Social developments in the European Union

2007

edited by Christophe Degryse and Philippe Pochet
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Ninth annual report
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Preface

The year 2007 was marked by several decisions fundamental for the continued integration of the European Union. The long-standing blocking of the European Constitutional Treaty was overcome by the European Union heads of government signing up to the Lisbon Treaty – or Reform Treaty – in December 2007. On a positive note, one might mention that the Lisbon Treaty clearly asserts adherence to full employment, as well as the social market economy. Furthermore, in response to worries concerning the impact of European integration on national public services, a protocol was attached particularly stressing the special status of public services in responding to national, regional and local needs, so emphasising that other considerations than economic ones should be involved in decision-making. But the status and effects of the protocol are still unclear. Another ambiguous matter is the handling of the Charter of Fundamental Rights, which has also given rise to critical voices. The Lisbon Treaty makes the Charter of Fundamental Rights legally binding, but does not incorporate it into the Treaty; the UK and Poland have opted out of the Charter. Finally, the Lisbon Treaty reconfirms that the role of the social partners is linked solely to matters of social policy, thereby significantly limiting their role in the construction of Europe. As a result, while the Lisbon Treaty has met with a positive response, some elements evoke mixed feelings among the social actors. The Member States will have to ratify the Lisbon Treaty during the coming year if it is to enter into force by 1st January 2009. Now the institutional debate is behind us, there seems to be scope for a more focused discussion on the future direction of European integration.

But the Lisbon Treaty was by no means the only major event of 2007. As this year's Social Developments in the European Union will show, the world economy was hit by the US sub-prime crisis, visiting major turbulence on financial markets across the world and bringing several big banks to their knees. It remains unknown how serious the damage to the world economy will be, with optimists claiming that the US economy is
extremely resilient and will bounce back very soon, while pessimists are warning that the world economy is heading towards a crisis worse than that of the 1930s.

Meanwhile, employment and social policy returned to the EU’s policy agenda. Starting in 2006, the flexicurity debate peaked in 2007, with the European Commission publishing *Flexicurity Pathways*, as well as *Towards Common Principles of Flexicurity*. Flexicurity is currently perceived by many actors as necessary if Europe is to remain competitive in a global economy, that is, as the only labour market strategy adapted to deal with the global economy, with ‘adapt’ being the key word. But as this year’s *Social Developments in the EU* shows, the debate on flexicurity is far from being harmonious. The debate on social policy also took off during 2007, although with less vigour, speed and attention from both European and national actors. Two documents were launched by the European Commission in order to consult European citizens on their views on current social reality and also the changing needs of social policy. This consultation on social reality in Europe and perceptions of the requisite social policy will feed into the process of reviewing the *Social Agenda*, which will take place during 2008. This debate is linked to revision of the internal market, although this does not always come across as clearly as one might wish. While an open debate on social policy at European level should be welcomed, especially if linked to revision of the internal market, the lack of attention given to the process and debate by both European and national actors can be interpreted in several ways: they do not consider it relevant, they are not aware it is taking place or they do not understand its importance. The outcome of this consultation will be reflected in the Social Agenda, which will be adopted in 2008 and will to a large extent determine whether the social dimension returns to the Lisbon Process or not.

While the social pillar of the Lisbon Strategy still seems to be on standby, sustainable development was clearly pushed up the policy agenda, to stand at the very forefront of European integration, as this year’s *Social Developments in the EU* will report. Its social impact, relevance and importance should not be underestimated.

Maria Jepsen, Philippe Pochet and Christophe Degryse
Foreword

If we were to identify two major crises of global economic governance in 2007, they would without doubt revolve around the fundamental rethink of methods of production, transport and consumption emerging from the latest work of the Intergovernmental Panel on Climate Change (IPCC), firstly, and, secondly, the failure of economic and financial governance highlighted by the subprime mortgage crisis in the United States. Throughout the entire year, in the industrialised countries, these two events were calling into question a type of ‘growth’ which nowadays no longer bolsters collective well-being.

The IPCC’s alarming forecasts concerning the social impact of global warming lead to fears that the meagre results of development in the poorest countries could be wiped out: social inequalities, threats to employment in many sectors (agriculture, fisheries, water etc.), drought, flooding, epidemics and population displacement could all increase. Industrialised countries will not escape climate change, nor its long-term effects on various economic sectors and on how employment is likely to be redistributed. A study carried out by the European Trade Union Confederation (ETUC), the Social Development Agency (SDA), Syndex (France), the Wuppertal Institute (Germany) and Istas (Spain) indicates that the volume of job gains and losses triggered by climate change will be considerable and that no sector will be spared, whether the effects of measures taken to combat global warming that it experiences are positive or negative.

The subprime crisis originating in the USA has, for its part, led to situations which would have been deemed unthinkable in the 21st century: long queues outside the Northern Rock bank in the United
Kingdom, colossal sums stumped up by central banks in large industrialised countries so as to avoid total paralysis of the interbank lending market, major Western banks bailed out by Asian investment funds, and so on. As well as being yet another financial crisis, what is striking about the subprime affair is that in December 2007, i.e. more than six months after it first began, the full impact on the international banking and financial system could still not be gauged – which betrays the existence of some extraordinarily shady areas in global economic ‘governance’.

These two major crises have been compounded by other events, some but not all of them linked to the above. Such events directly affect the ordinary European non-shareholding employee: thousands of over-indebted households can no longer afford their accommodation costs, rising energy prices (in New York the barrel of oil doubled between January 2007 and January 2008, from $50 to $100), the surge in raw materials prices and especially the cost of food, the return of inflation hitting low incomes particularly hard, and so the list goes on. Thus while the monetary authorities offer unlimited guarantees to banks foundering because they have over-speculated, the mounting insecurity of those who live by their labour contributes once again to a picture of unequal, unfair and chaotic globalisation.

To complete the picture, we must add the cohorts of migrants now arriving at a tragically regular pace, who are attempting by every possible means to penetrate the fortresses of North America and Europe. These countries, meanwhile, no longer tolerate immigration except through their competition to attract the best brains, conducted across the entire planet. Finally, the very notion of development cooperation, basically dating back to the 1960s, is nowadays giving way to trade liberalisation and demands in respect of governance and property rights. Peace and prosperity will ensue, or so the (sceptical) African, Caribbean and Pacific countries are promised.

We have decided, in view of these factors, to devote a substantial part of this edition of Social Developments to the theme ‘Europe in the world’ and to emerging forms of governance. The theme divides into several
chapters, devoted to the role of Europe in:
- the fight against climate change (Jean-Pascal van Ypersele);
- sustainable development (Iain Begg);
- the regulation of financial markets (Pierre Defraigne);
- international trade unionism (Christophe Degryse);
- development cooperation (Frédéric Lapeyre);
- asylum and immigration policies (Cécile Barbier).

As concerns the European Union’s ‘domestic’ agenda, we shall focus this year on four themes which we thought crucial in 2007:
- the Lisbon agenda and flexicurity (Maarten Keune);
- the liberalisation of postal services (Éric Van den Abeele);
- developments in the sectoral social dialogue (Philippe Pochet);
- the rulings of the European Court of Justice in the Viking and Laval cases (Dalila Ghailani).

One of the key ongoing social debates in Europe throughout the year concerned the future of services of general interest. Although independent studies demonstrated in 2007 that energy liberalisation has been a failure, the Commission pressed ahead with its plans to liberalise electricity and gas. In the eyes of the ETUC it is doggedly pursuing a hopeless cause: ‘the Commission continues to support a liberal model that has given ample proof of its limits, in particular in the United Kingdom, the cradle of energy liberalisation’ (1). Full liberalisation has been accomplished in the postal sector, with an agreement between the European Parliament and the Council (see the article by Éric Van den Abeele), but the question of how to finance universal service has not been answered clearly and unambiguously. So here too there are grounds for fearing that liberalisation will not bring the promised benefits for consumers, but will

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instead worsen the quality of service and of work in the sector and, ultimately, push up costs. Whether it be public services, postal services, healthcare services, social services of general interest etc., Europe urgently needs to clearly demarcate what forms part of the market and what does not; what is economic and what is not. Admittedly, the Lisbon Treaty contains a new protocol on services of general interest. Admittedly, the ETUC handed in a petition containing more than half a million signatures in November, demanding a directive on public services. But the Commission and the Court of Justice continue to give the impression that everything is – or can be – economic, and that consequently everything is – or can be – subject to competition rules and the freedom to provide services.

Another significant debate of 2007 was ‘flexicurity’ and the future of labour law. At the end of 2006, the Commission had adopted a Green Paper entitled ‘Modernising labour law to meet the challenges of the 21st century’, aimed at prompting a public debate about adapting labour law to the modern economy. During this entire year, debate focused on how to reconcile flexibility and security in the labour market (see the articles by Maarten Keune and Philippe Pochet). Whereas at the end of the year the Council managed to agree on eight common principles of flexicurity, it failed to reach agreement on revising the ‘working time’ directive (1) and on temporary work. This state of affairs, we believe, is indicative of the fact that it is easier to deregulate and enhance flexibility at European level than to heighten security for employees. Another worrying trend is highlighted by some recent Court of Justice rulings. There has been much discussion of the Viking and Laval cases, where the right of workers to take collective action clashes with the fundamental economic freedoms of the EU (see the chapter by Dalila Ghailani), but less mention has been made of the ruling of 14 June 2007 in a case between

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the Commission and the United Kingdom (Case 127/05). This ruling, which concerns transposition of the 1989 framework directive on workers’ health and safety, holds that an employer’s obligations to the workforce may be restricted by considerations of an economic nature. Surely, by declaring that the employer is obliged to ensure the health and safety of workers only in so far as is ‘reasonably practicable’ (3), the Court is opening up a breach in European labour law?

These developments on major European social issues – covered in more detail in the contributions to this volume – are embedded in national contexts, both political, economic and social, some aspects of which are shared by different Member States and may be worth recalling here.

For instance, the (European) issue of flexibility and labour law is accompanied by a number of pay disputes in several countries. Whilst at the end of 2007 almost all Member States were enjoying overall employment growth and a corresponding drop in unemployment, questions as to the quality of work, pay and household purchasing power are becoming ever more pressing. In Germany, the year began with a wide-ranging debate about pay. Figures published by the Federal Statistical Office in January 2007 (4) reveal that the 2.5% growth recorded in 2006 did not benefit German employees in terms of purchasing power. Wage rises were totally eroded by inflation (+1.7%), for both white-collar staff (+1.2% of pay on average) and blue-collar workers (+1.5% of hourly pay). Overall, wage rises in 2006 (+1.2%) were the lowest on record since 1995, the date of the first survey carried out for Germany as a whole. According to the German Social Democrats, almost 2.5 million people working full-time can no longer live on their earnings, yet the former Minister for Employment and Social Affairs and Vice-Chancellor, Franz Müntefering, has declared that ‘anyone who works full-time must be able

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4 http://www.destatis.de/jetspeed/portal/cms/.
to feed themselves and their family’ (5). Statistics published on 19 November by the Nuremberg-based IAB (Institute for Employment Research) reveal that the number of working people dependent on welfare assistance rose from 800,000 to 1.33 million between January 2005 and January 2007. The question of whether or not to introduce a minimum wage in Germany has been under consideration and hotly debated throughout the year (6).

In France, according to INSEE (the French National Institute of Statistics and Economic Studies), whereas hourly pay has risen since the start of the 1980s, and despite the numerous upward adjustments of the minimum wage, annual earned incomes have not progressed in constant euros over the same period of time (7). This stagnation mainly results from the increase in the proportion of employees working part-time or doing atypical forms of work, and from the fall in the number of days paid. Thus this expansion of job insecurity brings about a reduction in real earned incomes, mainly among young people and employees not working full-time.

Seen within the national political setting, this trend is accompanied by widespread social debate about growing inequalities. Regular calls for wage restraint in the name of competitiveness are at odds with the evidence that directors’ pay is spiralling out of control. What was regarded as an excessively generous golden handshake was given to Laurence Danon, former director of *Printemps*, in February 2007 and proved highly controversial. The French press took that as a pretext to recall the severance pay awarded to Jean-Marc Espalioux of the Accor

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6 In June 2007, having failed to agree on a minimum wage, the coalition reached agreement on extending the guaranteed minimum wage applying in the construction sector to a dozen other sectors.

In the Netherlands, a 316% pay rise for the head of the Dutch bank ING over a four-year period aroused indignation. There too, the national press latched on to the matter and revealed that, in the space of one year, the bonuses awarded to the bosses of twenty or so large publicly listed companies grew by 21%. Sums offered by way of golden handshakes to managers leaving their posts are going through the roof: a manager at ABN-Amro left with €3 million; the head of the publishing house VNU, Rob van den Bergh, received a leaving gift of €5.9 million (9). This prompted Finance Minister Wouter Bos, of the Labour Party, to argue in favour of placing limits on private-sector managers’ pay (a fixed pay component and a variable component consisting of premiums, bonuses and other allowances in the event of a takeover).

Directors’ pay is likewise highly controversial in Germany, with the €11.9 million taken home in 2005 by the head of Deutsche Bank, Josef Ackermann, the announcement of an almost 30% pay rise for members of the Siemens management board (10), and the doubling of emoluments for the management board at automobile manufacturer Porsche (the six board members earned €112.7 million between them, compared with 45.2 million in 2006). A Ministry of Employment report published in summer 2007 finds that the revenue of enterprises and earnings from capital shot up by 42% between 2000 and 2006, while wages increased by just 4.5%. Unlike the new French President, German President Horst Köhler, who is a Christian Democrat (CDU) and former president of the IMF, has publicly denounced this ‘decoupling’ of wages and profits. In an

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8 See Le Monde of 1st February and 12 April 2007.
9 Le Monde, 6 April 2007.
interview with the *Handelsblatt* newspaper, he referred to a ‘state of tension between enterprises and society’, called on senior managers to act responsibly, and asked supervisory boards and shareholders to ensure that ‘directors do not lose a sense of proportion in their pay pretensions’ (11). Meanwhile SPD President Kurt Beck, who is Minister-President of Rhineland-Palatinate, has announced that a working group will be set up to examine the possibility of legislative action to curb directors’ pay (12).

Public debate about directors’ pay goes way beyond the boundaries of the European Union. In the United States, the earnings gap between the head of a large company and an average employee, which stood at 42 in 1980, has since risen more than tenfold. According to the AFL-CIO trade union, the directors of the top 500 publicly listed companies each received a total income of $15 million on average in 2006, which represents an 11.5% increase compared with 2005 (13). In Switzerland, the head of the Novartis pharmaceutical laboratory, Daniel Vasella, involuntarily triggered a debate in the country’s media in that his annual income lies, according to estimates, somewhere between CHF 21 and 44 million (€13 to 27.5 million) and his severance pay is set at five years’ earnings. A study by the Ethos Foundation notes that average remuneration for executive directors grew to CHF 2.3 million in 2006, representing a rise of 15.8% compared to 2005. ‘Such a rise is far higher than that of the average population, which therefore leads to an even bigger increase in the gap between high and low wages’. The Foundation states with regard to executive pay, ‘No link between performance and variation of remuneration was found’ (14).

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The European Trade Union Confederation (ETUC) adopted a statement on pay at its Congress on 21-24 May 2007, to be followed up by campaigns in 2008. The statement notes that wages and salaries represent a declining share in the gross domestic products of almost all the EU countries; that pay rises have barely kept pace with inflation in the euro zone, in particular, and have lagged behind economic growth in many new Member States; and that in some countries such as the UK there is emerging evidence that underpaid migrant workers are used to exert downward pressure on real pay rates especially for the unskilled and semi-skilled.

All of this has a name: pauperisation. This process, taken together with the spiralling of directors’ pay described above, sheds a harsh light on the repeated appeals for wage restraint made by Finance Ministers at the Ecofin Council and by the European Central Bank (ECB) (15). One seemingly lone figure, the President of the Eurogroup and Luxembourg Prime Minister, Jean-Claude Juncker, stated at a European Parliament hearing on 27 June that it is ‘impossible’ to encourage trade unions to show restraint while ‘other actors in economic and social life are unembarrassed about accepting limitless pay awards’. More than 72 million European citizens are living in poverty, and the gulf between rich and poor is widening steadily: 15% of Europe’s workers, or approximately one in seven, are paid a monthly wage that is less than 60% of average national earnings; in other words, they are the ‘working poor’ (16). This climate of pauperisation signals a heavy workload for the year 2010, decreed by the European Commission the ‘European Year for Combating Poverty and Social Exclusion’.

This overall climate has caused employees to start putting forward robust wage claims in most European countries, both ‘old’ and ‘new’. In Germany, these demands are reflected in particular in the new pay agreement concluded last May in the metalworking sector (generally

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regarded as the barometer of pay trends in Germany). Similarly, the introduction of a minimum wage in the German postal sector, although viewed with some misgivings, is being presented as a means of combating the wage dumping provoked – whether one likes it or not – by the EU’s liberalisation of the sector. Indeed, if we are to believe the reasons given by competitors for leaving this market after the announcement of the plan to introduce a minimum wage, the number-one purpose of liberalisation seems to have been to exert downward pressure on postal workers’ wages. Under these circumstances, the European Parliament’s appeal for employment trends and working conditions in this liberalised sector to be monitored – an appeal ignored by the Council and jettisoned by the Parliament itself in December – makes a good deal of sense.

In the United Kingdom, labour disputes erupted in the Post Office, the London Underground, the railways and the civil service. In France, the transport sector and the public service in particular were hit by conflicts. In Finland, a bitter labour dispute in the healthcare sector caused the government to pass a law in November requisitioning 12,000 nurses who were threatening to resign en masse if their pay negotiations fell through. In Finland and in Sweden, two long-running labour disputes were resolved by means of court action: the Viking and Laval rulings by the European Court of Justice recognise the right to strike and the right of trade unions to take strike action against wage dumping; however, the ETUC fears, they could also affect the unions’ capacity to promote equal treatment and protection for workers whatever their nationality. In Belgium, the power vacuum brought about by the longest-running political crisis in the country’s history led to widespread trade union action on purchasing power and protests against rising prices for food, housing and energy (electricity, gas and heating oil). In Spain, according to the OECD, the huge rise in the number of working women and immigrants led to a 4% drop in average earnings between 1995 and 2005. Vigorous wage demands are also starting to be made in the central and eastern European countries: in Czech industry, where unions at the automobile manufacturer Skoda, a subsidiary of the German group Volkswagen, mobilised 27,000 employees in April in favour of a 24% wage hike; in the healthcare sector in Slovakia and Romania, where
workers fought for improved pay (17); and in Estonia, where agreement was reached in January to boost the minimum wage for health workers by 25% (18). In Poland, while many doctors and nurses are heading off to western European countries, a third of all hospitals went on strike in May for better wages and a reform of the health system (19). Robust wage claims have also been put forward in the public sector in Estonia (20) and Hungary (21); in the education sector in Bulgaria and Latvia (22), etc.

At a political level, general elections were held in eight EU countries in 2007: Estonia (March), Finland (March), Ireland (May), Belgium (June), France (June), Greece (September), Poland (October) and Denmark (November). New governments were likewise formed in Austria in January (following the elections of October 2006), the Czech Republic (elections of June 2006) and the Netherlands in February (elections of November 2006). All in all, no fewer than eleven new governments took office during 2007. In addition, in the United Kingdom, Prime Minister Tony Blair handed over to the Chancellor, Gordon Brown, in June after experiencing a setback at the May local elections. In Italy, the Prodi government fell in February then managed to regroup; the two main centre-left parties merged in October to form the Democratic Party, a social-democrat type line-up. Germany’s ‘grand coalition’, in whose ranks there is much dissent, saw the SPD strengthen its social profile at the Social-Democrat Congress in Hamburg in October, while the CDU is repositioning itself in the centre.

http://www.eurofound.europa.eu/eiro/2006/12/articles/sk0612039i.htm


As this brief overview shows, political change is rapid and ongoing in a Europe of 27 Member States. Hence it would seem more necessary than ever for there to be a certain consistency in countries’ European policies, especially when it comes to establishing alliances in the field of social affairs (see for example the joint declaration entitled ‘Un nouvel élan pour l'Europe sociale’ signed in Paris on 7 February by nine Member States: Belgium, Luxembourg, Bulgaria, Cyprus, Spain, France, Greece, Hungary and Italy) (23). On the other hand, the unpredictability of Member States’ European policies weakens the European project, as was demonstrated in the case of Poland until autumn 2007. In a sense, this demonstrates the need to clarify the purpose of building Europe and to possess a coherent, intelligible and reliable treaty governing the operation of EU institutions. Does the Treaty of Lisbon signed in December 2007 meet this need? Three lessons can certainly be learned from its lengthy gestation period. The first has to do with method, the second with content, and the third with the players and any alternatives.

As far as the method is concerned, the desire to replace the classic method of revising Europe’s treaties, namely ‘intergovernmental conferences’, had been accompanied since 2001 by a desire to more closely involve citizens in the building of Europe, most notably through so-called civil society organisations, and to simplify the treaties to make them more readable. What happened next is well known: the establishment of a European Convention, the elaboration of a draft ‘constitution’ forwarded to the intergovernmental conference of 2004, the signing of the constitutional treaty and then, finally, its rejection by France and the Netherlands at the ratification stage in 2005. Even though it had been drafted more democratically than its predecessors, therefore, the constitutional treaty did not reap the rewards of the new method. The lesson learnt from this, no doubt owing to pressure from EU enlargement, resulted in a 180 degree U-turn. Civil society was shut out, political compromises were reached at the highest level at the European Council of June 2007, a hasty intergovernmental conference was held behind closed doors, a new

and totally illegible treaty was signed and then, for most countries, parliamentary ratification occurred without public debate. What is more, according to some insiders, there will be no question of launching any further European conventions ‘until at least ten years from now’. Thus, following an attempt to open up democratic debate between 2000 and 2005, the Treaty of Lisbon has finally seen the light of day thanks to a retreat behind diplomatic closed doors. In sum, this treaty is the almost total antithesis of the Laeken Declaration which, in December 2001, launched the revision of the Treaty of Nice. One highly cynical Financial Times columnist noted that, if Europe wishes to make progress, it must at all costs do so out of sight of the citizens (24). Obviously, however, such a ‘lesson’ is scarcely tenable in the medium or long term. Keeping the Member States’ populations in the dark about the European debate will never serve to create a European dynamic among public opinion, except one of opposition.

In actual fact, one of the most surprising aspects of the new Treaty is that the European policy content remains virtually unchanged. Social affairs have become somewhat less visible, mainly by being relegated to the Charter of Fundamental Rights (although it is still binding, except on the United Kingdom which has opted out and Poland which has not really clarified its stance in this regard). In addition, recognition of the social partners in the Treaty appears more limited than in the draft European constitution: their role now seems confined to social policy matters in the strict sense and no longer extends – at least formally – to macro-economic matters. Paradoxically, a ‘horizontal social clause’ has been introduced into the Treaty, aimed at making all Community policies address a series of social requirements. The goal of free and undistorted competition has been relegated to a protocol (which does however have the same legal value as the Treaty). Another protocol acknowledges – and asserts the intention to preserve – the role of services of general interest. Otherwise, the Treaty’s main innovations are procedural: the extension of qualified majority voting, a new method of calculating the weighting of votes,

simplification of enhanced cooperation, etc. These innovations are not unimportant; they reflect a political will to make the Union function more effectively. But they are not in themselves sufficient to relaunch or redirect the momentum of Europe. Rather, it is to be feared that the saga of the European constitution and then the Treaty of Lisbon could mean that no real examination or rethink of the purpose and methods of building Europe will be attempted for quite a while to come.

Now that we have moved on from Nice, the absence of any further institutional deadlines in the near future should be turned to effect by social and trade union movements in order to cool-headedly revive democratic debate about Europe – its principles, its basis and its purpose. In other words, given that the institutions are now expected to operate effectively with 27 Member States, let us initiate a debate about what the European people expect of those institutions. Failing that, the Treaty of Lisbon will remain a triple failure in the minds of progressive thinkers: failure to involve the citizens; failure to reassert a social project for Europe and imbue it with content; failure to involve alternative non-governmental players. The upshot has been an unreadable text adopted by political elites who consider it more important to maintain a subtle diplomatic balance than to question the democratic nature of European construction and its participatory methods. It is clear in any event that, were a number of critical players to withdraw into their national shells, the champions of ‘negative integration’ and deregulation would be given free rein.

The fundamental injustice of climate change (*)

The greenhouse effect symbolises the onslants being made on the environment owing to the logic of accumulation. Tens of billions of tonnes of carbon dioxide (CO2) are being emitted every year through the burning of coal, oil and gas. Climate change will affect ecosystems, the food chain, water, human health – and above all the most vulnerable population groups. Those primarily responsible are still exporting their model of development, even though a world where each and every inhabitant pollutes as much as an average US citizen is inconceivable. The Convention on Climate Change adopted by the international community in 1992 was followed up in 1997 by the Kyoto Protocol. But the North has accumulated such a climate debt to the South that countries in the South balk at joining efforts to reduce greenhouse gas emissions until the North begins to practise what it preaches. Unless the use of combustible fuels is drastically scaled down, the climate will become hotter than humanity has ever experienced and hundreds of millions of people will be affected. Rich countries must reduce their emissions as a matter of urgency, promote clean world development and help the South adapt to that part of climate change which has become inevitable.

Climate debt

The large-scale burning of combustible fuels (coal, oil and natural gas) ever since the industrial revolution and the invention of the steam engine led to a 35% increase in the atmospheric concentration of CO2 between 1750 and 2005, CO2 being the main greenhouse gas of human origin.

* This article is an updated version of the one published in the special edition of the journal Alternatives Sud devoted to climate change (van Ypersele, 2006).
CO₂ is an unavoidable waste product of all combustion, and almost half of the amount emitted remains in the atmosphere for about a century; the other half is absorbed by the oceans and by plants. One consequence of the unequal development of North and South is that almost three quarters of the excess CO₂ hitherto accumulated in the atmosphere come from so-called ‘developed’ countries. Although countries in the South are likely to be emitting more greenhouse gases than those in the North within the next ten to twenty years, the quantities accumulated in the atmosphere will still come mainly from ‘developed’ countries for a long while.

It is these quantities accumulated over the decades which lie behind global warming, and not directly the CO₂ released in a given year. The CO₂ present in the atmosphere retains part of the heat radiated by the earth in the form of infra-red rays, and the more CO₂ there is, the more is trapped. This inevitably raises the global mean surface air temperature and alters the earth’s climate in a process known as ‘intensification of the greenhouse effect’, referring to the mechanism operating in a greenhouse, where the glass panels play a similar role to that of CO₂. Thus the North, through its CO₂ emissions, has built up a ‘climate debt’ to the South (Simms, 2005).

The Intergovernmental Panel on Climate Change (IPCC) (1) estimated back in 2001 that most of the warming effect observed over the past fifty years is attributable to greenhouse gases of human origin. It has likewise concluded that if these emissions continue, without a serious reduction policy, the global temperature will probably rise by 1.1 to 6.4°C between 1990 and 2100, depending on the emissions scenario and the model used (IPCC, 2007; see also Houghton, 2004; Le Treut et al., 2004). Many other

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1 The IPCC was established by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) in 1988 to assess the state of knowledge based on the scientific reference literature. It has published many important reports and documents. Hundreds of specialists participate in the IPCC’s work as authors and reviewers, as part of a rigorous and transparent procedure. IPCC reports provide excellent reference material which is widely used by policy-makers, scientists and other experts. The IPCC received the Nobel Peace Prize in 2007 (jointly with Al Gore) ‘for their efforts to build up and
climate parameters will be affected too, according to the IPCC: average sea levels will rise by between 18 and 59 cm (at least) during the same period and will continue rising for centuries once the temperature has stabilised. The water cycle will be intensified, generating more droughts in some regions and floods in others.

Several of the changes predicted for this century are starting to become perceptible in climate reporting. The global mean surface temperature rose by 0.6°C during the 20th century, with even higher values in continental regions and in the vicinity of the poles. The number of heatwaves is increasing, and so is the proportion of rain falling in a concentrated fashion, causing floods. Tropical cyclones have also been growing in intensity since 1970. Most small continental glaciers are melting, as is the Greenland ice cap.

**The impact of climate change**

The IPCC (2001 and 2007) has also evaluated the scientific information available about the impact of climate change on ecosystems, socio-economic sectors – including the food chain and water resources – and human health. The following paragraphs summarise the IPCC’s conclusions in these areas (see also Schneider, 1997).

**Ecosystems**

Global warming may occur at a faster pace than the natural migration of certain plant and animal species, which could be seriously affected or even disappear. This may well be the case for several species of forests. Some plant and animal species (such as those facing extinction and those adapted to narrow ecological niches for which the habitat is discontinuous and migration is hampered or prevented by barriers) and certain natural systems (such as coral reefs, mangrove swamps and other moist coastal
regions, wet meadows, mountain ecosystems and ecosystems relying on permafrost) will be adversely affected by climatic variations corresponding to a mean global warming scenario of less than 1°C in 2100 compared with 1990 temperatures. With a mean temperature rise of 1 to 2°C in 2100, the harm done to these very sensitive species and systems would be more serious; the risk of irreversible damage or loss would increase, including for additional species and systems. Furthermore, these changes would probably lead to a net decrease in global biodiversity. Approximately 20 to 30% of the plant and animal species so far studied would probably be threatened with extinction if average world temperatures were to rise by more than 1.5 to 2.5°C above 1990 levels.

**Food production**

Apart from human production factors, food production is mainly influenced by the availability of water and nutrients, as well as by temperature. Rising temperatures could open up new areas to agriculture in regions which are too cold at present, but will also increase the risk of heat or water stress in other regions. All farm animals (cattle, pigs and poultry) are sensitive to heat and drought. Even if the trend is gradual, the effects of climate change will not be uniform. Generally speaking, middle to high latitudes may in certain cases enjoy increased agricultural productivity given a modest overall rise in temperature (up to 2°C above 1990 temperatures on average). By contrast, in tropical and subtropical regions – where some crops are already close to their threshold of tolerance to heat and where non-irrigated farming predominates in dry areas – output is likely to fall. What is more, the adaptability of the least developed tropical countries is limited by a lack of financial resources. So global warming is likely to widen the disparity in food production between developed and developing countries. If overall temperatures were to rise by more than 2°C or so, productivity would also decrease in middle to high latitudes, and the situation in tropical countries would be even worse. A study by Parry *et al.* (2004) found that in the 2080s the total number of people going hungry could rise from 50 to 580 million as a result of climate change. These figures could be lower if plants were able
to take optimum advantage of the enrichment of CO2 in the atmosphere, but that seems unlikely. Most of the people affected would be in developing countries. Certain regions would be very hard hit, especially arid and sub-humid tropical regions, above all in Africa.

**Water**

The quantity and distribution of water depend largely on rainfall and its evaporation, both of which may well be affected by climate change. The likely alterations to distribution include increased precipitation at high latitudes and in some equatorial regions, and a decrease in certain regions at middle, subtropical and semi-arid latitudes. This would imply an increase in water stress in the Middle East, around the Mediterranean, in southern Africa, Mexico, some parts of Europe and Latin America, but a decrease in China and southeast Asia. In general, the capacity of existing water supply systems and their responsiveness to changes in demand largely determine how serious an impact climate change will have on water supply. In 1999, 1.3 billion people had no access to an adequate source of safe water, while 2 billion people had no access to proper sanitation, mainly in arid and semi-arid regions (see UNEP, 1999). Climate change entails significant additional stress under such circumstances. In addition to changes in average supplies, extreme climatic events such as drought or flooding are expected to become more problematical in many temperate and humid regions.

**Socio-economic effects**

The impacts described above affect all of human activity and the very preconditions for development. For example, if sea levels rise by one metre, the surface area of Bangladesh will be reduced by 17.5% and tens of millions of people will be forced to migrate. The existence of many cities located close to the sea, such as London, New York, Mumbai and Shanghai, is under threat in the medium term. Some island states, such as the Maldives and Tuvalu, could quite simply disappear. Over and above these slow changes in average conditions, the frequency and/or seriousness of extreme events such as droughts, floods, cyclones, storm surges and storms are liable to change in a hotter world, with potentially serious human and socio-economic consequences. These might vary in scale...
depending on the degree of social organisation and the preparedness of authorities and populations. A tropical cyclone of similar intensity can have very different effects from one place to another. Poor people often have no other choice than to set up home on worthless plots of land in areas prone to natural disasters, such as river banks, unstable hillsides in deforested areas or fragile water basins. Such circumstances not only make the most destitute people vulnerable to natural disasters, but also lessen their capacity to tackle the consequences. The poorest families are sometimes compelled to go even further into debt in order to rebuild their homes, replace their lost possessions and satisfy their most basic needs until income-generating activities can be resumed (De Souza, 2004). The human and material damage caused by Hurricane Katrina in New Orleans reminded us that social outcasts in rich countries are no better off than the inhabitants of Southern countries. The book by Le Tréhondat and Silberstein (2005) is edifying in this regard. Its authors show how the reconstruction effort after the disaster provided an opportunity for the US elite to expel inhabitants who are unwanted because they stand in the way of profit. Indeed, Condoleezza Rice even stated after the tsunami in December 2004 that this was ‘a wonderful opportunity’ for the United States and ‘has paid great dividends for us’ (Le Tréhondat and Silberstein, 2005).

Refugees
The migration of populations affected by gradual or sudden climate change could obviously increase the risk of political instability and conflict. These risks are alluded to cautiously in the IPCC’s reports. A report issued in October 2003 by two experts working for the Pentagon, P. Schwartz and D. Randall, is far more explicit (Schwartz and Randall, 2003). Oddly enough, while the official discourse of the Bush administration at that time still sought to minimise the significance of climate change and its anthropogenic causes, this report – which was kept secret for several months – envisages a doomsday scenario where the climate becomes chaotic and refugees fight over what meagre food resources are still available. The authors conclude in particular that the
United States and Australia will be tempted to build defensive fortresses around their countries because they have the resources and reserves to ensure their own self-sufficiency; borders will be reinforced in all countries so as to keep away undesirable immigrants from Caribbean islands, Mexico and South America; in this world of warring states a proliferation of nuclear weapons will be inescapable. Thus climate change serves here to justify spending additional resources on strengthening the USA’s role as global policeman in a world where control over basic resources – energy, food and water – counts more than ever before (Valantin, 2005).

**Human health**
The repercussions of global climate change on human health include changes in the geographical extension and seasonality of various infectious diseases, the effects of malnutrition and famine due to a redistribution of food and water resources, and an increase in the mortality and morbidity rates associated with heatwaves.

The relative vulnerability of different regions to each of the potential impacts indicated above is largely determined by their access to resources, information and technology, and by the stability and effectiveness of their institutions. This means that opportunities for sustainable development will be more seriously hampered by climate change in developing countries and among deprived population groups. Of course, climate change will not be accountable for all the problems encountered by developing countries in the coming century, but it will make satisfying the basic needs of their populations more difficult in both the short and long term. Climate change is likely to heighten iniquity on a global and regional scale, both within existing generations and between present and future generations.

**Response strategies: contraction and convergence**
The international community has been very slow to grasp the scale of climate issues. Even though scientists began to sound the alarm bell back in the late 1950s (1), and the First World Climate Conference recognised
in 1979 that significant climate change could result from the intensification of the greenhouse effect, it was not until 1992 that the United Nations Framework Convention on Climate Change (UNFCCC) (1) was adopted at the UN Conference on Environment and Development in Rio de Janeiro. Article 2 of the UNFCCC states that the ultimate objective of the Convention is ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’. This article refers to the need to achieve this level ‘within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner’.

The European Council of Ministers is the only political body to have expressed an official view on quantifying this objective. The European Council of 23 March 2005 reiterated the stance adopted back in June 1996: it ‘confirms that, with a view to achieving the ultimate objective of the UN Framework Convention on Climate Change, the global annual mean surface temperature increase should not exceed 2°C above pre-industrial levels’. Shortly before that, on 10 March 2005, the Council of Environment Ministers stated: ‘Recent scientific research and work under the IPCC indicate that it is unlikely that stabilisation of concentrations above 550 ppmv CO2 equivalent would be consistent with meeting the 2°C objective and that in order to have a reasonable chance to limit global warming to no more than 2°C, stabilisation of concentrations well below 550 ppmv CO2 equivalent may be needed’. We have already reached 380 ppmv CO2 today, and taking into account the extra effect of other greenhouse gases this corresponds to about 450 ppmv CO2 equivalent. So

2 The researchers Revelle and Suess (1957) write: ‘Human beings are now carrying out a large scale geophysical experiment of a kind that could not have happened in the past nor be reproduced in the future. Within a few centuries we are returning to the atmosphere and oceans the concentrated organic carbon stored in the sedimentary rocks over hundreds of millions of years.’ They go on to argue successfully for constant monitoring of atmospheric CO2 levels.

3 Available at: http://www.unfccc.int.
we might already have exceeded the maximum level considered dangerous by the European Union.

Such an objective cannot be achieved without seriously limiting the total volume of CO₂ emitted by humanity over the next century. Such limitation means that worldwide emissions of greenhouse gases must gradually contract as compared with today’s levels. This is the first of two ideas that Aubrey Meyer of the Global Commons Institute has been propounding for the past fifteen years or so (Meyer, 2000): in order to progress towards climate protection, we must first of all accept that the total quantity of greenhouse gas emissions has to contract. The question that follows is: how should we divide up the emissions cake between countries?

The Convention can help us here too. Article 3 acknowledges the ‘common but differentiated responsibilities’ of developed and developing countries. They are common in that we all share the atmosphere – 1 kg of CO₂ emitted in New York, Brussels or Ouagadougou has the same effect on the climate – but differentiated in that the carbon footprint of an average US citizen is 25 tonnes of CO₂/year, that of a Belgian 12 tonnes and an inhabitant of Burkina Faso about 100 kg (in the energy sector). Some participants at the Rio conference attempted to dismiss these huge differences by emphasising the part played by the developing countries’ demographic growth in pushing up greenhouse gas emissions.

But in the countries where this demographic growth is taking place, the average per capita consumption of goods and energy is considerably lower than in developed countries. For instance, it has been calculated that between 1950 and 1990 the increase in CO₂ emissions per inhabitant in developed countries played a bigger role in increasing world CO₂ emissions than demographic growth in developing countries (Bartiaux and van Ypersele, 1993). This explains why the Climate Change Convention recognises that the developed countries should ‘take the lead in combating climate change and the adverse effects thereof’.

Another important principle underpinning Article 3 of the Convention is equity. In order for agreements to be effective and encourage cooperation, they must be deemed legitimate. As the IPCC recalls, equity is an
important factor in legitimisation. Given that developed countries have caused the bulk of the problem, that their per capita CO2 output is far higher than the rest of the world and that developing countries need to augment their emissions in order to develop, the industrialised countries have contracted a moral debt towards the rest of the world and future generations. How should the burden of this debt be shared out? The debate is far from over, but it is already clear that industrialised countries must reduce their emissions more than developing countries.

This in fact is the second idea propounded by Aubrey Meyer: gradual convergence of per capita emission levels towards a single level consistent with the size of the ‘authorised emissions cake’. The negotiators’ jargon (see Gupta, 2001) speaks of ‘C&C’, or ‘contraction and convergence’. Raúl Estrada, the Argentine ambassador who presided with such panache over the birth of the Kyoto Protocol (4), finds C&C attractive on paper but does not believe that it solves the fundamental question of equity which, he points out, is merely a substitute for the notion of equality (Estrada, 2000). Developing countries are not willing to countenance even the slightest limitation of their growth, especially as the developed countries have been able to pollute for such a long time without any constraints and some refuse to subject themselves to the unambitious Kyoto targets (see also Athanasiou and Baer, 2002).

So how are we to move forward? Perhaps the solution will come from one of the most frequently criticised mechanisms set out in the Kyoto Protocol. It provides for the possibility that industrialised countries might achieve their reduction targets in part by trading a share of their quotas with each another (and not with ‘Southern’ countries for the time being, contrary to what many authors have written). Such a system is regularly dubbed immoral because it enables certain countries to buy, with a clear conscience, the right to pollute more. Yet it just makes the need to limit pollutant emissions even more apparent.

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4 The Kyoto Protocol complements the Convention on Climate Change and obliges the developed countries which have ratified it to reduce their emissions by an average of 5% between 1990 and 2008-2012 (see van Ypersele, 1998).
In practice, whenever a car driver buys 10 litres of petrol, without realising it he/she at the same time buys the right to send into the atmosphere the 25 kg of CO₂ generated by its combustion. And the driver does not have to worry about purchasing this right from another inhabitant of the planet. The ethical problem connected with permit trading therefore has more to do with the way in which the quotas, or ‘emission permits’, are initially divided up between countries. If they are initially shared out according to a principle of equity rather than one of ‘acquired rights’, permits could even be an excellent means of conveying aid to developing countries under certain conditions (Grégoire et al., 2000). And provided that the total quantity of permits is determined by the desire to protect the climate for the coming decades and centuries (contraction), such a system would mean that the necessary reductions in emissions could be made at the best possible cost.

It should be pointed out that the environmental efficiency of the system depends solely on the total quantity of permits issued, and not on their distribution. One of the great Indian ecological thinkers, the late Anil Agarwal, published an article shortly before the Rio summit in which he proposed exactly that: dividing up fairly the total world emissions ‘authorised’ in terms of climate protection by the number of inhabitants on earth, and then allowing these ‘pollution rights’ to be traded (Agarwal, 1992). Countries not using up their rights could sell them to those exceeding their own allocation: it would be like a worldwide Kyoto, but with built-in equity. Following on from the Bali Conference at the end of 2007, we shall see whether or not the international community comes out in favour of such a process, the only one that would really enable us to protect the climate in a socially equitable manner.
References


Governance for sustainable development

The idea of sustainable development resonates widely with policy-makers and the public alike and is often found in documents or vision statements mapping the way forward for both developed and developing economies. It is one of the fundamental aims of the European Union, prominently set out in article 2 of the Treaty on European Union.

In 2006, the EU agreed a revised Sustainable Development Strategy (SDS) which not only updated the aims of the strategy that had been established five years earlier, but elaborated the governance mechanisms intended to advance these aims. Individual Member States also have bodies with various roles in fostering or monitoring sustainable development: in 2006, for example, the UK assigned a watchdog role to an independent commission. The United Nations, too, has an agency – the Commission on Sustainable Development – set up in 1992 and charged with promoting sustainable development and the 2002 Johannesburg summit – the World Summit on Sustainable Development – was a showcase for the world’s ambitions. The resulting ‘Plan of Implementation’ (United Nations, 2002) offers a comprehensive list of aims and is replete with rousing rhetoric, though disturbingly short on credible obligations.

Yet despite the enthusiasm for the concept and the spread of initiatives and strategies, it is far from obvious either that the current trajectory of economic development is sustainable or that inroads are being made into global sustainability problems. Indeed, since the Brundtland report (WCED, 1987) first set out a comprehensive view of sustainable development, the concept has been narrowed towards environmental – especially climate change – and quality of life issues (seen as richer, developed country pre-occupations), although the original conception
was as much about economic development. An especially critical view is offered by Victor (2006: 93) who observes that ‘even as sustainable development has become conventional wisdom over the past two decades, something has gone horribly wrong’, and he notes the ‘capture’ by diverse special interest groups and a proliferation of ‘largely meaningless checklists and targets’.

That there are shortcomings in the governance of sustainable development is undeniable and it is evident that there is a pervasive reluctance to confront some of the more intractable challenges. These notes review definitions, examine the governance of sustainable development and try to tease out ideas on policy developments that might enhance governance for sustainable development.

1. Defining sustainable development

Most people have an intuitive understanding of what the term ‘sustainable development’ encompasses, and would tend to associate it with variations on the definition first adopted by the Brundtland report that sustainable development implies meeting the needs of the present without compromising the ability of future generations to meet their own needs. There are three distinct facets of this definition that should be stressed. First, a balance has to be struck in depleting scarce resources so that today’s generation can enjoy an adequate quality of life without depriving successor generations. ‘Scarce resources’ in this context comprises a mix of those that are lost irretrievably once consumed (such as oil stocks), those that can be re-cycled (many materials) and those that can be regenerated with competent management. An argument can also be made that social policies that promote life-long learning and engage those more distant from the labour market are about maintaining the stock of human capital.

Second, the present generation has to avoid leaving a legacy that is detrimental to the well-being of future generations. Environmental degradation is the obvious example here with extreme forms associated with contamination of industrial sites that will take centuries to recover naturally. However, it is important also to recognise that there are social and economic dimensions to legacies. Extreme poverty or endemic disease
are just as debilitating as a poisoned environment and will often be seen as more immediate political challenges. In so many African countries, the loss of such a high proportion of the prime age population to AIDS is having a devastating effect not just on economic potential but on social relations. At a political level, actual or perceived inequalities or social injustices can give rise to reactions that culminate in terrorism.

Third, there are the obligations to provide infrastructure and social capital for the future, just as previous generations have provided capital from which today’s benefits (1). A specific element here is pensions and care for the elderly which, in ageing populations such as the EU and China, raises complex questions about the sustainability of inter-generational arrangements domestically, although there is also an international dimension. For many in the developed world, capitalised pension funds imply investment in emerging markets (indeed the rules in many countries oblige fund managers to seek the highest returns consistent with a level of risk). Such investment improves the availability of funding for developing economies that might struggle to finance investment, but also creates governance challenges to do with the sustainability of investment. Equally, immigration is canvassed as one of the ways in which ageing populations can sustain their work forces, raising complex inter-country challenges around social provision for migrants and the burden of investing in human capital – ‘brain drain’ for some; ‘brain gain’ for others.

2. Governance of sustainable development
Sustainable development is often closely linked to analyses of globalisation, especially in relation to its social and environmental impacts. Since the late 1980s, the range of governance instruments and processes has expanded as the world struggles to develop a coherent approach. It is in the environmental area that most effort has been made,

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1 Anyone working in London, as the present author does, cannot fail to be struck by the fact that there is (only) now a major effort underway to renovate and upgrade sewers constructed in the Victorian era.
with multi-lateral – albeit incomplete – processes such as the Kyoto protocol, with its targets for lowering of emissions of greenhouse gases. The social dimension seems to have advanced significantly less. The word ‘development’ also deserves to be stressed. The Millennium Development Goals (MDG) emerged partly from the momentum of the 1992 Rio summit that, in turn, took forward the Brundtland Report and can, thus, be seen as a product of the global approach to sustainable development. The limited progress towards achieving these goals (see box 1) raises a number of governance issues, about whether the strategic framework and the institutional machinery are adequate. Moreover, the aim of improving the health and well-being of the world’s poorest people is patently not being achieved, especially in much of sub-Saharan Africa.

Many regard globalisation as a generally positive force, a good advocate being the prominent economist Jagdish Bhagwati (Bhagwati, 2005). However, in its report published in 2004, the ILO’s World Commission on the Social Dimension of Globalization (WCSDG) documents the inequitable distribution of the benefits of globalisation. The ILO is clear in its policy message that ‘wealth is being created, but too many countries and people are not sharing in its benefits. They also have little or no voice in shaping the process. Seen through the eyes of the vast majority of women and men, globalization has not met their simple and legitimate aspirations for decent jobs and a better future for their children.’ The inequities are of two sorts: benefits tend to accrue disproportionately to some groups and only marginally to others, but there are also those who lose absolutely from globalisation. The implication is that although there are frequently-stated aims of promoting sustainable development, these aims are not well matched by institutional development and policy innovation.
Box 1: The faltering progress towards the Millennium Development Goals

The eight MDGs – which, given the political trajectory that led to them, can be interpreted as a vision of sustainable development attuned to developing countries – comprise six that can be described as social, one environmental and one to do with governance; they are to:

- Eradicate extreme hunger and poverty, halving the proportions of the population subject to hunger or incomes of $1 a day or lower;
- Achieve universal primary education;
- Promote gender equality and empower women;
- Reduce child mortality by two thirds for under fives;
- Improve maternal health, reducing maternal mortality by two-thirds;
- Combat HIV/AIDS, malaria and other diseases;
- Ensure environmental sustainability, by introducing environmental sustainability programmes, by halving the proportion of the population with unsafe drinking water, and by improving the life of at least 100 million slum dwellers;
- Develop a global partnership for development, covering a wide range of initiatives.

The latest UN assessment states that, half way towards the 2015 target date, sub-Saharan Africa is not on track to achieve any of the Millennium Development Goals, and notes that even the best governed African countries are failing to make enough progress in reducing extreme poverty. Of 18 indicators shown in a summary assessment (*), the UN estimates that in 2007, only one (measles immunization) is considered likely to be met by 2015 in sub-Saharan Africa, but is more than offset by deterioration in other causes of infant mortality. Eight of the indicators are adjudged to be ‘target is not expected to be met by 2015’, while the remaining nine are described as ‘no progress or a deterioration or reversal’. Other developing regions fare better, though areas such as South Asia also seem unlikely to attain the goals on schedule, with the implication that sustainability remains distant.

The EU’s Sustainable Development Strategy (SDS), initially agreed at the 2001 Gothenburg European Council, was revised in 2006 and is one of a number of ‘mega-strategies’ put in place in recent years. These strategies are, inevitably, primarily inward-looking, with the SDS emphasising environmental aims, alongside social cohesion and competitiveness, as internal EU objectives. It identifies seven key challenges and corresponding overall objectives and targets (see box 2). Despite having three distinctive over-arching aims, the SDS appears, in these seven challenges, to be dominated by environmental objectives. But along with the EU’s energy and competitiveness strategies, there is an increasing disposition to integrate external dimensions. Thus, the SDS addresses global dimensions of sustainability that had been prominent in the Brundtland report and that have arisen in other initiatives such as the Johannesburg summit held in 2002.

In trade policy, market access for developing countries to richer countries’ spending power is recognised to be essential for economic progress, yet trade talks are stalled and there are few signs that the *European Consensus on Development* is allowed to over-ride entrenched interests. In particular, the adverse effects of European (but also US and Japanese) agricultural subsidies on production in lower-income countries is well-known. Although the EU has in place a variety of processes intended to promote sustainable development within the Union, there is little beyond statements of intent in relation to the international aims of the SDS. This prompts questions about how this dimension of the strategy could be developed.
Box 2: The challenges at the heart of the EU’s Sustainable Development Strategy

- **Climate Change and clean energy.** To limit climate change and its costs and negative effects on society and the environment

- **Sustainable Transport.** To ensure that transport systems meet society’s economic, social and environmental needs, while minimising their undesirable impacts on the economy, society and the environment

- **Sustainable consumption and production.** To promote the production and consumption of goods and services that make lesser demands on scarce resources and diminish adverse effects on the environment

- **Conservation and management of natural resources.** To improve management and avoid overexploitation of natural resources, recognising the value of ecosystem services

- **Public Health.** To promote good public health on equal conditions and improve protection against health threats

- **Social inclusion, demography and migration.** To create a socially inclusive society by taking into account solidarity between and within generations, and to secure and increase the quality of life of citizens as a precondition for lasting individual well-being

- **Global poverty and sustainable development challenges.** To promote sustainable development worldwide, and ensure that the European Union’s internal and external policies are consistent with global sustainable development and its international commitments.

### 3. Towards governance for sustainable development

The unsatisfactory governance of sustainable development calls for fresh thinking aimed not just at improving the current approach to key sustainability challenges, but also at shifting the terms of policy debate so that a more active pursuit of sustainable development becomes feasible, instead of just dealing with current priorities. In essence, the challenge is how to manage globalisation so as to make it consistent with a vision of sustainable development. Sound governance tends to imply being suspicious of statements replete with good intentions, but with no
regard to costs, practicalities of achieving goals or timescales. There is even more reason for caution when problems of capture by special interests of diverse characteristics are apparent. A key governance challenge will be how to nurture and build on SD measures that emerge at local level without compromising them.

In its response to the 2004 ILO report, the European Commission notes a range of areas in which the EU approach chimes with what the WCSDG advocates and argues that the EU can, in many respects, serve as a model. The Commission communication draws particular attention to gender issues (CEC, 2004a: 6), observing that ‘the WCSDG highlights that in some countries globalisation has exacerbated gender imbalances. Deep-rooted and long-standing gender inequalities often result in the social costs of globalisation falling disproportionately on women’. The Commission communication goes on to list several broad domains of the external impact, including migration. Corporate social responsibility (CSR) is seen as one area where EU experience may be especially salient. Another conceptual tool from EU experience of the social dimension is the notion of social protection as a productive factor.

3.1 How could the EU take a lead?

Recognising that the EU’s experience of internal policy co-ordination of policies that promote sustainable development is considerable, could it play a similar role in leading international co-ordination? One way may be to build on the learning and exchange of experience mechanisms in the ‘open method of co-ordination’ adopted in the EU. A first step could be to include sessions on the methodology of policy learning on the agenda of strategic dialogue between the EU and other global regions.

Energy and climate change raise further possibilities. The EU’s conditional commitment to lowering greenhouse gas emissions is a novel approach that combines a unilateral move with a promise to go further if others follow. It states that the EU will, by 2020, reduce emissions by 20% compared with 1990 levels, but the European Council undertakes to reduce EU greenhouse gas emissions by 30% by 2020 (compared with 1990), “provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing
countries to \textit{contributing adequately} according to their responsibilities and respective capabilities” (emphasis added). In practice, there is only one other developed country that really matters in this regard – the United States – and the outcome of the Heiligendamm G8 summit in June 2007 hardly inspired confidence. Yet three months on, in the run-up to the UN General Assembly, the much more constructive approach of the US revealed in the proposals on CFCs may signal that the considerable pressure for action coming from below in the US is shifting attitudes.

The EU as a whole is expected to exceed its overall Kyoto target of a 8\% reduction in emissions by 2012 compared with 1990, with the latest projections pointing to a 9.3\% reduction for EU-15. Bearing in mind the energy intensive character of industry, pre-transition, in the eight central and eastern European countries (CEECs) which acceded to the EU in 2004, the reduction likely to be attained by the EU-27 is even larger at around 11\%. The change in the CEECs is, moreover, a compelling example of how much scope there is for change when prices and the regulatory framework are used to good effect.

Building on these initial successes, limited though they may be, there is scope for the EU to lead the rest of the world in four main ways. As a governance experiment, the EU’s challenge to others to match a 30\% reduction has much to commend it when the obstacles to a more ambitious reduction in emissions are considered. These obstacles are principally to do with the perception that a significant lowering of carbon use necessarily implies a threat to competitiveness. The argument is that energy is a cost of production, so that if attempts to curb emissions raise the cost of energy, EU exporters will find themselves at a competitive disadvantage vis-à-vis China, India, the US and other competitors who do not make polluters pay as much. Yet there are only a few industries in which energy costs are, typically, a significant factor in competitiveness, so that the risks would not be huge.

What, then, could (or should) the EU do if the conditions, which are in any case fraught with ambiguity, are not met? For example, would China and India be regarded as ‘contributing adequately’ if they were simply to slow the growth of their emissions and, if so, by how much would they
need to be slowed (2)? Though manifestly in a different category as a major producer of oil and gas, what can reasonably be expected of Russia? Should the nature of emissions be brought into the equation, given that Brazil is a global leader in bio-fuels which have the potential to be ‘carbon neutral’ (3), even though technological challenges remain? If the US continues to resist a target close to 30%, can the EU be content with limiting itself to the much softer 20% target?

A second approach the EU could take is simply to aim for a more ambitious reduction without worrying about whether others follow suit. The figure of 50% reductions by 2050 canvassed at the Heiligendamm G8 summit was again predicated on US compliance, but the figure also signals what the EU believes it can achieve on its own. The main reason for hesitation would again be that forgoing hydrocarbons as the primary source of energy would result in self-inflicted wounds to EU competitiveness. Another objection that is frequently raised is that it does not actually have much impact if the EU – or more so an individual Member State – cuts emissions while China is opening a new coal-fired power-station every month. When allied to the competitiveness argument, this becomes a strategy for inaction. Yet it is misleading to believe that China has no interest in curbing emissions and there will be increasing domestic as well as international pressures on China to deal with pollution. Air pollution in the main urban centres of China is

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2 China is about to become the world’s biggest emitter of carbon, overtaking the US in absolute terms, although clearly the US’s per capita emissions still dwarf China’s. But as much as a third of China’s emission could be curbed if it adopted best practice technologies.

3 The simple proposition is that a bio-fuel, such as sugar cane, takes carbon out of the atmosphere while being cultivated, and returns the same amount when consumed. However, forest clearance (typically by burning), a lower absorption capacity of cultivated crops compared with virgin forest, transport and refinement all add to carbon emissions compared with conventional hydrocarbons, undermining the neutrality principle. In addition, it is claimed that bio-fuels emit more nitrous oxide, a more damaging greenhouse gas.
already at levels that are proving to be socially unacceptable and the experience of the most advanced countries showed that air quality was an important trigger for curbs on emissions in earlier decades. A third approach that the EU could deploy would be to push for governance methods at global level that build on the experience of the open method of co-ordination. It is important to stress that there are mixed reviews on the success of this approach, but it is also salient that where it works well, the opportunities for policy learning are considerable.

Perhaps the most imaginative broad direction that different major economies could take – the EU and China are obvious examples – in seeking to reconcile an energy deficit and a concern to boost renewable resources would be to opt for what has been called a smart growth strategy. This would entail investment that exploits new environmentally friendly technologies to achieve SD aims, but with the understanding that there are also substantial market opportunities from such an approach. Smart growth has to be predicated on changing investment strategies, because decisions today will have lasting effects, which means that decisions taken today will shape future energy demands. For this, investors need a reliable compass to guide investment strategies, implying the need to take tough but enduring decisions. The smart growth philosophy extends, similarly, to ensuring that social policy equips individuals for the new jobs that smart growth both brings and relies on, calling notably for a rethinking of training and lifelong learning. Judicious use of regulatory and pricing mechanisms, together with public procurement, can be used to promote such a ‘smart growth’ strategy. More stringent building codes and energy efficiency standards, differentiated charges for vehicle licensing, use of ‘lead’ market strategies to enable environmentally efficient energy providers to overcome the very substantial scale barriers to entry, and fiscal incentives are all prospective tools of policy that can be deployed. In the social policy arena, education and health policies have to adapt better to future labour needs, while migration needs to be handled more imaginatively.
3.2 Burden-sharing – a messy issue

One of the more intractable issues about promoting sustainability, whether within the EU or at global level, is that it imposes costs, with the corollary that proposals are needed on burden-sharing. In relation to abatement of climate change, the problem is complicated by the fact that the projections for later in the 21st century of the volume of greenhouse gases show them to be the result of the stock of past emissions (predominantly from developed countries) and the flow over the coming years of current emissions, where developing countries are rapidly overtaking their richer peers. Various models for allocating costs can be envisaged (discussed in depth in a Lehman Brothers study by Llewellyn and Chaix, 2007), deploying criteria such as:

- **ability to pay**, implying that richer countries pay disproportionately;

- **level of current emissions**, essentially the polluter pays principle, with a target for curbing the level, typically expressed per head of population;

- **estimated volume of past emissions** which entails working out retrospectively which countries bear the responsibility – Llewellyn (2007) reports that some 70% of the stock of carbon up to 2004 is attributable to the US, EU, Japan and Russia, with China and India accounting for just 10%;

- **distribution of benefits** in which the social, political or economic benefits of curbs are taken into account. A low-lying European country, for example, might have a higher welfare gain than, say, an upland Asian country;

- **egalitarian principles** might be advanced to justify richer countries subsiding abatements in poorer countries, thereby going beyond the ability to pay principle.

Also relevant is how abatement policies are pursued. Emissions can be cut by direct action to cut the burning of fossil fuels (principally by investment in replacing energy-inefficient equipment and buildings), but also more indirectly by investing in technology developments. The US, for example, argues that it is in the forefront in the latter category, even
if it lags behind in current abatement. The other side of the same coin is technology transfer and the related intellectual property right costs/benefits.

Similar analyses could be conducted about dealing with the costs of other facets of sustainability such as world health, world poverty or what, to adapt a well-known EU term, might be called global economic and social cohesion. There is, for example, a direct counterpart of the technology transfer issue referred to above in relation to drugs aimed at mitigating the effects of HIV. Drug companies, not surprisingly, want to charge prices that help to amortise the high costs of past and current research, implying prices much higher than the costs of marginal production, while impoverished nations are severely constrained in how much they can afford to pay. Although Bill Gates and Warren Buffett have led the way in showing that philanthropy can play a part in bridging this gap, it remains an inadequate approach to the governance of such a major issue. Labour standards, gender equality and social protection also come into the equation, while the upsurge in migration also has to be seen as a facet of sustainability. The flood of would-be migrants from Africa, drawn by the EU, is a symptom of imbalance between labour supply and demand that, in turn, results from lack of economic development which will be exacerbated by demographic trends in the two continents.

There is an obvious tension between economic development imperatives and climate change, and many developing countries have articulated resistance to curbing emissions, placing economic development as a higher priority. Energy is a lubricant of economic development and fossil fuels remain the fuel of choice in terms of cost and efficiency. But there are options, and in seeking to exploit some of them, business stakeholders are likely to be especially important in two respects: first for the actions they take themselves; and second in shifting the terms of political debate. It follows that political efforts to engage business are vital.

What, then would make sense, notably from a business perspective? Essentially, what is needed is a means of making the price of greenhouse gases (GHG), especially the burning of fossil fuels, better reflect the social as opposed to the production cost of using them. Here a number of
factors come into play. First, business craves and values certainty, and is, consequently, more likely to make the necessary long-term investments if a clear and enduring policy framework is in place. Second, policy has to deliver a tolerably level playing-field, or else there will be strong pressures to diminish policy-related costs that penalise production in locations that have impose heavier taxes or restrictions on GHG, ultimately triggering a ‘race-to-the-bottom’.

Choice of mechanisms is also central. The EU has in place an emissions trading system (ETS) that, although so far pretty undemanding, is expected to constrict carbon use progressively more as it evolves. Extension of the ETS principle to the global level may therefore be appealing. However, it would face a range of difficulties of design and implementation. It is, for instance, more difficult to implement in some sectors than others, an example of the former being transport, where the driver of the vehicle is the emitter, making it much harder to design efficient emission control incentives (4). In some other sectors, such as industry, it is more straightforward to administer emission control (see WBCSD, 2007), although special pleading will always arise. Any ETS system is also subject to the quality of monitoring and enforcement, especially in states where routine compliance with legal requirements is dubious – without the rule of law, a quasi-law cannot work.

Taxes (or subsidies) are an alternative means of using price signals to shape behaviour. Here there are many issues to confront. Who pays, and is the incidence of taxes equitable? What should be taxed or subsidised? By using the tax system to raise the costs of polluting activities, the expectation would be that consumers would shift demand to less polluting activities. But taxes inevitably raise difficult political economy problems.

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4 A study by the Tyndall Centre for Friends of the Earth casts severe doubts on the capacity of ETS to curb airline emissions, and favours a tax based system (Anderson et al., 2007).
Concluding comments and issues for debate
Sustainable development encompasses goals and obligations that deserve strong political commitment and a robust governance framework, yet it has been let down by ambiguity in its core aims, inconsistent and incoherent policies, and being subject to capture by vested interests.

Although the issue of climate change is manifestly both pressing and global in character, it is important to keep the wider aspects of sustainable development firmly on the policy agenda. In particular, there is a need – especially in the external dialogue – to restore the prominence of the social dimension.

It may be something of an exaggeration to assert that environmental sustainability is largely a rich country pre-occupation, but principles for burden-sharing need to start by recognising that other parts of the world assign a higher priority to economic development than to environmental protection. It is therefore incumbent on richer nations to facilitate development trajectories that take account of sustainability imperatives.

It is important to stress that sustainable development and growth are not incompatible; rather, it is the quality of growth that should be targeted.

Both at global level and within the EU, there is a propensity to overload the policy agenda. A resulting risk is of ‘process fatigue’ with too many reporting obligations, an undue proliferation of targets (some potentially at odds with one another) and a consequent lack of genuine or adequate commitment to each of them.

An associated risk, especially in a multi-lateral setting, is of succumbing to the lowest common denominator, often so as to achieve the broadest possible consensus. While breadth of support matters, it may be better for like-minded countries to adopt more ambitious targets. In this context, the EU should be aware of its scope for exercising leadership, not just by initiating strategies, but being prepared to go it alone.

The existence of a strategic framework and the procedures associated with it can help to motivate governments, both by providing a model to follow and a basis for political commitment, especially where the policy orientations are, ultimately in a country’s interest. If so, there would be
no reason for governments to shirk their responsibilities. However, it is generally easier for governments to respond to focused commitments than to have to reconcile different ones.

Some of the policy methodologies that have been tried in EU co-ordination processes could be effective either on the wider international stage or among new cross-border partnerships. It is therefore worth exploring how elements of the open method of co-ordination could be used elsewhere to stimulate policy learning. It would be a useful exercise to develop proposals along these lines in the EU dialogues with global partners.

It is essential to engage business actors in advancing sustainable development and to consider the governance principles that will facilitate such engagement. In particular, business contributions will be enhanced by regulatory predictability and stability in the conditions affecting investment. Long-term investment strategies are needed to shift the global economy in the direction of ‘smart growth’.

At the global level, energy policy lacks adequate strategic institutional, with producer cartels on one side and rich country consumers on the other (Weiss, 2007). The idea of a more balanced World Energy Agency that brings together producer and consumer interests deserves consideration.

Bearing in mind that economic reform requires consistency and perseverance, often with reforms having to be implemented in a sequence before they bear fruit, it would be regrettable if a lack of political attention at the highest level diminished commitments to reform. But perseverance with some of the difficult policy orientations that underpin long-run change can only be kept up if there is a demonstrable political pay-off. This may be the ultimate governance challenge for sustainable development.
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The need for capital regulation in Europe

Finance and the real economy are literally inextricably linked, and yet it is vital to distinguish between them in order for politicians to keep globalisation under control. Finance has proved to be a powerful aid to growth. Yet, among all economic activities, it is one of those most exposed to ‘market flaws’: there is a considerable information asymmetry between professionals and ordinary economic agents; there are significant externalities – i.e. the impact on third parties not involved in transactions, such as the effect of a bank failure on depositors and on the entire economy – and an immediate risk of ‘moral hazard’ arises when a reckless banker is saved from legitimate bankruptcy by Central Bank intervention; economies of scale, network economies and product differentiation generate non-competitive structures such as monopolies, oligopolies and monopolistic competition, which are sources of ‘market power’ and hence excessive profits; and lastly, the quality of physical infrastructures is crucial in globalised finance to prevent breakdowns in payment systems. Thus the financial sector, by its very nature, requires robust regulation by public authorities. But these authorities still operate on a national scale, while the supply of finance is global and so tends to elude them. This mismatch between market and politics, coupled with other factors – the information technology revolution and the unceasing creation of new financial products – is now putting finance on a course that is fraught with major risks to the efficiency, economic stability and social cohesion of our societies. Let us take a look at these three elements: efficiency, stability and equity.

First of all, from the point of view of efficiency in resource allocation, it is accepted that efficient financial markets lower the cost of capital for
investors and raise income from savings for households, thereby stimulating growth. Now that the markets in goods and services are globalised, consistency dictates that finance should likewise go global. But globalised finance is strengthening its hold over the real economy, with adverse effects. For instance, current demands for double-digit returns on investments in publicly listed companies are encouraging those companies to maximise short-term gain at the expense of more stable, long-term growth strategies. In addition, finance is a driving-force behind unearned income linked to market power as well as innovation, and the former no doubt plays as much of a part as the latter in the spectacular gains of stock markets around the world.

Next, from the point of view of economic stability, Alan Greenspan (Greenspan, 2007) marvels in his memoirs at the resilience shown by the world economy: it has absorbed economic shocks and financial crises for the past two decades without world growth being affected to any great extent. But these crises have resulted in high costs for vulnerable economies in the South and are now exposing susceptible social groups to interest rate fluctuations – examples being subprime mortgage borrowers in the United States and excessive credit card debt in the United Kingdom. Besides, there is no guarantee that a deeper, more severe crisis will not emerge at the heart of the system some day and mushroom into a worldwide recession. Thus finance could trigger a major international economic crisis, both through the brutal fallout from the structural imbalances that it has spawned – witness the USA’s gigantic foreign trade deficit (1) – and through the liquidity and solvency crises that it might experience, as is the case with subprime mortgages in the United States at present.

1 Martin Wolf refers in the Financial Times of 22 November 2007 to the ‘great unwinding’ that could lead, if not to a recession, then in any event to a long period of growth below US potential, if exports do not take over from domestic demand. It is worth noting that China presents the symmetrical risk: domestic demand that is not growing at the pace of the relative decline in exports.
Finally, in terms of income distribution and equity, the financial industry appears nowadays to be one of the most profitable sectors of the international economy: people living on unearned income and finance professionals are receiving abnormally high returns and capital gains at the expense of other groups and sectors (2). What is more, such earnings can readily evade taxation. Financialisation of the economy is now emerging as one of the main factors that exacerbate inequality, along with technical progress and deregulation. So is it justifiable to describe global finance as destabilising and predatory? Yes, undoubtedly!

1. The arrival of financial capitalism

Capitalism has always been financial, ever since its beginnings in Western Europe at the end of the Middle Ages: the market capitalism of the Renaissance and the Great Discoveries was at the same time financial; the industrial capitalism born in England at the end of the 17th century was likewise financial. But nowadays global capitalism is first and foremost financial before being industrial and market-led. There is even shareholder capitalism, described by Jean Peyrelevade (Peyrelevade, 2005) as ‘all-out’ capitalism. Although the financial industry represents only the tip of the iceberg of the world economy, it has a profound influence owing to its growing hold over the real economy. Jean Peyrelevade provides some telling figures on the concentration of economic power in private hands: ‘it appears that ten to twelve million individuals (two thousandths of the world population) control half of the market capitalisation on earth, and probably an only slightly smaller proportion of humanity’s commercial assets’ (Peyrelevade, 2005: 40-41) (3). As a result, governments’

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2 Le Monde reported on 1 July 2007 that in Mittal’s takeover bid for Arcelor, both parties’ merchant banking fees amounted to between €230 and 300 million, or 0.10 to 0.15% of the transaction cost.

3 The author estimated that, in late 2003, market capitalisation stood at $31,000 billion, or 86% of world GDP ($36,000 billion) while total world capital amounted to three times this sum. The total number of shareholders was 300 million, according to him, or 5% of the world population, half of them in the USA. Since on average stock-market portfolios represent only a fraction of individual shareholders’ assets, shareholders ‘possess a considerable proportion -
regulation of their economies is nowadays subject to the imperative of competitiveness, as required by the markets, whereas overall regulation, which is still very partial and very uneven, is aimed primarily at responding to demands for deregulation and the free movement of capital. Despite efforts to achieve harmonisation, binding multilateral rules and regulations which promote social, environmental or cultural values as opposed to commercial logic are still few and far between.

Three questions spring to mind, given this snapshot of present-day financial capitalism. How was such a system able to acquire legitimacy? Is it effective? Is it sustainable? One initial vague, but fair, answer would simply be to take a look at growth: as long as the system can rely on persistently satisfactory growth performance in the dominant countries – United States, Europe, China and other emerging economies – in other words, enabling the middle classes to aspire to stability or improvements in their circumstances, it will be difficult to form a political consensus around introducing more regulation at national level, still less so at multilateral level, to counter the drift into inequality and environmental destruction.

The current state of affairs is quite simply untenable, so much so that we could of course wait for the wake-up call inherent in the system to sound: the short-termism of the markets will reveal its limitations compared with more long-term and more stable corporate growth strategies; once mounting inequality begins to affect the middle classes it will prompt corrective action, since their political clout will make such action unavoidable; environmental protection has now become a vital issue. But the risk of breakdown looms too large nowadays to postpone reforms which would ‘send the market back to bed’ and recreate space for politics.

For instance, undoubtedly more than three quarters - of humanity’s market capital, defined as assets of all types (real estate, houses, apartments, securities, liquid assets, works of art) owned and traded by private individuals’. These figures are corroborated in a study by the UN University (UNU-Wider). According to the Financial Times of 6 December 2006, ‘the richest 2 per cent of adults own more than 50 per cent of global assets, while the poorest half only holds 1% of the wealth’.

60 Social developments in the European Union 2007
The European Union (EU) is an appropriate setting in which to deal effectively with all the dimensions of financial capital and negotiate, or even impose, Europe’s preferences on the rest of the world.

However, the continent of Europe is deeply divided on these matters. Internal divisions exist within each country, although a thorough, substantive debate about viable alternatives could minimise these splits if it were broached seriously. Even more intractable divisions exist between Member States, which bring their own collective preferences and choices of economic specialisation to bear, for example the City in the case of the United Kingdom and the scramble for foreign direct investment in the new Member States. But embarking on a substantive debate about a European response means first of all tracing back the underlying causes of the triumphant arrival of financial capitalism and, in particular, the mechanisms which enabled it to take hold and place itself beyond the reach of politicians. Three sets of explanations account for this transformation: financial markets taking over from international and national regulatory bodies, giving increased power to financial globalisation; shareholder power taking over from bank intermediation; and the burgeoning of the finance industry.

1.1 Global financial markets are taking over from the IMF and the World Bank

Despite the part it played in the success of the post-World War II boom, the regulation of international financial flows was abandoned and, less than ten years after the United Kingdom suspended controls over inward capital movements (1979), regulation gave way to a new international monetary and financial landscape characterised by the free movement of capital, floating exchange rates at the whim of markets, the deregulation and disintermediation of finance in the major financial centres, as well as a proliferation of offshore sites – under-regulated and under-taxed spaces through which the bulk of international financial flows now pass. How can this be?

An explanation has to exist, since this upheaval in the world economy could not have been accomplished without major political decisions by governments. Several authors, including Robert Gilpin (Gilpin, 1987)
and Eric Helleiner (Helleiner, 1994), have drawn attention to the
differential response of public opinion to two developments: firstly, trade
liberalisation within the GATT and the WTO, which traditionally arouses
strong resistance even though it has proved very gradual and rule-bound;
secondly, the liberalisation of capital movements and financial markets in
the 1980s, which went relatively unnoticed by NGOs and politicians.
Whereas trade liberalisation poses many very real problems concerning
the distribution of profits and welfare costs, its contribution to growth
and well-being is indisputable in three respects: a better international
division of labour, economies of scale and economies of competition. On
the other hand, it is not going too far to see the financialisation of the
world economy as a successful attempt to appropriate its main benefits on
the part of shareholders in publicly listed companies and a minority of
operators – bankers, institutional investors, business lawyers and other
professionals – whose share in the distribution of added value has increased
significantly over the past twenty years at the expense of labour and the
profits of most SMEs (4).

Some authors maintain, moreover, that the high distribution cost of
financial liberalisation is what has made the liberalisation of trade and
investment an unpopular cause, even though it has been much more
decisive than financial liberalisation for long-term world growth and for
North-South convergence. By understanding how this development
occurred, we can shed some useful light on the current balance of power
in global economic governance. The formal point of departure is without
doubt the collapse of the fixed exchange-rate system instituted by the
Bretton Woods Agreement when, on 15 August 1971, President Nixon
declared that the dollar would no longer be convertible into gold, causing
it to be devalued and subsequently to float freely. In doing so, the United
States were learning lessons from ten years of monetary inflation fuelled by
expenditure on the Vietnam War and social programmes intended to
make US public opinion forget about it. The USA gave up the position of

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4 The majority of SMEs are modest firms which are both ‘price-takers’ and
‘environment-takers’ without market power, but start-ups and sophisticated
service companies, especially in finance, play a part in the expansion of profits.
benevolent overlord, constructed at the start of the Cold War, thereby compelling its allies to share the economic burden of leadership of the free world. Europe was then able to gauge the economic cost associated with strategic protection by the USA.

However, the real beginnings of financialisation date back to the early 1960s, when merchant banks and the US and UK central banks colluded to make the City of London the forum for an early experiment in deregulated finance: this was the Eurodollar market, partly funded by contributions from Communist countries. Financialisation was in fact spurred on by an alliance, tinged with rivalry, between New York and London aimed at generating activity and profitability in these two financial centres that had been constrained by thirty years of oversight by national treasuries. The Reagan and Thatcher administrations which dominated the 1980s hastened a long-prepared move by triggering the Big Bang of the ‘3 Ds’ – disintermediation, deregulation and despecialisation – in the new international context created by the abolition of exchange controls and the floating of currencies. The recycling of petrodollars generated by the two oil shocks of 1973 and 1979 served as a test-bed for a return to the large-scale financing of budget and foreign deficits by the markets, causing some Southern countries to incur excessive debts in the process. These economies were caught between a rock and a hard place in the early 1980s by the fall in raw materials prices and the raising of interest rates by the US Fed.

The Bretton Woods international financial institutions, the IMF and the World Bank, were then utilised to protect rash creditors – Western merchant banks and governments – against possible default by debtor countries. Through the conditions attached to their loans, they forced indebted countries to implement neoliberal-type reforms ill-suited to their needs and means but advantageous for their private and public creditors. This was the rule of the Washington Consensus, which held sway for twenty years in Latin America, Africa and certain Asian countries. It helped spread financial liberalisation to countries too vulnerable to withstand the pressure of short-term speculative capital, as was shown – at their expense – by the financial crisis which hit East Asian countries in
1997 and 1998. Thus global finance emerged both as the unilateral choice of advanced countries and an imposition made upon developing countries.

It is impossible to over-emphasise the role played by London in the global financial revolution and the way in which the alliance/rivalry dialectic between New York and London made its mark on the key worldwide trends of financial deregulation and disintermediation. For the United Kingdom, confronted in the late 1970s by the demise of part of its manufacturing industry, the City of London became the number-one strategic sector in the newly developing international division of labour. Thus the UK authorities stopped at nothing to secure its pre-eminence in the European single market taking shape at the end of the 1980s: a flexible regulatory environment, free capital movement, a beneficial tax system for non-residents and measures to attract international financiers so as to ensure a lively, robust labour market.

But while London sought first and foremost to return to its 19\textsuperscript{th} century tradition of providing the entire world with financial services, New York was to found its growth more on the domestic market. The dynamism of that market was assured on the one hand by an abundant supply of government funds (\textsuperscript{5}) which guaranteed exceptional liquidity for the savings flowing in from Japan and the oil-producing countries to be held in dollars – the international currency – and, on the other, by the soaring demand for risk capital in the embryonic information technology sector (\textsuperscript{6}) as well as in privatised and deregulated services and utilities. In the United States, then, finance came to feed on two converging trends driven by a global supply-side strategy where markets and public intervention mutually reinforced each other to stimulate growth through public

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\textsuperscript{5} In particular US Treasury bonds, or T-bonds, the supply of which burgeoned with the increase in the USA’s endemic budget deficit, especially under Ronald Reagan. Reagan was of course a champion of supply-side economics but also an unrepentant practitioner of Keynesian financial policy with his tax cuts for the richest taxpayers – the Laffer curve – and massive spending on the ‘Star Wars’ policy which brought Brezhnev’s Russia to its knees in the 1980s.

\textsuperscript{6} See in particular the role of venture capital – an early form of private equity – in funding the start-ups of Silicon Valley in California and Route 128 in New England.
expenditure and productivity gains: government indebtedness and debt relief enjoyed by companies. Companies began to prefer calling on capital markets directly rather than on bank credit to finance their internal and external growth, i.e. through mergers and acquisitions. London, for its part, was to dominate the foreign-exchange market fed by speculative capital thanks to the abolition of controls on international capital movements. But the City also took succour from the wave of privatisation and deregulation which arose in Thatcher's Britain before sweeping through the entire European single market, where cross-border mergers and acquisitions proliferated in anticipation of the elimination of border controls on 31 December 1992. The international status of the City of London was enhanced by its connections with tax havens, expanding fast for twenty years including within the EU, which served as a transit point for a significant proportion of foreign direct investment throughout the world, most notably heading for the emerging economies.

Three forces propelled the global financial industry to power from its two initial homes, New York and London, as it moved eastwards – Tokyo, Hong Kong, Singapore and now Dubai – thanks to the economic emergence of Asia and the boom in energy and raw materials. These three forces were the information technology revolution, growing internationalisation of the real economy (fuelling activity on world financial markets), and the financial revolution, itself characterised by the disintermediation between companies and capital markets and by endless financial innovation, whereby the markets always get ahead of the regulatory authorities and more or less successfully correct their own trials and errors themselves. Thus it is that an integrated global financial market has come into being: national borders and the compartmentalisation of sub-markets – stock exchange, foreign exchange, derivatives – have melted away while choices for savers and investors have expanded.

1.2 From bank to stock exchange: financial intermediation gives way to direct finance

It is worth dwelling for a moment on this transition from indirect funding of companies by banks to direct funding by the market via the stock exchange (even though there are historical differences in this trend
between Member States). Financial intermediation remained the principal source of finance for a long while. It is a process whereby financial institutions convert the short-term deposits of households into long-term loans to finance corporate investment projects and mortgage loans for householders on the basis of the differential between the deposit rate and the lending rate. Nowadays, however, processing by banks is giving way to a direct relationship between companies and savers through the stock market. Banks no longer engage mainly in processing work but have become intermediaries, just like the new institutional players in the marketplace (unit trusts, pension funds, hedge funds and investment funds, especially those of the private equity kind). Besides, ever since the return of positive real interest rates in the early 1980s, governments themselves have preferred to use the market to finance the public debt, by offering worthwhile opportunities for people living on unearned income.

Direct finance results in a radical change: savers (7) are now organised into powerful coalitions via institutional funds and can bring all their weight to bear on the share-out of added value between wages and profits, as well as in the allocation of profits to dividends or to reinvestment (8). Capital gain is the name of the game: the return on savings is no longer limited by interest rate levels, but absorbs corporate gains to a greater extent than in the past. The consequences are two-fold: firstly, the entire balance of corporate governance is shifted because power passes from the manager, who hitherto ensured a balance between all the stakeholders

7 It is worth noting that population ageing in the advanced economies prompts a higher propensity to save and hence an increased demand for financial products, which tends to push up the value of assets. This trend can be expected to turn around once pensions have to be paid out to retired people whose numbers are growing faster than the number of active workers. This is the thesis upheld by Jean Peyrelevade (2005).

8 We would point out that, while profits are growing as a proportion of GDP, the proportion of corporate investment is not growing in most OECD countries: the slogan of the ‘Reagan revolution’ - whereby today’s profit is tomorrow’s investment and the next day’s jobs - rashly taken up by certain European leaders, including even Helmut Schmidt, has not materialised in practice.
- shareholders, clients, suppliers, workers and regional authorities – to well-organised shareholders who want ‘value’ and who, via the system of stock options, make the manager their exclusive agent. Secondly, the form taken by savers’ financial investments – listed or unlisted shares or bonds – will make it possible to mobilise much more substantial funds to finance much more innovative and hence risky projects. Financial innovation completes the picture in the form of securitisation and derivatives: the former converts lending contracts between banks and borrowers into negotiable securities, and increases their liquidity while discharging the bank of the initial risk; the latter make it possible to subdivide risk into its main components – variations in the interest rate, the exchange rate and the price of raw materials, or the likelihood of a borrower defaulting – and to spread the burden of risk across the entire market structure. Risk is diluted but not eliminated. It is no longer micro-economic but becomes macro-economic. The advantage of the growing securitisation of finance is the liquidity offered to investors, who can combine it with a higher yield than that of a bank deposit. The drawback of securitisation is that it discharges the bank of its primary responsibility to evaluate risk.

This truly Copernican revolution in the world of finance has three major consequences. First of all, it indubitably feeds into a new growth dynamic centred on technological innovation and productivity gains, which are fundamental requirements of societies confronted by population ageing and a dearth of natural resources. Secondly, it alters the share-out of added value in favour of finance, owing to a new balance of power between mobile, close-knit capital on the one hand and, on the other, labour which is land-based and fragmented by the advent of new forms of production (9). Thirdly, fundamental uncertainty arises about the

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9 This balance of power is likewise modified by a differentiation occurring within the working population itself. A growing income divide is opening up between earners of stable, high salaries who have a preference for money purchase pensions (which promote asset growth) and workers with less job security who are on lower wages and prefer the relative security of a pay-as-you-go pension.
systemic risk now resulting from a combination of macro-economic factors – the structural imbalances of large economies and exchange rates – and financial factors – the sophistication and unfathomability of products. This new, poorly regulated world of finance can lead to formidable financial instability.

1.3 Globalisation of the financial industry

Global finance is organised on two closely connected levels: the regulated market and offshore financial markets, i.e. tax havens. As Nicolas Veron (10) sees it, the regulated global market is structured in a multi-polar fashion (New York, London and an ever-competing Asian constellation), with transcontinental stock exchanges, but still dominated by banks. Banks are internationalising, but more along regional than global lines, with the exception of HSBC. Regulation geared to protecting investors has until now been ensured by a duopoly between the United States and the EU, with the latter taking the lead but drawing its inspiration from work done in the US and the UK, especially on accounting standards and operator supervision. China, whose capital account is not liberalised, nevertheless remains an unknown quantity in the evolution of a truly global system, especially regarding the priority attached to investor protection.

The other level, which is less well-known but absolutely central to the system, consists of an amorphous group of offshore financial markets, otherwise known as tax havens. Their quality is very variable and they compete to appropriate a share of the immense added value generated, or rather monopolised, by international finance. Indeed, in globalised finance, flows of capital cross borders instantly and anonymously, evading the regulator and the tax authorities. New technology has made a significant contribution to placing offshore finance, long the preserve of the very wealthy, within reach of the average saver. According to Jeffrey

10 Nicolas Veron, senior research fellow at Bruegel (www.bruegel.org), has made a crucially important contribution on the issue of financial organisation and standardisation on a European and international scale through his work at Bruegel and his columns in La Tribune.
Owens (11), head of the tax policy division at the OECD, the financial assets located in offshore markets amount to between 5 and 7,000 billion dollars, or 6 to 7% of all the funds managed around the world; this volume is five times higher than twenty years ago. He reports that the number of offshore financial markets registered as such has doubled and now stands at more than thirty.

If recent financial developments have led to one dangerous and morally unacceptable anomaly, then it is the existence of tax havens; to a much greater extent at any rate than speculation by hedge funds or corporate restructuring initiatives by private equity investment funds. The latter naturally prompt major reservations, and are in need of reform, but they do have genuine merits whereas tax havens are a potential source of destabilisation and serious regulatory and fiscal distortion. These under-regulated and under-taxed financial centres are no longer merely exotic places through which dubious funds pass and where illegal – or even criminal – transactions take place. They lie at the very heart of the most advanced economies and have become an unavoidable point of transit for every large-scale international financial transaction, as well as a home for private financial assets in search of discretion and preferential tax treatment – even a place where large fortunes can avoid income tax. Sometimes they revolve around financial centres such as London, for the network of British tax territories and former colonies; sometimes they themselves are established as financial centres, one example being Luxembourg whose GDP per capita is now one of the highest in the world, along with Bermuda.

This anomaly has in actual fact been institutionalised within the EU where, to a much greater extent than in the United States (where such matters are far more strictly circumscribed), it is heightened by the regulatory and fiscal competition engaged in by our main financial centres. Indeed, several Member States offer extremely advantageous tax arrangements for non-residents, while the new Member States are waging all-out war on the taxation of corporate profits, dragging down the

Community average. Certain Member States, notably Luxembourg, Belgium and Austria – and, for that matter, Switzerland – persistently refuse to abolish bank secrecy on non-residents’ holdings when it comes to taxing savings. These various legal mechanisms guarantee discretion for financial transactions aimed at either speculative activity, ‘fiscal optimisation’ or even outright fraud. Their existence considerably complicates the fight against all other forms of organised financial crime, meaning that this fight remains fundamentally ineffectual in respect of human and drug trafficking as well as terrorist activity, because it is no easy matter to distinguish between money laundering that results from tax fraud, organised crime or even terrorism.

A vast group of new players is now active in global finance and has an ever-increasing range of tools available to it. Some, such as banks, insurance companies, unit trusts and pension funds, operate under strict conditions of liquidity, solvency, transparency and supervision. These conditions are defined by the so-called Basle I (1988) and Basle II (2005-2006) Agreements (12) in the case of banks, and according to the International Financial Reporting Standards (IFRS) in that of companies; the latter were adopted by the EU in 2002 but are in the process of being extended to all OECD countries. The same applies to the supervision rules for intermediaries drawn up by the most advanced countries belonging to the Financial Stability Forum. However, these operators work in different time-frames – pension funds may choose to tie up capital for a very lengthy period – and sometimes create financial products that pose unknown problems. In order to boost the investment returns offered to their clients they sometimes incorporate high-risk securities, such as the ones backed by the US subprime mortgage loans or the products offered by hedge funds. The damning vice of some instruments, such as derivatives and futures, is their extreme

12 The Basle I and II Agreements (negotiated at the Basle Committee which brings together the central bank governors and supervisory agency presidents of the G10 countries) relate to capital adequacy requirements for banks, i.e. the regulatory capital needed to cover the credit risk.
sophistication: they can escape oversight even by fund managers and regulatory authorities (13). As for private equity investment funds, which operate a high capital/debt ratio, they aim to profit from the restructuring of unlisted or temporarily delisted companies; their involvement can sometimes prove positive, sometimes predatory (asset-stripping). Their strategies are impenetrable and the social costs are not taken into account.

Finally, the accumulation of foreign exchange reserves in net exporting countries (China and the oil-producing countries) has led to a proliferation of ‘sovereign funds’ over which governments exert direct or indirect influence. These funds target investments of various kinds (financial assets, companies, technology, service networks, raw materials or energy sources) using contrasting strategies: portfolio diversification and foreign currency holdings for countries that produce raw materials; industrial strategy and security of supply for China. Provided that their strategies and transactions are transparent, sovereign funds play a positive role on the whole. In particular, they have recently helped to restock the capital of the major Western banks affected by losses owing to transactions on the US subprime market. Here too, portfolio diversification into foreign currency serves to achieve a more balanced distribution between the dollar and the euro.

2. Global finance and inequality

The subject of inequality has long been of little interest to economists, with the exception of pioneers such as Paul Krugman and Thomas Picketty, on the grounds that – according to the neoliberal precept – growth is expected to provide employment and thereby improve the lot of the poor. Even less attention has been paid to this issue at EU level, since income and asset distribution is only peripherally covered by European economic policy: thanks to subsidiarity, it is the preserve of Member States. Europe is now waking up fifteen years too late to the

13 Charles Bean, Chief Economist at the Bank of England admitted his inability to understand the workings of some of these tools. Le Monde, 3 October 2007.
problem of a certain return to mounting inequality (14). The complexity of the subject is somewhat off-putting: what indicators (social, health, cultural, financial) should be used to gauge inequality? What has caused the upsurge in inequality observed in particular in the United States, the United Kingdom and, more recently, Germany: technical progress, globalisation, the weakening of employees’ bargaining power, the instability of family and parental structures, or financialisation? The latter’s effects are therefore difficult to ascertain, except through the use of artificial indicators which require very subtle interpretation or through hard facts the real extent of which is open to debate. The fact, for example, that pension funds also manage the often modest savings of some employees cannot be overlooked.

Despite these reservations, it is vital to shine a bright spotlight on what can only be described as the extravagances of the financial industry and, moreover, to subject it to an economic and anthropological appraisal. A moral verdict is also called for. According to European statistics analysed by Michel Husson (Husson, 2007), the standard wage component of added value in the EU went from 63.2% in 1960 to 66.3% in 1982 and 57.7% in 2006, i.e. a drop of 8.6% between the last two dates. It has since settled at the 2006 level. Analysts believe that the excessively low proportion of profits in the 1960s and 1970s made it impossible to sustain sufficient investment in growth. Today, on the other hand, it is the level of consumption that is proving too weak.

However, the respective proportion of wages and profits constitutes only a very rough approximation of income distribution. For instance, disparities within the wages category have spiralled. Michel Husson tells us that, in the United States, the proportion of GDP accounted for by the best-paid percentile of workers rose from 4.4% to 8% between 1980 and 1972 Social developments in the European Union 2007

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14 Only recently have the BEPA (Bureau of European Policy Advisers) and DG Ecfin (see the Commission’s website) done any work on this subject, which is still poorly documented statistically at EU level. Data are often partial and outdated, so it is difficult to assess in real time the effects of policies and markets on income inequality, still more on assets even though these represent an increasingly relevant part of social inequality.
2005. In 2005, directors of large French companies earned 300 times the minimum wage on average (15), stock options excluded. By contrast, directors of SMEs earned an average of €4,000 in 2004, compared with an average wage of less than €2,000 per month and per household for French employees as a whole. Similar disparities exist within the share of national earnings taken as profits, for example between the profits of listed companies and SMEs. It is also notable above all that a growing share of profits is no longer reinvested but is redistributed to shareholders in the form of dividends or, worryingly, through share purchases by companies themselves, which heightens individual inequality. Most tellingly of all, the (French) National Council for Statistical Information points out that ‘measuring wealth remains the black box of inequality in France, especially owing to possible under-reporting and tax optimisation techniques enabling individuals or companies to pay lower taxes’ (16).

All in all, work done by Paul Krugman and Larry Summers in the United States reveals that most of the past twenty years’ growth has been pocketed by 1% of the population. According to Thomas Picketty (17), the richest 1% saw their share of GDP increase from 8% in 1980 to 16% in 2004. Robert Reich (18) notes that, at the end of George W. Bush’s second term of office, the USA has reverted to the earnings distribution of 1926. The New Deal effect of income compression has thus been wiped out during this period, even though it included the Democrat administration of Bill Clinton.

15 According to Le Monde of 14 December 2006. This is the average pay of directors of CAC 40 companies. In an interview with Le Monde ten years ago, Peter Drucker, the US management guru who experienced a wage disparity of 1 to 20 in the post-war period, described the then rate of 1 to 200 as ‘socially untenable’.

16 Le Monde, 21 November 2006


18 Supercapitalism, Robert Reich.
Therefore it is hardly surprising that, as pointed out by Tim Geithner, chairman of the Fed in New York, the growing gap between rich and poor is undermining political support for trade liberalisation in the United States (19). The particular problem of earnings linked to the financialisation of the economy needs to be seen in this context of growing inequality: double-digit returns on investment coveted and often achieved by publicly listed companies or handed to private equity funds; stock options and ‘golden parachutes’ for directors, and brokerage fees (especially for hedge fund managers and investment bankers). We would merely point out that last year individual end-of-year bonuses in the City of London exceeded £1 million for 3,000 traders and amounted to €13.2 billion in total. In New York (20), the 26,000 employees of the merchant bank Goldman Sachs shared a bonus of $16.1 billion.

Three comments are called for here. From an economic point of view, it is senseless to imagine that double-digit yields in economies growing by 2 to 3% per year can be sustained for long without doing serious damage to the share of SMEs and the workforce as a whole in added value. Wage deflation hampers growth. Moreover, the spiralling of pay for managers reveals a serious dysfunction in our economies. Of course, some economists still believe that there is a competitive market for company directors and that their earnings reflect their productivity, but no such correlation has been established through analysis. It appears on the contrary that directors’ pay is set in a manner which has nothing to do with the market. What is going on here is more of a Duesenburry-style demonstration effect, or more simply self-aggrandisement.

From an anthropological point of view, most people take a dim view of spiralling inequality. Recent epidemiological studies in the UK (21) demonstrate that inequality is becoming intolerable and is leading to an

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20 Le Monde, 23 December 2006.

21 The Guardian, ‘Selfish Capitalism’ by Oliver James, 3 January 2008.

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increase in mental illness, even though it is flourishing in a climate where the materialistic values of capitalism are extolled. Exactly when frustration spills over into anger is an increasingly relevant question. From a moral point of view, it is quite simply unacceptable for a director to make in one year what the average worker in his company would take three centuries of uninterrupted labour to earn. It is up to politicians to determine either a maximum ratio or a procedure for setting socially acceptable rates of pay.

3. Towards a solution
3.1 The difficulties of European regulation

Financialisation driven by market globalisation poses problems for growth, stability and equity which go well beyond the difficulties on which progressive thinkers tend to focus nowadays: jobs, purchasing power, relocation, trade liberalisation, viability of the welfare state, sustainability of pension systems, equal opportunities and social housing. In reality, finance comes upstream of these issues and has a strong, indirect influence upon them (22), but its apparent complexity and above all its overall aura have long relegated it to the margins of political debate. Politicians have an almost reverential fear of finance and are afraid of ‘causing a flight of capital’; they are as frightened as rabbits and have the memories of elephants. No politician can attain the position of Finance Minister in our countries unless he/she is trusted by the stock exchange and financial circles, which sometimes amounts to making that person ‘their’ government official, whether on the left or right. One of the left’s traditional weaknesses is its lack of interest in financial matters,

22 Let us take as an example the recent decision of the French government, at the behest of Brussels, to abolish the monopoly of the Banque Postale and the Caisse des dépôts et consignation (a government investment bank) over the popular ‘Livret A’ savings scheme. The proceeds from the scheme have hitherto been used mainly to fund the construction of social housing, but if it is opened up to merchant banks they will use it as a loss leader. In this way, an improper interpretation of rules on fair competition at Community level will lead to a reduction in funds for social housing in France.
which condemns it to oscillating between cursing when in opposition and falling into line when in power (23). Yet it is here, in financialisation, that the regulation of market capitalism takes place nowadays.

Europe is the most relevant level at which to deal with these matters, but it presents another obstacle: the difficulty of reaching the necessary consensus is even greater owing to the diversity of collective preferences on savings and capital taxation among the 27 Member States (24). The EU’s normal inclination is to align itself with the countries at the forefront of protecting financial interests: the United Kingdom, Ireland, Luxembourg, Malta, Austria and of course Switzerland which often, by force of circumstances, acts as the ‘28th’ EU Member State. But it is London and Bern that set the trend. The Grand Duchy of Luxembourg, whose vital interests are now at stake owing to its overblown financial services sector, is enjoying the windfall effect but would not stand in the way of tighter European regulatory legislation or of harmonised taxes on unearned income. If significant progress on regulatory and fiscal harmonisation in the financial arena looked likely to affect Luxembourg’s economy, Community solidarity would undoubtedly be used to encourage the necessary diversification of its production structures.

A third difficulty has to do with the close scrutiny exercised by the financial media, especially in the US and the UK, over Commission and Parliament initiatives in the field of finance and taxation, beginning with the choice of the Commissioners concerned. The Economist, the Financial

23 Thus there is all the more reason to rejoice at the recent work done by the PES Group in the European Parliament, at the initiative of Pervenche Bérès, chair of the Committee on Economic and Monetary Affairs, attempting to step up pressure on the Commission to make it opt for a more regulatory approach to financial affairs, in keeping with the goal of social cohesion and more independent of US/UK influence.

24 It is no mystery in Brussels that Mr McCreevy, the Irish Commissioner for the internal market and a champion of Anglo-Saxon neoliberalism, managed at the very end of 2007 to persuade the Commission to defer a vitally important proposal aimed at harmonising the basis for company taxation. He did so on the grounds of the forthcoming Irish referendum on the Amending Treaty.
Times and the Wall Street Journal – all incidentally excellent sources of factual information – are capable of ruining the credibility of any Commissioner keen to adopt a controversial stance on such issues, or even of preventing a national politician from joining the European executive body if he/she is regarded as hostile to the interests of international finance as perceived by Anglo-Saxon media gurus. An enormous amount of influence is exerted by these newspapers on Brussels circles in these matters and relayed by the foreign press as well as by the European non-specialist press; so much so that, despite some laudable attempts, no political group in the European Parliament has the capacity today to wage a broad-based campaign in favour of fundamental financial reform tailored to the need for growth and a coherent European model.

The fourth difficulty relates to the method of regulation: voluntary codes (soft law) or binding codes (hard law). In this age of financial experimentation and innovation, the market is constantly exploring the limits of the system, pushing them back in order to boost growth, but more often also so as to corner a larger share of added value for finance. Self-regulation by professionals affords two advantages in this context: firstly, systemic risk cannot be assessed without information that they alone possess – but only to a certain extent in the absence of aggregation; secondly, challenging established positions which generate unearned income means allowing competition free rein, and this requires flexibility that is rarely afforded by coercive rules.

But there are three limits to self-regulation. The first has to do with its ineffectiveness in the face of ‘stowaway behaviour’, the second with the absence of ethical standards, and the third with crisis management. Corporate social responsibility boils down to ‘fair-weather morality’ and very soon finds itself at odds with the harsh reality of business life or becomes confined to a skilful, or even cynical, marketing exercise. The inadequacy of ethical standards is reflected in excessive shareholder power and disregard for the interests of the company’s other partners; the greed of directors who award themselves inordinate salaries and unwarranted wealth enhancement; the quest for market power (the true motivation for numerous mergers and acquisitions); fiscal engineering and impunity for
the tax avoidance practices promoted by offshore financial markets. White-collar crime is not sufficiently punished in a business world where efficiency becomes the only rule and individual greed is socially acceptable – or even respectable – behaviour. Only the law can sanction error and abuse and impose a professional ban or severe penal sanctions on managers who engage in insider dealing, price-fixing and tax fraud.

Self-regulation does not survive a crisis. Politicians always have the last word in the event of a crisis. It is they who must act as lender of last resort to ensure the liquidity of the system when confidence is lost, either by depositors (the Northern Rock case) or between banks in the case of a credit crunch. It is they who must wipe out debt when things go wrong, so as to provide minimal protection for ordinary depositors acting in good faith, and to make taxpayers bear the cost. Finally, it is politicians who must devise an economic policy to get out of recession if the financial crisis has gone as far as that.

International cooperation, via the Basle-based Bank for International Settlements (BIS), the IMF and the enlarged G7, is of course inescapable at times of full-blown financial crisis. But no country allows its hands to be tied in advance by ceding sovereignty to a hypothetical supranational authority. Only in emergencies are ad hoc solutions devised and compromises negotiated as to cost-sharing and policy-making. The balance of power between countries and, equally, the internal influences at work within individual countries – where the financial industry will continue to loom large in spite of any errors or mistakes made – will determine the speed and nature of responses. If the crisis is serious the role of the public authorities will increase (25), but this key point, which alters the balance of the system, will naturally give rise to sharp divergences and tension. Two issues need to be raised here, both revolving around the role of Europe: its present capacity to take back control of finance, and its ability to act at global level in the event of an international financial crisis resulting in worldwide recession.

25 A recent editorial in the Financial Times went so far as to recommend nationalising the failed bank Northern Rock to stop the subprime crisis spreading to the United Kingdom.
3.2 What financial doctrine should govern internal regulation in the euro zone?

Efficient financial markets must meet several criteria, between which the monetary and regulatory authorities need to seek a satisfactory compromise. First of all, security of transactions and protection of investors’ legitimate rights call for a reliable payment infrastructure and proper control over the risks inherent in financial instruments, as well as high levels of professionalism and robust solvency and liquidity ratios on the part of financial intermediaries, especially banks. Secondly, an optimum combination of economies of scale and effective competition between operators, not biased by preferential tax legislation, must work to the advantage of large users as well as individual consumers. Thirdly, proper links with monetary policy are vital in order to boost that policy’s efficiency.

What could be a more appropriate level for legislation than the EU? In an interdependent world characterised by market externalities and the knock-on effects and conflicts generated by national policies, international cooperation is of the essence. Governments are no longer equal to the task, with the exception of giants like the United States and China, while for the foreseeable future we shall merely have a constellation of global governances and not a global government – which moreover is both unlikely and undesirable. But Europe, for its part, constitutes an appropriate level in terms of corporate governance, financial organisation, monetary policy (for the euro zone) and capital taxation. However, in order to achieve financial regulation that goes beyond the interests of investors and strikes the appropriate balance with the interests of other economic players, especially workers, we must abandon our blind faith in those experts and practitioners of the profession who nowadays dominate the thinking of the Commission, wholly in thrall to Anglo-Saxon influence. We must open up the finance debate to political movements and social players. In this way it will be
possible to base EU financial policy on principles consistent with the need for a healthy, robust economy and a fair distribution of wealth (26).

The EU is the ideal size to enact its own law, if it so wishes, to negotiate its enforcement with its main partners – the United States and China – and to impose it on others. The EU should go further and do in the financial sphere what it is already doing in the trade sphere: champion a more efficient and fairer multilateral financial order. The new order would seek to provide the global public goods needed by the international economy to ensure sustainable development: open markets, financial stability, accountancy standards favouring long-term corporate strategies, measures to combat corruption and financial crime, the establishment of multilateral rules on minimum capital taxation, regulation of offshore financial markets and a boycott of uncooperative markets. Since the adoption of the Financial Services Action Plan (FSAP) by the Lisbon European Council (2000), progress has undeniably been made in strengthening basic Community legislation with a view to creating a European market for wholesale transactions, giving retail markets more security (if they cannot be integrated) and updating prudential and supervisory rules. Some important legislation has been adopted by means of codecision, with the Parliament playing a major role in this process. But the main innovation has been the development of the Lamfalussy Method which creates a pragmatic, four-stage procedure combining Community legislation and cooperation among national regulatory authorities. The former lays down a binding framework, while the latter provides the flexibility so dear to City traders which gives London the edge over New York, now that New York is subject to the straitjacket of the Sarbanes-Oxley Act passed in the wake of the Enron and Worldcom scandals.

26 The interest newly demonstrated by the European Trade Union Confederation is welcome in this regard - see in particular the speech by John Monks about ‘casino capitalism’ in late 2006. On this topic see also the own-initiative report of the European Economic and Social Committee, with the contribution by Olivier Derruine (CSC).
But the EU is confronted by structural, doctrinal and interest-based differences which have so far been only partially overcome. One initial difficulty arises from the fact that the internal market in financial services involves all 27 EU countries; financial integration in the euro zone, which has 15 members as from 1 January 2008, is held back by the progress made by all 27. At the same time, unification of the internal market is dominated by rivalry between the City of London and the competing centres of New York, Dubai, Singapore and Hong Kong. London has opted for a structure that is both centralised – the Financial Services Authority – and based on principles allowing for a degree of self-regulation by markets, whereas the United States maintain a rather different dual structure. For the SEC (Stock Exchange Commission) it is rule-based, while for the CFTC (Commodities Futures Trading Commission, Chicago) it relies more on risk assessment. London is not prepared to sacrifice its regulatory autonomy (27), which constitutes one of its main comparative advantages in global competition, for the sake of harmonisation or mutual recognition in the EU 27.

The second difficulty is connected with the current gradual transformation of structures into a hierarchy of financial establishments, some of them pan-European, others national or even regional, while the regulators remain national – even though they do cooperate closely with one another through the Lamfalussy procedure. In the case of a transnational trader, supervision is carried out in the country of origin, but if a subsidiary goes bankrupt the cost will fall to taxpayers in the host country. Then there is the question of the lender of last resort: ultimately for euro zone countries this can only be the ECB. One may well ask, as do Dirk Schoenmaker and Sander Oosterloo (28), whether the balance that

27 The Economist of 15 September 2007 did not shirk from describing the UK’s management as lax, or even lenient, in respect of insider dealing and white-collar crime occasioned by an overly close relationship between regulators and traders within the traditionally British ‘old boys’ network’.

has been struck is stable: ‘the policy question is whether home country control of supervision, plus host country responsibility for financial stability is sustainable in an integrating market’.

The third and final difficulty concerns the fact that tax harmonisation is blocked by the unanimous voting rule, while the EU’s decision on accounting standards cannot fail to raise eyebrows. Oddly enough, the EU adopted in 2002 the International Financial Reporting Standards drawn up by a committee dominated by US and UK representatives but not adopted by the United States, which preferred its own standards. Although they do have advantages, the IFRS standards raise some tricky questions. In particular, the logic behind them is to maximise shareholder value, and they even rely on the market value of assets, meaning that companies are liable to engage in short-term management rather than taking a long-term strategic approach. One may well wonder whether, in the financial sphere, there are grounds for reverting to a more realistic conception of subsidiarity than the one which prevails today and is really aimed first and foremost at accommodating the City of London. Surely the time has come to assess the merits of a 27-country virtual single market as compared with the reality of a properly integrated 15-country euro zone. We must in fact draw a distinction between the euro zone and the EU, specifically acknowledging two undeniable facts: on the one hand, if a monetary zone is to function well it requires much more in-depth financial integration and economic governance than has so far been admitted (29); on the other, it is not for countries having opted to remain outside of the euro zone or not yet in a position to join it to determine

29 On this subject we would cite Anton Brender and Florence Pisani (2007: 115-116): ‘the euro zone is ill-loved. Its institutions, designed at the end of the 1980s, are geared to controlling inflation and public debt… In a world where deflationary forces are rampant, … full employment entails active demand management. Monetary policy cannot play its part without a modern financial system, allowing in particular for ongoing regulation of credit flows to households… yet financial unification has stopped at markets, that of retail banking not being deemed a priority. The consequences of this omission are obvious: since 2000, cuts in the Central Bank’s base rate have been passed on in a weak and unequal manner within the zone’.
the degree of integration and governance that is desirable in the euro zone. Whether we like it or not, we are in a two-speed monetary – and hence financial – Europe. We must draw the consequences and agree that all legislation required for integration purposes should be drawn up under the rules on enhanced cooperation. This will necessitate awkward decisions, not only for Dublin and Luxembourg but also for other Member States which are playing a very subtle double game: they are superficially proactive but fundamentally not unhappy to use existing reservations as a pretext for allowing the blockage to continue, out of a desire to protect their own financial interests.

Once freedom of movement for capital has been perfected through the use of a single currency, a high-quality monetary policy and good financial stability dictate that the structures and rules in use on all credit markets must converge, as must financial instruments. Homogeneous market structures are a precondition for effective transmission of the ECB’s monetary policy and a rapid, uniform dissemination of the impetus it gives on liquidity and interest rates. National regulations liable to skew decision-making and cause traders to react differently should not be allowed to continue. By the same token, regulatory systems must be the same for all national markets, and there must be a hierarchy of supervision within a common supervisory structure. This is especially true since the wave of restructuring currently underway will soon increase the clout of pan-European banks as compared with national institutions, and since the lender of last resort – where required – will be the ECB. In return, the budgetary cost of bankruptcy by a bank or another financial institution should be mutualised at euro zone level. The euro zone should possess the necessary resources or a means of calling on the necessary contributions in the event of need, with a country by country distribution key agreed in advance.

Europe must establish its own doctrine and its own financial and fiscal legislation, so as to be in a position to interact with the rest of the world in a manner consistent with its goals of economic progress, financial stability and social justice. As long as the EU, and especially the euro zone, is itself the theatre of competition between its financial markets –
concerning not only infrastructure, expertise and the quality of services provided by local operators, but also the relative leniency of regulatory systems and differential tax treatment for savings and corporate profits — it will not be capable of launching an effective attack on the most dangerous and unfair dysfunction of global finance: tax havens. While Europe tolerates them at home, it will have to come to terms with them elsewhere.

The many-headed Hydra and the flight of capital are often evoked in this context: getting the better of it would be impossible, and trying to do so would lead to a haemorrhaging of capital. Such objections derive more from brainwashing than serious analysis. Capital may well transit through tax havens but it does not stop there, because it has to be invested somewhere in the real economy in order to generate profit. So how could it manage without the EU or the United States, the world’s top two economies, which offer capital a combination of income and the highest security in the world? Because — let there be no mistake — although the tax take on capital is lower in the USA, tax really is levied there, thanks to very rigorous bilateral treaties with the tax havens housing the assets of rich US citizens, and since prison sentences are handed down to fraudsters. It would not be surreal to envisage setting ourselves as of now the medium-term goal of introducing European taxation on capital — corporate profits and income from financial saving — in order to eliminate tax distortions on these very mobile factors, to re-establish fiscal justice towards labour, and to simplify the lives of traders and savers who invest in more than one Member State. This centralisation of tax would be more effective and fairer than the harmonisation that is being thwarted by the unanimous voting system to be maintained in the Amending Treaty. By reconstituting a new, broader tax base at EU level, taxation levels could be reduced. Moreover, while most of the tax receipts would be redistributed to Member States according to a distribution key of the type used between the various federal states in the USA, a proportion could be paid into the Community budget. It could even serve to establish a compensation fund for euro zone countries, acting as an automatic stabilisation mechanism in the case of divergent cyclical patterns between members of the zone. Given this dual basis of unified
financial legislation and fiscal legislation, the EU would be in a position to negotiate terms and conditions with offshore markets, compelling these entities or countries to comply with minimum legal and fiscal criteria. Otherwise, sanctions (a boycott, penalties for traders, taxation of capital entering the EU) would be imposed on recalcitrant countries. Finally, the traceability of capital movements would mean that effective measures could be taken against all forms of international financial crime, including those connected with terrorism.

4. What role should the EU play in global financial governance?

Can the EU confine its efforts to internal regulation when finance has a global and, in particular, a transatlantic dimension owing to market interpenetration (in spite of regulatory divergences), as the existence of the NYSE-Euronext stock market illustrates? In ‘Fragmented Power; Europe and the Global Economy’ (Sapir, 2007), Benoît Coeuré and Jean Pisani-Ferry pick up on something said by Lorenzo Bini-Smaghi, a member of the ECB Board: ‘Powerless Europe: why is the euro area still a political dwarf?’.

They later state (Coeuré and Pisani-Ferry, 2007: 23) that ‘only in financial markets is the EU a significant smaller player, because of its comparatively lower degree of financial development’. The point is that the EU does not have a presence, with powers of expression or negotiation consistent with its responsibilities, in any of the bodies exercising global financial and monetary governance (the Bretton Woods financial institutions, G7-Finance, Financial Stability Forum, FATF, Basle Committees). Remarkably, the changeover to the euro did virtually nothing to alter these shortcomings in the EU’s external presence, even though several Member States are represented – if not over-represented – for example on the Boards of the IMF and the World Bank. Although the ECB has quite naturally become a part of the system, within the club of main central banks which meet monthly at the BIS in Basle, it is less self-evident that its arrival (with an indeterminate status) in certain regulatory forums constitutes real progress, owing to confusion over the respective roles of the legislator, the legislative and supervisory authorities and the lender of last resort. Marco Brecht and Luis Correia da Silva (2007: 223)
point out in the same volume that: ‘as long as the enforcement power of European institutions in financial services is limited, the EU has externally to rely on Member States’. So the problem is always the same: Europe cannot project itself to the outside world as a global economic power unless it has first achieved internal unity. No amount of institutional tinkering will overcome this fundamental obstacle.

Conclusion
In a context of abundant labour supply around the world, the main variables for adjusting to the structural changes brought about by technological innovation and globalised production are jobs, the status conferred on employees by their contract of employment, and of course wages themselves. Financialisation both feeds into and guarantees this dynamic. Institutional investors are demanding a combination of income and high liquidity for individual investors, which forces companies to seek maximum short-term profit and to redistribute it among shareholders in the form of dividends or share purchases. Financial activity – some innovative, some parasitical and predatory and potentially destabilising – compounds this new relationship between productivity gains and the share-out of added value, making taxation even more favourable to capital due to the debt leverage effect.

This extreme financialisation calls into question three fundamental aspects of the European social compromise. Firstly, growth is doubly affected by the long-term shortfall in investment, especially in innovation, and by wage deflation which slows down consumer demand. Secondly, the growing differentiation between wage levels on the one hand, and between profits (of listed companies and of SMEs) on the other, as well as the disparate share of capital and labour in added value, all result in a concentration of wealth unprecedented since 1945; this reveals untenable inequalities, including for an increasing proportion of the middle classes who are being ‘dragged down’. Thirdly, the relative detaxation of capital shifts the tax burden from the wealthiest groups to the middle classes and employees, and reduces the government’s capacity to rectify excessive inequality either at causal level (equal opportunities) or in terms of its effects (financial assistance to the least well-off).
Can the principle or methods of financialisation be combated? Is it advisable? Is it worth a try? Only very recently have official bodies and commentators in the economic and financial press, who reflect the views of business circles, begun to ask such questions. Excessive income disparities and the risk of instability have until now been played down, if not denied, but they are coming out into the open at the end of a cycle of wealth accumulation and speculation, now that a crisis is looming. It is becoming possible to agree that the link between profit and growth is no longer as self-evident as it may have been in the 1980s after three decades of wage rises at the expense of investment. Today, a rebalancing of wages and profits may well be advantageous in social and macro-economic terms, but the irresistible micro-economic dynamic of the market stands in its way. The logic of market self-regulation, favoured by the dominant neoclassical school of thought, maintains that there must first be a depression phase which erodes profits and devalues assets, but at the cost of rising unemployment and falling real wages.

Can such a scenario, presaged perhaps by the current deepening of the financial crisis and its recession-inducing impact on the real economy, be averted? How will governments react, particularly those of EU Member States and even more so of the euro zone? Will the crisis call into question the opening up of markets around the world? Will it threaten the unity of the EU, which until now has not had to experience a severe, widespread recession? Could a new form of New Deal negotiated at European level forestall a sustained deterioration in growth performance which would ultimately create a tense, dangerous, social and political climate within and between Member States?

What should this new European social pact consist of? We shall list a few essential components by way of conclusion: a reform of corporate governance geared towards increased participation by stakeholders, first and foremost workers; genuine economic governance of the euro zone with macro-economic and structural dimensions; a monetary policy focused on growth and on preventing financial or property bubbles rather than obsessed by inflation; capital taxation (on savings and companies) set at European level, at least for the euro zone, perhaps with the
establishment among Member States of a counter-cyclical solidarity and stabilisation fund; controls on movements of capital involving uncooperative offshore markets; accounting and financial standards and supervisory systems that are compatible not just with the demand for financial stability and investor security but also with long-term corporate strategies; flexicurity contracts that strike a balance between training, income safeguards, employment incentives and protection against insecurity and ‘poverty wages’ in the formal and informal economy. This agenda could be expanded to include Community-scale industrial policies in the fields of energy, the environment and the defence industries. One might even envisage the creation of European services of general interest, for example in respect of the railways, certain road-rail or interconnected energy infrastructures and even in the education sector – specialist universities – or the cultural sphere. Last of all, there should be incentives for the social economy and the non-market sector, since there is no reason why marketisation should become the yardstick for all economic activity.

In short, if the European Union intends to remain open for trade with the rest of the world, which is a sine qua non for its prosperity and security, it must be bold enough to re-engage with the ‘European exception’, with all the wealth of civilisation inherent in this concept. The Union must continue its pursuit of freedom and justice, an approach it first initiated on our continent in the post-war period and which must not fall victim to globalisation. It is the only approach that can save Europe from the much-dreaded slide into security-consciousness which is currently taking hold. Justice and freedom are in fact the only alternative to the fear now pervading those who derive great benefit from inequality and, conversely, those who are afraid of being sucked into insecurity. If Europe wishes to protect freedom from this formidable coalition of fear, it must devise an alternative to neoliberalism. Capital regulation by the EU is imperative in this regard.
The need for capital regulation in Europe

References


New frontiers of trade unionism

Globalisation of the economy, underway for several years now, poses new challenges for trade union bodies, be they national, regional – in particular European – or worldwide. After years of negotiations between international organisations (the ICFTU, WCL and others), 2006 saw the founding of a unique new world structure which is democratic, pluralist and independent: the International Trade Union Confederation (ITUC). Its establishment reflects a desire to unify the aims, strategies and actions of workers’ organisations throughout the world in response to accelerating globalisation which has been dictated, especially over the past thirty years or so, by the financial interests of transnational enterprises. But even before the ITUC was founded, we had been seeing the emergence since the 1990s and then more recently a proliferation of ‘International Framework Agreements’, i.e. texts negotiated jointly by the managements of multinational companies on the one hand and international trade union federations on the other. The role of Europe, and of European sectoral organisations, in the signature of such agreements is important, if not crucial, in most cases.

In the following paragraphs we shall outline the key circumstances surrounding the unification of the world’s trade unions; thereafter we shall investigate what appears to be one of the principal means of global union action nowadays, International Framework Agreements (IFAs), as well as their scope and content. In section three we shall attempt to examine the specific role of European sectoral trade union organisations in this process of global ‘collective bargaining’.
1. Key circumstances
The founding congress of the new International Trade Union Confederation (ITUC), held in Vienna in November 2006, undertook ‘to change globalisation fundamentally, so that it works for working women and men, the unemployed, and the poor’ (ITUC, 2006: 1) (1). 'It is essential', the inaugural declaration goes on, that ‘the policies of free market neo-liberalism, and the manifest failings and incoherence of the international community in respect of the current process of globalisation, give way to governance of the global economy’. Does this undertaking reflect a global consensus within the trade union movement in analysing the causes to be addressed and strategies to be implemented in order to achieve its aims? Globally, the component parts of the international trade union movement in Europe, Asia, America and Africa agree on the responsibility of neoliberal policies and the failings of current global governance. They likewise share basic demands in the social, environmental and regulatory fields: compliance with fundamental social rights and trade union rights, improvement of working conditions, enforcement of health and safety standards in the workplace and environmental protection; but also measures to combat tax havens, free-trade zones, unfettered capitalism, forced labour, child labour, slavery etc. ‘Global governance’ as envisaged by the ITUC implies in particular making the international trade rules of the World Trade Organisation (WTO) comply with the rules of the International Labour Organisation (ILO); another requirement is to draw up rules on multilateral investment which take into account workers’ fundamental rights.

Beyond these major points of consensus, however, the experience of the European trade union movement shows that different approaches and methods, but also different forms of representation, tradition and culture – and even interests – exist between national organisations. Within the European Trade Union Confederation (ETUC) there are national splits,

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1 The Pan-European Regional Council (PERC) of the International Trade Union Confederation (ITUC) came into being on 19 March 2007 at the close of its constitutive assembly held in Rome, Italy.
but also, depending on the matter in hand, splits between sectors or between the sectoral and cross-industry levels (2). Compounding these divisions are management strategies which seek to promote competition between the individual sites of multinational companies (threats of relocation, etc.), turning employees in different localities, countries or continents into rivals. As has been pointed out by Guy Ryder, the first General Secretary of the ITUC, in the process of globalisation with which we are familiar ‘the biggest trap is enforced competition between workers’ (3).

1.1 Falling membership rolls
Moreover, if neoliberal policies have had ample opportunity to evolve over the past twenty or thirty years, it is partly thanks to the transformation in global capitalism (industrial decline, internationalisation of methods of production, trade, finance, transport and networking) (4) concomitant with the steady fall in trade union membership rolls. For instance, on this last point, the large US union federation AFL-CIO is experiencing the most serious crisis in its fifty years of existence. This crisis has resulted in a lower trade union density and deep rifts (the Service Employees International Union and the International Brotherhood of Teamsters announced their withdrawal from the Federation in July 2005). According to observers, the US union movement is now more deeply split than at any time since the 1930s (5).

In Europe too, union membership has declined significantly in recent

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2 By way of example, the recent ‘REACH’ initiative, aimed at a more judicious handling of chemicals in Europe, has been the subject of discord between Europe’s sectoral federations and the cross-industry level.

3 ‘The division of labour must be socially acceptable’, Interview with ITUC General Secretary Guy Ryder, Le Monde, 4 November 2006.

4 This aspect is not dealt with in the present chapter. We would refer readers interested in an analysis of this trend to the articles by Pierre Defraigne in Social Developments in the European Union 2005 (Defraigne, 2006) and in the present volume.


Social developments in the European Union 2007
years, down from 32.6% in 1995 to 26.4% in 2001. Jeremy Waddington informs us that this decline is particularly marked in the new Member States, where trade union density has been reduced by more than half in just a few years, falling from 42.7% to 20.4% between 1995 and 2001 (Waddington, 2005). He states that, ‘in Europe, the proportion of trade union affiliates has never been as low as it is today since 1950’. In the United Kingdom and France, but also in countries with strong union traditions such as Sweden or Belgium, information and recruitment campaigns have become a top priority with a view to attracting sociological groups that generally have a limited presence in the trade union world: young people, migrants and women. In Germany, membership of the Deutsche Gewerkschaftsbund (DGB) now seems to be stabilising, but after having experienced a sharp drop (from 9.76 million to 6.58 million between 1994 and 2006). Of course, trade union density does not necessarily reflect the vigour of a labour movement: France, with its low rate of union membership (under 10%) but strong mobilisation of protesters, particularly in 2006 and 2007, is a case in point.

The trend towards falling rolls is likewise affecting Japan, Australia and New Zealand, where rates have halved in recent years (from about 40% to 20%). In China, despite the absence of large independent trade unions, labour movements are proliferating. They now extend to the private sector (Walt Disney, Wal-Mart, McDonald’s, etc.) and no longer, as in the 1990s, concern only State factories (6). The NGO China Labour Watch reports that, in 2004, three million workers participated in thousands of protests calling for more favourable working conditions. The 17th Congress of the Chinese Communist Party, in October 2007, was moreover used by the country’s President, Mr Hu, as an opportunity to promote his ‘social harmony’ slogan, which some observers explain in terms of the country’s need, given its present circumstances, to redistribute the surpluses produced by Chinese economic growth in favour of individuals. We should, lastly, mention the emergence of labour movements in Russia, such as the intermittent strikes at the Russian Ford

6 See in particular http://www.chinalaborwatch.org/.
plant, where the employees are calling for better working conditions. Overall, therefore, the recent trend towards falling union membership rolls in the industrialised countries seems not to be accompanied by a weakening of labour movements; rather, they appear to be gaining strength in the emerging economies.

1.2 Regional strategies

The international trade union movement is simultaneously confronted by the external challenge of global governance and the internal challenge related to its own national and regional foothold. Thus, if the ITUC is to achieve the aims it has set itself, it must *inter alia* strengthen the links, common analyses and shared strategies between regions of the world. At European level, the ETUC has embarked on the slow task of forging ties with regional union organisations in Latin America (a central trade union coordinating body and the *Consejo de Trabajadores*), Asia (in the context of UE-ASEM meetings), Africa (see in particular the trade union summit of October 2007 bringing together more than sixty African and European union leaders), Russia and the United States (in particular via the joint ETUC/AFL-CIO declaration of April 2007, addressed to the European and US governments, calling on them to safeguard workers’ interests in their management of the world economy), and so the list goes on. The aim of these regional strategies is, in certain cases, to introduce a social dimension (workers’ rights, the creation of joint advisory committees, etc.) into bilateral agreements signed by the EU with these regions of the world; sometimes the goal is to set up joint trade union platforms to counterbalance bilateral employer platforms; it may also be to incorporate social dialogue into relations between the European Union and other countries.

As far as China is concerned, the absence of any real independent trade union partners hampers the ETUC’s strategy, which therefore has to focus on the conduct of European companies established in that country: questioning them about employee representation, freedom of association,
respect for health and safety, working conditions and decent wages (7). The same applies in the case of India, where the ETUC and the ITUC are trying to pressurise the European Commission into including a social chapter in India-EU trade agreements and into reminding the Indian government of its international obligations (in 2007 with regard to Burma in particular, the trade unions demanded compliance with the obligations arising out of the ILO and UN resolutions on workers’ rights and other human rights).

However, the trade unions’ desire to firm up joint analyses and strategies worldwide is thwarted by a series of difficulties: social dialogue structures vary from one country and region of the world to another (bipartite or tripartite structures), union strength and representativeness are very diverse, and the economic situation, commercial position and also unemployment and poverty levels make every national or regional situation specific – without even counting the political difficulties in many countries where trade union rights are severely suppressed (8), and in Europe where an anti-union climate is spreading (see, in 2007, the case of Sweden).

Finally, it is sometimes hard to bring solidarity to bear when it comes, for example, to coordinating wage strategies, even within the EU (9). So, if we

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7 In June 2006, for instance, ETUC General Secretary John Monks stated: ‘It is outrageous that profit-chasing European companies are threatening to disinvest if very basic standards are introduced in China’ (ETUC, 2006). His reaction followed on from the publication of reports that the European Chambers of Commerce in Beijing had said that, if new labour laws were introduced to cut working time and improve pay rates, this would ‘increase Chinese production costs and would force foreign companies to reconsider new investment or continuing with their activities in China’.

8 See the Annual Survey of violations of trade union rights – 2007 from the ITUC (http://survey07.ituc-csi.org/).

9 See for example the difficulties encountered by the Doorn Group in coordinating collective bargaining (the Doorn Group has since 1997 brought together trade unions from Germany (DGB), France (CGT, CFDT, FO & CFTC), the Netherlands (FNV & CNV), Luxembourg (CGT-L & LCGB) and Belgium (FGTB, CSC, & CGSLB).
cannot adopt a single vision of international trade unionism, we must put our faith in fundamental principles. According to Tom Jenkins, external relations coordinator at the ETUC, ‘Our approach is to link trade with core labour standards, freedom of association, collective bargaining, and an end to child and forced labour. We want coherent policies, so that trade is not divorced from development and social issues. (…) The ETUC wants to see independent trade unions established around the world, able to engage in free collective bargaining’ (10).

2. What tools of the trade should global trade unionism adopt?
To this day, there are no structures framing global social dialogue, global collective agreements or global collective action and strikes. International trade union action is based mainly on international institutions: trade preferences linked to social rights, the OECD Guidelines for Multinational Enterprises (OECD, 2000), and the Tripartite Declaration of Principles concerning multinational enterprises and social policy (ILO, 2001). At international level, however, the absence of a hierarchy of rules weakens the scope of these documents vis-à-vis other organisations, especially the World Trade Organisation (WTO). And yet the globalisation of economic activity, the growing importance of multinationals and the proliferation of large-scale corporate restructuring exercises, mergers and acquisitions, have made trade unions wonder about the geographical limits of their capacity to act. Telljohann et al. note that ‘as a consequence of TNEs’ (Transnational Enterprises, author’s note) growing flexibility and capacity to shift production from one country to another, trade unions began to attempt to create a social framework for the global economy in order to bridge the growing gap between TNEs’ strategic options, which transcend national borders, and their own limited capacity to act, since it is largely circumscribed by national boundaries. In the light of the limited capacity for political regulation at global level, the only realistic option to create such a social framework was to push for more

self-regulation through the conclusion of IFAs at global company level’ (Telljohann et al., 2007: 11).

It is in this context that, since the early 1990s, we have witnessed the emergence of global agreements on workers’ rights concluded between certain multinational enterprises and global union federations. These agreements, known as ‘International Framework Agreements’ (IFAs), are aimed at promoting embryonic social dialogue at an international level. In 2002, the ICFTU gave the following definition of them: ‘International Framework Agreements (...) are agreements on certain principles which, although they do not constitute collective agreements in the same way as agreements concluded at national or local level, lay down a framework of rights to encourage recognition and negotiation at this level’ (Bourque, 2005: 9). Such agreements are negotiated and signed between unions and employers – which sets them apart from codes of conduct, drawn up unilaterally by company management – and the employers undertake to comply with the social standards laid down in them at all the multinational’s sites. A more militant take on IFAs prompts the CGT (France) to state that ‘the idea is to reduce, or even wipe out, the profits made by shareholders who build their “competitive advantage” on low wages and the absence of social rules’ (CGT: 1). A study conducted by Isabelle Schömann et al. counted some 52 IFAs in July 2007. It is indicative of the acceleration in this process that there were already 59 in late December of the same year.

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11 Each of these federations, known as Global Unions, represents its sector of activity at global level: Education International (www.ei-ie.org); Building and Wood Workers International (www.bwint.org); International Federation of Chemical, Energy, Mine and General Workers’ Union (www.icem.org); International Federation of Journalists (www.ifj.org); International Metalworkers’ Federation (www.imfmetal.org); International Textile, Garment and Leather Workers’ Federation (www.itglwf.org); International Transport Workers’ Federation (www.itf.org.uk); International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (www.iuf.org); Public Services International (www.world-psi.org); Union Network International (www.union-network.org). The International Trade Union Confederation (www.ituc-csi.org) and the Trade Union Advisory Committee to the OECD (www.tuac.org).
2.1 Signatories and sectors
IFAs are signed by the management of a multinational enterprise and the global union federations \(^{(1)}\). In certain cases they are also signed by the European Works Council concerned and/or by national trade union organisations. A Global Unions Council, resulting from an agreement with the global union federations and the Trade Union Advisory Committee to the OECD (CSC-TUAC), was established at the founding conference of the ITUC.

Table 1: List of International Framework Agreements (IFAs) (1989-2007)

<table>
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<tr>
<th>Enterprise</th>
<th>Year</th>
<th>Country</th>
<th>Global Union</th>
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Although most IFAs run for an indefinite period, others are concluded for multiannual periods (two or five years). A preliminary analysis of the enterprises signing up to an IFA tells us that the vast majority of them are European. 52 out of the 59 Agreements in existence at the end of 2007 concern multinationals whose head offices are in an EU Member State (or in Norway). Almost half of them are German (15) or French (10). The countries of origin of the seven non-European IFAs are South Africa (2), New Zealand (1), Australia (1), Russia (1), Canada (1) and the USA (1). This initial finding leads us to believe that, beneath their global character, IFAs are strongly influenced by European traditions of collective bargaining. As for the sectors concerned, still according to Schömann et al, the following three sectors of industry are the main ones: metalworking and electronics; chemicals and energy; woodworking and construction. A less significant role is played by the food industry and textiles. The signatory union federations most heavily involved are, in order, the IMF (metalworking), the ICEM (chemicals, energy and mines), UNI (telecommunications, commerce, private security etc.), BWI (woodworking and construction) and the IUF (food).

### 2.2 Content of IFAs

Most of these Agreements draw their inspiration from the ILO Declaration on Fundamental Principles and Rights at Work. Unlike local or national agreements on working conditions, IFAs seek to ensure compliance with fundamental principles, such as freedom of association and the right to collective bargaining, in all of the signatory company’s operations. Reference is usually made to the ILO Conventions, in particular those relating to freedom of association (¹²), the right to

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¹² Convention on freedom of association and protection of the right to organise, Convention No. 87, 1948.
collective bargaining (13) and the worst forms of child labour (14). Over and above the ILO Conventions, most Agreements also include the issues of health and safety, pay, vocational training and working hours in their provisions. However, like European voluntary framework agreements, these documents do not impose any legally binding obligations on the companies signing them. It is more a matter of companies making a moral commitment, at their own initiative, to observe the provisions of these texts, without any sanctions being possible if those provisions are violated. Yet Bourque notices an evolving trend in the content of IFAs: ‘the first Agreements are essentially declamatory in nature and amount to a commitment by the multinational enterprise to comply with the fundamental ILO Conventions and cooperate with the signatory trade unions in ensuring compliance with this commitment. The other Agreements are generally more detailed and more explicit, both in the number and enumeration of the ILO Conventions to which they refer and concerning their more binding character as regards compliance by subcontractors with the stated principles and rights, and as regards procedures for monitoring the Agreement’ (Bourque, 2005: 11).

2.3 A tentative assessment

The vast majority of IFAs are rooted in European traditions of social dialogue (the German, Swedish or French model, etc.). Thus one might think that, in a context of globalised production processes, they are a way for European trade unions to disseminate these traditions beyond the continent of Europe with a view to reducing the potential for labour competition, even within multinational enterprises, between sites in different regions of the world. If that were the case, IFAs would do nothing – or very little – to improve working conditions for European workers. But Schömann et al note that ‘even within the European Union, there is potential for progress, in particular in the development of rights

that are not directly related to working conditions and that correspond to much broader social or environmental aspects linked to the lives of workers and their families’ (Schömann et al., 2007: 25).

IFAs are more than an instrument to disseminate the European model. Other elements are relevant, such as placing labour relations in a globalised context (beyond the European confines of European Works Councils), devising tools to prevent labour disputes and arbitrate in the event of conflict, and even, in the minds of some company managers, the benefit of having a mechanism for showing off the company’s labour standards with a view to gaining market share. Indeed, according to Telljohann, ‘IFAs offer an instrument to address the growing social concerns of consumers and investors’ (Telljohann et al., 2007: 14). From this perspective, then, IFAs represent the search for a meeting point between workers’ interests and those of management or the company as a whole.

Virtually all Agreements cover every one of the multinational’s sites, and 80% of them likewise apply to suppliers. This reflects a higher degree of commitment on the part of management than is the case for the codes of conduct adopted unilaterally by certain multinationals (some of which have also signed an IFA). In this sense, the adoption of Framework Agreements ‘can be seen as the start of international collective bargaining’ (ICFTU, 2004: 95). However, verification that the entire production chain complies with the provisions of the IFA appears to be insufficient in some instances. Admittedly, most Agreements do foresee monitoring mechanisms, with trade union involvement. But these mechanisms sometimes amount to nothing more than the mere circulation of information about the Agreement within the company. Certain multinationals do go further, however, and make provision for joint inspections by the national trade union concerned and the Global Union, aimed at verifying enforcement of the Agreement on the ground. Where there is violation of an IFA and/or its provisions, the Global Union is expected to notify the management. Finally, certain IFAs provide for verification of their implementation to be entrusted to external audit or certification agencies.
Even though we lack hindsight to assess the implementation of the provisions of IFAs, that implementation depends not only on the goodwill of employers but also on the ability of union organisations to verify their enforcement and exert pressure on the signatory companies. As Stevis and Boswell put it (2007: 175), ‘While IFAs aim to establish certain rules that regulate the corporation’s labor practices at the global level, they are not collective bargaining agreements that can be enforced in national or international law. Their value depends on the regulatory provisions that unions have managed to negotiate and, of course, on the ability of unions to exert pressure on the corporation through organizing and campaigns’. But the ability of unions to engage in monitoring IFAs is anything but a marginal issue: ‘experience has shown that the effective implementation and monitoring of IFAs requires significant resources to conduct meetings, maintain networks and co-ordinate activities’ (Telljohann et al., 2007: 15).

On the trade union side, the ultimate aim is to create a legal framework for labour relations at international level (IFAs currently sit mid-way between European codes of conduct and framework agreements). Such a framework should serve as a beacon for the prevention and settlement of labour disputes. According to the ICFTU, ‘Most problems that have been resolved so far, through global social dialogue or with the help of an FA, have been worked out informally and quietly. Unlike campaigns and other public action, the intention is to implement common, agreed principles in a way that leads to a speedy resolution of conflicts or even anticipation of conflicts, partly with the aim of preventing damage to the reputation of a company’ (ICFTU, 2004: 95). Thus the attraction for management may also lie in this sort of implicit social peace clause: no media campaign takes place; everyone sits down around the table and finds a joint solution. But other authors stress the need, for trade unions, to combine IFAs and media campaigns: ‘campaign and agreements strategies can be fused into cohesive global strategies’ (Stevis and Boswell in Bronfenbrenner, 2007: 188). Others still point out that in sectors where the balance of power is very unequal and/or the employers are traditionally hostile to trade unions, ‘IFAs are often the result of campaigns at local and global level, aiming to secure organising rights in
the first place’ (Hammer, 2005: 513); one need only mention the Agreement signed by Chiquita.

3. IFAs and European social dialogue

In a way, IFAs reflect the international dimension of Europe’s method of structuring labour relations. Several directives have been adopted in the EU since the 1990s organising employee information and consultation (European Parliament and Council of the European Union, 2002), establishing European Works Councils in European-scale undertakings (Council of the European Union, 1994), and on the involvement of employees in European companies (Council of the European Union, 2001). In parallel, over the past ten years, European sectoral social dialogue, now affecting almost forty economic sectors, has flourished and been institutionalised (see the chapter in this volume by Philippe Pochet). It would seem – although there is a lack of research in this area – that the Global Unions active in IFAs (IMF, ICEM, UNI, BWI, IUF) correspond to the European industry federations which are likewise active in European social dialogue (EMF (15), EMCEF, UNI-Europa, EPBWW, EFFAT). The main sectors affected are metallurgy, chemicals, energy, mines, telecommunications, commerce, private security, woodworking, construction and Horeca. These sectors alone account for almost a third of all the sectoral joint texts signed in the European Union. It would be interesting to check whether most of the companies signing IFAs are the same ones in which European Works Councils operate effectively. In other words, the whole issue could be summed up in one question: does good employee representation and/or participation in a company belonging to a sector where social dialogue is productive contribute to generating a larger number of International Framework Agreements, covering all of

15 The EMF is an unusual case: European metallurgy is divided into various sub-sectors (metalwork, shipbuilding, steel, automobile, machine tools, garage work). It has a strong tradition of European trade unionism but, paradoxically, it only very recently formed a sectoral social dialogue committee (even though coordination of collective bargaining is well developed in the industry) (see Dufresne et al., 2006).
that company’s sites and employees? If the answer to this question is affirmative – no studies have yet been conducted in this area – we shall no doubt be able to infer that IFAs constitute a tool for extending the European social model to the rest of the world (16).

Conclusion
The establishment of the International Trade Union Confederation (ITUC) in 2006 is now testing the ability of national and regional labour organisations to pool their thinking and articulate their strategies in a global context. Although no overall structure for a ‘global social dialogue’ exists as yet, several Global Unions have over the past ten or fifteen years developed a new instrument liable to serve as a test-bed for such social dialogue: International Framework Agreements (IFAs). The recent proliferation of IFAs represents an attempt to shift the global balance of power within multinationals in favour of workers. IFAs – which are strongly rooted in the European social model – aim to establish social dialogue at this international level. For employees, they can help to promote labour rights such as those set out in the ILO Conventions, in order to combat various forms of labour competition between different sites, countries or regions of the world. For management, they can help in the prevention and arbitration of labour disputes. So far, IFAs represent no more than a drop in the ocean of international labour relations. They covered fewer than 5.3 million workers in total throughout the world at the end of 2007, and their effective, long-term implementation has yet to be assessed. Nevertheless, IFAs could serve as a model for the gradual construction of an international sectoral social dialogue.

16 While bearing in mind, of course, that the number of IFAs, in proportion to the number of multinationals, remains very small.
References


CGT (undated), ‘Pour freiner les délocalisations, imposer un minimum social dans les groupes multinationaux’.


Economic Partnership Agreements (EPAs): redefining relations between the EU and the ACP countries

Introduction
In 2005, a few weeks after having been appointed to the European Commission as Trade Commissioner, Peter Mandelson declared his intention to put trade at the service of development, thereby reviving an old slogan from the optimistic years of debate about a new international economic order favourable to countries in the South: ‘trade not aid’. At that time, negotiations leading to the Economic Partnership Agreements (EPAs) were entering their final phase, which was supposed to result, at the end of 2007, in their adoption by the African, Caribbean and Pacific (ACP) countries, grouped together in six regional blocs.

However, contrary to the wishes of the European Union (EU) and despite the efforts of the Commission officials responsible for this policy area, 2007 ended with an extremely worrying acknowledgement of failure concerning EPAs. Not only had not a single one of these Agreements been signed by the deadline of 31 December, but an unexpectedly strong wind of rebellion is blowing in from Africa condemning the way in which the negotiations had been handled and decrying what the socio-economic effects of these Agreements would be, were they to be introduced. The ACP countries are expressing in no uncertain terms their concern that the measures proposed by the Commission would not have the anticipated results, and that EPAs could endanger their development projects as well as hamper efforts to achieve regional integration and combat poverty. The question that arises is whether these free-trade agreements will
contribute to economic development in the ACP countries, or whether they are nothing but a mercantilist offensive by the EU aimed at forcing the governments of these countries to open their borders to European goods, thereby perpetuating rather than terminating a neo-colonial relationship.

The way in which the negotiations for the signature of EPAs have been conducted by the Commission would seem very remote from the grand principles adopted at the EU-Africa summit held in Lisbon on 8 and 9 December 2007. In the final declaration on the strategic Africa-EU partnership, the signatories place particular emphasis on the need to establish a strong political partnership among equals, based on the effective engagement of their respective societies and on a European/African consensus around certain values, common interests and common strategic objectives. Yet at that same summit the governments of the ACP countries, at the initiative of the President of Senegal, backed by the South African President, were sharply critical of the pressure and blackmail to which they were being subjected in a bid to make them sign EPAs which merely instigate competition between unequal partners. Following a lengthy silence, they refused outright to sign EPAs because, as Senegalese President Abdoulaye Wade put it on that occasion, ‘if Europe has nothing other than the straitjacket of EPAs to offer us, one might well wonder whether Brussels has run out of imagination and creativity’ (1). At the same time, we are seeing a significant, mounting groundswell of activity from organisations representing civil society in the South, which had long been excluded from the EPA negotiations. These organisations, and in particular workers’ and employers’ organisations, have become involved in this issue over the past few months. They are demanding more information about the process underway and are eager to participate in redesigning EPAs.

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After a brief summary of the main elements of the Cotonou Agreement and the role of EPAs within it – including the question of participation by non-State actors – we shall focus on the main socio-economic aspects of these Agreements, the process of drawing up and negotiating EPAs and, finally, the state of play just after the deadline of 31 December 2007.

1. The Cotonou Agreement
The Cotonou Agreement was signed on 23 June 2000 by the EU and 77 countries in the ACP zone. It thoroughly redefines EU-ACP cooperation, making it more compatible with the new rules of the game in the globalised economy (2). In spite of stalwart efforts to preserve as far as possible the specific nature of development cooperation linking the EU with the ACP countries, this cooperation is increasingly tending to drift towards the implementation of free-trade agreements. Trade liberalisation is portrayed in this process as a powerful means of contributing to the objectives of growth, job creation and poverty reduction. The Cotonou Agreement is founded on the principles of partnership and solidarity. It pursues three principal objectives:

- the reduction and, ultimately, eradication of poverty in the ACP countries;
- sustainable development;
- gradual integration of the ACP countries into the world economy.

Attainment of the Agreement’s objectives is intended to be based on three pillars: political dialogue, trade and development. This presupposes:

- formulating appropriate development strategies and focusing on the objective of poverty reduction;

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- establishing a new framework for economic and trade cooperation, and gradually integrating the ACP countries into the world economy;
- strengthening the political dimension;
- encouraging participation by non-State actors;
- improving technical and financial cooperation.

The participatory approach is one of the major innovations of the Cotonou Agreement, which sets out a framework for the participation of civil society, including trade union organisations in the ACP countries. The Agreement contains many references to civil society and provisions relating to the involvement of non-governmental actors in mandatory implementation and management procedures. Their role in the development process is recognised through their participation in the formulation of programmes and projects, consultation and participation in political dialogue, and support for capacity-building. Article 6 of the Cotonou Agreement gives the following definition of ‘non-State actors’: they are the private sector; economic and social partners, including trade union organisations; and civil society in all its forms according to national characteristics. Methods of participation are defined for each individual State, but Article 4 indicates the manner in which civil society should be involved (3). The intention is that up to 15% of the funds allocated to each ACP country under its National Indicative Programme may be used by civil society organisations. However, these funds are not uniformly allocated across all the ACP countries: in some cases they are non-existent, while in other countries they amount to less than 15%.

The Cotonou Agreement has therefore given civil society in the ACP countries fresh impetus to identify its own priorities, as well as making it possible to establish or consolidate organisations liable to achieve official recognition as eligible partners under the new partnership. The

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3 ‘Civil society actors must be kept informed, provided with financial resources, involved in the implementation of projects, and provided with capacity-building support in the cultural and economic areas in order to reinforce their capabilities.’
existence of articles on measures requiring active civil society participation for their implementation facilitates the process of institutionally strengthening non-State actors.

2. Economic Partnership Agreements (EPAs)

It was in this new context that the EU-ACP negotiations on the signature of EPAs began in 2002. These negotiations are being held on the basis of six regional groupings (the Caribbean, the Pacific and four African regions: western Africa - ECOWAS, central Africa - CEMAC, eastern Africa - ESA and southern Africa - SADC; the question of whether to include South Africa, although not an ACP member, is still under discussion). EPAs represent the economic dimension of the Cotonou Agreement. They are governed by Article 37 of the Agreement and are intended to promote ‘the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries’ (Article 34(1)). More generally, EPAs assist in the implementation of the ‘development strategies’ set out in Articles 19 to 27 (Title 1) of the Cotonou Agreement. In practice they have three objectives:

- to facilitate the access of ACP products to the European market;
- to develop South-South trade;
- to support the process of regional integration.

EPAs are reciprocal free-trade agreements. They must be negotiated bilaterally between the EU and ACP countries or regions, and their objective is to bring EU-ACP trade relations into line with the rules of the World Trade Organisation (WTO). But their implementation will inevitably have a major impact on socio-economic structures in the ACP countries. It is crucial from this point of view that organisations representing civil society play an active part in the negotiations and in drawing up these Agreements, in order to ensure that they comply with certain mandatory criteria: integration into the world economy must be linked to the promotion of decent work, the strengthening of social and
economic rights, food sovereignty and respect for workers’ rights. These criteria ought to be at the core of the regional negotiations and instrumental to the elaboration of EPAs, but they have been put on the back burner for the time being at least.

As far as the liberalisation of North-South trade is concerned, the European Union proposes a flexible approach enabling each region to negotiate measures to safeguard its vulnerable sectors. Moreover, the EU realises that its product quality standards could be detrimental to exports from ACP countries. The negotiations must encompass aid programmes as well as longer transitional periods and modified rules of origin, so as to facilitate the entry of ACP goods into the European market.

EPAs likewise envisage financial aid for regional integration: this aid should help recipients bear the cost of opening up trade and the necessary adjustments. The EU will provide financial support for the process of regional integration and for the introduction of partnership agreements. The Commission hopes that the aid for EPAs will be incorporated into existing regional programmes.

Given the difficulty of the EU-ACP negotiations and what is at stake, a transitional period was scheduled until 31 December 2007. During this period prior to the new trade agreements, the non-reciprocal trade preferences applied under the fourth ACP-EC Convention were maintained for all the ACP countries, under the conditions laid down in Annex V of the Cotonou Agreement.

The negotiations have taken on board the need to set a sufficiently long transitional period for the final coverage of products, given the existence of sensitive sectors and the degree of asymmetry in terms of the timetable for dismantling tariff barriers. The intention is to take into account the ACP countries’ capacity to adapt and adjust their economies to the liberalisation process whilst remaining in compliance with the WTO rules. Over and above their stated aims, EPAs seek to bring EU-ACP relations into line with the WTO rules. In actual fact, the former preferential system confined to the ACP group of countries (and hence not open to all developing countries) ran counter to the WTO provisions, especially the most-favoured nation clause and the reciprocity clause. The
EU-ACP negotiating timetable accommodated this need for a gradual elimination of obstacles to trade among the parties, since the WTO had given the EU a compliance deadline of 31 December 2007.

The resulting EU-ACP negotiating process has been lengthy and arduous. The fact that the talks are to continue into 2008 provides civil society organisations with an ideal opportunity to involve themselves and claim their rightful role in recasting the EPAs. The Cotonou Agreement provides a unique framework for the participation of non-State actors, since when the signatory States signed it they undertook to completely overhaul the process for formulating development policies. This, then, is a powerful means of forcing onto the negotiating agenda the issues of how to improve living and working conditions and how to achieve food sovereignty, two objectives which ought to take precedence over those of liberalisation and growth.

3. Liberalisation, growth and EPAs
Organisations representing civil society are keen to recall that ‘trade and economic integration should raise the standards of living and of work, not lower them’ (ETUC and ITUC, 2007: 31). Thus the objective of development must not be reduced to economic growth alone. The reality of social problems in the ACP countries seriously calls into question the ‘virtuous’ spiral of liberalisation, growth and poverty reduction underpinning the prescriptive side of the dominant neoliberal discourse, and in particular the key role of liberalisation policies within structural adjustment policies.

Yet EPAs make enhanced international trade by the ACP countries in the globalised economy exclusively dependent on increased economic growth. They reaffirm the hypothesis backed by neoliberals, namely that growth will have positive knock-on effects, even though past experience has amply demonstrated that growth has mainly benefited a small minority in the ACP countries. The failure of structural adjustments shows that liberalisation alone is not sufficient to improve standards of living and of work – far from it! The Cotonou Agreement and EPAs should therefore guarantee the primacy of human rights, particularly social rights and the right to food security, over any trade or financial
aspects. These rights must be systematically incorporated into all regional-level EPA negotiations.

Moreover, enhancing trade among ACP countries is much more of a priority for these countries than opening up their markets to EU products. The need for trade liberalisation measures to be introduced progressively has been acknowledged and must be acted upon. And liberalisation measures duly accepted among ACP countries must take precedence over measures to liberalise trade with the EU. Indeed, excessive opening of ACP markets to EU competition would have a devastating effect on the ACP countries’ economies, whereas effective integration of ACP regions will ensure that the countries concerned derive greater benefit from further integration with the EU. Nonetheless, the effects of regional integration must also be analysed where, within one and the same region, there are partner countries with very unequal levels of economic development, since that could significantly jeopardise the weaker production structures.

4. The main challenges for EPAs
The EU and the ACP countries must rapidly set about conducting economic and social impact studies on the economic and trade policies proposed for the regions and countries concerned, with a view to evaluating the effects on the ACP countries of:

- the abolition of customs duties on imports from Europe;
- the rise in European imports and their enhanced competition with local and regional output;
- the paucity of new export opportunities for the least developed countries;
- problems of accessing the European market owing to the inability of African agro-food businesses and farmers to comply with the quality requirements of EU consumers and with plant-health rules.

It is crucial to bear in mind that the two zones are in competition and not complementary in respect of many agricultural goods. Thus there is a risk that imported European products could compete even more strongly with
local output, such as for example milk, meat, vegetable oils and tomato concentrate, or else replace them (e.g. meat for cereals). Opening up to European goods – which are cheaper in many cases – could therefore mean that imports find favour to the detriment of regional and national goods. In a climate of concern about getting supplies to African consumers and the capacity of the region’s agriculture to produce enough to meet growing demand, the challenge boils down to just two issues: the risk of national industries facing heightened competition from imports of European origin; and the risk of regional industries facing heightened competition from imports of European origin (a weakening of integration and of the complementarity among African regions).

The already high food dependency of the sub-region (45.6% of ACP imports came from Europe in 1997-98) will undoubtedly continue to rise (Lapeyre, 2007: 45). The success of various strategies to promote local agricultural output will probably be threatened by this state of affairs. Such an increase in imports from the EU could disrupt small-scale agricultural production, which plays a vital role in generating income and employment. The summary note written by GRET (a professional solidarity and international cooperation association) on the impact of the EU-West Africa Economic Partnership Agreement reveals that in the first instance tax resources will fall, lowering the capacity of governments to intervene and raising the question of alternative funding. In addition, the expansion of the market and the abolition of internal customs barriers can only give strong impetus to the regional economy provided that the market really is rendered more fluid and sensitive sectors are properly protected from European imports (Faucheux et al., 2005).

Most studies concur that the introduction of an EPA will increase imports from the EU by almost $647 million. The abolition of customs duties on European goods could create trade diversion, i.e. European imports would replace imports from other sources, to the tune of around $390 million. All in all, export gains for the EU could be close to $1 billion, or 15% of current exports (Lapeyre, 2007: 46). By the same token, all studies point out the difficulties experienced by ACP countries’ products in terms of accessing the European market, owing to the inability of agro-food
businesses and farmers to meet the quality demands of EU consumers. The main regulatory impediments to market access are health and plant-health provisions and the rules of origin. Bolstering the competitiveness of ACP businesses and, in particular, heightening the capacity to modernise production sectors so as to adapt them to their new commercial environment (processing, storage, preservation etc.) will require very substantial financial resources, and the EU must factor this requirement into its development cooperation.

5. Priorities for food sovereignty
In the agricultural sphere, the ACP countries must attempt to safeguard their food sovereignty and protect the interests of family farms. It should be acknowledged that certain goods need temporary protection lasting longer than the twelve years envisaged for the gradual reduction and elimination of barriers to trade with the EU. Particularly sensitive agricultural produce includes meat (especially pigmeat, poultry and beef), vegetables (potatoes, onions and tomatoes), wheat flour and oils. A defensive position must be promoted so as to properly protect produce that is key to food security and the food sovereignty of the region. That means maintaining significant protective tariffs: these could be based on a system distinguishing between three major categories of goods for differentiated liberalisation:

- capital goods and inputs not produced in the region could be fully liberalised, whereas those produced in the region should be treated differently;

- imported agricultural and food products which do not compete with local output could be liberalised unless they account for a significant share of customs revenue;

- products competing with national or regional output: the goal of development must prevail over all other considerations, as must the precautionary principle, if there is a risk that West African producers may be ousted from the regional market.

EPAs must enable the ACP countries to come to the aid of their peasant farmers and invest in preserving natural resources. One model for an EPA
would therefore be close integration of agricultural and food-producing economies with the establishment of a genuine intra-regional free-trade area, combined with differentiated protection for sectors depending on the specific challenges and needs of each segment and enabling positive integration into international markets.

6. Proposals for a redesign of EPAs

It is imperative, in the opinion of civil society organisations, that these Agreements should have an effective social dimension. Otherwise people would have no confidence in their provisions, yet the success of EPAs depends to a large extent on the trust placed in them by ordinary people and by the main actors. The Agreements must likewise contribute to economic and social development in these regions and must lead to a significant improvement in living and working conditions for the populations concerned. To this end, there is a need for social objectives and participatory methods for their implementation, in particular through social dialogue. The National Indicative Programmes set up under the Cotonou Agreement have revealed all the inherent difficulties, in that the involvement of non-State actors has been very selective (notably by excluding trade unions) and limited.

Negotiations with all the ACP countries must comply with certain mandatory criteria: over and above sensible integration into the world economy, trade promotion should be accompanied by the attendant social rights, poverty reduction and respect for workers’ rights. Regional negotiations should be guided by these criteria. EPAs should guarantee the primacy of human, and in particular social, rights – in the meaning of the International Labour Organisation (ILO) – over all trade-related or financial aspects. These rights must be systematically incorporated into all regional-level EPA negotiations, which should revolve around two major themes:

1) Promoting and guaranteeing rights: the fundamental social rights enshrined in the Cotonou Agreement (Preamble) must be guaranteed as essential values shared by the contracting parties. These derive from the eight Conventions on so-called fundamental social rights (the tripartite ILO Declaration on fundamental principles and rights at work, adopted
by the International Labour Organisation in 1998) concerning:
- freedom of association (Conv. 87);
- the right to collective bargaining and action (Conv. 98);
- the elimination of forced labour (Convs. 29 and 105);
- the effective abolition of child labour and the elimination of the worst forms of child labour (Convs. 138 and 182);
- equal treatment for men and women who are nationals/foreigners (Convs. 100 and 111).

But the International Labour Code also comprises 70 operational Conventions. The rights covered by it are vital prerequisites for the dignity of people living in a country; they underpin all social policy. Moreover, other rights flowing from ILO Conventions must be taken into consideration since they are relevant in the economic sphere, especially:
- social protection (Conv. 102);
- maternity protection (Conv. 183);
- employment promotion (Conv. 122);
- the management of labour in industry (Conv. 81) and in agricultural sectors (Conv. 129);
- migrant workers (Conv. 97).

In principle, in order for these Conventions to become legally applicable in a country, they must be ratified by an official legal act of that country. However, the fundamental social rights (8 Conventions) must be applied in all ILO member states, by virtue of their membership of the Organisation (this is the case for all the EU and ACP countries). It is worth pointing out here that many aspects related to employment, social security and gender equality, as well as the close link existing between trade development and labour standards, have been included in a somewhat generic fashion and only in the preamble to the EPA negotiating mandate conferred upon the Commission.

2) A practical social development strategy: this must be applied to both essential aspects of anti-poverty measures:
- the promotion of decent work;
- the promotion of social protection.

The emergence of local and regional markets is dependent on people having sufficient purchasing power. The promotion of work and social protection systems should generate regular incomes. Decent work (with fair, respectable working conditions) should be promoted in all production sectors (handicrafts, rural industries, the public and private formal sector, and informal sectors).

A key factor in this strategy is productive investment. The measures provided for in the Cotonou Agreement (Annex II, Chapter I, Articles 1 to 15) should therefore be pursued more energetically in support of efforts to industrialise and develop infrastructure with backing from the European Investment Bank. At the same time, works contracts in respect of goods and services, funded by the European Development Fund (EDF), should be awarded wherever possible to ACP contractors, who could benefit from adequate technical assistance. Lastly, it is vital to initiate within the ACP regions a programme on the processing of primary products (energy, mining, agricultural and fishery products, etc.) so as to lend added value to national output, diversify production and create jobs. Fair trade must also be promoted systematically as a contribution to regular incomes for producers and sales outlets for their goods.

Informal sectors often employ the bulk of active manpower in many ACP regions. The activities of such sectors are extensive, diverse and complex. These so-called marginal sectors contribute to GDP, bring goods and services to people of limited means and, above all, provide incomes (albeit precarious ones); they also encourage job-creating, productive activity (production of goods and services; the social and cooperative economy). Handicrafts and agriculture are two sectors particularly exposed to the destabilising effects of liberalisation imposed by EPAs. That is why it is very important for the contracting parties to each EPA to envisage a negotiated programme (economic, trade, social and fiscal aspects) to safeguard these sectors of activity and contribute to gradual, equitable integration of these informal sectors into formal public/private, rural/urban sectors.
Finally, along with work, the promotion of social protection is the key element in combating poverty. Its absence results in economic and social insecurity. Theoretically, social security systems exist in most of the ACP countries but, for want of funding, they often cover only a minority of workers in the formal sector. The overwhelming majority of people have no income substitution benefits enabling them to cope with sickness, unemployment or retirement. A social protection promotion fund, financed out of public and private contributions, should be created as part of each EPA to begin tackling this problem. A decisive contribution to this aspect of poverty reduction can be made by stepping up and building on existing economic and social achievements. This strategy should be pursued efficiently through a general method of active participation, thanks to the social dialogue referred to in Article 25 of the Cotonou Agreement.

Often, men and women working in informal sectors organise their own social economy initiatives in many areas, especially health (mutualisation of risk). By having recourse to micro-credit and micro-insurance, they can find partial but real solutions to people’s needs. Generally speaking, these achievements are little-known and little-supported by the public authorities. Universal access to essential goods and services must be ensured in any event, and liberalisation processes or the application of private-sector cost/efficiency logic must be rejected in sectors crucial to human development such as the water sector.

**What prospects are there for EPAs in the future?**

The collapse of the negotiations aimed at concluding an EPA with at least one of the six regions has resulted in a proliferation of bilateral interim agreements between certain ACP countries and the EU. These agreements, signed for example by five East African countries, Namibia and Ghana and Ivory Coast, enable these countries to preserve guaranteed access for their exports to the EU market. The European Commission’s approach in this context has been to force these countries to greatly reduce their duties on imports of EU products in return for guaranteed markets for their agricultural exports. The significant difference within the ACP countries between least developed countries (LDCs) and non-
LDCs should be noted here, since the former have free access to the EU market in any event, under the ‘Everything but arms’ initiative, whereas non-LDCs have access to the EU market via the generalised system of preferences which covers all developing countries. Concluding an EPA is therefore much more important for non-LDCs than for LDCs. So in Western Africa Mali and Niger, as LDCs, had much less to lose from the collapse of negotiations than Ghana or Ivory Coast. Meanwhile Nigeria’s hard-line stance against EPAs can be explained by the nature of its exports – oil and gas – which have no difficulty in finding outlets; Nigeria therefore has little inclination to make concessions to the EU.

One of the main criticisms levelled the ACP countries concerns this EU strategy of splitting them up into six regions so as to weaken their negotiating power whilst exerting considerable pressure on each country to sign EPAs at regional level or, for the time being, to sign interim agreements as a matter of urgency. Not only have the Commission’s divide-and-rule tactics not borne fruit; they have had the opposite effect of the one sought by the EU, namely to legitimise the signing of EPAs, since a process of regional disintegration rather than integration is occurring. Indeed, in early January 2008 the Senegalese coalition of trade union federations lambasted the ‘torpedoing of African integration’ during a march organised by civil society in Senegal, which brought more than 2,000 people out onto the streets of Dakar.

Whatever kind of agreements are signed in future, the EPA negotiating process has considerably worsened EU-ACP relations, which have become very tense. An illustration of this is the statement made by the National Association of Nigerian Traders attacking Peter Mandelson and Louis Michel, whom they accuse of blackmailing the ACP countries and treating them like schoolchildren (Beattie and Bounds, 2007: 3). One of the ACP countries’ main demands in this respect is to be given more time to arrive at common positions and coordinate with one another so as to promote proper regional integration. They are also determined not to countenance the conclusion of EPAs unless these Agreements serve the development goals laid down in the Cotonou Agreement. The Kigali Declaration on trade, signed at the 14th ACP-EU Joint Parliamentary
Assembly in November 2007, is very clear in its condemnation of the Commission negotiators, who viewed the EPA negotiations as if they were merely negotiating a free-trade area based on opening up markets, rather than as development tools. This is likewise the stance of the ‘African coalition against Economic Partnership Agreements and for the opening of a dialogue with a view to building a partnership for growth and development’, which launched an appeal from the peoples of Africa to European and international public opinion at the end of 2007.

The role of organisations representing civil society is essential in making sure that living and working conditions are taken into account in the EPA negotiations. They must make the ACP governments face up to their written undertakings while appealing to the European Commission and its delegations in the ACP countries to enforce them. Only on this condition will we see the emergence of EPAs which take account of issues such as food sovereignty, guarantees of fundamental social rights, the promotion of decent work and the promotion of social protection. Then the speed and nature of integration into the globalised economy will no longer be dictated by the logic of growth, but by that of human development.
References


Asylum and immigration: how consistent are the EU’s policies?

The latest human tragedies to unfold in the Mediterranean and Aegean Seas in 2007 demonstrated the scale and sophistication of the resources available to the European Union (EU) in combating illegal immigration and protecting Europe’s external borders. The European Commission put forward new proposals on illegal and legal immigration in 2007, thereby putting into practice its desire to pursue a common approach in a politically highly charged field. The Commission has likewise devoted further thought to the future common asylum system.

The Europeanisation of migration policies remains partial and fragmentary, while their external dimension is being further developed in various policies involving third countries, particularly African ones. Ever since the 1980s, Europe has tackled immigration policy primarily from the point of view of protecting its borders (the Trevi Group¹, Schengen, the Ad Hoc Group on Immigration, etc.). The Treaty of Amsterdam (1997) assigned to the EU the goal of creating an ‘area of freedom, justice and security’. The five-year programme adopted at Tampere in 1999 contained the bare bones of a common European policy on immigration.

¹ Trevi, apparently an acronym of ‘Terrorisme, Radicalisme, Extrémisme et Violence Internationale’, was an intergovernmental forum within which the EU Member States cooperated on mostly confidential matters, on the periphery of the Community institutions. It discussed matters such as the maintenance of law and order in Europe, the fight against serious crime, anti-terrorism measures, security in a frontier-free Europe, etc.
and asylum. That policy entailed action on four fronts: elaboration of a ‘global immigration policy’ in partnership with countries of origin, establishment of a common asylum system, fair treatment for third-country nationals and management of migration flows. The adoption of a ‘European management concept on border control’ after the attacks of 11 September 2001 heralded the pursuit of a security-based approach. Following on from the Tampere Programme, the Hague Programme of 2004 turned its attention to the external dimension of asylum and immigration policies. Another issue arising in the new context of labour shortages confronting certain countries in certain sectors relates to highly skilled migrants.

This chapter will examine, first, the way in which the Union goes about policing its external borders (1), and then the still-to-be-completed area of free movement for workers where checks on persons at internal borders between Member States have partially been abolished (2). During 2007, the EU incorporated the principle of mobility into its relations with third countries (3) and defined the new concept of ‘circular migration’ (4). Its introduction, geared to the admission of highly skilled foreigners, reveals the weakness of existing European rules on the rights of foreigners staying legally in one of the EU Member States (5). In view of the tougher line being taken on combating illegal immigration (6), the EU’s asylum policy is the poor relation of the Hague Programme (7). This analysis of the different aspects of the matter – social, humanitarian, economic and even competitive – shows the extent to which Europe is struggling to adopt a consistent overall approach to immigration and freedom of movement. The variable geometry permitted under the existing European treaties and maintained by the Treaty of Lisbon is not of course unconnected with this absence of an overall vision.

1. Protection of the external borders: the Frontex Agency
The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex, created in 2004) (Council of the EU, 2004) is an operational body which manages the EU’s external borders. The purpose of this Agency is to ‘coordinate operational cooperation between Member States
in the field of management of external borders’ and to provide them with ‘the necessary support in organising joint return operations’. After some joint operations and pilot projects carried out in 2006 and 2007, a provision was added to the Frontex regulation enabling the Agency to form and deploy rapid intervention teams comprising border guards from the Member States, with a view to lending operational assistance to another Member State. These teams, known by the name RABIT (Rapid Border Intervention Teams), may be made available by Frontex to a Member State ‘facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally’ (European Parliament and Council of the EU, 2007a: 32).

In addition, at a financial level, an External Borders Fund introduces the principle of Community solidarity into border management (European Parliament and Council of the EU, 2007b). This Fund has been endowed with €1.82 billion for the period 2007-2013, including €170 million for 2007, with a view to ‘modernising’ the infrastructure (border crossing points, video-surveillance, etc.) located along the Union’s external land and sea borders.

In the course of 2007, the media were full of images of people dying in the Mediterranean, the Aegean and elsewhere in the world, as well as of the treatment of survivors. Surveillance at the EU’s southern maritime borders, in which certain third countries have been invited to join, results in migration routes becoming longer and more hazardous than before. According to data published in early January 2008 by the Italian association Fortress Europe, at least 1,861 migrants perished during 2007 while attempting to reach one of the southern EU countries, as opposed to 2,088 in 2006. Although these figures are difficult to compare, the events of summer 2007 raised questions about compliance with international humanitarian and maritime law, to such an extent that in July the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs held a public hearing on the migrant tragedies at sea. Thereafter, the Parliament implicitly acknowledged the humanitarian shortcomings of Frontex, stating that ‘steps should be taken to
incorporate into the mandate of Frontex and rapid intervention teams at the EU’s sea borders operations to rescue migrants and asylum seekers who are in emergency situations where their lives are at risk’ (European Parliament, 2007a: paragraph 39).

2. Intra-European mobility: incomplete freedom of movement for workers

The EU is no more a common area of free movement for workers than it is a common area of free movement for persons. At the time of the 2004 enlargement, only three countries (Ireland, the United Kingdom and Sweden) decided not to impose any restrictions on freedom of movement for workers from eight of the new Member States (EU-8), as was permissible under the transitional derogation measures contained in the accession treaty. Two years later, the European Commission delivered a positive assessment of enlargement and consequently encouraged the other Member States to lift their restrictions (CEC, 2006a). And so it was that on 1 May 2006, Portugal, Spain, Greece and Finland decided to open their borders to workers from the new Member States. They were followed by Italy (27 July 2006), the Netherlands (1 May 2007) and Luxembourg (20 September 2007). Belgium, Denmark and France relaxed their legislation in accordance with labour market requirements. Thus only Germany and Austria still have restrictions in place. The German Government had already adopted a ‘green card’-type scheme in 2005 for highly skilled IT workers, albeit with mixed results. It subsequently decided, in response to a labour shortage, to open up its labour market to mechanical and electrical engineers from eight Eastern countries which have joined the EU in 2004 as from 1 November 2007.

The accession treaty covering the two latest entrants, Romania and Bulgaria, likewise contains provisions allowing for temporary restrictions on freedom of movement for workers. As at 1 January 2007, only ten of the EU-25 countries did not have recourse to these provisions: Cyprus, Estonia, Finland, Latvia, Lithuania, Poland, the Czech Republic, Slovenia, Slovakia and Sweden. Six countries decided to maintain work permits and opened up their labour markets partially: France, Hungary, Italy, Luxembourg, Denmark and Belgium. Nine countries kept restrictions in
place: Austria, Germany, Spain, Greece, Malta, the Netherlands, Portugal, Ireland and the United Kingdom.

Thus Ireland and the United Kingdom significantly rowed back on their earlier policy of openness. The British Home Secretary officially issued a positive verdict on the opening of the labour market in 2004. The ‘economic immigration’ policy is regarded as beneficial and a contribution to enhancing national prosperity. According to figures published by the Home Office in August 2006, 447,000 workers originating from the new EU Member States were registered in the UK (600,000 taking into account the liberal professions). However, articles in the press about the working conditions and exploitation of some of the workers from the new Member States have given this ‘immigration’ a negative image, even though in reality it is not immigration but the practical manifestation of a fundamental freedom enshrined in the EC Treaty and of the right of citizens to freedom of movement. A survey published by the Financial Times on 20 October 2006 found that 76% of British people believe there are too many immigrants in the country, while 46% think that immigrants in general and 50% of recent immigrants from the new Member States have had an adverse impact on the economy. Do these findings justify the recourse made to transitional measures in respect of Bulgarian and Romanian workers (EU-2)? Be that as it may, the United Kingdom has decided on a gradual approach to opening up labour market access for nationals of these countries. Highly skilled workers require a work permit under the Highly Skilled Migrants Programme, while quota limits are imposed for those with lesser skills under the Seasonal Agricultural Scheme and the Sector-Based Scheme (Home Office, Border & Immigration Agency, 2007).

With respect to wages, the report issued by the Home Office in October 2007 states that ‘Full-time workers from developed Western economies and the Middle East earn more than their UK-born counterparts. In contrast, those from the A8 and A2 countries earn noticeably less than UK-born workers’ (Home Office, 2007: 20). The English-speaking countries are nonetheless one of the most popular destinations for nationals from the new States, which are in fact suffering labour shortages themselves.
3. Intra-European mobility and economic migration

This episode of transitional measures partially lifted in order to alleviate labour market ‘tension’ demonstrates (if ever proof were needed) the diversity in national circumstances. Simultaneously, it compels the Member States to speak out about their manpower requirements, thereby adding grist to the mill of those who advocate economic migration in view of the ageing of Europe’s population.

It should not be forgotten that, besides family reunification, the two main causes of migration towards the EU are political and economic. Political migrants are refugees and asylum seekers, people who fear for their lives because they are fleeing from war or being persecuted on grounds of their sex, the colour of their skin or their faith. Economic migrants are people from poor countries who hope to find better living conditions in Europe by finding work here. These two groups have recently been joined by people fleeing their countries for climatic reasons (drought in sub-Saharan Africa). There is more and more talk, in the European and international jargon, of ‘mixed flows, where the migratory flows arriving at a Member State’s external borders include both illegal immigrants and persons in need of protection’ (CEC, 2007a: 14). This results in a tendency at EU level to view the right of asylum in terms of migration policy (management of flows and protection of external borders), to the detriment of the human rights supposedly safeguarded by humanitarian law. For instance, Human Rights Watch notes that between October 2004 and March 2005, Italy returned more than 1,500 irregular migrants from Lampedusa to Libya, without even examining their applications for asylum. Another outcome is the introduction of a crackdown on illegal immigration, the ‘return’ part of which is sharply criticised by NGOs promoting the right of asylum and observance of human rights (see below).

The United Nations estimated the number of migrants in the world at 191 million in 2005: an increase of 23% in fifteen years. This figure, which is said to reflect the current phase of globalisation, includes migrants forced out of Africa as a result of conflict. However, whereas freedom of movement for goods, services and capital is being encouraged, the situation for international migrants is much less encouraging. Freedom
of movement for workers is a right enshrined in the United Nations Convention on the protection of the rights of all migrant workers (and members of their families) of 18 December 1990. The Convention states that fundamental rights and the principle of non-discrimination apply to everyone but must be reaffirmed for migrants ‘without distinction of any kind’, ‘considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves’. The Convention needed to be ratified by at least UN 20 member countries to enter into force; 35 states (mainly countries of emigration) have ratified it so far. Not one EU Member States has done so yet. As migrants’ rights begin to suffer the restrictive consequences of European legislation (especially in respect of family reunion) (4), the argument that the EU countries grant more favourable conditions than those set out in the Convention begins to lose weight. Various voluntary bodies launched a petition ahead of International Migrants’ Day (18 December 2007), calling on the EU Member States to ratify the UN Convention. Ratification is likewise backed by the European Economic and Social Committee and the European Parliament (European Parliament, 2005: paragraph 22).

In 2005 the Commission proposed bringing together migration and development cooperation, in partnership with countries and regions of origin. Its communication on migration and development made provision for different kinds of action, for example making it easier to send remittances to countries of origin by reducing the cost, and fostering ‘brain circulation’ while limiting the brain drain (CEC, 2005a). At the informal Hampton Court summit in October 2005, immigration policy was confirmed as one of the Union’s priority actions, on the same footing as

4 See on this point the grounds for the appeal lodged by the European Parliament in 2003 against certain articles of Directive 2003/86/EC on the right to family reunification, calling for them to be repealed. Even though the Court referred to the Charter of Fundamental Rights for the first time in its judgment of 27 June 2006, it did not find in favour of the European Parliament, considering that the room for manoeuvre allowed to Member States did not conflict with fundamental rights. ECJ, Case C-540/03, European Parliament/Council of the European Union, 27 June 2006.
population ageing, research/development and energy. The global approach adopted in the following December focuses on Africa in two ways, as is evident from the adoption of the European strategy on Africa and the Global Approach to Migration: priority actions focusing on Africa and the Mediterranean; the latter is aimed at reducing the pressure placed on these regions by migration (European Council, 2005: Annex I). The Commission subsequently proposed extending the global approach to other regions, in particular the EU’s eastern and south-eastern external borders (CEC, 2006b).

The Commission put forward a Policy Plan on Legal Migration in late 2005 (CEC, 2005b). It was designed as part of the Lisbon strategy and as a response to population ageing. The Plan sets out a roadmap for the remainder of the Hague Programme (2006-2009) and announces future legislative measures and initiatives to be proposed by the Commission on legal migration, concerning the entry and residence conditions for third-country nationals for employment purposes. There is to be a general directive and four specific directives relating to the conditions of entry and residence for certain categories of immigrants (highly skilled workers, seasonal workers, people transferred within their company and remunerated trainees). The Commission is likewise drawing up a number of non-legislative instruments with a view to improving the exchange and coordination of information available about immigration: an EU Immigration Portal is being established, the European Job Mobility Portal is being expanded, and the European Migration Network (EMN) is to be put on a permanent footing (CEC, 2005c). There are other measures relating to exchanges of statistics which represent an attempt by the Commission to discover the Member States’ intentions, for example as concerns the regularisation of people without documents (Council of the EU, 2006; European Parliament and Council of the EU, 2007c). It is worth noting that the Commission advises against such operations because they make illegal immigration appear attractive. Since its mass regularisation of 690,000 individuals, Spain has undertaken not to resort to this practice again.
4. Immigration and external relations: ‘mobility partnerships’ and ‘circular migration’

In response to the conclusions of the December 2006 European Council, the Commission put forward its ideas on incorporating options for legal migration into the Union’s external policy. The proposal is to negotiate ‘mobility partnerships’ with countries ‘ready to commit themselves to cooperating actively with the EU on the management of migration flows, including by fighting illegal migration in partnership with the EU, notably in the area of readmission and return’ (CEC, 2007b: 13-14). By way of compensation, legal migration options, such as short-stay visas, could be offered to nationals of the countries concerned. The undertakings expected of third countries would of course vary, but they would mainly relate to security aspects: readmission of nationals, negotiation of readmission agreements including for non-nationals, efforts to improve external border controls and/or management together with the Frontex Agency, introduction of safeguards in travel documents – perhaps by inserting biometric data –, cooperation and information exchanges on border management problems, and specific measures or initiatives to combat the trafficking of migrants and the trade in human beings.

All agreements concluded between the Community and third countries since 1996 already contain a readmission clause. In order to be effective, these clauses require delicate negotiations to produce readmission agreements, including for non-nationals. The conclusions of the Seville European Council (2002) furthermore recommend including a clause on the joint management of migration flows and compulsory readmission in the case of illegal immigration in every cooperation, association or equivalent agreement. By demanding additional commitments on the management of flows at borders, the Commission is making relations between the Community and third countries even more contingent on the observance of security conditions. Curiously, the very last of these commitments concerns the country’s development: ‘Commitments to promote productive employment and decent work, and more generally to improve the economic and social framework conditions, should also be sought from the third country concerned as they may contribute to reducing the incentives for irregular migration’ (CEC, 2007b: 4). Could
one doubt for even a second that a country’s development is the foremost and most certain means of curbing illegal immigration? One might wonder in this respect whether the conditionality of aid from the International Monetary Fund (IMF) as well as EU policies (agricultural export subsidies and the trade part of Economic Partnership Agreements) may constitute the main obstacle to improving the ‘economic and social framework conditions’ in some of the poorest countries (see the chapter by Frédéric Lapeyre in this volume).

The other part of the Commission’s communication examines ways of facilitating ‘circular migration’, so as to help the Union make up for its manpower shortages and contribute to development in the country of origin by preventing a brain drain. To this end, the EU could undertake not to recruit in sectors identified by the country concerned as being ‘under pressure’. The Commission defines two types of circular migration. The first is that of foreigners established in the EU, mainly expatriates (business persons working in the EU and wishing to start an activity in their country of origin or in another non-EU country and doctors, professors or other professionals willing to support their country of origin by conducting part of their professional activity there); the second is circular migration of persons resident elsewhere. The second category covers the whole spectrum of migrants (temporary workers, persons studying or training in Europe, trainees, researchers, people taking part in intercultural exchanges and other activities in the field of culture or active citizenship, and those wishing to carry out an unremunerated voluntary service pursuing objectives of general interest in the EU).

5. The European ‘blue card’

After several postponements, the Commission presented its plans for a European ‘blue card’, the first draft legislation encouraging the long-term ‘circulation’ of highly skilled workers, at the same time as a proposal establishing a procedure on a single application for the issuing of a residence and work permit. The latter will also guarantee a ‘common set of rights’ for all foreign workers who are legally resident in a Member State but cannot yet claim the status of long-term resident, as defined by
Directive 2003/109/EC (CEC, 2007c). Although the Commission put forward its proposal in the context of ‘growing labour market globalisation’, security concerns are not far away. According to the Commission, the combined residence and work permit should create useful synergies and enable Member States to better manage and control the presence of third-country nationals on their soil for work purposes. In this sense, the directive would usefully complement another proposal, which provides for the imposition of sanctions against employers of illegally staying third-country nationals (see below).

The European ‘blue card’ is in fact one of the four sectoral directives announced in late 2005: it sets out the entry and residence conditions for highly skilled workers. Although seasonal workers are regarded as the other key category of economic migrants, the draft text covering them will not be presented until the autumn of 2008 (CEC, 2007d). With the ‘blue card’, the Commission aims at ‘effectively and promptly responding to fluctuating demands for highly qualified immigrant labour – and to offset present and upcoming skill shortages – by creating a level playing field at EU level to facilitate and harmonise the admission of this category of workers and by promoting their efficient allocation and re-allocation on the EU labour market’ (CEC, 2007e: 2). The justification for this directive is that it falls within the Lisbon strategy, as is the case for Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research (Council of the EU, 2005a). Let us not forget the Commission’s estimate that the EU will need to recruit 550,000 researchers by 2010 to make up its shortfall. The Union is experiencing its own brain drain (cf. Doquier and Marfouk, 2007): the Commission estimated in 2003 that 400,000 European graduate researchers in science and technology were resident in the United States.

As for attracting highly skilled workers, the EU faces competition from the United States and Canada as well as Australia. According to the Commission, the Union is the preferred destination of unskilled and semi-skilled workers from the Maghreb countries (87% of such immigrants), whereas 54% of highly skilled immigrants originating
from these same countries have established themselves in the USA and Canada. The Commission’s initiative is likewise related to the ageing of Europe’s population. Eurostat projections tell us that the total EU population is likely to fall by 2025 and the population of working age by 2011. Demographic decline is not affecting all Member States to the same extent (the decline is much smaller in France and Ireland).

The ‘blue card’ proposal in fact covers workers with an average to high level of skills. It defines ‘highly qualified employment’ as follows: ‘the exercise of genuine and effective work under the direction of someone else for which a person is paid and for which higher education qualifications or at least three years of equivalent professional experience is required’ (CEC, 2007e: 19). Taking its lead from the US ‘green card’, the Commission proposes issuing eligible workers with a residence permit enabling them to work for an initial period of two years (although holders of a US green card are entitled to work indefinitely). The blue card would confer on them and their families a common set of rights, most notably favourable conditions for family reunification. The blue card proposal derogates from Directive 2003/86/EC on family reunification in that it allows immediate family reunification, even in the case of a temporary stay. A blue card holder is not entitled to move to a second Member State during the first two years, but may do so thereafter on certain conditions. At the end of the two-year period, the directive derogates from Directive 2003/109/EC on the status of long-term residents (granted after five years of authorised residence in a Member State) by allowing ‘mobile workers’ to add together periods of residence of two, or at most three, Member States for the purpose of obtaining that status. Further derogations from that directive are proposed once the status of long-term resident has been obtained, in connection with ‘circularity’. For example, a blue card holder and his/her family members who possess long-term resident status would be authorised to live outside of the Community for a maximum period of two consecutive years, as opposed to one year for long-term residents.

Although Member States remain responsible for determining the number of workers they require, the proposal is very controversial owing to the politically sensitive nature of immigration policy and the varying needs
of different countries. At the time when this proposal was put forward, France and the United Kingdom had just adopted restrictive migration policies (tougher conditions on family reunification, a selective immigration strategy and an enhanced ‘numbers policy’ aimed at combating illegal immigration, in France and, in the UK, a tightening of admission conditions including for highly skilled workers). Spain, meanwhile, had already concluded an agreement with Morocco, followed by others with Senegal and Mali, aimed at recruiting seasonal farm labourers.

The ‘blue card’ scheme is moreover a sensitive issue in that it would exacerbate the brain drain, especially for Africa in the field of health (3), but also on account of the persistently high unemployment rates in several Member States and the presence of people without documents, some of whom are unregistered workers in highly, average or low skilled occupations. All that will be required for this proposal to be adopted is consultation of the European Parliament and a unanimous agreement in the Council, albeit under conditions of variable geometry. Denmark has an opt-out from migration policy. Ireland participated in the adoption of Directive 2005/71/EC on the admission of foreign researchers. But inasmuch as Ireland, like the UK, opted not to adopt the directive on the status of long-term residents or the one on the right to family reunification, it appears unlikely that any of these two countries will join the other 24. Of those, Austria has already come out against the very principle of adopting such a text.

6. Combating illegal immigration
Measures to combat illegal immigration have been dealt with through co-decision between the European Parliament and the Council (the latter acting by a qualified majority) since 1 January 2005. Two draft legislative texts attracted attention in 2007.

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3 In this area, the United Kingdom is already one of the main EU countries of destination for numerous nationals of countries in sub-Saharan Africa (cf. ACP-EU Joint Parliamentary Assembly, 2007).
The first one, put forward in 2005, is a proposal for a highly controversial directive on common standards and procedures in Member States for returning illegally staying third-country nationals (the ‘return’ directive) (CEC, 2005d). The Commission’s proposal contains a set of rules applicable to any ‘illegally staying’ third-country national, whatever the reason for the illegality of their stay (e.g. expiry of a visa or residence permit, revocation or withdrawal of a residence permit, negative final decision on an asylum application, withdrawal of refugee status, illegal entry). A two-stage procedure is envisaged to put an end to ‘illegal stays’. Once the return decision has been taken, there is a period of up to four weeks for voluntary departure. If the person concerned does not return voluntarily, the text stipulates that the Member State must execute the obligation to return by means of a removal order. Removal orders are accompanied by a re-entry ban valid for a maximum of five years. This is the principal element of ‘Europeanisation’ sought by the Commission. One of the most roundly criticised aspects of the proposal is the recourse made to temporary custody (in effect detention), which is authorised where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures.

In September, once the European Parliament committee had completed its work, the text was made more flexible in certain respects, but at the same time it contains some aspects which are potentially more restrictive than the Commission’s initial proposal (European Parliament, 2007b). For instance, a Member State would be able to decide on the re-entry ban on a case-by-case basis rather than in an automatic, mandatory fashion. On the other hand, whereas the Commission’s proposal envisages a six-month period for what it calls ‘temporary custody’, the new text refers to ‘a period of three months after which temporary custody shall cease to be justified’. This period could be shortened or extended by 18 months at most (it varies from 32 days in France to six months in Austria and 18 months in Germany).

A petition against ‘the Outrageous Directive’ was launched by European human rights and pro-asylum organisations in November 2007.
Following differences of opinion between the European Parliament and the Council, Parliament’s first reading has been deferred until May 2008. The priorities of the Slovenian Presidency (first six months of 2008) include reaching a political agreement on this text. That is a tall order, given the likely implications of the text’s transposition on legislation relating to foreigners. Similarly, it is a tall order from a democratic point of view, given the European Parliament’s tendency to adopt texts subject to parliamentary co-decision in a single reading. The Union has already equipped itself with an array of instruments in the field of return policy, financed by the European Return Fund to the tune of €676 million for the period 2008-2013 (European Parliament and Council of the EU, 2007d). One such instrument is Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, which would be replaced by the new directive if it were adopted. One may well wonder whether such a harmonisation initiatives might be premature.

The equally controversial second text, which firms up the legislative side of the 2006 EU Action Plan on illegal immigration, is a draft directive providing for sanctions against employers of illegally staying third-country nationals (CEC, 2007f). The Commission wishes to tackle one of the main causes of illegal immigration, namely the opportunity to find work. It acknowledges the difficulty of obtaining precise statistics in this area and refers to recent estimates. The number of immigrants staying illegally in the Union is thought to lie somewhere between 4.5 and 8 million. Between 7 and 16% of EU GDP is estimated to come from the parallel economy, although the workforce employed in this sector is not entirely made up of illegal immigrants. The Commission identifies the building, agriculture, domestic work, cleaning, restaurant and hotel sectors as those most likely to draw on undeclared employment in general and to attract illegal immigrants in particular.

The principle behind the proposal is a general prohibition on the employment of third-country nationals who do not have the right to be resident in the EU. It is accompanied by various penalties (including criminal penalties in the most serious cases) aimed at making this
prohibition effective and efficient. As has been pointed out by the European Trade Union Confederation (ETUC), the purpose of the directive is clearly not to combat the exploitation of migrant workers, but to solve the problem of migrants who have no residence permit. The ETUC bemoans the lack of social partner consultation (on this proposal and others) and expresses ‘serious doubts about whether the proposed instrument is the right one, proposed at the right moment in time, and in the right order of legislative proposals’ in respect of legal migration by medium- and low-skilled workers (ETUC, 2007: 11). The United Kingdom, under pressure from the employers, has already announced its intention to use its opt-out and decline to adopt this text (4). The directive is regarded as problematical in other countries too (especially France and Belgium) on account of the excessive burden on Member States, obliged to inspect at least of 10% of all companies established on their soil once a year. Furthermore, the Commission explains that: ‘Legally employed third-country nationals may be posted to another Member State in the context of the provision of services. In such cases it is the service provider, as employer, that would be responsible for complying with the prohibition in the proposed Directive on employing illegally staying third-country nationals. Accordingly it is the authorities in the Member State in which the service provider is established that would be responsible for enforcing the prohibition’ (CEC, 2007g: para. 13). Hence we are returning in no uncertain terms to the country of origin principle, even though that principle has been removed from the directive on services in the internal market.

7. The Green Paper on the future European asylum system
According to figures published by Eurostat, the number of asylum seekers has halved in five years (Eurostat, 2007). In 2006, 192,000 applications were lodged in the European Union. The United Kingdom registered the

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4 ‘Victory for CBI over opt-out of draft EU law on illegal workers’, Financial Times (on line), 24 September 2007.
largest number of applications (27,850), ahead of France (26,300), Sweden (24,300) and Germany (21,000). In 2007, in keeping with the Hague Programme, the Commission launched a consultation in the form of a Green Paper on the future Common European Asylum System. After the initial phase, the plan is to explore ways of establishing a common asylum system by 2010 (Barbier, 2005; CEC, 2007a). In terms of external policy, the Green Paper revisits the regional protection programme strategy (two pilot projects have been launched with the Western Newly Independent States and in Tanzania) and promotes resettlement schemes. The consultation was originally scheduled to close at the end of August 2007 but was extended by a month; a hearing was held in November.

The Commission’s initial haste is all the more incomprehensible in that there were not yet any readily available analyses serving to gauge the degree of Europeanisation achieved, i.e. the way in which the European minimum standards adopted during the initial phase have been converted into national legislation. Thus, only the Dublin system (the Dublin II and EURODAC regulations) – on how to determine which Member State is responsible for examining an application for asylum on EU territory – has been evaluated (CEC, 2007h). The evaluation therefore looks at a method of distributing asylum seekers and not at an essential building-block of harmonisation. This does not however mean no difficulties arise out of the basic principle behind the regulation, namely that the first country of access is the Member State responsible for processing an asylum application. This principle prevents an asylum request from being processed in the country where it has been lodged. More recently, some countries of first access, such as Cyprus and Malta, have been confronted by more applications than they can handle. In response to the state of affairs in the Maltese refugee camps, the European Parliament has called for an initiative overturning this principle and establishing a fair method of distributing responsibilities among Member States (European Parliament, 2007c). While awaiting the outcome of the consultation, the Commission has proposed extending the status of long-term resident (Directive 2003/109/EC) to refugees and beneficiaries of temporary protection who are currently not eligible for that status (CEC, 2007i). Since the variable geometry of the status of long-term resident will stand
in the way of any real harmonisation, the preconditions for devising a common asylum system would seem rather a long way off.

The Europeanisation resulting from the implementation of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in Member States (the ‘reception’ directive) was not made known until late November 2007. It should be pointed out that this directive is not in force in either Denmark or Ireland. The report notes that ‘serious problems exist in terms of the applicability of the Directive in all premises hosting asylum seekers. As many as seven Member States (UK, BE, IT, NL, PL, LU, CY) do not apply the Directive in detention centres’ (CEC, 2007j: 3). It also states that ‘the adequacy of reception conditions provided to asylum seekers in detention (…) may be questioned only in a few Member States (HU, LT, SI, EL, BE, IT, MT)’ (CEC, 2007j: 6).

Notwithstanding that, the Commission concludes that, on the whole, ‘the Directive has been transposed satisfactorily in the majority of Member States’. But the report does highlight the low level of Europeanisation achieved in respect of social rights, as a result of ‘the wide discretion allowed by the Directive in a number of areas, notably in regard to access to employment, health care, level and form of material reception conditions, free movement rights and needs of vulnerable persons’. This power of discretion ‘undermines the objective of creating a level playing field in the area of reception conditions’ (CEC, 2007j: 10). The Commission therefore deems it necessary to await the outcome of the public consultation on this Green Paper before proposing any amendments to the directive.

The deadline for transposing Directive 2005/85/EC on asylum procedures (Council of the EU, 2005b) expired on 1 December 2007. This directive, implemented in all Member States except Denmark, allowed for a number of derogations. Here too, it is difficult to gauge the quality of the European standards produced. By 1 December 2007, only six Member States (Germany, Austria, Bulgaria, Luxembourg, Romania and the United Kingdom) had forwarded to the Commission the legislation transposing the directive into national law. Four Member States (Belgium, Estonia, France and Lithuania) had notified partial
transposition. Slovenia incorporated the European directive into national law in early January, thereby making it less likely that asylum seekers will be afforded protection in Slovenia.

**Conclusion**

The European Union is anything but a uniform area, in terms of both its purpose and its policy making and implementation. Migration policies constitute a cross-over point for several EU policies – development, trade, external relations, neighbourhood policy and competitiveness (the ‘blue card’) – giving the impression of a lack of consistency, with the exception of the security-based approach to managing flows of ‘competitive’ migrants and others.

The Union is seeking to incorporate migration into its external policies, but without an overall vision of immigration and asylum. Its policies are geared to border security, while offloading responsibility for surveillance and ‘managing flows’ onto its so-called partners. Borders are a long way from disappearing in a world where mobility for highly skilled individuals is the object of everyone’s desire, while the fate of more vulnerable people is looked at purely in terms of combating illegal immigration. At the behest of the European Council, the economic immigration policy proposed by the Commission seeks – externally – to make the EU as attractive as its main competitors (the United States, Canada, Australia etc.) for the purposes of highly qualified immigration. Internally, this policy risks turning into yet another tool for boosting the flexibility of the European labour market, at the expense of the trade unions and their prerogatives over the rights of all workers – whatever their skills or vocational training – and the pursuit of a wage policy in the EU. Even if the policy is adopted, it will not extend to all the EU Member States. This is its principal weakness, but also its principal contradiction. European citizens falling under the special arrangements derogating from the rules on freedom of movement for workers are still dependent on national decisions. Meanwhile, certain Member States are introducing competing migration policies in response to their own requirements. What is more, even though unemployment in the Union is declining, it still affects 17 million people. Consequently, the common
approach on immigration ought to begin by defining the rights of individuals and then, when deciding which sectors to open up, operate with due respect for the principle of subsidiarity.

Besides, the EU’s desire to impose its primarily trade-related approach on others is encountering resistance from African countries. Given the new geopolitical situation, and in this era of climate change, population ageing and the spread of AIDS in Africa, will the Union ever realise that the time has come for cooperation rather than the dogged pursuit of competitiveness, where Europe will never be a match for the emerging countries? The EU can be an important partner for many countries or regional groups as long as it scales down its free-trade, security-minded aspirations and prioritises partnerships based on cooperation with sustainable development as their main goal. This includes the right of the poorest countries to high-quality, sustainable agriculture, which is a key element of food security but also of development. The harmonisation and Europeanisation achieved and proposed by the Commission raise many questions but offer few guarantees for the rights of the people concerned, first and foremost asylum seekers – be they within or outside of the Union – as well as other people awaiting a status or without documents. To this extent, such policies merely respond to the demands of the European Council, that misnamed ‘collective head of State’ of a Union which, in these sensitive fields, represents anything but a uniform area for the purposes of tackling the challenges of the 21st century – and that applies both before and after the Treaty of Lisbon.

It is therefore evident that asylum and immigration issues go well beyond the question of determining who may enter the EU, who may move freely within it and who may work here. Asylum and immigration policy takes the European Union back to its fundamental choices and proclaimed values: freedom, security and justice, but also cooperation, development, solidarity, cultural diversity, integration, refuge and protection. There is no certainty that the Member States are prepared to ensure this consistency.
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Flexicurity: the new cure for Europe’s labour market problems?

Introduction
In the last two years, ‘flexicurity’ has become a core element of the European debate on social and economic policies in general and employment policies in particular. The European Commission has emerged as the main promoter of flexicurity, and following the Commission’s lead and reacting to its initiatives, the other European actors, including the European Parliament, the European Council and the European social partners, have also developed their own positions on the issue. As a result, whereas until recently the concept of flexicurity was discussed largely in small academic circles, today it is at the top of the European agenda.

Flexicurity is emerging after decades of European integration characterised by a fundamental asymmetry between ‘negative integration’, i.e. measures aimed at deregulation and eliminating national-level obstacles to the ‘four freedoms’ (free movement of capital, goods, services and people) and at fostering competition, and ‘positive integration’, i.e. the development of common European policies to shape the conditions under which markets operate and to promote social protection and equality (Scharpf, 1998: 157-160). More and more, however, negative integration has limited the range of policy instruments available to national policy-makers and hence their control over their economy as well as over their social and labour market systems. As a result, negative integration has important social consequences in the Member States (Scharpf, 2002 and 2007). This has also affected public opinion regarding

Maarten Keune
the (lack of a) social dimension of European integration as indicated by, for example, the French and Dutch rejections of the Constitution. Indeed, flexicurity seems to be one of the ways in which the Commission tries to redress this perception.

This paper discusses the emergence of flexicurity in the European Commission’s employment discourse, the reasons why the Commission has embraced flexicurity and what meaning it has given to this concept, and the extent to which it has managed to create a European consensus on the issue. In the next section a brief account is provided of the origins of the flexicurity concept. Section 2 will discuss the European Commission’s position on flexicurity. Section 3 discusses to what extent the Commission’s position may become a consensual position for European reform, by reviewing the reactions of other European actors to the Commission’s position. The last section presents some conclusions.

1. Origins of the flexicurity concept

The concept of flexicurity was first employed in the mid-1990s in the Netherlands, in the context of the preparation of the Dutch Flexibility and Security Act and the Act concerning the Allocation of Workers via Intermediaries (Wilthagen and Tros, 2004; van Oorschot, 2004). These two acts aimed ‘… to inject additional flexibility into the labour market by relaxing dismissal laws and the rules to start a temporary work agency on the one hand, while generating a higher level of security for employees in flexible jobs on the other’ (Wilthagen et al., forthcoming). They were a typical product of the Dutch Polder Model as well as the ‘purple’ (labour-liberal) coalition government of the 1990s, aiming to reconcile the interests of employers and workers, strengthening both competitiveness and protection. As a result, the Dutch flexicurity model was born. Dutch flexicurity promotes the use of atypical, flexible types of employment; at the same time it provides such flexible types of employment with similar rights concerning working conditions and social security as standard employment.

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¹ This section is to a large extent based on Keune and Jepsen (2007).
In subsequent years, Denmark was discovered as an alternative to the Dutch flexicurity model. The Danish flexicurity model, rather than being concerned with atypical types of employment, builds on (i) flexible standard employment, resulting from low employment protection; (ii) extensive unemployment benefits providing income security to the unemployed; and (iii) active labour market policies aimed at skill upgrading and activation of the unemployed (Madsen, forthcoming). What the models share is that, in both cases, they emphasise the importance of social dialogue as a means of devising and legitimising flexicurity policies. These two national cases have aroused interest in flexicurity on the part of both the academic community and, as will be discussed below, politicians and policymakers. This interest stems to a large extent from the fact that both countries have managed to improve their labour market situation remarkably since the mid-1990s, reducing unemployment rates to the lowest and employment rates to the highest levels in Europe.

Another reason for this growing interest in flexicurity is that it constitutes an alternative to the (largely bankrupt) neo-liberal view of the labour market which dominated the debate during much of the 1980s and 1990s. Exemplified by the OECD Jobs Studies (OECD, 1994), this view argued for extensive deregulation and flexibilisation of the labour market. It is questionable, though, to what extent the flexicurity models of the two countries have led to successful labour market developments. Dutch employment and unemployment rates are favourable largely because of a high share of part-time employment (now close to 50%): when calculated in full-time equivalents the Dutch employment rate is actually similar to the German rate and below that of countries like Spain, France or Greece (WRR, 2007: Table 2.2). And in the Danish case the importance of the country’s flexicurity model seems overrated. Indeed, it is inevitably an over-simplistic undertaking to seek to explain labour market success or failure solely by the type of labour market regulations. More complex approaches, taking into account elements like macro-economic conditions, wage policies, fiscal policies, industrial relations systems and others, are required. For examples of such more complex explanations of the Danish success and revival since the mid-1990s, see Campbell et al. (2006) and Larsen (2002).
market, starting from the assumption that, by and large, all forms of employee protection and social security interfere with the proper functioning of the labour market and therefore, in the end, negatively affect economic growth and employment creation. However, by the end of the 1990s, the fallacy of this view had become only too apparent and the OECD retracted many aspects of its radical stance; in particular, it now accepts that there is no clear relation between the level of employment protection in a country and its level of unemployment (OECD, 2006: 96-100 and 1999). Indeed, today the OECD also hails the success of the Dutch and Danish labour markets and refers positively to the Danish flexicurity approach.

In spite of all the attention given to flexicurity, the concept remains quite ambiguous and disputed. Possibly the best-known definition comes from Wilthagen and Tros who see flexicurity as ‘…a policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, work organisation and labour relations on the one hand, and to enhance security – employment and social security – notably for weaker groups in and outside the labour market, on the other hand’ (Wilthagen and Tros, 2004: 169). This definition leaves a lot of scope for interpretation. For example, it does not prioritise different types of flexibility over others or specify how much flexibility or security is adequate (3). Hence, this definition can in principle cover a broad range of labour market models or reforms. In addition, others employ quite different definitions. For example, for Auer (2005), flexicurity basically refers to protected mobility, while for many, flexicurity has become a synonym for the Danish labour market model.

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3 The types of flexibility and security generally included in the flexicurity discussion are: internal flexibility, external flexibility, functional flexibility, wage flexibility, job security, employment security, income security and combination security.
2. The European Commission and flexicurity

2.1 Flexicurity at the centre of the Commission’s employment policy

Since 2006, flexicurity has moved to the centre of the European Commission’s employment policy. The Commission is following a comprehensive and multifaceted strategy to advocate flexicurity and has underlined its corresponding commitment in numerous documents, conferences and public statements. In the past two years, the Commission has organised a large number of summits, conferences and seminars on flexicurity. Furthermore, the Commission’s 2006 and 2007 Employment in Europe Reports devote an important part of their analysis to flexicurity (CEC, 2006a and 2007a). Flexicurity is also at the heart of the Commission’s Green Paper on labour law, which ‘… looks at the role labour law might play in advancing a “flexicurity” agenda’ (CEC, 2006b: 4). Moreover, in June 2007 the Commission published its flexicurity communication (CEC, 2007b), representing its most comprehensive effort to outline its view, even including a set of ‘common flexicurity principles’ which were proposed to the Council for adoption. Finally, flexicurity has become the core concept in the employment guidelines of the European Employment Strategy (EES) proposed by the Commission for 2008-2010 (CEC, 2007c).

Indeed, the Commission has embraced flexicurity as a cure for Europe’s labour market problems, considers it key to achieving full employment, and sees it as a means of combining economic and social objectives. Along similar lines to Wilthagen and Tros (2004), it defines flexicurity as ‘… a policy strategy to enhance, at the same time and in a deliberate way, the flexibility of labour markets, work organisations and labour relations on the one hand, and security – employment security and income security – on the other’ (4). Such a strategy is said to be necessary first of all to increase the adaptability of enterprises and workers to the changes in the global economy. This requires, the argument goes, a more flexible labour

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market, combined with levels of security that address the new needs of employers and employees simultaneously. For companies this means they ‘...need to be able to adapt their workforce to changes in economic conditions. They should be able to recruit staff with a better skills match, who will be more productive and adaptable leading to greater innovation and competitiveness’ (CEC, 2007b: 4). For individuals, it is argued that they ‘...increasingly need employment security rather than job security, as fewer have the same job for life’ (ibid.). Employment security is then defined as the possibility of finding a job at every stage of active life and the prospects for career development in a quickly changing economic environment which includes more frequent transitions between jobs and between different labour market states. A second rationale put forward for flexicurity is the reduction of labour market segmentation and the more even spread of the benefits of prosperity among well-protected insiders and marginalised outsiders (ibid.).

The attention paid to the relation between flexibility and security is not a novelty in the EES. In the first employment guidelines of 1998, the social partners were already invited to negotiate agreements to modernise the organisation of work with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security (5). Also, in the 2003 guidelines it was argued that the right balance between flexibility and security will help support the competitiveness of firms, increase quality and productivity at work and facilitate the adaptation of firms and workers to economic change (Council of the European Union, 2003). Finally, in the 2005 guidelines, guideline 21 called upon the Member States to promote flexibility combined with employment security and reduce labour market segmentation, having due regard to the role of the social partners (Council of the European Union, 2005) (6).

5 http://ec.europa.eu/employment_social/employment_strategy/98_guidelines_en.htm
6 One could also argue that the framework agreements negotiated by the European social partners in the second half of the 1990s and subsequently translated into
What is new, however, is that flexicurity is now put at the centre of the EES and is being presented as a comprehensive reform strategy. This flexicurity strategy is argued to have four main components (CEC, 2007b: 6): (i) flexible and reliable contractual arrangements through modern labour laws, collective agreements and work organisation; (ii) comprehensive life-long learning (LLL) strategies; (iii) effective active labour market policies (ALMP) that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs; and (iv) modern social security systems that provide adequate income support, encourage employment and facilitate labour market mobility. In addition, the Commission argues that the involvement of the social partners in designing flexicurity policies is crucial for their success. It also underlines that flexicurity is not about one single model but that it should be shaped according to particular national situations. In this way, like soft regulation in general, it aims to strike a balance between European integration and deep-rooted and legitimate national diversity by encouraging convergence of objectives, performance and broad policy approaches, but not of specific programmes, rules or institutions (Zeitlin, 2005: 448).

Finally, as part of its flexicurity communication, the Commission proposed a set of eight flexicurity principles which should guide the implementation of flexicurity-oriented reforms in the Member States. They summarise its flexicurity position in very broad and non-specific formulations. These principles were presented to the Council for adoption.

2.2 Disentangling the Commission’s flexicurity concept
The Commission’s flexicurity discourse as summarised above remains quite abstract and ambiguous. This is understandable in the sense that it aims to appeal to a broad range of actors with differing interests and ideas, as well as to 27 countries which demonstrate substantial heterogeneity in

terms of labour market institutions and outcomes. However, it is also highly problematic in that the concept and its components are wide open to multiple interpretations. Indeed, what exactly are, for example, flexible and reliable contractual arrangements, modern labour laws, or modern social security systems? Clearly, the Commission envisages a labour market where there are frequent transitions of workers between jobs and between labour market states and where their security derives from support in fostering employability, active labour market policies aimed at making transitions run smoothly, and social security support during periods without employment. But how is this put into practice and translated into policy implications?

First of all, the Commission argues for less job security (in terms of employment protection legislation) but more employment security: ‘The main thrust of the EU recommendation on flexicurity is to encourage a shift from job security to employment security flexicurity’ (CEC, 2006a: 78). It argues that ‘Whereas some workers experience high flexibility and low security, others are in contractual arrangements which discourage or delay transfers. This is particularly the case with strict employment protection legislation (EPL) against economic dismissal. (…) When deciding whether to recruit new staff, firms will take into account the likelihood that high dismissal costs will be incurred in the future’ (CEC, 2007b: 6-7). Indeed, EPL is not considered as an important element of security for workers, but rather as an obstacle to flexibility.

Secondly, the call for flexible and reliable contractual arrangements also points towards flexibilisation through the ‘normalisation’ of so-called ‘atypical’ or flexible contracts. At the same time, however, such contracts should be made less precarious by ensuring access to training and to the social security system (CEC, 2007b).

Thirdly, security, it is argued, should be achieved by providing people with employment security and income security. Employment security should come from more life-long learning, i.e. training to keep skills up-to-date and to develop talents, and more and more efficient active labour market policies, largely taking the form of support in finding (new) employment. But while in general it is true that training and job search
assistance can improve the likelihood of finding employment, it remains unclear to what extent they provide security in this respect. This is also because this approach does not seem to include any notion of rights (e.g. an individual right to training).

Income security, then, refers to the provision of adequate unemployment benefits if people were to lose their job for a period of time (CEC, 2007d: 11). This is possibly the most ambiguous element of this view. On the one hand the Commission claims that good unemployment benefit systems are necessary to offset negative income consequences during job transfers; but at the same time it argues that unemployment benefits may have a negative effect on the intensity of job search activities and may reduce financial incentives to accept work.

In an attempt to move beyond the analysis of the Commission’s discourse, it is useful to consider the instances where the Commission in fact makes policy recommendations to individual Member States on flexicurity policies. The Commission provided such recommendations in its proposals for the broad guidelines for the economic policies of the Member States and the Community and on the implementation of Member States’ employment policies (CEC, 2007e). There is no space here to discuss this document in detail but an analysis of the employment-related recommendations results in the following picture.

Where EPL and flexible contracts are concerned, the Commission advises a number of countries to review employment protection legislation with a view to reducing labour market segmentation (i.e. to reduce employment protection) and increasing the use of flexible contracts. However, in no country does it recommend an increase in employment protection, suggesting that even in the countries where it is lowest its level remains adequate. Even in for example Estonia, known for a very flexible labour market, the Commission recommends reducing labour market rigidities by means of urgent progress towards labour law modernisation and by promoting flexible forms of work (CEC, 2007e).

In most countries the document recommends a strengthening of activation policies, active labour market policies and life-long learning. This clearly underscores the focus on employment security. The case of
unemployment benefits is different. Although in its more general statements like the above-discussed communication the Commission calls for adequate unemployment benefits, in its country recommendations there is not one case where it calls for the improvement of such benefits, even though in a number of countries they are clearly very minimal in terms of replacement rates, coverage or duration. It does in some cases call for a review of benefits to improve incentives to work (e.g. Poland), or for a tightening of the conditions for early retirement (e.g. Austria).

Hence, these recommendations confirm the Commission’s flexicurity vision: flexibility should be provided by low EPL and easy use of flexible contracts, while security should derive from employment security, i.e. active labour market policies and life-long learning. Its call for modern social security remains vague and underspecified, and when it results in a practical translation this is only towards reducing and never toward increasing benefits. Hence, the emphasis in the Commission’s conceptualisation is first and foremost on increasing flexibility, while security remains much less developed (see also Keune and Jepsen, 2007).

Moreover, while the Commission claims that there is not one model for flexicurity, it seems to have a well-defined idea of how labour markets should be regulated. Indeed, it does not discuss alternative models or varieties of flexicurity. In the communication it does discuss a number of possible pathways towards flexicurity, with each of four pathways addressing a set of typical labour market problems and their solution. These pathways however seem to be a set of remedies aimed at bringing quite different labour markets closer to the Commission’s general model.

3. A European consensus?
The European Commission, as mentioned above, has been the main driver of the flexicurity debate in Europe and has made an enormous effort to promote its concept of flexicurity and to achieve a European consensus on the issue. Here we will briefly consider the reactions of some of the key European players, i.e. the Council, the European Parliament (EP) and the European social partners, to the Commission’s point of view. The goal is not to discuss these views in detail but rather to determine whether a European consensus on flexicurity is in the making.
First of all, it should be underlined here that the Commission has undoubtedly been successful in setting the agenda where flexicurity is concerned. Flexicurity is at the heart of today’s European labour market debate, it is the subject of many political and academic events and debates, and it is widely accepted to be an issue of key importance. Nevertheless, the way the concept is understood and translated into policy by different European actors differs substantially.

Where the Council is concerned, it adopted a document with eight flexicurity principles, aimed at framing national reforms. The Council’s principles are fairly similar to those proposed by the Commission and represent an over-generalised summary of the Commission’s flexicurity discourse. Importantly, though, the Council’s principles are indeed similar but not identical to those proposed by the Commission. The major difference is that the Council included a statement which contradicts the Commission’s drive for flexibility, in particular in terms of contracts and employment protection: ‘The inactive, the unemployed, those in undeclared work, in unstable employment, or at the margins of the labour market need to be provided with better opportunities, economic incentives and supportive measures for easier access to work or stepping-stones to assist progress into stable and legally secure employment’ (Council of the European Union, 2007: 5, emphasis added). This represents a clear departure from the Commission’s view that EPL should be low and from its acceptance of flexible contracts (7). This is further underlined by the emphasis the Member States placed earlier on standard instead of atypical employment relationships: ‘The Member States are called upon to strengthen standard working relationships in accordance with their national practice and to limit their circumvention by atypical employment relationships’ (8).

Also, although the adoption of the common principles gives momentum to the Commission’s drive for flexicurity, these principles at the same time remain extremely general and do not commit the Member States to anything very specific.
The European Parliament drew up a comprehensive opinion on the Commission’s communication (European Parliament, 2007). In this opinion it takes a number of positions that contradict the Commission. Possibly the most important one concerns EPL. The Parliament strongly states that the view of the Commission is one-sided and too focused on flexibility. Also, it argues for simultaneously improving employment security and job security and for maintaining the traditional model of open-ended contracts. One of the reasons it gives for this view, in line with Streeck’s idea of ‘beneficial constraint’ (Streeck, 1997), is the fact that job protection and longer-term employment relationships act as incentives for firms to invest in human resources, which in turn is good for productivity and innovation (European Parliament, 2007). Flexibility, then, should be achieved rather through raising education, expanding training and apprenticeship programmes, policies against discrimination, removing obstacles to mobility, and policies supporting transitions (ibid.). Finally, the European Parliament argues that flexicurity requires a macro-economic framework that supports job creation. Clearly the position of the European Parliament differs substantially from that of the Commission on crucial points.

As far as the social partners are concerned, the position of BusinessEurope, the largest European employers’ organisation, is very similar to that of the Commission. It argues that flexicurity should consist of flexible labour law and a variety of contracts; active labour market policies and life-long learning; and unemployment benefit systems that reduce unemployment periods to a minimum (8). BusinessEurope also warns that flexicurity should not only be about security.

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The European Trade Union Confederation (ETUC) reasons differently, however. It argues in a position paper that business in Europe already enjoys high adaptability, that the European economy is already flexible and that job creation has the upper hand over job destruction (ETUC, 2007). Rather, the ETUC identifies the prevalence of precarious employment and excessive flexibility as key problems and puts forward the improvement of the quality of jobs as a key objective. Also, like the European Parliament, it argues for employment security as a complement to, rather than an alternative for, job security, for open-ended contracts as the general rule and for upgrading the rights of atypical workers. Where labour market policies are concerned, the ETUC argues for a high level of benefits combined with active labour market policies, including training, as well as for including groups presently not covered in social security schemes (ibid.). High benefits and active labour market policies, it maintains, provide security as well as being positively associated with labour market participation. Finally, the ETUC argues for the integration of flexicurity policy with growth and employment creation-oriented macro-economic policy, given that flexicurity by itself does not have employment-creating capacities.

The above descriptions do not do justice to the more comprehensive analysis and positions of the various European actors. They do, however, show that there is no European consensus on flexicurity. Whereas the driver of the debate, i.e. the European Commission, has been very successful in pushing the issue to the top of the European agenda, there are major differences as concerns the understanding of the flexicurity concept as well as its policy implications. The Council, the European Parliament and the ETUC all have positions that deviate from that of the Commission. In particular, they reject the Commission’s one-sided emphasis on increasing flexibility through restricted job protection and on the normalisation of flexible contracts, but its concept of modern social security systems is also rebuffed and the lack of a link with employment-friendly macro-economic policies is underlined, as is the absence of attention to productivity and innovation-friendly policies.
Conclusion

From being a concept discussed in small academic circles, flexicurity has in recent years moved to the centre of the political debate in Europe. This is to a large extent due to the fact that the European Commission has emerged as the major promoter of flexicurity and has been using its substantial agenda-setting capacity to make it a core element of the European labour market debate. It has given new impetus to this debate, and today flexicurity is widely considered to be an issue of major importance for labour market reform in Europe.

The European Commission proposes flexicurity as an innovative approach towards a balanced increase of both labour market flexibility and security, which it considers indispensable for the achievement of full employment, for the reduction of labour market segmentation and for the reconciliation of economic and social objectives. Four components make up the core of the Commission’s view: flexible and reliable contractual arrangements; comprehensive life-long learning strategies; effective active labour market policies; and modern social security systems. A closer look, however, shows that in the Commission’s view flexibility should be provided by low job protection and the normalisation of flexible contracts, while security should derive from employment security, i.e. active labour market policies and life-long learning. Its call for modern social security remains ambiguous, and when it results in a practical translation this is only towards reducing and never toward increasing benefits. Hence, the emphasis in the Commission’s conceptualisation is first and foremost on increasing flexibility, while security remains much less developed.

It comes as no surprise that the Commission’s view of flexicurity has not created a political consensus. With its move to the centre of the political debate, flexicurity has also become strongly politicised and there is an ongoing struggle between political actors to determine its precise definition and policy implications. Whereas the European employers are basically on the same wavelength as the Commission, the Council, the European Parliament and the European trade unions one way or another contest the Commission’s view. At the same time, these critics also call for flexicurity but give it a different shape. Indeed, while all agree on the
importance of flexicurity, it remains wide open to interpretation because of its ambiguous nature. As a result, different actors put forward quite different versions of flexicurity, using it as a banner to promote quite traditional views on labour market reforms.

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Sectoral social dialogue: a review of the past three years

Introduction
Whereas in previous editions of Social Developments in the European Union we have focused mainly on cross-industry social dialogue, the purpose of this chapter is to take stock of recent developments at sectoral level. For the record, the European Commission decided in 1998 to revive the social dialogue by establishing Sectoral Social Dialogue Committees (SSDCs) (CEC, 1998). These followed on from the various committees created from the 1980s onwards (Dufresne, 2005). The initial intention was basically to put existing practice on a more formal footing, but gradually a growing number of sectors formally applied for recognition as sectoral committees. So far there are 35 SSDCs (see annexed list). In addition, certain nationally important sectors have recently sought recognition, such as for example the chemical industry (in 2004), local and regional government (2004) and shipbuilding. Four sectoral committees (steel and hospitals in 2006; gas and catering in 2007) have been formed since 2005, while two applications are under investigation: non-ferrous metals and the automotive industry.

Although representation of the employers is split between different sectoral organisations, and in some cases even between several organisations for a single sector (e.g. civil aviation and banking; see annexed list), the opposite is true on the trade union side. For instance, Uni-Europa covers eleven committees, ETF six in the transport sector and EPSU (public services), EMCEF (chemicals) and EFFAT (agri-food) four each.
The sheer number of committees is in itself an indication of mounting interest. But what really matters is the quality of the documents adopted by the social partners. The European Commission drew attention in its 2004 communication to a new generation of agreements which, in its opinion, were more akin to reciprocal commitments between partners, in that their content was more binding than before (CEC, 2004). The main challenge was to ensure that these texts did not just remain symbolic but were acted upon at national level. In this sense, sectoral dialogue faces the same challenges as cross-industry dialogue.

This chapter is divided into two parts. The first, drawing on the database of sectoral joint texts held by the Observatoire social européen, examines quantitative developments since the new committees were established in 1999. The second takes a more detailed look at some significant, innovative joint texts and focuses on qualitative aspects. We conclude by highlighting the dynamics operating at sectoral and cross-industry level.

1. A quantitative analysis
The Observatoire social européen (OSE) distinguishes between two broad categories of documents: firstly, those mainly intended for the attention of European or national public authorities, which we call ‘common positions’; secondly, texts which are primarily addressed to the social partners themselves, which we call ‘reciprocal commitments’. We have identified five categories within the latter group:

- ‘agreements’ implemented either by means of a directive or by the social partners themselves (autonomous agreements);

- ‘recommendations’, which contain clear provisions and a process to monitor implementation (1);

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1 This category has been expanded to cover all texts making explicit reference to a monitoring process. Thus some texts classified as declarations in our previous research are now regarded as recommendations. The point here is to check whether any monitoring provisions exist, and not whether they have actually been put into practice, which is another matter entirely.
- ‘declarations’, which are addressed to the social partners but are vague and do not contain monitoring procedures;

- joint ‘tools’: these mainly comprise studies, training packages or dissemination media such as websites. The criterion for inclusion in this group is that they be adopted by the social partners (which would exclude a study carried out by consultants, for example);

- ‘internal rules of procedure’, i.e. the rules of the game for social dialogue.

Common positions cannot be ignored, as they often relate to sectoral policy and aim to influence Community policy-making through joint lobbying. The employers sometimes use social dialogue as a mechanism for reinforcing requests made directly to the relevant Directorate General (DG) of the Commission, but it is an instrument that can prove useful for the trade unions too, since they do not always have access to the DGs responsible for sectoral policy – or in any event their access is less straightforward than that of the employers.

As for the subject matter of these joint texts, we have for the most part used the categories devised by the Commission in the 1990s, with just a few additions. For instance, the ‘gender equality’ category has been broadened to encompass the theme of non-discrimination. We have added the categories ‘sustainable development’ and ‘corporate social responsibility (CSR)/code of conduct/charter’. We distinguish between economic and sectoral policies on the one hand and, on the other, the social consequences of European integration.

In order to illustrate recent developments, we have divided the nine years since the establishment of the new committees into three distinct periods: 1999-2001, when the new committees were being set up, and 2002-2004, when they reached maturity. In our study of that period for the Commission (OSE, 2004), we commented that the sectoral social dialogue seemed to be developing qualitatively towards greater sectoral partner autonomy. The third and final period, the three years 2005-2007, enables us to confirm that the trend detected during the previous period did indeed occur.
This quantitative approach obviously has the limitations of all such approaches. In that it encompasses almost 300 documents, it enables us to present overarching trends, verify hypotheses quantitatively, and so forth, but it tells us little about the actual quality of the texts or about the social progress they foster (or do not foster), or even about what goes on in committees but does not necessarily lead to the adoption of joint texts. To give just one example, the fact that the textile sector has not signed a joint document for some years does not mean that nothing is happening. The partners in this sector have for instance undertaken intensive capacity-building work in the new Member States and held a major joint conference on this topic in 2007.

Table 1 shows the number of joint documents adopted per year. No clear trend emerges, as is immediately apparent, although the number appears to increase slightly. On average, there is just over one joint text per sector per year. This is misleading, however, since productivity varies considerably from one sector to another, as Table 2 indicates. Overall, though, the number of texts adopted is extremely stable: 93 for the period 1999-2001; 92 for 2002-2004, and 110 for the last period. Given that more committees (5) existed during the period 2005-2007, stability does exist in relative terms.
The next table shows the output of joint documents by sector. The most prolific sectors throughout the entire period are electricity, railways, Horeca/tourism, sea fisheries, construction, civil aviation and the extractive industry. The sectors with fewest joint texts are inland waterways, insurance, furniture, temporary agency work and banking.

Looking at the last three years, the civil aviation, live performance (culture), railways, electricity, extractive industry, road transport and telecommunications sectors have been the most productive. The textile and clothing, shipbuilding and insurance sectors have not concluded a single agreement in the past three years. Seven sectors have concluded only one agreement each over the three years and eight sectors only two each.

Source: Observatoire social européen, own database 2008.
Table 2: Number of documents per sector (1999-2007)

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<td>Electricity</td>
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<td>Railways</td>
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<td>Horeca / tourism</td>
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<td>Civial aviation</td>
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<td>Construction</td>
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<td>Extractive industry</td>
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<td>Sugar</td>
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<td>Commerce</td>
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<td>Road transport</td>
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<td>Culture</td>
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<td>Private security</td>
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<tr>
<td>Tanning and leather</td>
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<td>Telecommunications</td>
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<td>Agriculture</td>
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<td>Cleaning industry</td>
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<td>Postal services</td>
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<td>Textile and clothing</td>
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<td>Chemical industry</td>
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<td>Local &amp; regional gov.</td>
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<td>Personal services</td>
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<td>Sea transport</td>
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<td>Footwear</td>
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<td>Catering*</td>
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<td>Gas*</td>
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<td>Hospitals*</td>
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<td>Woodworking</td>
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<td>Banking</td>
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<tr>
<td>Temp. agency work</td>
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<tr>
<td>Furniture</td>
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<tr>
<td>Insurance</td>
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<tr>
<td>Audiovisual</td>
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<tr>
<td>Shipbuilding</td>
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<tr>
<td>Steel*</td>
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<tr>
<td>Inland waterways</td>
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</tbody>
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Note: The sectors with an asterisk were established in 2006 or 2007.

Source: Observatoire social européen, own database 2008.

If we consider the topics broached, we see that the past three years account for the largest number of documents devoted to economic and sectoral
policies. Despite the development of the so-called Copenhagen-
Maastricht-Helsinki process on the recognition of lifelong learning,
training has not taken off as a topic at European sectoral level (Léonard et
al., 2007a). By contrast, health and safety issues are being tackled with
increasing frequency. Enlargement is declining as a theme, for logical
reasons. What is more surprising is the relative decrease in ‘corporate
social responsibility/code of conduct/charter’. Texts dealing with
sustainable development are on the increase, owing to the global warming
debate, but even so they represent only a tiny number of joint documents.
Non-discrimination is another topic undergoing a slight rise. The decline
in the topic ‘social dialogue’ is partly attributable to a decreasing number
of sets of internal rules of procedure, which are directly connected with the
establishment of a sectoral committee.

Table 3: Number of documents per topic (1999-2007)

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Economic and/or sectoral pol.</td>
<td>14</td>
<td>28</td>
<td>11</td>
</tr>
<tr>
<td>Social dialogue</td>
<td>22</td>
<td>20</td>
<td>11</td>
</tr>
<tr>
<td>Training</td>
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<td>12</td>
<td>10</td>
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<tr>
<td>Health and safety</td>
<td>6</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>Soc. aspects of Community pol.</td>
<td>12</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Working conditions</td>
<td>7</td>
<td>9</td>
<td>10</td>
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<tr>
<td>Enlargement</td>
<td>3</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Employment</td>
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<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Corporate soc. responsibility</td>
<td>5</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Non-discrimination</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Sustainable development</td>
<td>2</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Working time</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Observatoire social européen, own database 2008.
The findings of our quantitative analysis are relatively clear-cut: the trend detected earlier – towards a dialogue that is more binding on the signatory parties – is only partially borne out by the quantitative data. Just two binding agreements have been concluded in the past three years (5 for the entire period, or about 2% of the total), and eleven recommendations (28 for the entire period, or about 10% of the total) (see list below). Furthermore, most of these agreements and recommendations have been adopted in new sectors. This indicates that there has not been a cumulative effect, with one or more sectors forging ahead towards more binding internal procedures, despite encouragement from the Commission to move in this direction. Rather, we are seeing a rash of initiatives materialising at a given moment in a given sector, often for different reasons.
Our last table examines the main addressees of these documents. Over the period as a whole, the majority of the texts are common positions intended for the Commission, and this trend has strengthened in the past three years. On the other hand, in 2005-2007 there were many fewer declarations, which are the weakest form of reciprocal commitment between social partners. The next table confirms that most of the texts are addressed to the European institutions, which was not the case for the period 2002-2004.

Table 5: Number of documents per addressee (1999-2007)

![Bar chart showing the number of documents per addressee from 1999 to 2007.]

Source: Observatoire social européen, own database 2008.

2. Recent progress
The fact that no quantitative step-change has occurred since the establishment of the new committees does not mean that nothing significant has been evolving behind the scenes.

2.1 Agreements
As concerns binding agreements, the first sectoral agreements served to adapt the ‘working time’ directive of 1993 to the specific needs of the various transport sectors. The second stage was the signing of two
important texts by the railway sector in 2004, one of them transformed into a directive by the Council in 2005 (Hilal, 2006) and the other used in part as the basis for a directive in 2007. Lastly, an autonomous agreement on crystalline silica was concluded in 2006. This was the ‘Agreement on Workers’ Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it’, published in the Official Journal (2). Its signatories were two trade union federations (chemicals and metalworking) and thirteen employers’ organisations (3). In 2007 there was an agreement implementing an International Labour Organisation (ILO) Convention: the ‘Agreement concluded by ECSA and ETF on the Maritime Labour Convention 2006’.

We shall focus in the next few paragraphs on the silica dust agreement (4). Silica dust can cause cancer. EU countries already have measures in their national legislation to reduce exposure to silica dust based on Community directives, including having adopted occupational exposure limits (OELs). Some countries – notably the Netherlands and Denmark – have

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3 European industry associations: European Glass Fibre Producers Association (APFE), International Bureau for Precast Concrete (BIBM), The European Foundry Association (CAEF), Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), The European Cement Association (CEMBUREAU), The European Ceramics Industries (CERAME-UNIE), European Mortar Industry Organization (EMO), European Association of Mining Industries (EUROMINES), European and International Federation of Natural Stones Industries (EUROROC), European Special Glass Association (ESGA), European Insulation Manufacturers Association (EURIMA), European Container Glass Federation (FEVE), European Association of Flat Glass Manufacturers (GEPVP), European Industrial Minerals Association (IMA-Europe), European Aggregates Association (UEPG).

European trade union federations: European Mine, Chemical and Energy Workers’ Federation (EMCEF) and European Metalworkers’ Federation (EMF).

4 The following paragraphs are taken, with the authors’ permission, from the article by Tony Musu and Marc Sapir in the Newsletter of the ETUI-REHS Health and Safety Department, No. 30-31, October 2006.
also classified crystalline silica as a carcinogen. At Community level, crystalline silica is still not listed in Annex 1 of Directive 67/548 which lays down the rules on labelling and classification of dangerous substances. It was decided in 1998 that silica was not to be regarded as a priority for classification under Annex 1 of the Directive, but this matter resurfaced in 2004-2005.

Eurosil (the European Association of Silica Producers) then began considering the conclusion of a multi-sector Social Dialogue Agreement under Article 139 of the Treaty as an alternative to regulation on the basis of a draft ‘prevention practices’ document. In September 2004, the employers’ organisation initiated a silica platform linking together ten employers’ associations, and set consultations in train with the chemical, mining, metallurgical and building workers’ federations (EMCEF, EMF and EFBWW). A number of the employers’ associations which were not recognised social partners were granted recognition by the Commission specifically for the purpose. In the end, the official negotiations were joined by all the employers’ associations, except for the European Construction Industry Federation (FIEC). On the union side, the EFBWW stood aloof from the discussions (see HESA Newsletter, 2006) on the grounds that legislation was the only way of guaranteeing equal rights. The EMF for its part felt that the agreement could represent progress, especially thanks to the monitoring process and involvement of the social partners. In actual fact, the debate was a broader one about the merits and drawbacks of the legislative versus the collective bargaining approach at European level.

The main aim of the agreement is to minimise exposure to respirable crystalline silica at work by applying ‘good practices’ in order to prevent, eliminate or reduce the health risks to exposed workers. It also aims to increase knowledge of the potential health impacts of respirable crystalline silica and about good practices. The agreement applies to the production and use of crystalline silica and to products containing it, but also covers related ancillary activities like handling, storage and transport. The agreement specifies that ‘employers and employees, and the workers’ representatives, will jointly make their best endeavours to implement the
Good Practices at site level’. The list of good practices contained in Annex 1 of the agreement will be adapted and updated on an ongoing basis. The good practices relate to risk assessments and controls on workers exposed to respirable crystalline silica, monitoring the effectiveness of measures taken and health surveillance of employees, as well as training for workers. A monitoring system will be installed at each site to determine, in association with the company works’ council and the workers’ representatives if necessary, whether the good practices are being applied or not.

A monitoring committee (the Council), comprised of equal numbers of workers’ reps and employers, will deal with issues relating to the application and interpretation of the agreement. It will also report on how the agreement is being applied by industry sectors and submit its report to their members, the European Commission and the national workers’ health and safety authorities. The agreement entered into effect for a period of four years, and will then be automatically extended for further periods of two years. Should future European legislation on crystalline silica be proposed, the agreement’s signatories will meet to examine the consequences for the agreement.

Whatever one might think of the agreement, it certainly broke new ground in terms of monitoring: it is the first voluntary agreement to include such rigorous monitoring procedures. Be that as it may, we lack sufficient hindsight to assert that they have been fully effective (5).

2.2 Recommendations

Besides these two agreements, eleven texts adopted over the past three years can be regarded as recommendations. The table below summarises their main features.

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5 For further information, visit the European Network on Silica website (http://www.nepsi.eu).
## Recommendations 2005-2007

<table>
<thead>
<tr>
<th>Title</th>
<th>Sector</th>
<th>Topic</th>
<th>Date</th>
<th>Addressee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint declaration on violence at work</td>
<td>Gas</td>
<td>Working conditions</td>
<td>15/11/2007</td>
<td>National organisations</td>
</tr>
<tr>
<td>Joint declaration on harassment and violence at work</td>
<td>Electricity</td>
<td>Working conditions</td>
<td>11/2007</td>
<td>National organisations</td>
</tr>
<tr>
<td>Joint declaration on stress</td>
<td>Electricity</td>
<td>Working conditions</td>
<td>11/2007</td>
<td>National organisations</td>
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<tr>
<td>Joint recommendations for a better representation and integration of women in the railway sector</td>
<td>Railways</td>
<td>Non-discrimination</td>
<td>12/06/2007</td>
<td>National organisations</td>
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<tr>
<td>FERCO-EFFAT agreement on Corporate Social Responsibility (CSR) in the Contract Catering sector</td>
<td>Catering</td>
<td>Corporate Social Responsibility</td>
<td>31/01/2007</td>
<td>National organisations</td>
</tr>
<tr>
<td>Social partners sign letter of intent – BeQuaWe European Certified Training</td>
<td>Commerce</td>
<td>Training</td>
<td>26/11/2006</td>
<td>National organisations</td>
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<td>IRU and ETF joint recommendations on employment and training in logistics</td>
<td>Road transport</td>
<td>Training</td>
<td>31/03/2006</td>
<td>National organisations</td>
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<td>Joint statement of the EU social partners in the postal sector on Corporate Social Responsibility</td>
<td>Postal services</td>
<td>Corporate Social Responsibility</td>
<td>23/11/2005</td>
<td>National organisations</td>
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<tr>
<td>EU bank social partners joint statement. Some aspects related to CSR</td>
<td>Banking</td>
<td>Corporate Social Responsibility</td>
<td>18/05/2005</td>
<td>National organisations</td>
</tr>
<tr>
<td>European agreement on the reduction of workers’ exposure to the risk of work-related musculo-skeletal disorders in agriculture</td>
<td>Agriculture</td>
<td>Health &amp; Safety</td>
<td>21/11/2005</td>
<td>National organisations</td>
</tr>
<tr>
<td>Covenant 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</td>
<td>Personal services</td>
<td>Health &amp; Safety</td>
<td>21/09/2005</td>
<td>National organisations</td>
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</table>

**Source:** Observatoire social européen, own database 2008.
Three of these eleven texts relate to corporate social responsibility: banking, postal services and catering. The catering agreement is the most comprehensive of the three, covering *inter alia* fundamental rights at work, quality in work, health and safety, training, information and consultation, work/life balance, equal opportunities, non-discrimination and integration of people with disabilities, fair pay, restructuring, the fight against obesity, the awarding of contracts and the choice of suppliers. It is also the only one of the three to contain relatively clear implementing procedures. Interestingly, the structure of this agreement was largely inspired by the code of conduct in the sugar sector.

Two texts deal with training (commerce and road transport). Two others concern health and safety (agriculture and personal services/hairdressing). The hairdressing agreement is in two parts. The first part calls on the Commission to adopt a directive protecting hairdressers who use cosmetics professionally, introducing a system of health and safety certification for cosmetics. In the second part the partners agree on shared objectives which must not under any circumstances adversely affect national laws or cause a reduction in protection.

The railway sector has concluded an agreement on non-discrimination. Lastly, the electricity and gas sectors have taken up the cross-industry document on violence at work, calling for it to be applied in their sectors (electricity has also taken up the ‘stress’ agreement). One noteworthy aspect is a growing interaction both vertically (between the cross-industry and sectoral levels) and horizontally (between sectors). Generally speaking, sectors covered by EPSU tend to be those most inclined to extend cross-industry agreements to the sectoral level. A stronger linkage is therefore emerging between cross-industry and sectoral voluntary agreements. Telework was the first example of such a crossover: commerce was the first sector to sign an agreement, after which the cross-industry agreement was reproduced in various sectors. We nevertheless have little information about the impact on individual sectors of taking up agreements concluded at cross-industry level.
Following the conclusion of the cross-industry agreement on violence at work (6), the Commission brought together those sectoral partners potentially interested in supplementing this agreement by including third-party violence (by people outside of the company), which is a major problem in sectors such as commerce and banking.

In addition, four sectors have adopted ‘best value’ codes: textiles, the cleaning industry, private security and catering. All of them aim to prevent calls for tender from taking account solely of financial aspects. Quality, training and the payment of decent wages, for example, should likewise be taken into consideration. These four sectors have decided to pool their efforts and propose common principles for these codes; the results are to be made known in April 2008. These last two examples demonstrate a new departure: the emergence of a horizontal dimension between sectors.

Finally, to complete our review of sectoral developments, mention should be made of the tripartite agreement in the automotive sector on the sensitive matter of restructuring. This partnership, subscribed to by all of the economic and social players in the sector – including the EU, governments, companies, trade unions and regions – has three main aims. These are:

- setting up a new observatory to study change in the automotive industry and the necessary employment and labour skills;
- collecting and exchanging examples of best practice dealing with socially responsible restructuring;
- ensuring the better use of existing support structures such as the European Social Fund and European Globalisation Adjustment Fund.

Hence the elaboration of sectoral recommendations reveals just how specific each sector is. Some *ad hoc* progress has been achieved but is not

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catching on more widely. Nevertheless, there is evidence of incipient coordination both horizontally – across sectors, going beyond the bounds of individual European trade union federations – and vertically – between the sectoral and cross-industry social partners.

**Conclusion**

Sectoral social dialogue at European level has not developed in a way that mirrors the cross-industry social dialogue. The latter began with non-binding texts, principally in consensual areas and addressed to the Commission (training and lifelong learning). Then there was a move towards ‘agreements’ extended *erga omnes* by means of Council directives, finally ending up with what we refer to as voluntary agreements and more flexible instruments as in the case of lifelong learning.

Our quantitative analysis of the sectoral social dialogue has highlighted a plethora of documents unevenly spread over the years but growing in number. The majority are ‘common positions’ addressed to the European institutions with a view to influencing EU policy-making. In other words, one important function of social dialogue consists in joint lobbying of the EU.

There is no evidence at sectoral level of a progression from ‘tools’ or ‘weak documents’ (in the sense that they are vague or purely declamatory) towards more binding agreements. Nor has there always necessarily been discussion of a consensual issue at the outset. That is why training, which was so important in the Val Duchesse social dialogue at cross-industry level and then in the voluntary social dialogue post-2000 (Heyes, 2007; Winterton, 2007), has not always taken pole position in sectoral dialogue. Nevertheless, training has become a more important issue at sectoral level over the past few years (Léonard *et al.*, 2007b).

From a quantitative perspective, the conclusion is clear: fewer than 2% of the texts adopted at sectoral level are agreements with binding effect, and fewer than 10% are expected to have some impact at national level. The Commission’s attempt in 2004 to clarify the nature of the documents signed, in order to improve their quality and implementation process, has not been entirely successful as yet.
Different trends are apparent from one sector to another: some are more inclined towards consultation and the adoption of ‘common positions’, while others are more inward-looking and prefer ‘reciprocal commitments. Yet there is no obvious difference between sectors, and internal developments in various directions are visible (for example, the sea transport and civil aviation sectors concluded binding agreements on working time but have subsequently been unable to negotiate any other binding agreements).

The diversity of circumstances, issues and dynamics is one explanation of why it is so difficult to build a well-structured system of industrial relations at Community level. It seems however that several sectors have reached a critical point. In some, social dialogue appears purely formal, without the slightest impact at EU or national level. Those sectors having concluded recommendations, which could also be described as ‘soft law’ (less than half of the 35 committees have signed such a text in the last ten years), are all facing the same problems: how should these texts be implemented nationally and monitored at EU level? What linkage should there be between the European and national sectoral levels (and between the sectoral and cross-industry dialogue)? Thus the aims of social dialogue require further clarification. The recent silica agreement provides for a very sophisticated monitoring system which could be an inspiration to other sectors.

Our overall conclusion, however, is that the sectoral and cross-industry social dialogues are converging – albeit in very different ways – towards the output of texts which are not legally binding (in the sense that they cover all workers and that a court could be asked to verify compliance), but are morally binding and process-oriented (see Visser and Ramos Martin, 2008 on this point). These documents are increasingly coming to resemble codes of conduct or optional guidelines. Thus implementation is the task of decentralized stakeholders, perhaps with some moral pressure being exerted on any who fail in their duty. The other source of pressure is that, where implementation is non-existent or inadequate, the Commission could decide to legislate to extend the key provisions erga omnes (see its 2004 communication).
If this is the case, the consequences are significant. First, it means a blurring of the Community instrument. Social dialogue was regarded as an autonomous way (or a semi-autonomous way, ‘in the shadow of the law’) to achieve binding agreements. The move towards a ‘softer’ approach was not so much the consequence of a decision but rather, from a trade union perspective, a second-best solution. It resulted from the failure of the Commission and Member States to exert pressure for the elaboration of an ambitious social programme, and from the employers’ lack of interest in negotiating in the absence of pressure.

The purpose assigned to social dialogue depends partly on our vision of Europe. According to a classic federalist vision, its purpose is to take up or coordinate the key elements of national trade union objectives and develop a multi-layer system of industrial relations (Falkner, 1998). According to a more experimental vision, European social dialogue is aimed more at innovating, in respect of both themes and instruments (Pochet, 2003; Visser and Ramos Martin, 2008). For the time being, the European sectoral and cross-industry social dialogues are both manifestly following the latter approach. This is not the first choice of the trade unions, which would prefer to have more classic, binding, instruments and would like the effects not to be confined to a few meetings of representatives in Brussels.

At the outset, social dialogue and EU collective agreements were thought of as an alternative to EU legislation and a means of creating a multi-layer industrial relations system. Twenty years on from the Single Act and the first steps towards establishing social dialogue, the outcome bears a strong resemblance to the open method of coordination (OMC) and the European employment strategy (EES); the same implementation and participation difficulties arise at EU and national level.
References


*Social developments in the European Union 2007*


192 Social developments in the European Union 2007


Annex: Sectoral social dialogue - December 2007  
(based on the Commission’s table) 35 sectors - 481 agreements

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Employees’ organisations</th>
<th>Employers’ organisations</th>
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<td>UER, FIAPF, CEPI, AER, ACT</td>
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<td>Banking</td>
<td>UNI-Europa</td>
<td>FBE, ESBG, EACB</td>
<td>1999</td>
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<td>Catering</td>
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<td>Chemical industry</td>
<td>EMCEF</td>
<td>ECEG</td>
<td>2004</td>
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<td>Civil aviation</td>
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<td>AEA, CANSO, ERA, ACI-EUROPA, IACA</td>
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<td>Cleaning industry</td>
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<td>Electricity</td>
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<td>APEP, Euracon, Euromines, IMA</td>
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<td>ETUF:TCL</td>
<td>CEC</td>
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<td>1999</td>
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The full opening of postal services to competition: a fool’s bargain?

The postal sector is not a negligible sector of activity. In 2000, postal revenue in the European Union (EU) stood at around €85,000 billion, or some 1% of EU GDP. The postal market represents 5 million jobs in Europe (1), of which 1.71 million are direct jobs and the remainder indirect or ancillary employment (direct marketing, printing, envelopes, transport, and so on). Postal services are a concentrated market. According to the Commission, nearly 88% of mail is business-related (correspondence to customers or to other businesses). By way of illustration, in Belgium the 300 biggest customers represent 35% of turnover (2,500 customers for 70% of turnover). It is therefore tempting for operators which compete with national monopoly-holders to cream off the market by targeting the most profitable customers.

Despite the fact that the postal sector has similarities with other network-based sectors, it is different from highly capital-intensive network operators (telecommunications, for example). The postal sector is not structured around a single physical network (like the railways), but takes the form of many different infrastructures organised around essentially human capital. Postal services are regarded as a very important driver of economic, social and territorial cohesion.

Postal services exist in varying situations. In the European Union the market has followed the move to liberalisation launched at the beginning  

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of the 1990s. In some countries, such as Sweden, the Netherlands, Finland, Estonia and the United Kingdom, the market has been fully open to competition for a long time (Sweden since 1993; more recently, the United Kingdom in 2006).

Current status of postal service operators

<table>
<thead>
<tr>
<th>Managed by the postal authority</th>
<th>Public enterprises 100% owned by the State</th>
<th>Public enterprises more than 50% owned by the State</th>
<th>Public enterprises less than 50% owned by the State</th>
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</thead>
<tbody>
<tr>
<td>Cyprus</td>
<td>France, Spain, Poland, Greece, Czech Republic, Luxembourg</td>
<td>Denmark (75%) Malta (65%) Austria (51%) Belgium (50% plus one share)</td>
<td>Germany (45%) Netherlands (10%) Sweden (0%)</td>
</tr>
</tbody>
</table>


1. The stages leading up to the launch of liberalisation
The postal sector came late within the purview of the Community institutions. Postal services are not in fact mentioned in the Treaty of Rome. They form part of the services of general economic interest (SGEI) governed by Article 86(2) of the Treaty (2). The development and transformation of the sector, together with the advent of new competing and higher-value market segments, have increasingly attracted intervention at European level.

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2 Article 86(2) of the Treaty provides that: ‘Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community’.
That intervention initially took place in court (3). At the outset it concerned compliance, in the postal sector, with the competition rules laid down by the Treaty on European Union. Following a number of decisions in the 1980s and 1990s, a celebrated judgment of the Court of Justice of the European Communities on the extent of the postal monopoly in Belgium (4) held, in 1993, that the treaty provisions on competition enabled ‘the Member States to confer on undertakings to which they entrust the operation of services of general economic interest, exclusive rights which may hinder the application of the rules of the Treaty on competition in so far as restrictions on competition, or even the exclusion of all competition, by other economic operators are necessary to ensure the performance of the particular tasks assigned to the undertakings possessed of the exclusive rights’. It is worth noting that for over 30 years the monopoly on postal services was not called into question by either the Community institutions (the Commission, Council or the European Parliament), or the European Court of Justice.

The debate on the opening of postal services to competition was initiated in December 1989 at a meeting of the Council of Post and Telecommunications Ministers in Antibes, under the French presidency. At the meeting the Twelve sought consensus amongst themselves on the main principles which should govern a postal Europe. It was decided to set up a Senior Officials Group for Post (SOGP) to prepare the ground. This group was to play an important role in relations with the European Commission (5).

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3 See in particular Decisions 90/16 of 20 December 1989 concerning express delivery services in the Netherlands, 90/456 of 1 August 1990 concerning international express courier services in Spain and the judgment of the ECJ of 12 February 1992 in Netherlands v Commission.

4 ECJ, Case C-320/91, Paul Corbeau, judgment of the Court of 19 May 1993.

5 In October 1989 the SOGP set to work. Four working groups were formed in the following areas: regulation, harmonisation, service quality, terminal dues and tariffs The aim stated in 1989 was to define a European regulatory framework for postal services.
1.1 The 1992 Green Paper on the internal market for postal services

The Commission published a Green Paper on the development of postal services (CEC, 1991) which was adopted on 13 May 1992 and submitted to the Council of Ministers on 5 June 1992. Starting from the premise that ‘the absolute policy fundamental is the need to ensure the continuation of universal service, and thus to ensure that the postal authorities’ public service mission is carried out in good economic and financial conditions’, the Green Paper:

- ruled out both full liberalisation of the sector and maintenance of the status quo (synonymous, in the eyes of the Commission, with an absence of European harmonisation and therefore of a single postal market);

- proposed a ‘balanced’ solution combining increased liberalisation of the market with a strengthening of universal service by maintaining a portfolio of monopoly services (the ‘reserved’ services) intended to ensure the financing of universal service. The Commission stated that ‘this option accepts that in order to ensure the universal service it is necessary to have some restriction of the free market. (…) The universal service objective can justify the establishment of a set of reserved services, which would help to ensure the financial viability of the universal service network’;

- raised the banner of quality of service in terms of delivery times and affordable prices.

The crucial element was the appearance, for the first time in Community law, of the concept of ‘universal service’ applied to the postal and telecommunications sector (6). What would later appear as an unequal bargain was to be settled in the following ‘deal’: the opening of the postal

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6 Once could say a good deal about this concept, which seems to be both an impoverished form of public service and the quid pro quo for the move to liberalisation. The reader is referred to my article in the 2005 edition of Social Developments in the European Union 2005 (Van den Abeele, 2006).
sector to competition in return for a strong universal postal service. As we shall see below, we were to get full liberalisation with no real guarantee of a worthwhile universal postal service. Publication of the Green Paper was followed by a consultation process, and it was submitted to the European Parliament and the Council. The ensuing debate about the document at the Council right away revealed marked opposition between two immovable camps – proponents of the immediate, full opening of postal services and supporters of maintaining a strong public service. Against a background of debate between modernists (favouring the ‘natural’ development of postal services) and conservatives (who preferred the status quo), a profound cleavage opened up over arrangements for financing the obligations to be imposed on postal operators. When the opposing views proved impossible to reconcile, a third option would emerge: a phased opening of ‘reserved services’ to competition.

1.2 The 1993 Commission communication on guidelines for the development of Community postal services and the resolutions of the European Parliament

On 22 January 1993 the European Parliament adopted a resolution in which it confirmed the need for a universal postal service and expressed its desire to be closely associated with adoption of the future European regulatory framework. On 2 June 1993 the Commission published guidelines for the development of postal services, scarcely two weeks after the Court had delivered its well-known judgment in Corbeau (19 May 1993) (CEC, 1993). That judgment recognised the need for reserved services, dissociable from services of general interest, and that they could be provided in a competitive context, in so far as the opening up of those services did not compromise the economic stability of the service of general economic interest performed by the holder of the exclusive right, in particular as a result of the geographical area in which it was operating.

On 7 February 1994 it was Council’s turn to adopt a resolution on the development of postal services, in which it stated that the primary objectives in developing postal services were to provide a universal service corresponding to a minimum set of high quality services to be provided in each Member State at a reasonable price for all users. The Council
invited the Commission to submit proposals for developing a single market for postal services, to propose a common definition of universal service and the reserved sector, and to define measures to implement a Community policy on postal services.

On 26 July 1995 (7) the Commission presented two texts to the Council of European Post and Telecommunications Ministers: a communication on the application of the competition rules to the postal sector and in particular on the assessment of certain State measures relating to postal services (CEC, 1995), and a proposal for a directive on common rules for the development of Community postal services and the improvement of quality of service (European Parliament and Council of the European Union, 1995). At the meeting of the Council of European Post and Telecommunications Ministers (27 November 1995), France, Belgium and Luxembourg fought bitterly for the idea of a high quality universal service very close to the notion of a public service. After long months of seeking agreement, on 27 November 1995 the Council signalled the first stage in the process of adopting the regulatory framework for a postal Europe by producing a compromise embodying the launch of liberalisation of the postal sector in return for a guarantee of a strong universal postal service. Finally, after more than two years of discussions under the co-decision procedure involving active participation by the European Parliament, the first Postal Directive on common rules for the development of the internal market of Community postal services and the improvement of quality of service was adopted on 1 December 1997 (European Parliament and Council of the European Union, 1997).

2. The three stages in reaching full liberalisation

2.1 The first Postal Directive: universal service in return for liberalisation

Directive 97/67/EC laid down a Community framework of general principles and left it for the Member States to determine the procedures

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(7) The two texts presented on 26 July 1995 were published in the Official Journal of the European Communities on 2 December 1995.
for implementation. The Directive defined the characteristics of the universal postal service to be guaranteed by all Member States and laid down quality standards for cross-border services as well as the principles governing tariffs and accounting transparency.

2.1.1 ‘Gradual controlled’ liberalisation

Member States were required to open to competition the clearance, sorting, transport and distribution of items of domestic correspondence. The common maximum limits for the services which the Member States could reserve to the provider(s) of the universal service were set at 350 grammes and five times the normal tariff for an item in the first weight step. We should point out that those prices and weight limits, above which competition was allowed, represented some 3% of the European postal market. Below those weight/price limits States could reserve postal services for a single provider, as long as they showed this to be necessary for maintenance of the universal postal service, which now had a Community definition.

2.1.2 Establishment of a universal postal service (UPS)

The Directive enshrined the right of European citizens to a universal postal service. Article 3 of the Directive laid down the definition of the UPS (8). The service had to be guaranteed by each Member State: postal services had to be of specified quality, provided throughout the territory and at a price affordable to all users. What is striking about this definition is that it is particularly vague and imprecise. What are ‘specified quality’ or ‘affordable prices’? Who defines them? Who would ensure compliance with them?

Next, the operator was obliged to provide a minimum of one collection and one distribution per day for private homes, at least five days a week. The UPS included the clearance, sorting, transport and distribution of postal items of up to two kilograms and packages of up to 10 kilograms,

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8 Article 3: ‘Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users’.
as well as registered and insured items. This applied to both domestic and cross-border services. The Directive also stated that all those services should comply with the principles of fair and non-discriminatory treatment of users, continuity of service and adaptability to technical progress and users’ timetables. Member States could exclude a service from competition if it was demonstrably necessary in order to maintain the UPS. As regards the free postal service for blind and partially sighted persons, exceptions to the restrictions on weight and prices were permitted. This also applied to cross-border mail.

The UPS would come into being in the form of a compensation fund. The Directive proposed two mechanisms for financing the UPS, which are not mutually exclusive:

- the mechanism under Article 7: to the extent necessary to ensure the maintenance of universal service, some services could be ‘reserved’ for the universal service provider;

- the mechanism under Article 9: in order to safeguard the universal service, where the service gives rise to an unfair financial burden on the universal service provider, a compensation fund could be set up (9).

Only the universal service providers would be entitled to support from the fund, but in order to benefit they would have to furnish evidence of such a need for funding (10).

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9 Several countries (Germany, Belgium, Spain, Finland, Greece and Italy) have already provided in their legislation for the setting up of such a compensation fund, which however has only come into operation in Belgium, Spain and Greece.

10 Indeed, Article 9(4) of the Directive strictly circumscribed the conditions for setting up the compensation fund. Its existence had to be necessary to ensure that the ‘universal service is safeguarded’. The universal service provider would have to incur an ‘unfair financial burden’, and the principles of transparency, non-discrimination and proportionality were to be applied.
2.1.3 Financial transparency

The Directive required that prices be cost-oriented, transparent and non-discriminatory. Transparency was to be understood as cost accounting in separate accounts for, on the one hand, at least each of the services in the reserved sector and, on the other, for the non-reserved services. Harmonised requirements applied to the allocation of costs between these two categories. The Directive also laid down principles to govern the procedures for authorising the provision of non-reserved postal services, and for the separation of functions between the regulator and operators in the postal sector.

2.1.4 Service quality

There were references to service quality. As well as the obligation on each Member State to publish rules on postal service quality within national territory, the quality standards for intra-Community cross-border mail were set out at Community level by the Parliament and the Council (11). Quantitative targets were set in the annex to the Directive: at least 85% of items had to be delivered within D + 3 and 97% within 5 days.

2.1.5 Regulation of the postal sector

The last aspect of the Directive lay in the monitoring of the regulatory framework, reinforced by the appointment by the Member States of national regulatory authorities (NRAs) for the postal sector. These had to be ‘legally separate from and operationally independent of the postal

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11 The quality standards for intra-Community cross-border mail in each country are to be established in relation to the time limit for routing measured from end to end (end-to-end routing is measured from the access point to the network to the point of delivery to the addressee) for postal items of the fastest standard category according to the formula D + n, where D represents the date of deposit and n the number of working days which elapse between that date and that delivery to the addressee. The standards must be achieved not only for the entirety of intra-Community traffic but also for each of the bilateral flows between two Member States.
operators’ (12). They had to ensure compliance with the obligations under the Directive and with competition rules in the postal sector. Finally, the first Postal Directive laid down a timetable for implementation of the process of opening up to competition:

- by 31 December 1998 the Commission would table a proposal for the progressive and controlled further liberalisation of the postal market, with a view in particular to liberalising cross-border mail and direct mailing and to review further the price and weight limits;
- the Council and the Parliament had to deliver opinions on that proposal by 1 January 2000;
- the measures decided upon would have to enter into force by 1 January 2003.


In May 2000, slightly behind schedule, the Commission adopted a proposal for a directive amending Directive 97/67 (European Parliament and Council of the European Union, 2000). The initial text provided for complete liberalisation of the market as from 2007. That first target was re-evaluated following the refusal of the Council and the European Parliament (13) to embark on too rapid a timeframe. Directive 2002/39/EC is the EU’s current legal framework for postal services. It establishes a new timetable for the opening of postal services to competition. From 1 January 2003, only services relating to items of incoming domestic and cross-border mail weighing a maximum of 100 grammes (or up to three times the public tariff applicable to an item of correspondence of the first...
weight step in the fastest category) have been reserved for universal service providers. From 1 January 2006 the weight limit has been set at 50 grammes (or two and a half times that tariff).

The Commission undertook to carry out a prospective study intended to assess, for each Member State, the impact on universal service of the completion of the internal market in postal services in 2009. On the basis of the results of that study, the Commission would, by 31 December 2006, submit a report to the Parliament and the Council, together with a proposal confirming, if appropriate, the date of 2009 for the completion of the postal internal market or determining any other step. There was a further requirement on the Commission to present a report to the Parliament and the Council every two years ‘including the appropriate information about developments in the sector, particularly concerning economic, social, employment and technological aspects, as well as about quality of service’. On 23 March 2005 the Commission, in its second report (CEC, 2005) made three observations on the application of the Postal Directive:

- reform of the postal market had progressed well and it had even been possible to observe considerable improvements in three areas: service quality, business efficiency and separation between regulatory authorities and operators;

- transposition of the Community framework was largely complete. The Commission noted that the reduction in the reserved sector and the concomitant opening to competition by 1 January 2003 had not thrown up any major problems, but the Commission drew attention to a number of more delicate or less well-implemented aspects: separation of accounts for the various services, cost allocation and monitoring of the prices for the universal service;

- national regulatory authorities had become more independent and the regulations more effective, but there was still a high risk, according to the Commission, that inadequate regulation in certain countries could prevent the emergence of the single market in postal services.
The Commission also noted that market conditions were very different from one Member States to another. It highlighted in particular the position of the universal postal service which, in some States, continued to enjoy high profit margins, whereas in others they faced much more difficult conditions due, in the Commission’s view, to differences between the types of market interventions, different ownership structures and different price levels set.

A quite different tone was struck by the German MEP Markus Ferber (EPP-ED) who observed, in his parliamentary report, that ‘the Commission figures point to these divergences (in relation to the universal service obligation) being significant, thus potentially jeopardising a central objective of the Postal Directive, namely the guaranteeing throughout the EU of a universal service which comprises a minimum level of services of a specified quality at an affordable price (European Parliament, 2005: 9).

2.3 Genesis of the third Postal Directive

2.3.1 The new proposal

On 9 November 2006 the Commission tabled a proposal for a Directive amending the second Postal Directive (CEC, 2006), intended to complete the opening of the postal sector to competition. It will be recalled that Directive 2002/39 envisaged 1 January 2009 as the date for actual liberalisation (14). The Commission called on the Parliament and the Council to confirm the date of liberalisation as 2009 or to propose interim steps (15). Two studies (16) were carried out at the request of the

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14 In the Commission’s view, 60% of all letter mail would be completely liberalised by 1 January 2008.

15 The Commission had proposed that, should no decision be made by the beginning of 2009, the current Directive would lapse. The European provisions on universal service would cease to exist and the Commission would apply Article 86 of the Treaty to examine on a case by case basis whether the provisions laid down by the Member States distorted competition.

16 These documents are available on the website of DG Internal Market (Unit H: Postal Services) (http://ec.europa.eu/internal_market/post/studies_en.htm).
Commission, one on the impact on UPS of full liberalisation of the market in 2009, by Price Waterhouse Coopers (PWC), and the other by WIK Consult on developments in the postal sector between 2004 and 2006. Those studies were used as the basis for the proposed amendment of the Postal Directive presented by the Commission. In support of its proposal, the Commission asserted that the opening of markets had enabled the quality of services to be improved, a high quality universal service at an affordable price to be maintained, and the efficiency and profitability of postal businesses to be improved. According to the Commission, postal operators had changed how they provided a service to customers and how they sold their products and managed customer expectations. The opening to competition had in its view provided incentives to improve performance.

2.3.2 The two preliminary impact studies

The PWC study imagines various scenarios for the opening of markets based on the regulatory environment in the Member States, and on changes of governance and capital structure in the postal operators. Given the disparity of national situations (17), the consultants propose flanking measures (18), to be determined by the Member States after agreement by the Commission. Although the Commission has taken up only the one positive conclusion which suited it, namely the green light to complete liberalisation, a number of aspects of the report should have tempered its enthusiasm. On the one hand, the phenomena of postal operators coming together through mergers and acquisitions and the formation of postal giants are at work here. These trends jeopardise the very objective of

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17 In the case of Belgium, PWC finds that there are good opportunities for competition (which could capture the most profitable markets) but that complete liberalisation could jeopardise the viability of the postal operator entrusted with the universal service.

18 The flanking measures envisaged include abolishing the civil servant status of La Poste employees or the funding of the universal postal service out of the State budget.
greater competition between operators since there is a threat of Europe-
wide private monopolies being created over the most profitable parts of
European territory. At the same time, the impact on employment has
been seriously under-assessed or under-estimated. After all, the objective
of ‘predatory holding companies’ was not the economic, social and
territorial cohesion of the European Union, but profit.

In that vein, the most recent study which assessed the impact of
liberalisation on employment (PLS Ramboll) concluded in its least
pessimistic scenario that a profound change was taking place in working
conditions in the postal sector: rapid disappearance of civil service jobs,
increased flexibility (19), and widespread use of part-time working (20)
temporary employment, large-scale outsourcing (21) and even of child
labour (22). The following table gives a picture of changes in the field of
employment.

**Changes in employment in the postal sector**

<table>
<thead>
<tr>
<th>Operator</th>
<th>Employment downsizing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deutsche Post (Germany)</td>
<td>20,000 jobs cut in the period 2000-2004</td>
</tr>
<tr>
<td>La Poste (France)</td>
<td>35,000 jobs cut in the period 2002-2006</td>
</tr>
<tr>
<td>Royal Mail (United Kingdom)</td>
<td>More than 50,000 jobs lost in the period 2000-2005</td>
</tr>
<tr>
<td>Poste Italiane (Italy)</td>
<td>128,000 in the period 1993-2002 (of which 153,000 are full-time equivalent jobs)</td>
</tr>
<tr>
<td>Posten (Sweden)</td>
<td>17,000 jobs cut between 1991 and 2002</td>
</tr>
</tbody>
</table>


19 Correos de España has developed a system where workers are available on demand 24 hours a day through a phone call.

20 In TNT Netherlands, more than 30% of the workforce is on part-time, for Royal Mail this rate is 20% with the will to reach 40%, and it is 25% at Deutsche Post.

21 Transport, postal outlets and newspaper and non-addressed mail distribution are the most frequently outsourced activities.

22 TNT is even hiring children in Germany in 2006 (source: Europress, 27 November 2006).
2.3.3 Analysis of the impact on employment

On 15 March 2007 the Commission summarised the impact of the opening of the postal market on employment, on the basis of various studies carried out by external consultants. Changes relating to demand, habits or the use of new technologies have had an impact on the structure of the sector but are not changes attributable solely to opening of the postal market. In general, the Commission noted a decline in jobs with universal service providers in the 1990s but stabilisation thereafter (-7.38% between 1990 and 1995, -1.13% between 1995 and 2000, and -0.7% between 2002 and 2004). Universal service providers themselves increased part-time working and flexibility. The sector open to competition represented 461,000 jobs in 1995 and 500,000 in 2002, i.e. an increase of 19.7%. It is estimated that it will represent 720,000 jobs in 2010. The Commission cited the case of Germany, which lost 29,000 jobs in the licensed postal sector but where the losses were to an extent offset by the creation of 29,000 new jobs in the competitive postal sector. Those new jobs are both full and part-time. Part-time working represented 18.2% of jobs in Europe in 2002 and 18.9% in 2004. Workers with civil servant status fell by 10.4% between 2002 and 2004. Operators have recourse to a high level of part-time working in certain countries (the Netherlands, Lithuania) and very little in others (Malta, Latvia, Portugal, Greece, Spain). Universal service providers tend to outsource a certain number of their activities (catering, cleaning, IT and telecommunications, for example), which has given rise to a downsizing in jobs with those operators.

The Commission studied the interactions between the various factors which have a quantitative and qualitative influence on employment: technology, market demand, the regulatory framework and strategic choices by operators. Amongst those drivers, it notes that it is market demand which has the quickest direct impact, whilst the impact of the others is more spread over time. The pressure to restructure, modernise and increase efficiency will continue for postal operators as will the pressure to make substitutions (use of electronic means, for example), which will give rise to job losses potentially offset by jobs created as postal operators diversify services and by the activities of the operators subject to competition.
The Commission examined three liberalisation scenarios and their impact on jobs. In its opinion, complete liberalisation of the postal market in 2009 would result in an 11.71% rise in overall employment (direct, indirect and ancillary jobs), complete liberalisation of the market accompanied by a rapid replacement of postal correspondence by electronic means would give a rise of 3.88%, whilst a market which was not fully competitive in which liberalisation was deferred would experience a 2.10% fall in total jobs. The Commission therefore concluded that employment in the postal sector is a factor in the long-term restructuring of the sector and that it is influenced more by technological change and changes in demand than by the opening of the market which, of itself, would bring new employment opportunities. In the view of the Commission, competitive markets are better able to sustain employment than monopoly markets. It observed that the regulatory framework has not jeopardised employment in the postal sector.

In response to that rose-tinted view, the situation needs to be portrayed more subtly. It has been seen, in Greece for example, that new entrants frequently offered badly-paid jobs and practised social ‘dumping’ (23) which forced the traditional operators to follow them. Others have pointed out that, on the other hand, part-time jobs were not necessarily poorer quality jobs but were useful and sometimes met the needs of certain workers.

2.3.4 The difficulty of securing sustainable financing for UPS

A recent study by Oxera Consulting, a UK firm of economic consultants (Oxera, 2007), reveals the complexity of funding the universal postal service. The nine postal operators which commissioned the report (La Poste, De Post-La Poste, Hellenic Post, Poste Italiane, P&T Luxembourg, Correos, Magyar Posta, Cyprus Post, and Poczta Polska) asked for an in-

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23 In Denmark, postal workers are parties to the same collective agreement and there is therefore no social dumping by competing operators. In Sweden and Denmark they are covered by the same collective agreement as employees of the traditional operator.
depth study to be made so that the options within each Member State could be sufficiently analysed. The postal operators in Belgium, Cyprus, France, Greece, Italy, Hungary, Luxembourg, Malta and Poland had already signalled in July and October 2006 that the funding methods proposed in the draft third Postal Directive provided no guarantee of funding for UPS and therefore entailed a serious threat to its sustainability.

The study reveals how difficult it is to identify and implement a funding mechanism which ensures the sustainability of the universal service and satisfies requirements such as economic efficiency, competitive neutrality, social equity, compatibility with State aid rules, proportionality and long-term funding security. The Oxera report states: ‘If regulatory authorities value certainty above any other consideration, the reserved area is likely to score particularly highly, while mechanisms such as compensation funds funded with profit taxes, uniform access with allowed bypass, and forms of competitive tendering that auction the provision of the universal service obligation on a regional or national basis are likely to receive a low score. Moreover, if predictability is a key consideration of the authorities, the reserved area, access charges and, to a certain extent, state funding could provide an attractive solution’ (Oxera, 2007: 95). Given the difficulties of funding UPS, Oxera found that the proposal for a Directive did not provide sufficiently solid responses from an economic and legal perspective. Elimination of the reserved area as a financing mechanism — with no effective alternative means of funding — therefore seemed premature in terms of the very survival of the universal service. Finally, the study noted that the system chosen by the Commission, and confirmed by the co-legislators (Parliament and Council), could create a situation differing from country to country, which would conflict with the objective sought by the Commission, namely Community-wide harmonisation of the postal sector.

2.4 The position of the co-legislators

2.4.1 The first-reading vote by the European Parliament

On 10 July 2007, on the eve of its vote in plenary session, the European Parliament held a debate on the completion of postal liberalisation. The
debate confirmed the positions of the political groups expressed at
meetings of the parliamentary Committee on Transport and Tourism.
Commissioner Charlie McCreevy restated his position supporting the
opening, from 2009, of the last segment of the postal market still capable
of being reserved for a public operator, that is to say, the processing of
correspondence of under 50 grammes. ‘The proposal for a Directive has
not been dreamed up in an ivory tower’, stated Commissioner McCreevy,
recalling the main aspects: opening the last reserved area to competition,
maintaining a ‘top quality’ universal postal service (UPS) ‘for all users’, a
‘broad range of financing mechanisms to meet the burden of the UPS’,
introduction of increased flexibility enabling prices better to reflect the
nature of the service whilst leaving the door open for ‘a single tariff’. The
Commissioner believed that total opening to competition in the postal
sector would be ‘good for the whole economy’. In his view, unjustified
restrictions on access to the market should also be reduced and ‘greater
clarity’ should be given to the role of the national regulator. Pointing out
the need for postal services to adapt to the ‘revolution’ of the new
communications technologies, Commissioner McCreery stressed the
opportunities coming into view: the point was not to divide up the
existing cake, but to increase the size of the cake so that all operators
could benefit, and to adhere to the Commission’s initial position in favour
of market opening from 2009, in particular because ‘many Member
States’ have accepted that timetable.

‘Parliament has to send out a clear message’ is the message sent out in his
turn by Markus Ferber (EPP-ED, Germany) so that the challenge laid
down is to ensure that postal services are ‘determined by demand and not
by supply’. He adds: ‘today’s problems cannot be solved unless there is
fair competition – I stress the word fair – which upholds workers’ rights
but nevertheless allows competition to flourish’. The rapporteur puts the
main components of the compromise on the table:

- opening to competition at the end of 2010 with a further two years’
grace for Member States which joined the EU after 2004 or which
have a small population and land area or which have particularly
difficult topography, especially islands;
- inclusion of a reciprocity clause preventing operators responsible for the reserved area from taking over markets in Member States which have already opened their markets. On the latter point Mr Ferber referred to the dozen or so sets of ‘infringement proceedings’ already brought against Member States in that regard.

As concerns the mechanisms for funding the UPS in a competitive environment, he views as ‘adequate’ the compromise formula which allows Member States to choose from ‘five mechanisms’ which could themselves be used in combination. The Parliament’s compromise does not alter the funding mechanisms in the Commission’s proposal. These include in particular public subsidies, the setting up of national compensation funds financed by operators not subject to public service obligations and/or by users themselves, and the awarding of public tender contracts.

Amongst reactions to the Ferber report, attention should be drawn to that of British Labour MEP Brian Simpson. To him it is not a question of deciding whether or not postal services should be opened to competition but of defining the regulatory instruments which will govern that opening. ‘Saying that the monopoly sector should be kept is to live not in the real world’, he feels, whilst nevertheless lamenting the weakness of the provisions on the funding of UPS. For the Greens/EFA Group, the Austrian MEP Eva Lichtenberger believes that the last opening of the postal service led to ‘a deterioration in services in particular in rural areas’. In her view the creation of compensation funds could work in the large Member States but not in the small ones, because their markets would make it impossible. According to Pierre Jonckheer (Greens/EFA, Belgium), the question is whether or not postal liberalisation allows a relative reduction in prices and, if it does, who benefits. ‘In Germany, we had net losses of 29,000 jobs within the Deutsche Post, of which 15,000 have not been compensated for by the creation of jobs by new operators’, whilst ‘in Sweden, price reductions have been of benefit only to large enterprises, at the expense of individual consumers and small and medium-sized enterprises’, he states. He stresses that ‘the results have not been up to expectations. That should give us cause for thought’. The
French Communist Francis Wurtz, favours rejection of the Directive; he for his part condemns the ‘liberal dogmatism’ of the Commission ‘that feeds the crisis of legitimacy in the European economic and social model’ and ‘the arrogance that maintains the climate of defiance towards our institutions’. Lastly, Christine de Veyrac (EPP-ED, France), in contrast, expresses her belief that ‘competition is synonymous with improvement in services and in competitiveness for a sector with a turnover that is going down’. She expresses satisfaction that the Parliament compromise includes an option to fund the operator responsible for all or part of the UPS ‘by levies on the activities of its competitors who are not subject to the same obligations’ or ‘public subsidies’, and urges the Commission to publish ‘guidelines for calculating the cost of the universal service’ in order to ascertain what belongs to the universal service and what does not.

2.4.2 The first reading by the European Parliament (July 2007)

On 11 July the European Parliament adopted its opinion at first reading on the proposal for a directive by a comfortable majority (512 votes for, 156 against and 18 abstentions). However, it imposed a number of conditions on liberalisation, in particular regarding timing and compliance with employees’ working conditions. Complete liberalisation of the postal sector would have to take place as follows:

- keeping unchanged the UPS entailing clearance and distribution of mail at least five times a week for all users;
- complete opening of the last area reserved for a public operator, namely the processing of correspondence below 50 grammes, no later than 1 January 2011;
- grant of a two-year deferral to Member States which joined the EU after 2004 or which have a small population and land area, or which have a difficult topography, in particular a large number of islands;
- insertion of a reciprocity clause preventing holders of monopolies over mail processing from taking over markets in EU countries where the market is fully competitive;
- an option for Member States to fund public service obligations by choosing from a non-exhaustive list of mechanisms (public tendering, a compensation fund endowed by service providers and/or users, direct subsidies etc.);

- the Member States to notify the Commission, before 1 January 2010, of their national plans for funding the UPS; the Commission to draw up guidelines for calculation of the net cost of the public service obligations;

- clarification of the procedure for authorising postal operators;

- Member States to be able to impose conditions on the provision of postal services for general non-economic reasons such as compliance with employment conditions and social security systems.

The amendments adopted by the Parliament include in particular that of the Belgian Socialist Saïd El Khadraoui under which ‘each Member State shall ensure that the financing of the universal service is guaranteed at all times in a fully liberalised postal market’, and that of the Greens/EFA group allowing Member States to require postal operators ‘to fully respect the labour laws to which they are subject’, ‘the social security legislation’ and ‘collective agreements concluded between social partners’. The amendment tabled by Olle Schmidt (EPP-ED, Sweden) providing that ‘common costs, which are necessary for the provision of both universal services and non-universal services, shall not be entirely allocated to universal services’ was also adopted.

The Greens did not support the compromise because they want ‘to keep (postal) services in remote regions without needing enormous state aid and to restore fair working conditions for the employees of private postal services’, declared Austrian MEP Eva Lichtenberger. Various significant concerns were the object of compromise between the EPP, PES and ALDE groups: the date, requests for clarification from the Commission, financial compensation, the universal service obligation and the approach to outlying regions as well as employment conditions and social security rights. Voting began with the motion to reject the proposal tabled by the EUL group. That motion was supported by 82 MEPs, with 588 against.
The French Socialist MEP Gilles Savary presented a further attempt to overturn the measures proposed by the rapporteur. This sought to reintroduce the option of raising finance by keeping a reserved area. That amendment received 154 votes in favour and 531 against, a large number of which were from the PES delegation (France, Italy, Luxembourg, and Belgium), the EUL, and the Greens, supported by the Luxembourg EPP MEPs. The plenary session also adopted an amendment providing to keep the option, where needed in order to maintain the universal service, of having a ‘reserved sector’ relating to direct mailing and outgoing international mail with the same limit of 50 grammes. The provisions on the financing of UPS costs were retained in the version adopted by the parliamentary committee.

The main element of the compromise relates to postponement of complete liberalisation of the market until 31 December 2011 (that is, a postponement by two years) for all Member States. In addition to that postponement there is a further two-year period of grace (until 31 December 2012) for the 12 Member States which joined the Union after 2002 together with two categories of Member States: countries with difficult topography (Greece) and Member States ‘with a small population and a limited geographical size’, a provision tailor-made for Luxembourg whose MEPs of all parties want to keep the reserved area. The MEPs in plenary session also upheld a reciprocity clause enabling Member States which have liberalised their markets to refuse access to their markets to foreign operators which still have the benefit of a reserved sector in their countries of origin. As regards social issues, we would draw attention to the adoption of a significant amendment (No. 81) tabled by the Greens Group and adopted in plenary session by 391 MEPs with 297 against. This provides that ‘Member States shall request all operators to fully respect the labour laws to which they are subject’ (employment, working, health and safety and industrial relations conditions). The Member States may also require the chosen operator ‘to fully respect the social security legislation (...) and collective agreements concluded between social partners’.
Just as with other delicate major dossiers (the ‘Services’ Directive and the REACH Regulation in particular), the Parliament proposed a compromise in the interests of debate continuing at the Council. The rapporteur Markus Ferber succeeded in reaching out well beyond the EPP Group in order to facilitate a compromise. As with the Services Directive, a minority of MEPs argued for maintenance of the reserved sector, but these remained confined to a few nationalities and did not prevail over Group cleavages save in relation to the Luxembourg MEPs. The vast majority of the Greens and the EUL Group opposed the final compromise, as did the French and Belgian delegations of the PES.

2.4.3 The Council’s common position of 1 October 2007

The TRAN Council reached a broad consensus on the fundamental aspects of the proposal tabled by the Commission and took proper account of the opinion delivered at first reading by the European Parliament. Discussion centred on the extent of UPS and the deadlines for complete opening of the market. The text has kept the approach and legal structure proposed by the Commission with a view to adapting the regulation on the postal sector to the new conditions associated with completion of the internal market before the end of 2010.

In the light of the foregoing, clarifications and adjustments were made to the text, particularly in relation to the relevant definitions in the proposal, the guarantees applicable to the provision of universal service, including its financing, arrangements for authorisation, the role of the national authorities and the provision of information by all providers of postal services.

Deadline for complete opening of the market: the Council offered a number of Member States the option of requesting a derogation (applicable until 31 December 2012 at the latest) from the date for

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24 The points on which an agreement of principle emerged on the Parliament’s amendments are indicated by brackets (amend. x) in the text issued by the presidency.
implementation of the new Directive, to meet the particular structural needs of their national postal markets. Luxembourg and Greece have had recourse to this provision to postpone complete opening of their postal markets.

Provision of a universal service: the common position rests on the principle that provision of universal service is a key element of the completion of the internal market in postal services and plays a crucial role in social and territorial cohesion. Against that background, the Council gives Member States a degree of flexibility as regards designating one or more universal service provider and as regards the terms on which the providers operate, whilst nevertheless ensuring a periodic review of their compliance with the principles set out in the Directive and that the period of the designation is sufficient for a return on investment. The common position also states clearly that the universal service provider or providers must furnish sufficiently detailed and up-to-date information regarding the particular features of the universal service offered, with special reference to the general conditions of access to these services, prices and quality standard levels. Lastly, the common position acknowledges that continued provision of certain free services introduced by the Member States for blind and partially-sighted persons should not be hindered.

Financing of the universal service: the Council endorses in general the mechanisms proposed by the Commission, basing itself on the principles of subsidiarity and the conditions of the national market. Accordingly, Member States can choose an appropriate enabling measure, according to the specific features of their national markets. In response to the concerns expressed by certain Member States as regards calculation of the net cost and in order to provide guidance based on a common indicative methodology, the common position adds a new annex to the Directive based largely on Annex IV of the ‘Universal Service’ Directive (European Parliament and Council of the European Union, 2002b).

Compliance with employment conditions and social security systems: the common position includes on the list of essential requirements compliance with Community law and national legislation as concerns
employment conditions and social security provisions. Social considerations are also taken into account in the provisions on the requirements for the grant of authorisations, under which authorisation may, where appropriate, be subject to an obligation to comply with the employment conditions laid down by national legislation or may impose compliance with those conditions.

2.4.4 The second-reading vote by the parliamentary committee
On 18 December 2007 the European Parliament Committee on Transport and Tourism adopted at second reading the Ferber report on liberalisation of the postal sector by 37 votes to 2, with 6 abstentions. As the result of the vote testifies, there was no real debate. Markus Ferber was the first to speak and reiterated the basic tenets of his report. He proposed that the Council’s common position should be followed. In procedural terms, he relied on three factors in support of his position. First, all the issues raised at first reading were given a response in the common position. Second, one should not undo what had been done and to jeopardise in any way the Council’s compromise would lead to embarking on a hazardous conciliation procedure. Lastly, he called on the committee not to seek conciliation as an end in itself, but only if a clear ‘qualitative leap forward ‘could be achieved. On the substance of the dossier, he asserted that Annex 1 (25) to the Directive brought the timetable for liberalisation of the postal sector to life. In the view of the rapporteur, ‘the era of monopolies is over and the Member States must agree and adopt identical measures’, and for him, Article 9 enabled Member States who so wished to make the grant of authorisations subject in particular to obligations linked to the universal service.

In the ensuing debate, the various political groups spoke sometimes bluntly, often with no surprises, and rarely with any hope of modifying the rapporteur’s position. As the first reading vote showed, the Socialists were far from having a unanimous position. Brian Simpson, a British Socialist, was broadly in agreement with Markus Ferber although he

25 Guidance on calculating the net cost, if any, of universal service.
stated that he would have ‘preferred the public to keep the service whilst recognising that it is impossible’. He regretted that the universal service was not sufficiently guaranteed and expressed concern at the social consequences of the agreement, whilst conceding that financing of the universal service should be guaranteed. The Belgian Socialist Saïd El Khadraoui did not share his colleague’s enthusiasm and sought to table, with French Socialist MEP Gilles Savary, a number of amendments primarily on the issue of financing, based on the position adopted by the Parliament at first reading, namely that ‘each Member State, before abolishing exclusive rights, shall ensure that the financing of universal service is guaranteed at all times’. Ines Ayala Sender, a Spanish Socialist, signatory to the amendments, acknowledged that the common position improved on the Commission communication by restoring a degree of room for manoeuvre to Member States. She invited Markus Ferber to agree to the amendments in the interests of preventing legal uncertainty. Lastly, Willy Piecyk, a German Socialist, thought that ‘it would be better not to lose conciliation’, but that one should call for proper financing of the universal service and give a social commitment to the postal sector by ‘requiring new operators to comply with social provisions’ in order to avoid problems.

There was less nuance from the Christian Democrats, who unhesitatingly toed the line taken by the rapporteur. Georg Jarzemowski (EPP Germany) announced that the EPP was going to reject all the amendments. ‘In 95% of cases, the Council has followed the position of the European Parliament and it would be wishful thinking to believe that conciliation will make things better’.

Luigi Cocilovo, spokesman for the European Liberals on the postal dossier, found positive aspects in the common position and thought that modifying the Council’s compromise by a difficult conciliation procedure would be risky. However, he introduced a number of amendments relating to the universal service provider and one amendment which might even have been proposed by the left, in which he asked that ‘Member States should require all operators to comply fully with employment legislation (…) and social security legislation including
collective agreements entered into between the social partners’. He was isolated within his group, as witnessed by the contribution from Dirk Sterckx, a Belgian Liberal, who took the view that there could be no better compromise and that Parliament should accept the common position. Arunas Degutis, a Lithuanian Liberal MEP, expressed satisfaction at the direction taken by the Council, but regretted that liberalisation had come too late. He did not wish to ‘keep the universal service under identical conditions of use’. One should also note the position of Dutch MEP Jeanine Hennis-Plaaschaert, for whom the compromise reached was no gift to the Liberals. ‘I am in favour of rapid liberalisation and regret that the compromise offers Member States too many possibilities to intervene in the postal sector’. The Dutch MEP even tabled an amendment seeking to remove universal service obligations from new operators.

For the Greens, the Austrian MEP Eva Lichtenberger tabled amendments already adopted by the Parliament at first reading to strengthen social provisions in the text of the compromise, in particular the maintenance of social standards, collective agreements and guaranteed access to the same services for all citizens. Lastly, for the EUL Group, Dutch MEP Érik Meijer expressed a hard-line stance inviting Parliament to reject the common position. He noted that for his Group, ‘postal services are not commercial undertakings, but public services, and this is a good thing neither for consumers nor for employees’.

2.4.5 The vote in plenary session (31 January 2008) (26)

In the plenary, as expected, a vote supporting the common position was adopted by the EPP-ED, ADLE and PES (mostly) Groups. The EUL continued to oppose the text. The Greens also argued for rejection but some of their number preferred to abstain.

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2.4.6 Evaluation of the trade-off: UPS for full liberalisation

The text adopted on 31 January 2008 provides for no firming up of the imprecise definition of ‘universal service obligations’ in Article 3 of the 1997 Directive, in exchange for full liberalisation of the sector. On the contrary, tariff equalisation is optional (27). Next, the content of universal service obligations (USOs) is weakened. Admittedly, a number of specific universal service obligations could be added to the list of universal service obligations. However, the text stipulates that accessibility to access points, affordability and uniform tariffs ‘may’ be on the list, which will therefore be left at the discretion of the authorities. As regards calculation of the net cost of UPS, Annex 1 states: ‘National regulatory authorities are to consider all means to ensure appropriate incentives for postal service providers (designated or not) to provide universal service obligations cost efficiently’ (our emphasis). One can see that the measure is scarcely binding and that the discharge of USOs is subject to the criteria of cost efficiency.

As regards the net costs of universal service obligations, these could be covered or financed by granting compensation to providers in return for services provided under non-commercial conditions. Lastly, the text provides that ‘Member States have to ensure that (transfers) are undertaken in an objective, transparent, non-discriminatory and proportionate manner’ and must ‘result as far as possible in the least distortion to competition and to user demand’ (28). Will elimination of the reserved area imperil the UPS and the financial health of public undertakings? This is the burning issue which has been troubling all the Member States whose postal operators are more than 50% State-owned. The question is not

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27 Annex 1 inserted by the Council’s common position provides that ‘universal service obligations refer to the obligations (...) placed upon a postal service provider by a Member State which concern the provision of a postal service throughout a specified geographical area, including, where required, uniform prices in that geographical area for the provision of that service or provision of certain free services for blind and partially sighted persons’.

28 Annex 1.
merely theoretical or ideological, as is borne out by several national studies which have posed the question. In Hungary, for example, the impact of removing the reserved area has been put at a net loss of between €8 million and €120 million (a figure forecast by Magyar Posta), that is to say, in the event of complete liberalisation in 2009, in comparison with the net profits returned in recent years (€30 in 2005 and €20 million in 2006 (39)).

2.4.7 The stances taken by the various actors

The positions of Member States

Two opposing positions have emerged in the attitudes of Member States to complete liberalisation. In general, reactions have focused on the financing of UPS by means other than the reserved sector. Some Member States (Luxembourg, Slovakia, Cyprus, Greece, Poland, Italy and Belgium) wanted to make the date of full liberalisation of the sector and elimination of the reserved sector conditional on the establishment of guarantees for funding UPS and clear guidelines for calculating the net cost of the universal service. Those Member States argued for guidelines (30) on the accounting principles to be used and on calculation of the net cost of universal service. Other Member States, including proponents of rapid liberalisation (the Netherlands, Austria, Sweden and Finland) believed, conversely, that elimination of a reserved sector could serve as an incentive to increasing the efficiency of the service provider

29 Magyar Posta will not be able to bear the burden of eliminating the reserved area, whilst providing a universal service, before 2012. Those five years are the period needed in order sufficiently to increase the productivity of the business, through modernisation, automation, rationalisation of the network and job cuts.

30 At the insistence of a number of Member States (Belgium in particular but also the United Kingdom), the Commission ultimately agreed to publish guidelines or guidance for calculation of the net cost of UPS, but it drew attention to the difficulty of the exercise if one was to avoid encroaching on subsidiarity and pointed out that the CERP (the postal regulators’ committee) had failed to reach agreement on the matter.
which, being more efficient, would not need additional financing in order to provide the UPS.

The experiences of Member States

Recent developments concerning the Postal Directive have provoked a number of reactions among European operators in the name of government supervision.

Sweden was the first country to open its postal market fully to competition, in 1993. Until then, Sweden Post was the only operator in the letter carriage market in Sweden. With the appearance of competitors in certain segments of the market, the competitive environment of the new entity, Posten AB, changed appreciably. There are some 30 small postal undertakings, which have a local presence and one big competitor which holds 40% of the bulk mail market in the three major urban areas. Very isolated customers are served by the ‘rural postman’ which is a form of mobile post office. Where they exist, local operators offer lower prices than Posten AB, since the national operator has to maintain uniform prices which prevent it from competing selectively in specific areas. It would be wrong to believe, however, that deregulation of the postal service in Sweden has been completely smooth. First, the Swedish competition authority has had to arbitrate in a large number of conflicts in the postal sector. Secondly, competition has had an impact on the price of postal services. In the sector of non-urgent consolidated items posted in bulk and pre-sorted for densely-populated areas (which represents more than 70% of the total postal market), the level of prices has, admittedly, fallen by an average of 30% over a ten-year period. However, urgent single-piece mail posted in mail-boxes on the public highway has seen prices rise steeply even though, since 1998, operators have had a duty to keep in line with the Swedish consumer price index. The price differential between the two extremes is more than 2:1. From the outset, UPS has been confined to single-piece mail, posted in small quantities. Today, according to Posten AB statistics, the number of postal product outlets has increased from around 1,800 to more than 4,200. Large supermarkets, service stations and the like now sell stamps and offer local postal services. The opening times of these new postal outlets are an
added attraction. A recent study has shown that 96.2% of mail posted in Sweden arrives within 24 hours. The only remaining problem is that of weak competition in the postal sector. The traditional operator continues to hold a more than 94% market share.

Finland’s experience has been similar to that of Sweden. The competitors who entered the market quickly disappeared. However, that description should be qualified: although tariffs for commercial mail have fallen sharply, those for private mail have tended to do the opposite. Finland’s full liberalisation would seem rather to have smiled on the big private mailers, and not necessarily on individuals (31), even if the choice of products and services for consumers has increased.

The British postal market has been open only since January 2006 although the regulatory framework for liberalisation was already in place from 2000. 87% of mail is generated by businesses. After one year of liberalisation, Royal Mail remains broadly dominant (96% of the market) and 16 other operators share the remaining 4%. The market has been opened gradually, beginning with liberalisation of bulk mail (30% of the market). The decision to open up completely was made in February 2005 and implemented in January 2006. London believes that service quality has improved but the profit margin of the business is still only 2% and must therefore be improved. Jobs have been cut by 5% without compulsory redundancies and wages have increased by 4%. The trade unions walked out several times during 2007, calling three major strikes against wage freezes and threats to pension schemes planned by Royal Mail. Trials of a ‘zonal pricing’ scheme began at the start of 2008, with a view to testing the effects of ending the single tariff in certain areas.

31 The Eurobaromètre qualitative survey, published in December 2003, observed in that regard that ‘the positive assessment factors are first and foremost the density of the network of post offices – and it is the numerous closures that often cause an outcry among the Swedes, many of whom patently take a dim view of the liberalisation of these services’ (European consumers and services of general interest, page 25) (http://ec.europa.eu/public_opinion/quali/ ql_sgi_report_en.pdf).
For the time being there does not seem to be a need to finance the universal service, but it appears that post offices are being used less and less and that further restructuring will undoubtedly have to be considered. In order to ‘face up to competition’ and ensure the profitability of Post Office Ltd., the subsidiary responsible for the post office network, a broad-based consultation was launched at the end of 2007 under the auspices of the regulator, POSTCOMM. The first stage is aimed at closing 2,500 out of almost 14,000 franchises.

In France the universal postal service decree published on 7 January 2007 guarantees a single stamp price throughout the country. For bulk mail – business mail, for example – La Poste can offer its customers commercial terms to take into account the number of items sent. This decree also leaves it to the discretion of the universal service operator whether or not to distribute items regularly, depending on the geographical conditions and road infrastructure. All tariffs falling within the universal service are monitored by the post and electronic communications regulation authority. The French Government owns 100% of the ‘La Poste’ post offices, which are present at 17,000 points throughout the territory (12,000 self-managed contact points and 5,000 subcontracted). La Poste is calling for adequate permanent financing arrangements for the universal service so that it can square up to competition on an equal footing. The trade unions also fear tariff de-equalisation which will allow differentiated tariffs to be charged depending on the destination of the mail and the difficulty involved in delivery. According to the trade union Sud-PTT, this sounds the death knell for the single-price stamp and heralds inevitable job losses (the public operator has not been replacing staff who retire since 2003, meaning that 30,000 posts had been lost by the end of 2007).

Italy is one of the countries most critical of the proposal. Its particular concern is not only the size of the country but also the remoteness of certain mountain areas and, of course, the islands. Italy, which wants to keep a high quality universal service throughout its territory, fears that liberalisation of postal services will mean that such a service will no longer be guaranteed. Italy is one of the Member States which have called for the deadline for entry into force to be postponed.
In Germany, the Bundestag passed the minimum wage law (32) on 20 December 2007; it came into force at the same time as opening of the German postal market, that is, 1 January 2008. Introduction of the minimum wage poses a fundamental threat to the low-cost economic models of competitors of the German postal operator and represents very high barrier to new entrants. Amongst the competitors of Deutsche Post World Net (DPWN), TNT Post AG is the best equipped to withstand the threat, but has had to downsize its ambitions for growth in the German market by abandoning the proposal to use the 13,500 contact points of Hermes Logistik to distribute mail to individuals, independent professionals and small and medium-sized businesses. Following representations to the Commission by competitors of DPWN, the Commission is likely to look carefully at the minimum wage law to ascertain whether it will give DPWN an unfair advantage (33). Excessively binding legislation in the case of Germany is clearly identified as a barrier to competition in the annexes to the PWC study of May 2006. It could be regarded as a provision aimed at protecting DPWN, especially since the German postal operator has recourse to contracts which can go down as low as €5 per hour at its Dutch subsidiary SELEKTMAIL SANDD. Its main competitor uses the same type of contracts, covering 9,500 distributors, at least half of whom are ‘self-employed’ with commercial contracts relating to volumes of mail and distribution routes.

In Spain, the Government proposed a decree in 2008 dispensing Correos from the obligation to distribute mail to recipients located more than 250 from a main road.

32 For sorting personnel, the hourly wage will be €8 in the eastern part of Germany and €8.40 in the western part. For delivery personnel, the wage will be €9 in the East and €9.80 in the West. In contrast, delivery personnel of DPWN’s competitors - Pin Group and TNT Post - are currently paid much less, between €7 and €7.50 an hour.

33 At the same time, the Commission will probably take an interest in the VAT exemption enjoyed by DPWN, likewise denounced by competitors of the German postal operator.
In the Netherlands, flanking measures to accompany market liberalisation, which will entail a wage freeze until 2010, have been called into question by threats of compulsory redundancies potentially affect 7,000 jobs (out of roughly 40,000).

**The position of workers’ representatives and interest groups**

The public postal operators of twelve Member States, including the eight which commissioned the Oxera study (Austria, Belgium, Cyprus, France, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Poland and Slovakia) noted in a press release the improvements made by the European Parliament which ‘significantly’ amended the legislation. They welcomed in particular the provisions addressing methods of financing the universal service and the risks of social dumping, the call for deferral of the date for completion of the internal market in postal services and the reference to the role of the postal service in Europe in terms of the economy and territorial cohesion. Stressing however the fact that deferral of the final opening of the market does not amount to a response to the many legal, economic and technical concerns, the twelve postal operators call on the Council to follow the prudent approach adopted by the European Parliament and enrich the proposal for a directive by responding to those issues (34).

As long ago as 8 December 2006, the ETUC Executive Committee adopted a declaration pointing out the dangers inherent in the latest draft of the Directive, especially the requisite guarantees in terms of universal service and the threats to employment. The declaration concludes by pointing out the need for a framework directive on SGEIs.

While the trade union federation UNI-Europa described itself as ‘disappointed’ by the outcome of the vote and saw a need to put pressure on European governments to include better safeguard provisions in the

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legislation, the Free And Fair Post Initiative (FFPI) movement expressed its disappointment at the extended deadline granted by MEPs for full liberalisation of the postal sector. Lastly, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) for its part was delighted at the vote by Parliament in favour of liberalisation and the strengthening of ‘guarantees for the universal service’.

**Conclusion**

On concluding this contribution, how could one fail to notice striking similarities between this dossier and the Services Directive? The same dramatisation at the outset of negotiations, the same – although less wide-ranging – mobilisation of the actors in support of permanent public service commitments or of greater competitiveness and, what is more, the same hesitancy by the European Parliament at second reading. With the exception of the EUL Group, the Greens and a number of (mainly Belgian and French) PES MEPs, the European Parliament seems to have found its point of balance with this proposal for complete liberalisation of the postal sector, ultimately counterbalanced only the possibility – where circumstances allow – of resorting to a compensation fund for the universal service. Indeed, it should be pointed out that the largely optional nature of such a fund does not augur well for its future activation being on the best of terms.

One difference with the Services Directive, however, lies in the fact that, since the process of postal liberalisation began over ten years ago, the domestic experiences of Member States are accessible, particularly in respect of the impact on jobs and on social and territorial cohesion. These fundamental aspects, lying at the basis of the overarching principles of European integration, have largely been passed over: for instance, the employment statistics date at best from 2004, whereas the Commission’s only study (by PLS Ramboll) relies on statistics from 2000.

In the early 1990s the co-legislator held that the ‘balanced’ solution combined increased market opening with a strengthening of universal service, by means of keeping a portfolio of services (the ‘reserved’ services) under monopoly. In 2008, the Parliament and Council will implement full liberalisation, while leaving it to the Member States to determine the
content of UPS. The single tariff and the reserved sector, the only existing safeguards for providing and funding equal treatment for all users, are the two options expressly ruled out by the Directive.

We are a long way from Community-wide harmonisation of the postal sector hoped for in the 1990s. In a globalised world, prey to competition by powerful operators, it is to be feared that this notion will not fade away. We shall have to watch carefully how circumstances in the sector evolve, particularly in terms of service quality and quality in work. In May 2006, just a few months before proposing the recently adopted Postal Directive, the European Commission delivered an assessment of social reality in its ‘Agenda for European Citizens’, which lay down the prerequisites for accessibility and solidarity. This commitment was backed by the European Council in June 2006, which emphasised accessibility and opportunity. A minor semantic difference, perhaps, but hardly insignificant.
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How can trade union rights and economic freedoms be reconciled in the EU?

The *Laval* and *Viking* cases

Introduction

The growing mobility of services and the increased posting of workers between the new and the old Member States following enlargement in May 2004 has thrown up many questions about the impact of that enlargement on regulation of the labour market and working conditions in Europe. From a group of countries with well-developed employment legislation and social protection systems, the European Union has become ‘an arena for globalisation in one continent’ (Dølvik and Eldring, 2006: 137), upsetting the prevailing conditions for governance of national labour markets. Given the wage differentials within the enlarged Europe, the mobility of service providers and the posting of workers have given rise to merciless competition and jeopardised the principle of fair competition. How, then, can freedom of movement for workers within the European Union be reconciled with the struggle against social competition? That was the underlying question which the Court of Justice of the European Communities (ECJ) had to answer in the *Viking* and *Laval* cases, in which judgments were delivered on 11 and 18 December 2007. Those cases posed the question as to whether trade unions have a right to take action (strike, blockade or boycott) against undertakings which use the economic freedoms guaranteed by the EC Treaty to lower wages or working conditions. Essentially, the Court found in favour of business, arousing concern and disappointment on the part of the trade unions.

The International Transport Workers’ Federation (ITF), an international federation bringing together 600 trade unions of transport sector workers in 140 countries, seeks to combat flags of convenience. In line with that policy of struggle and with a view to improving the working conditions of crews employed on vessels, only unions established in the country where the beneficial ownership of a vessel is situated are entitled to conclude collective agreements irrespective of the flag under which the vessel is registered.

Viking Line, a Finnish ferry operator, owns the Rosella, a ferry registered under the Finnish flag which plies the route between Tallinn and Helsinki. Its crew are members of the Finnish Seamen’s Union (FSU), affiliated to the ITF. In October 2003 Viking Line informed the FSU of its intention to reflag the Rosella and to register it in Estonia, where it had a subsidiary, so that it could employ an Estonian crew paid lower wages than those in Finland. In November 2003, at the request of the FSU, the ITF sent a circular to all its affiliates requiring them, on pain of sanction, not to enter into negotiations with Viking Line, and so preventing the Estonian unions from commencing negotiations with Viking Line. At the same time, the FSU imposed conditions on renewal of the manning agreement and announced its intention to strike in support of, on the one hand, increasing the manning on the Rosella and, on the other, conclusion of a collective agreement providing that, on any reflagging, Viking Line would continue to comply with Finnish employment law and would not lay off the crew. In August 2004, after Estonia had joined the European Union, Viking Line, determined to register the loss-making ship under an Estonian flag, brought proceedings before the courts of the United Kingdom where the ITF has

its registered office. Viking Line applied for an order that the ITF withdraw its circular and the FSU refrain from impeding its right of establishment in relation to the refflagging of the Rosella.

The Court of Appeal, in proceedings brought by the FSU and the ITF, referred to the Court of Justice of the European Communities for a preliminary ruling ten questions on the application to the case of the Treaty rules on freedom of establishment and on whether the actions of the FSU and the ITF amounted to an unjustified restriction on freedom of movement. Those issues go to the very heart of the process of European integration, the key question being whether the overriding interest of guaranteed freedom of movement within the EU can be limited, and if so, how (Blanke, 2006).

**The judgment of the European Court of Justice**

The Court held that neither the fact that the right to strike and the right to take trade union action fall outside Community competence, nor the fact that they are fundamental rights forming part and parcel of the general principles of Community law whose compliance is enforced by the Court, means that their exercise is exempt from compliance with Community law. The Treaty rules on freedom of establishment therefore do apply to collective action initiated by a trade union or a group of trade unions against an undertaking in order to induce that undertaking to enter into a collective agreement, the terms of which are liable to deter it from exercising that freedom. The Court found that, in the context of an agreement intended to regulate paid work collectively, the provisions on freedom of establishment confer rights on a private enterprise which can be relied on against a trade union or an association of trade unions exercising the autonomous power they enjoy by virtue of their trade union right to negotiate with employers or professional organisations the conditions of employment and pay of workers.

In the view of the Court, the conditions imposed on the registration of vessels must not impede freedom of establishment. Collective action such as that envisaged by the FSU, then, prevents Viking Line from exercising its right to freedom of establishment, depriving it in the host Member State of the same treatment as other economic operators established in
that State. Furthermore, collective action taken with a view to implementing the policy pursued by the ITF of combating flags of convenience – which seeks primarily to prevent ship owners from registering their vessels in a State other than that of which the beneficial owners of those ships are nationals – must be found to be such as to restrict exercise by Viking Line of its right to freedom of establishment. Such restrictions can be justified only by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective. The referring court therefore had to examine whether the jobs of the Finnish seafarers were seriously threatened by Viking’s decision to reflag the Rosella and whether the action of the unions went beyond what was necessary to achieve the objective of protecting the jobs and working conditions of their members. It was therefore necessary to ascertain whether, under national legislation and the law on collective agreements applicable to its action, other means, less restrictive of freedom of establishment, were available to the FSU to bring to a successful conclusion the collective negotiation entered into with Viking Line and whether that union had exhausted those means before embarking on the action in question.

As regards as the principle applied by the ITF, the Court hints that it is perhaps a little too rigid where, in the context of its policy of combating the use of flags of convenience, the ITF is required, when asked by one of its members, to initiate solidarity action against the beneficial owner of a vessel which is registered in a State other than that of which that owner is a national, irrespective of whether or not that owner’s exercise of its right of freedom of establishment is liable to have a harmful effect on the work or conditions of employment of its employees. Therefore, as Viking argued during the hearing without being contradicted by ITF in that regard, the policy of reserving the right of collective negotiations to trade unions of the State of which the beneficial owner of a vessel is a national is also applicable where the vessel is registered in a State which guarantees workers a higher level of social protection than they would enjoy in the first State. It will also fall to the national court to ascertain
whether the action taken by the ITF does not therefore go beyond that which is necessary to achieve its objective.

2. Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, 18 December 2007 (2)

In May 2004 the Latvian company Laval posted workers to sites in Sweden. The work to renovate and extend a school in the town of Vaxholm had been contracted to a subsidiary, L&P Baltic Bygg AB. In June 2004 Laval and Baltic Bygg and the Swedish building and public works trade union, Svenska Byggnadsarbetareförbundet, commenced negotiations on the wage rates for posted workers and on signature by Laval of the collective agreement for the construction sector. The negotiations were unsuccessful but, in September and in October, Laval entered into collective agreements with the Latvian building trade union, of which 65% of the posted workers were members. On 2 November 2004 the Swedish building union initiated collective action in the form of a blockade of all Laval’s worksites in Sweden, which was joined in sympathy by the Swedish electricians’ union, preventing electricians from providing services to Laval. Those unions had none of their members amongst the personnel of Laval. As a result of the lengthy interruption of the work, Baltic Bygg was declared bankrupt and the posted workers returned to Latvia.

The Arbetsdomstolen, hearing an appeal brought by Laval on the legality of the collective action and damages for the loss incurred, referred two preliminary questions to the European Court of Justice: do the provisions of the EC Treaty on the freedom to provide services and of Directive 96/71 (Council of the European Union, 1997) allow trade unions to engage in collective action in the form of a strike to force a foreign temporary provider of services to sign a collective agreement in respect of terms and conditions of employment where the legislation transposing the Directive in the host country contains no express provision on

2 ECJ, Case C-341/05, Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, 18 December 2007, not yet published.
application of the terms and conditions of employment in the collective agreement? Do those provisions preclude application of the *Lex Britannia* (³) to collective action initiated by Swedish trade unions against a foreign temporary provider of services?

**The judgement of the European Court of Justice**

The Court not only confirmed that the right to take collective action must be upheld as a fundamental right forming an integral part of the general principles of Community law whose compliance is enforced by the Court, a right whose exercise may be subject to certain restrictions. As it had done in the *Viking* judgment, the Court pointed out that under Article 3 of the Treaty of Rome the activities of the Community are to include not only an internal market characterised by the abolition, as between Member States, of obstacles to the free movement but also a policy in the social sphere. Since the Community has not only an economic but also a social purpose, the rights under the provisions of the EC Treaty on the free movement of goods, persons, services and capital must be balanced against the objectives pursued by social policy, which include, as is clear from the first paragraph of Article 136 EC, *inter alia*, improved living and working conditions, so as to make possible their harmonisation while improvement is being maintained, proper social protection and dialogue between management and labour. The Court stated in terms identical to the *Viking* judgment that the right to take collective action for the protection of the workers of the host State against possible social dumping may constitute an overriding reason of public interest justifying a restriction of one of the fundamental freedoms

³ The Law on workers' participation in negotiated decisions lays down rules applicable to, *inter alia*, the right to bargaining, collective agreements, arbitration in collective labour disputes and the obligation of social peace, and contains provisions restricting the right of employees' organisations to take collective action. Article 42 prohibits collective action taken in order to have a collective agreement concluded between third parties set aside or amended. The *Lex Britannia* removes that prohibition from collective action against employers operating temporarily in Sweden.
guaranteed by the Treaty. It broke new ground by holding that a blockade of sites by a trade union in the host Member State, intended to safeguard terms and conditions of employment set at a particular level for workers posted in the context of a cross-border provision of services, does fall within the objective of the protection of workers.

However, application of those general principles to the case in hand proved less favourable to the unions’ case. According to the Court, the blockade in question was unjustified, not because it was not aimed at protecting workers, but because it was intended to force a foreign provider of services to comply with a sectoral collective agreement not satisfying the requirements laid down by Directive 96/71 on the posting of workers (Council of the European Union, 1997) in order to be relied on against foreign undertakings. This Directive lays down a nucleus of mandatory rules for minimum protection to be observed by employers who post workers to another Member State to perform temporary work in that State. Those rules include minimum rates of pay. Under Article 3, the terms and conditions of employment guaranteed for workers posted in the host Member State are determined by law, regulation or administrative provision and/or, in the building sector, by collective agreements or arbitration awards which have been declared universally applicable. The Swedish collective agreement with which Laval would have to comply did not satisfy the requirements under Article 3(8) which define what must be understood by ‘collective agreements or arbitration awards which have been declared universally applicable’. The Swedish law on the posting of workers, the lag om utstationering av arbetstagare, lays down the terms and conditions of employment in respect of the matters listed in Directive 96/71/EC, with the exception of minimum rates of pay. The law is silent as regards remuneration. In Sweden the setting of wages has traditionally been left to the social partners by means of collective bargaining and the resulting collective agreements, which are not declared to be of universal application.

That difficulty could have been averted had Sweden availed itself of the option which Article 3(8) of the Directive gives Member States to base themselves on collective agreements which are generally applicable to all

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similar undertakings in the industry concerned or those concluded by the most representative employers’ and labour organisations at national level and which are applied throughout the national territory. Since Sweden had not done this, the collective agreement invoked by the trade unions, whose terms go beyond the minimal protection afforded by Directive 96/71/EC, cannot be taken into account because, the Court notes, bargaining in the construction sector takes place on a case-by-case basis, at the place of work, having regard to the qualifications and tasks of the employees concerned. This gives rise to uncertainty for the service provider as to the extent of its obligations because it forms part of a national context characterised by a lack of provisions, of any kind, which are sufficiently precise and accessible to ensure that it is not impossible or excessively difficult in practice for such an undertaking to determine the obligations with which it is required to comply as regards minimum pay. The union’s action cannot therefore justify a restriction on the freedom to provide services.

The Court went further, taking the view that national rules which fail to take into account collective agreements to which undertakings that post workers to Sweden are already bound in the Member State in which they are established, discriminate against such undertakings, in so far as those rules treat them in the same way as national undertakings which have not concluded a collective agreement. Such discriminatory rules can be justified only on grounds of law and order, public safety or public health. The application of those rules to foreign undertakings which are bound by collective agreements to which Swedish law does not directly apply is intended, first, to allow trade unions to take action to ensure that all employers operating on the Swedish labour market pay wages and apply other terms and conditions of employment in line with those usual in Sweden, and, secondly, to create a climate of fair competition, on an equal basis, between Swedish employers and entrepreneurs from other Member States. Since those considerations are not motivated by law and order, public safety or public health, such discrimination cannot be justified.
Comments

In the Viking case, the issue raised was that of the legality of collective action to dissuade a company from relocating within the European Union to take advantage of employment legislation which was more advantageous to employers because it was less protective to workers. In the Laval case, the question was whether the Swedish trade unions could oblige a Latvian company which posted workers to Sweden to comply with pay conditions resulting from a sectoral collective agreement. In both cases, the exercise of trade union rights within the EU came into conflict with the freedom to provide services and freedom of establishment, cornerstones of the internal market. In both cases, the companies sought to make use of the freedoms guaranteed by the Treaty purely and simply to replace workers in the ‘Group of 15’ with workers from the new Member States (Donaghey and Teague, 2006).

The judgments delivered failed to live up to the unions’ expectations. The Court did not however say that economic freedoms must in all circumstances prevail over trade union action taking the form of strikes or blockades. On the contrary, it underscored the social dimension of the European Union and acknowledged the right to take collective action as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures (4). Nevertheless, according to the European Trade Union Confederation (ETUC), the decision in Viking could fail to give sufficient protection to the rights of organised labour in a modern transnational economy. In the words of John Monks, General Secretary of the ETUC, ‘this judgement clearly gives protection to unions acting at local and national level when challenging the freedom of establishment of companies. However, it is less clear about transnational trade union rights. In the run up to the solemn proclamation of the Charter of Fundamental Rights and the

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4 Brian Bercusson put forward other possible solutions for the Laval and Viking cases based on the Opinions of Advocates General Maduro and Mengozzi (see Bercusson, 2007).
adoption of the Reform Treaty, we would have welcomed a more clear and unambiguous recognition of the rights of unions to maintain and defend workers’ rights and equal treatment and to cooperate cross-border, to counterbalance the power of organised business that is increasingly going global’ (ETUC, 2007a).

For its part, the Laval case highlighted a feature of the Scandinavian model: the importance of tradition and practice, sometimes formalised by agreements between the social partners but not legally binding, and the low level of legal regulation of industrial relations (Bruun, 2007). The ETUC has moreover expressed particular concern at the implications of the Laval judgment for the Swedish system of collective agreements (along with those of the other Nordic countries). It believes that although the ruling reinforces the Viking decision as regards recognition in Community law of the right to strike as a fundamental right and the right of trade unions to take strike action against social dumping, it lays down a real challenge to the Swedish system of collective bargaining (Laitner and Anderson, 2007). A decision like this will necessitate a review of how the directive on posted workers is implemented in those countries. A narrow interpretation of the ‘posting’ directive, adds the ETUC, could have negative implications for other countries’ systems, and repercussions on the trade unions’ ability to encourage equal treatment and the protection of workers irrespective of their nationality (ETUC, 2007b).

We would add that both Advocates General took a different approach from that of the Court and sided with the arguments of the trade unions (Blanke, 2007). In Laval, Advocate General Mengozzi took the view that Community law does not preclude ‘trade unions from attempting, by means of collective action in the form of a blockade and solidarity action, to compel a service provider of another Member State to subscribe to the rate of pay determined in accordance with a collective agreement which is applicable in practice to domestic undertakings in the same sector that are in a similar situation and was concluded in the first Member State, to whose territory workers of the other Member State are temporarily
posted, provided that the collective action is motivated by public interest objectives, such as the protection of workers and the fight against social dumping, and is not carried out in a manner that is disproportionate to the attainment of those objectives’ (5). Similarly, Advocate General Maduro held in Viking that ‘Article 43 EC does not preclude a trade union or an association of trade unions from taking collective action which has the effect of restricting the right of establishment of an undertaking that intends to relocate to another Member State, in order to protect the workers of that undertaking’ (6). Matters are different where collective action prevents a company established in one Member State from lawfully providing its services in another Member State, once relocation has taken place (Blanke, 2006).

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5 Opinion of Advocate General Mengozzi in Case C-341/05, Laval un Partneri Ltd v Svenska Byggnadsarbetarförbundet and Others, delivered on 23 May 2007.

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Future prospects
A paradigm shift

The principal challenges now confronting the European Union fall into three major categories:

- creating and promoting internationally a genuine model of sustainable development with all the necessary economic, social and environmental aspects (van Ypersele, Begg);
- establishing regulatory instruments to govern the conduct of economic and financial actors with a view to putting economics and finance at the service of worldwide sustainable development (Defraigne);
- fostering a model of cooperative relations with third countries that comprises diplomacy, trade, cooperation and migration flows (Lapeyre, Barbier).

These three challenges raise both structural and long-term issues. They call for a fresh response from the EU: a new strategic programme must be devised for the Union, based on a new paradigm. In other words, it is not a matter of making peripheral adjustments to an improved Lisbon strategy (or what is left of it), but of inventing a fresh strategy which places sustainable development at the heart of Europe’s objectives and makes it a yardstick for assessing all EU initiatives and policies.

The Lisbon strategy adopted in 2000 was initially constructed as a compromise between a social-democratic vision (social-democrats either held absolute power or were in a majority in thirteen of the fifteen governments at the time) and an economic approach based on endogenous growth theory. The goal, let us not forget, was ‘to become the most ...
competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’ (European Council, 2000: paragraph 5). The qualifier ‘sustainable’ was attached only very symbolically to ‘economic growth’. Even though the Göteborg European Council added a ‘sustainable development’ dimension to the Lisbon strategy in June 2001, nothing much came of it. General guidelines only were set out in four areas: climate change, transport, public health and natural resources.

The most significant modification of the Lisbon strategy occurred in 2004-2005 owing, on the one hand, to the difficulty of implementing objectives which were too numerous and not prioritised, but above all, on the other hand, to political change in the Member States – the emergence of centre-right governments – and in the European Parliament. The point of balance found in the original compromise gradually shifted. The Kok report (2004) recommended a relaunch of the strategy, gearing it mainly to economic growth targets: ‘improved economic growth and increased employment provide the means to sustain social cohesion and environmental sustainability’ (our emphasis) (Kok et al., 2004: 6). The Commission endorsed these new priorities in 2005 (CEC, 2005), since when the Lisbon strategy has concentrated exclusively on the competitiveness of Europe's economy, with a fixation on the number of jobs created. As for the environment, it now merely has to be ‘conserved’. This modification naturally has little to do with defining and pursuing real sustainable development. Competitiveness has become the sole yardstick, from which social and environmental benefits are expected to flow: ‘we need a dynamic economy to fuel our wider social and environmental ambitions’ (CEC, 2005: 4).

This reorientation glosses over issues such as quality in work, the working poor, social exclusion, poverty and – more broadly – sustainable development, all of which are relegated to the margins or, at most, taken into consideration only provided that they do not hinder competitiveness. Some semi-autonomous strategies have been developed in this context (the open method of coordination in the social field; the sustainable development and energy strategies).
Job creation was indeed a live issue in 2007. In a press release dated 18 February 2008, the Commission expressed satisfaction that ‘by the third quarter of 2007, the overall EU employment rate had increased to 66%, up from 65% one year earlier’ (CEC, 2008). But it immediately added: ‘On the downside, growth in hourly labour costs has tended to pick up (...), reflecting strong wage increases in new Member States’. The fact that a narrowing of the wage gap by the central and eastern European countries is regarded as a ‘downside’ speaks volumes about the order of priorities: competitiveness and job creation, whatever the cost. The above-mentioned press release makes no mention at all of the quality of those jobs, even though the European Commission itself had previously noted that job quality was inadequate and even, in some cases, deteriorating (CEC, 2007: 6-7): ‘Progress in the quest to increase quality at work again remains mixed and implementation of policies to further this aim limited. In-work poverty still affects 8% of workers in the EU. While 2006 saw some further improvements in youth education levels there has been limited progress in other elements of quality at work, including in particular the transitions from insecure to secure jobs, and the issue of reducing labour market segmentation, the level of which is currently on the rise in many Member States. Adult participation in lifelong learning, one of the key indicators for quality at work shows stagnating or even declining trends’. It is hard to deplore the phenomenon of in-work poverty and wage rises at the same time!

Thus the ideological and economic foundations of Lisbon are unstable: the ‘dynamic economy’ which is supposed to enable us ‘to fuel our wider social and environmental ambitions’ is not working. The virtuous circle does not exist; it aims at the very most to rally advocates of social progress and environmental protection to the cause of economic dynamism.

Sustainable development

We therefore believe that the European Union must enter a new phase. The new phase should not entail a change of focus aimed at reintroducing a social dimension related to employment and cohesion (a sort of ‘Lisbon +’, which would be highly improbable given the current balance of power), but should amount to a paradigm shift. What is needed is for
social and employment policies, as well as social protection, to be embedded in the sustainable development agenda; they should become the number-one priority and the economic paradigm should be altered accordingly. The current sustainable development strategy already encompasses social objectives: public health, social exclusion and poverty in the world. We must go further in this direction, setting out the social agenda not as an additional branch of the Lisbon strategy but as the foundation stone of the sustainable development strategy. In keeping with this new integrated approach, the economic paradigm must be adapted in two respects:

- from now on we must rely on cooperation, and no longer exclusively on competition, to meet the challenges facing the EU. A programme of deregulation currently lies at the heart of the Lisbon agenda, pitting economies and legislations against one another in a bid to heighten the overall effectiveness of the economic system. Cooperative, sustainable economies, as opposed to rival competitive economies, will enable us to meet the challenges of climate disruption and all of its social implications;

- whereas Lisbon is a short-term (three-year) or medium-term (ten-year) strategy, the sustainable development strategy spans the medium and long term. A different timeframe is therefore needed. In the past few years, the scientific community has gained a fairly precise knowledge of what awaits us in terms of climate change and its long-term repercussions on human activity. The scientists tell us that there is still time to bring these changes under control. But in order to do so, economic policies must look beyond the short and medium term.

Europe puts itself – at least in its pronouncements – at the forefront of this approach and claims to be constructing a long-term development model. We must take note of this good will and draw all the appropriate consequences, beginning with a systematic analysis of European policies (economic, agricultural, competition, transport etc.) and their compatibility with sustainable development goals. The next step is to anticipate and manage change, which will not happen without political and social tension, nor without transfers of production. Such a paradigm
shift is likely to have many consequences on EU policies (restructuring, vocational training, employment policy, competition policy etc.), just a few of which we shall outline in the following paragraphs.

As far as the Stability and Growth Pact is concerned, the ‘zero deficit’ goal has become meaningless (if ever it was meaningful), since considerable public and private investment is required to fulfil present and future demands. It will be necessary to envisage a genuine ‘stability and sustainable development pact’ in keeping with the need to invest in public transport, renewable energy and research and development. It is highly likely, according to the IPCC, that the effects of climate change will cause net annual costs to increase as time goes by and as global temperatures rise. At the same time, cuts in greenhouse gas emissions will serve to reduce air pollution and the associated health costs, improve energy security and boost employment. We would recall here that the reform of the Pact adopted by the Council on 27 June 2005 (Council of the European Union, 2005a) makes it possible, in the context of budgetary surveillance, to take into account ‘major’ structural reforms having a verifiably positive impact on the long-term viability of public finances. The same already applies to pension reforms in particular. A new stability and sustainable development pact should endeavour to interpret the ‘relevant factors’ which the Commission is nowadays expected to take into account when assessing deficits (Council of the European Union, 2005b), in a genuine effort to combat climate change. It is a matter not so much of radically reshaping the Pact as of bringing it into line with the European discourse on sustainable development.

Fiscal policy, and above all ‘green’ or environmental taxation, must likewise be included in this overall rethink. From now on, we should avoid a situation where each Member State decides to introduce green taxes in an individual and uncoordinated fashion; there is scope here for establishing European tax incentives.

With regard to European competition policy, the rules on State aid allow for derogations in a number of areas (in particular for heritage conservation) but not for the promotion of sustainable development, even though ecosystems are our principal heritage. Initial steps in this
direction were taken by the Commission (in 2001 and 2008) when it put forward guidelines on State aid awarded for the purpose of environmental protection. But we must go further, since the environment is only one aspect of sustainable development. Similar environmental exemptions must be applied to the development of social cohesion. The very opposite happens at present, in fact: how can it be justifiable to apply competition rules blindly to sectors having nothing – or almost nothing – to do with the market sector, and whose goal is not profit but well-being and cohesion? The above-mentioned paradigm shift makes perfect sense here: cooperation rather than competition.

From a sustainable development perspective, moreover, there is a need to make up for the dearth of impact studies on sectoral liberalisation (telecommunications, transport, electricity, postal services etc.) in terms of consumption of resources and energy, and as regards quality in work and the sustainability of production. Liberalisation has so far been justified exclusively on the grounds of consumers' interests. It is high time that two other facets of the consumer were taken into consideration: the citizen and the worker.

The link between the new paradigm and European transport policy is obvious. The Commission adopted an ambitious White Paper in September 2001, putting forward sixty or so measures aimed at establishing a new balance between modes of transport by 2010 (CEC, 2001): reviving the railways, promoting sea and river transport, curbing the growth in air transport and developing intermodality. At the time of the mid-term review of this White Paper in 2006, however, the Commission changed its tune and advocated 'adjusting the balance between the modes', focusing on the contribution made by the different modes of transport including roads (CEC, 2006). Hence the modal split has given way to 'co-modality', which constitutes an undoubted step backwards in terms of sustainable development. As well as returning to a controlled modal split strategy, the new transport policy must be designed with a view to social cohesion. It is not just a matter of creating high-speed rail freight corridors, but also of connecting up different geographical areas. That is how sustainable development should play out...
in the common transport policy, and it is quite a demanding task politically.

Agriculture is the prime example of a policy where environmental, social and development aspects all come together at international level. Sustainable agriculture is agriculture that respects both the environment, workers in the sector (social aspects), consumers (public health) and populations (food sovereignty). From this point of view, prioritising exports to world markets should be prohibited. After all, agriculture is not a kind of production just like any other; its specific role in life, health and the environment must be recognised.

With regard to social policies (employment, management of restructuring, vocational training, Structural Fund activities etc.), the new economic paradigm clearly necessitates a redirection of EU action. For instance, employment in the energy generation sector is sensitive to energy-saving policies. Yet according to the Syndex study (Syndex, 2007), the net effect of energy-saving on employment is positive, although such projections are very difficult to validate since they depend on many variables. Measures to cut emissions in the EU could significantly accelerate the relocation of jobs in energy-intensive sectors of industry which are already largely globalised, such as iron and steel. The transport sector has huge potential for job creation: in the railways and public transport. On the other hand, employment in the road haulage and automobile sectors would fall in comparison with a ‘business as usual’ scenario. A substantial untapped reservoir of employment likewise exists in the building and construction industry, in connection with the energy efficiency of buildings, but this sector will have to meet the challenges of innovation and training in the art of sustainable construction. As the Syndex study points out, the net impact on economic activity and employment will be heavily dependent on the introduction of ambitious, effective economic and social policies. The ETUC adopts a similar stance: it ‘proposes the introduction of a “European low-carbon economy adjustment fund”, to be financed notably by a proportion of the income from the auctioning of emission permits, the object being to help workers affected by the transformations associated with the transition to a very
low carbon emission society, to assist them with their re-training and job search efforts’ (ETUC, 2007: 2). What is more, attenuation measures will significantly alter the supply of, and demand for, jobs and skills within and between economic sectors. Thus the sectoral impact on employment must be assessed in terms of opportunities and risks rather than in terms of ‘winners’ and ‘losers’. Furthermore, it is in this new context that we will have to address issues such as quality in work, social dialogue and employee participation, but also the new training and skills required by workers owing to the adaptation of Europe’s economy to sustainable development, as well as their involvement in innovation and in assessing its social effects. ‘Social Europe’ is manifestly an immense undertaking.

What we need in order to become a low-carbon economy (1), therefore, is an overall strategy for social and territorial cohesion. Over and above the repercussions on the Union’s internal policies, the pursuit of a new development model also implies intensive interaction on the external front. Rather than pitting economies against one another, this new paradigm entails seeking out their complementary features, because a CO2 reduction in one country may be cancelled out by a rise in another (although the rich countries’ enormous debt in this regard must be taken into account). Both internally and externally, then, Europe must encourage a dynamic of bilateral and multilateral international cooperation aimed at a global reduction in CO2. The following example illustrates the links between such cooperation and the fight against climate change: Europe’s cement manufacturers have threatened to stop investing in Europe owing to the price to be paid for their greenhouse gas emissions (2). They could decide to shut down their European plants,

1 The Lisbon strategy has failed in this respect too. The Joint Employment Report states: ‘In spite of the positive economic environment, in most countries there was no reduction of relative poverty and employment rates increases for vulnerable groups have been more limited than those for the labour force in general. In the EU, the percentage of adults and children living in jobless households has remained unchanged since 2000 at nearly 10%’ (CEC, 2007: 7).

2 See among other publications Le Monde of 15 February 2008.
transfer their investments out of the continent and import cement from countries not subject to the tax, thereby adding to their greenhouse gas emissions by transporting the product over greater distances. The best solution for Europe would be to negotiate a worldwide agreement among industrialists in the sector, under which they would voluntarily reduce their emissions in all countries. Hence sustainable development and international cooperation must go hand in hand.

Clearly, if Europe’s discourse on sustainable development is to be credible, it must be successfully incorporated into economic, budgetary, fiscal, social, transport, agricultural, development cooperation and other policies, all of which must henceforth be gauged according to their sustainability. Such a paradigm shift calls for new political, economic and social alliances. Many non-governmental organisations, associations and other groups are rallying to this cause. It is possible to find common ground here, but also to pre-empt conflict (especially between CO2 reduction targets and industrial restructuring). Coming to an understanding with the employers is not impossible, since companies in certain sectors are seeking to profit from this new niche to increase their market share. Any ambiguity as to the ultimate goal should be avoided, however: the aim is not to make competitive capitalism ‘go green’, but rather to change the nature of economic growth and the objectives of development. The responsibilities of national, regional and European public authorities must be reaffirmed to this end. Most national and multinational companies, in defence of their own competitive position, will not spontaneously go down the sustainable development road (except in their public relations pronouncements). On the contrary, companies will be tempted to pressurise policy-makers into serving their interests, as we saw in Europe not long ago with the lobbying onslaught launched during the elaboration of the REACH Regulation and, more recently (January 2008) when the European climate plan was unveiled (see, among others, the above-mentioned reaction of the cement manufacturers). Effective pursuit of a sustainable development model therefore calls for public action which is transparent and democratic, but also impermeable to the specific demands of industry. In order to ensure public action of this kind, those working in the European institutions and the Member
States’ governments will have to heed the maxim of the writer James Freeman Clarke (1810-1888): ‘A politician thinks of the next election. A statesman, of the next generation’.

References


ETUC (2007), ETUC position on the revision of the EU emissions trading directive, Position adopted by the ETUC Executive Committee in their meeting held in Brussels on 5-6 December 2007 (http://www.etuc.org/a/4408).


Chronology 2007
Key events in European social policy

JANUARY

10 January: Trade union action
The Court of Justice of the European Communities (ECJ) hears the explanations of the parties in the Viking case concerning the right to freedom of movement and the right to collective trade union action (see also 11 and 18 December) (ECJ, 23 November 2005, ITF, Finnish Seamen’s Union, Viking Line ABP, Viking Line Eesti, C-485/05, OJ C 060 of 11 March 2006, pp.16-18).

15 January: European Parliament
Announcement of the formation of the far-right political group ‘Identity, Tradition and Sovereignty’ (ITS) (see also 10 November 2007).

18 January: Employment
Meeting in Berlin of the European social partners, the ‘social troika’, the European Commission, the Social Platform and the European Parliament in order to feed into the informal meeting of the European Employment and Social Affairs Ministers on the topic of ‘quality jobs’ (Bulletin of the European Union, No.9348 of 20 January 2007).

18-20 January: Employment
23 January: Social dialogue
UNICE, the European-level organisation representing private sector employers, renames itself ‘BusinessEurope’.

29 January: Social dialogue – discrimination

30 January: Equal opportunities
Launch of the European Year (2007) of Equal Opportunities for All, in Berlin, at the first Equality Summit bringing together ministers, social partner representatives, NGOs and public authorities.

30 January: Racism and xenophobia

31 January: Employment – unemployment
The unemployment statistics published by Eurostat confirm that the employment situation has improved throughout Europe (Bulletin of the European Union, No.9356 of 1 February 2007).

FEBRUARY
7 February: Social Europe
Nine EU Member States – Belgium, Luxembourg, Bulgaria, Cyprus, Spain, France, Greece, Hungary and Italy – sign in Paris a declaration entitled ‘Un nouvel élan pour l’Europe sociale’. These countries believe it ‘necessary to link the relaunch of Social Europe with the revival of the institutional dynamic’ (http://www.rpfrance.eu/spip.php?article665).
8 February: Economic immigration
The European Union prepares to open, on an experimental basis, the first ‘European employment agency’ in Mali, serving as a gateway for the recruitment of Malian workers wishing to move to the EU (IP/07/167).

19 February: Social protection

21 February: Health and safety

22 February: Employment

22 February: Elderly people
The Employment, Social Policy, Health and Consumer Affairs Council supports the establishment of a ‘European Alliance for Families’ proposed by the German presidency of the Council (6226/07-Presse 23).

26 February: Fundamental rights
26 February: ‘Social reality’

26 February: Wages and purchasing power
While the President of the Eurogroup, Mr Juncker, and the President of the ECB, Mr Trichet, oppose wage rises in Europe, the euro zone Finance Ministers launch a process of reflection on the redistribution of the fruits of growth (http://www.gouvernement.lu/salle_presse/communiques/2007/02/23ecofin/index.html).

MARCH

1 March: Fundamental rights

7 March: Discrimination

8 March: Employment
Tripartite Social Summit: Commission President, José Manuel Barroso, and Angela Merkel, German Chancellor, current President of the European Council, discuss with employers’ and workers’ representatives progress on the EU’s jobs and growth goals (IP/07/308).

8-9 March: Sustainable development
The European Council commits itself to binding targets to reduce greenhouse gas emissions (- 20%) and to boost renewable energy use by 2020. Brussels European Council, Presidency Conclusions, 8-9 March 2007.
12 March: Sustainable development
The ETUC calls on the Commission to set up a European social partner platform to investigate ways of achieving the targets for the reduction of CO2 emissions by 2020 while strengthening employment and innovation in Europe (http://www.etuc.org/a/3439).

13 March: European social model
At the European welfare state congress held by the German trade union confederation DGB, the German Chancellor and President-in-Office of the European Council, Angela Merkel, calls on European countries to vigorously uphold the European social model vis-à-vis the rest of the world. (http://www.bundesregierung.de/Content/EN/Artikel/2007/03/2007-03-13-merkel-fuer-soziales-europa-kaempfen__en.html).

15 March: Social dialogue
The European Federation of Public Service Unions (EPSU), the European Mine, Chemical and Energy Workers’ Federation (EMCEF) and the European Union of the Natural Gas Industry (EUROGAS) launch the sectoral social dialogue committee for the natural gas industry.

15-16 March: Trade union action
European days of action held at Alcatel-Lucent and at Airbus.

19 March: European trade unionism
The Pan-European Regional Council (PERC) of the International Trade Union Confederation (ITUC) holds its Founding Assembly in Rome (Italy). Guy Ryder is elected President and John Monks, General Secretary.

21 March: Services of general interest
20-21 March: Labour law

24 March: Social Europe

APRIL

11 April: Working time

18 April: Social dialogue

19 April: Racism and xenophobia
The 27 Member States reach a compromise on the decision aimed at punishing racism and xenophobia (see 30 January 2007). 2794th Council meeting Justice and Home Affairs, Luxembourg, 19-20 April 2007 (8364/07-Presse 77).

19 April: Fundamental rights and citizenship
20 April: Flexicurity
European Commission conference on future proposals regarding ‘flexicurity’ in the European Union. The European Trade Union Confederation (ETUC) calls for a socially acceptable balance between the needs of companies and the well-being of workers (http://www.etuc.org/a/4288).

20 April: Health services
At the Informal Health Council in Aachen (Germany), the European Commission presents the results of the public consultation concerning Community action in the field of health services. According to this consultation, a majority of respondents favour Community action in the field of health services, revolving around legislation and practical support for cooperation between European health systems (IP/07/524).

20 April: Information and consultation
At a meeting organised by the ETUC, some 200 European Works Council (EWC) members call for an urgent review of the EWC Directive (http://www.etuc.org/a/3586).

26 April: Social dialogue
The General Secretaries of the ETUC, BusinessEurope, UEAPME and CEEP officially sign a framework agreement on harassment and violence at work. Framework agreement on harassment and violence at work (http://www.etuc.org/a/3574).

28 April: Health and safety
An International Workers’ Memorial Day to commemorate the dead and injured is inaugurated at the initiative of trade unions all around the world.

May
1 May: Free movement
The Netherlands government officially opens its labour market to workers from the States having acceded to the European Union in 2004 (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia).
6 May: Lifelong learning

16 May: Liberalisation
The postal workers’ trade unions demand the resignation of European Commissioner Charlie McCreevy, whom they accuse of being over-hasty in wishing to deregulate European postal services without ensuring the funding of a universal postal service for all citizens.

21-24 May: European trade unionism

23 May: Trade union action

29 May: Social Europe
First meeting of the Member States that signed the Paris Declaration on the relaunch of Social Europe (see 14 February).

30 May: Employment
30 May: Social dialogue

30 May: Economic and social cohesion

30 May: Pensions

JUNE

4 June: Health and safety
Launch by the European Agency for Safety and Health at Work of the European campaign ‘Lighten the load’ aiming to combat musculoskeletal disorders (MSDs) at work. The Commission declares its readiness to legislate on the prevention of musculoskeletal disorders (http://ew2007.osha.europa.eu/about).

6 June: Asylum and immigration
The Commission announces a comprehensive package on asylum. This includes a Green Paper to launch a debate on the future of the Common European Asylum System, a proposal for a Directive which extends the possibility of granting long-term residence status to beneficiaries of international protection and an evaluation report on the Dublin system (IP/07/768).

6 June: Monetary policy
The European Central Bank raises its key interest rate to 4%.
13 June: Posting of workers
The Commission presents its assessment of national measures applied by Member States in the context of supervising the posting of workers, as well as the situation in terms of administrative cooperation (IP/07/817). According to the ETUC, the Commission is threatening the balance inherent in the final agreement reached on the Services Directive between the freedom to provide cross-border services and the need for effective mechanisms to oversee and enforce labour standards in the host country.

14 June: Health and safety
The European Court of Justice delivers its ruling in the case brought by the Commission against the United Kingdom for failing to transpose the 1989 framework directive on the health and safety of workers. In its ruling, the Court condones the use of the clause ‘reasonably practicable’ in UK health and safety legislation. It thus accepts that the employer’s safety obligations may be limited by economic considerations. The ETUC believes that this decision undermines the inalienable right of European workers to protection of their health and safety at work (Press Release No.41/07 of 14 June 2007 – Judgment of the Court of Justice in Case C-127/05).

15 June: Social dialogue
Ernest Antoine Seillière of France is re-elected president of BusinessEurope with a two-year mandate (1 July 2007 – 30 June 2009).

20 June: Fundamental rights
3,000 trade unionists demonstrate in Brussels in favour of incorporating the Charter of Fundamental Rights into any new European constitutional treaty.

20 June: Social dialogue
The European Commission launches the ‘First phase consultation of social partners under Article 138(2) of the EC Treaty concerning cross-border transfers of undertakings, businesses or parts of undertakings or businesses’ (http://ec.europa.eu/employment_social/social_dialogue/docs/cross_border_transfer_en.pdf).
20 June: Pensions
The European Parliament adopts the proposal for a directive on supplementary pensions by a large majority. COM (2005) 507 final of 20 October 2005. The European Trade Union Confederation (ETUC) considers that this text is a step back from the Commission’s initial proposal (http://www.etuc.org/a/3748).

21-22 June: The euro
At the European Council, the Heads of State and Government give the go-ahead for the entry of Cyprus and Malta into the euro zone on 1 January 2008. Brussels European Council, Presidency Conclusions, Brussels, 21 and 22 June 2007 (D/07/2).

22 June: Reform treaty
The European Council reaches a political agreement on the content of the future European Reform Treaty. Brussels European Council, Presidency Conclusions, Brussels, 21 and 22 June 2007 (D/07/2).

25 June: Restructuring
The Commission approves the first two applications for European Globalisation Adjustment Fund (EGF) money concerning Peugeot (PSA) and Renault (IP/07/880).

27 June: Flexicurity

The ETUC regrets the bias in the Communication against the protection and stability of jobs, which is a key workers’ right as well as the basis for productive enterprises (http://www.etuc.org/a/3765).

28 June: Structural Funds
A high-level conference is held in Potsdam (Germany) to mark the 50th anniversary of the European Social Fund (ESF).
29 June: Sustainable development

July
4 July: Discrimination
The European Commission launches an online consultation on combating discrimination in the Member States and at European Union (EU) level, to help draw up new measures to fight against discrimination on grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation (http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/green_en.htm).

6 July: Sustainable development
A study carried out for the European Commission by the European Trade Union Confederation (ETUC), the Social Development Agency (SDA), Syndex (France), Wuppertal Institute (Germany) and Istas (Spain) reveals that climate change and policies to attenuate climate change constitute a serious and unprecedented challenge for employment in Europe. ETUC, Syndex, ISTAS, SDA and Wuppertal Institute, ‘Climate Change and employment. Impact on employment in the European Union-25 of climate change and CO2 emission reduction measures by 2030’ (http://www.tradeunionpress.eu/Web/EN/Activities/Environment/Study climatechange/rapport.pdf).

6 July: Fight against terrorism

6 July: Flexicurity
An informal meeting of Employment and Social Affairs Ministers is held at Guimarães; some 7,000 Portuguese trade unionists demonstrate against the concept of flexicurity (MEMO/07/275).
11 July: Social dialogue

11 July: Liberalisation
The European Parliament votes by a huge majority (512 in favour, 155 against and 13 abstentions) to abolish the monopoly on the delivery of mail weighing less than 50 g on 1 January 2011.

18 July: Discrimination

23 July: Reform Treaty
Opening of the Intergovernmental Conference geared to drafting the new treaty.

AUGUST
10 August: Immigration

SEPTEMBER
12 September: Immigration
13 September: Flexicurity

John Monks, General Secretary of the European Trade Union Confederation (ETUC), calls on the Council, the Commission and the European social partners to structure the flexibility debate around an agenda including in particular a directive on temporary agency work; establishment of the right to request a full-time job for the millions of involuntary part-time workers; and assurances that labour law covers and protects all workers who find themselves in a de facto relationship of subordination.

14 September: Better regulation
The President of the European Commission, Mr Barroso, appoints Edmund Stoiber to head a High Level Expert Group on the Reduction of Administrative Burdens.

17 September: Services of general interest
At a Forum organised in Lisbon by the Portuguese presidency of the Union, under the auspices of the European Parliament, Commissioner Vladimir Spidla announces the adoption ‘sooner or later’ of a legislative instrument for social services of general interest (Speech 07/536).

18 September: Asylum and immigration

19 September: Liberalisation
20 September: Flexicurity

OCTOBER
1 October: Liberalisation
The Telecommunications Council reaches a political agreement on full liberalisation of postal services by the end of 2010 at the latest. UNI-Europa Post denounces this agreement; to the European Trade Union Confederation (ETUC), this sectoral liberalisation demonstrates that the Commission has no overall vision of the need for universal services. 2821st Council meeting Transport, Telecommunications and Energy, Luxembourg, 1st and 2nd October 2007 (13066/07-Presse 203).

8 October: Employment
Celebrating ten years of the European Employment Strategy (EES) (IP/07/1455).

9 October: Flexicurity

17 October: Social exclusion
18 October: Social dialogue

22 October: Reform treaty
The Heads of State and Government reach agreement on the new European amending treaty. For the ETUC, the social dimension of the European Union ‘is paying a price for the agreement’: the new treaty is notable for its lack of ambition and will not help advance social measures that will win back popular support for the European project (http://www.etuc.org/a/4139).

23 October: Immigration

24 October: Labour law
24 October: Taxation
Sahra Wagenknecht (GUE/NGL, Germany) withdraws her name from the ‘Report on the contribution of taxation and customs policies to the Lisbon Strategy’ adopted by MEPs in plenary session, in which the Parliament supports ‘reasonable’ fiscal competition in the EU (Report A6-0391/2007 of 10 October 2007).

NOVEMBER

1 November: Free movement
The Luxembourg government fully opens up its labour market to nationals of eight Member States which joined the EU in May 2004.

4 November: Flexicurity
‘Declaration of European lawyers. The European Commission’s Flexicurity Concept. For a labour law which really protects workers’. This is a joint Declaration of the European Association of Lawyers for Democracy and World Human Rights (ELDH), the Progress Lawyers Network (Belgium) and the European Democratic Lawyers (EDL) (http://www.ejdm.eu/Flexicurity-EN.htm).

5 November: Trade union action
Tens of thousands of journalists held a coordinated day of protest throughout Europe to draw attention to the crisis in the media caused by political pressure, as well as to the erosion of standards and poor working conditions which are destroying quality journalism. The European Trade Union Confederation (ETUC) supports this day of action organised by journalists’ trade unions and associations.

5 November: Restructuring
The European Commission launches a new partnership with the main industry federations and employee organisations in the automobile industry in order to improve the anticipation and management of change in the sector (IP/07/1644).
5 November: Social dialogue

6 November: Services of general interest

8 November: Restructuring
Representatives of the associations of 16 industrial sectors in Europe (automobile, woodworking, paper, cotton, rayon and synthetic fibres, textiles, chemicals, fertilisers, ceramics, carbon and graphite, mines, metals, iron and steel, wire rope, steel tubes and ferro-alloys) and European and national trade union federations attend a seminar entitled ‘Competitiveness in a Global Economy – A Challenge to Trade Discipline?’ (IP/07/1644).

8 November: Liberalisation

8 November: Health and safety
10 November: European Parliament
Collapse of the ‘Identity, Tradition and Sovereignty’ (ITS) Group (see 15 January 2007) in the European Parliament following the withdrawal of five Romanian members of the Partidul România Mare.

13 November: Information and consultation
On 21 November, the Steering Committee of the European Trade Union Confederation (ETUC) welcomes this undertaking from the Commission (http://www.etuc.org/a/4304).

15 November: Information and consultation
The new European company BASF SE established in Ludwigshafen (Germany) concludes an agreement on employee participation. This agreement constitutes the biggest step ever taken towards mandatory broad-based employee participation within a European company. It operates through the BASF European Works Council and employee representation on the company’s supervisory board (http://www.etuc.org/a/4310).

15 November: Free movement
The European Parliament adopts the report by Carlos Coelho (EPP-ED, Portugal) assessing the application of the Schengen acquis in nine new Member States. The approval of this report makes it possible to eliminate checks at borders between the Schengen area and nine Member States (Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic). The effective removal of land and sea border checks takes place as from 21 December 2007 and, from 30 March 2008, those at international airports (Report A6-0441/2007 of 12 November 2007).
19 November: Services of general interest
John Monks, General Secretary of the European Trade Union Confederation (ETUC), and Carola Fischbach-Pyttel, General Secretary of the European Federation of Public Service Unions (EPSU), present a petition with more than half a million signatures to European Commission President José Manuel Barroso. The petition calls for an EU directive on public services (http://www.etuc.org/a/4277).

19 November: Social dialogue

19 November: Social exclusion
Danuta Hübner, Regional Policy Commissioner, puts forward an initiative seeking to improve access to finance for small businesses and for socially excluded people, also ethnic minorities, who want to become self-employed. This initiative aims to make small loans, or micro-credit, more widely available in Europe to satisfy unmet demand (IP/07/1713).

19-20 November: Indicators
A high-level conference entitled ‘Beyond GDP’ is organised on 19 and 20 November in partnership with the European Parliament, the OECD, the Club of Rome and the WWF. The aim is to gain a better understanding of the notions of progress, wealth and well-being, to determine how best to measure these parameters and to integrate them into the decision-making process (http://www.beyond-gdp.eu).

20 November: Internal market
20 November: Services of general interest

26 November: Employment

26-27 November: Restructuring

29 November: Flexicurity
The European Parliament adopts by a large majority (496 votes in favour, 92 against) its report on Common Principles of Flexicurity, in which it argues for a ‘balanced’ set of flexicurity principles based on an improvement in the quality of work (promotion of stable working relations, action against abusive practices in non-standard contracts, action designed to improve job security for all workers whatever their occupational status, enhanced employability, etc.). Ole Christensen Report on Common Principles of Flexicurity (A6-0446/2007 of 15 November 2007).

29-30 November: Social dialogue
A major conference is organised in Lisbon by the European Commission together with the Portuguese EU Presidency on the concrete outcomes of European social dialogue and the benefits they have brought to European workers and companies (MEMO/07/528).
DECEMBER

5 December: Flexicurity
The Employment and Social Policy Council adopts the eight common principles underpinning flexicurity, as well as the joint opinion of the Employment Committee and the Social Protection Committee. These common principles are forwarded to the European Council of 13 and 14 December for approval. 2837th Council Meeting Employment, Social Policy, Health and Consumer Affairs, Brussels, 5-6 December 2007 (16139/07-Presse 284).

5 December: Labour law
The Employment and Social Policy Council fails to agree on the draft working time directive or the draft directive on the rights of temporary workers. 2837th Council Meeting Employment, Social Policy, Health and Consumer Affairs, Brussels, 5-6 December 2007 (16139/07-Presse 284).

The European Commission threatens to withdraw both draft directives. The ETUC regrets this double setback (http://www.etuc.org/a/4366).

5-6 December: Economic and social cohesion

6 December: Free movement
The EU Ministers of the Interior give the final green light for enlargement of the Schengen area as from 21 December. 2838th Justice and Home Affairs Council meeting, Brussels, 6 and 7 December 2007 (15966/07-Presse 275).

11 December: Trade union action
In its judgment on the Viking case, the European Court of Justice (ECJ) confirms that the right to conduct collective action is a fundamental right, recognised by international and Community legislation. As such,
it may justify restrictions imposed on the fundamental freedom of establishment guaranteed under the EU Treaty, particularly in order to protect workers and their working conditions. However, the ECJ simultaneously narrows the scope of that justification in a way which could hamper the exercising of the right to collective action, especially in cross-border situations (Judgment of the Court of 11 December 2007 in Case C-438/05).

12 December: Social exclusion
The European Commission designates 2010 as the ‘European year for combating poverty and social exclusion’ to make ‘a decisive impact on the eradication of poverty by 2010’ (IP/07/1905).

12 December: Fundamental rights
The Parliament, the Commission and the Council sign and solemnly proclaim the Charter of Fundamental Rights (IP/07/1916).

13 December: Treaty of Lisbon

18 December: Trade union action
The European Court of Justice (ECJ) delivers its ruling concerning the Swedish trade union action against the Latvian shipbuilder Laval. This ruling contains a recognition, in Community law, of the right to strike as a fundamental rights and of the right of trade unions to take strike action against social dumping. Nevertheless, the ruling condemns the blockade mounted after the collapse of negotiations on the pay of the Latvian shipyard workers, since it is not a legitimate means of compelling the company to join a collective agreement. The Court deems such action excessive and unjustified (Judgment of the Court of 18 December 2007 in Case C-341/05).
The European Trade Union Confederation (ETUC) expressed its disappointment at this ‘unexpected decision’ by the ECJ and its concern at the implications of the case for Nordic countries’ systems of collective bargaining (http://www.etuc.org/a/4401).

18 December: Liberalisation
The MEPs belonging to the Committee on Transport and Tourism adopted without amendment at second reading the ‘common position of the Council on the adoption of a Directive (…) concerning the full accomplishment of the internal market of Community postal services’, COM (2007) 695 final of 9 November 2007.

19 December: Health services
The European Committee once again deferred the presentation of its proposal for a directive on cross-border healthcare services.

21 December: Free movement
Removal of land and sea border checks between the Schengen area and nine Member States: Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic.

Chronology drawn up by Christophe Degryse with the assistance of Dominique Jadot.
List of abbreviations

ACP  African, Caribbean and Pacific countries
ADLE  Alliance of Liberals and Democrats for Europe
AFL-CIO  American Federation of Labor and Congress of Industrial Organizations
ALMP  Active labour market policies
BEPA  Bureau of European Policy Advisers
BIS  Bank for International Settlements
BusinessEurope  Confederation of European Business
CDU  Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany)
CEC  Commission of the European Communities
CEEC  Central and Eastern European countries
CEEP  European Centre of Enterprises with Public Participation
CEMAC  Economic and Monetary Community of Central Africa
CERF  European Committee for Postal Regulation
CFC  Chlorofluorocarbons
CFTC  Commodities Futures Trading Commission
CGT  Confédération générale du travail (France)
CSR  Corporate social responsibility
DG  Directorate General
DGB  Deutsche Gewerkschaftsbund
EC  European Community
ECB  European Central Bank
ECHRI  European Court of Human Rights
ECJS  European Court of Justice
ECOFIN  Economic and Financial Affairs Council
ECOWAS  Economic Community of West African States
EDF    European Development Fund
EES    European Employment Strategy
EESC   European Economic and Social Committee
EFBWW  European Federation of Building and Woodworkers
EGF    European Globalisation Adjustment Fund
EMCEF  European Mine, Chemical and Energy Workers’ Federation
EMF    European Metalworkers’ Federation
EMN    European Migration Network
EP     European Parliament
EPA    Economic Partnership Agreement
EPL    Employment protection legislation
EPP    European People’s Party
EPSU   European Federation of Public Service Unions
ESA    Eastern and Southern Africa
ESF    European Social Fund
ETF    European Transport Workers’ Federation
ETS    Emissions trading system
ETUC   European Trade Union Confederation
EU     European Union
Eurogroup  Group of 15 Member States having adopted the euro by 1 January 2008
EWC    European Works Council
FFPI   Free and Fair Post Initiative
FIEC   European Construction Industry Federation
FSAP   Financial Services Action Plan
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<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tr>
<td>FSU</td>
<td>Finlands Svenska Ungdomsförbunds (Finnish Seamen’s Union)</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>Gross domestic product</td>
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<td>GHG</td>
<td>Greenhouse gases</td>
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<td>Greens/EFA</td>
<td>Group of the Greens/European Free Alliance</td>
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<td>GRET</td>
<td>Research and Technological Exchange Group</td>
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<tr>
<td>GUE/NGL</td>
<td>European United Left Group /Nordic Green Left</td>
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<tr>
<td>IAB</td>
<td>Institut für Arbeitsmarkt- und Berufsforschung (Institute for Employment Research)</td>
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<tr>
<td>ICFTU</td>
<td>International Confederation of Free Trade Unions</td>
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<td>IFA</td>
<td>International Framework Agreement</td>
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<td>IFRS</td>
<td>International Financial Reporting Standards</td>
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<td>ILO</td>
<td>International Labour Office</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INSEE</td>
<td>(French) National Institute of Statistics and Economic Studies</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>ITF</td>
<td>International Transport Workers' Federation</td>
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<td>ITUC</td>
<td>International Trade Union Confederation</td>
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<td>IUSSP</td>
<td>International Union for the Scientific Study of Population</td>
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<td>LDC</td>
<td>Least developed countries</td>
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<td>LLL</td>
<td>Lifelong learning</td>
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<td>MDG</td>
<td>Millennium development goals</td>
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<td>MSDs</td>
<td>Musculoskeletal disorders</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>NRA</td>
<td>National regulatory authority</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>OELV</td>
<td>Occupational Exposure Limit Values</td>
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<td>OJ</td>
<td>Official Journal</td>
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<td>OMC</td>
<td>Open method of coordination</td>
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<td>PERC</td>
<td>Pan-European Regional Council</td>
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<td>PES</td>
<td>Party of European Socialists</td>
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<td>REACH</td>
<td>Registration, Evaluation and Authorisation of Chemicals</td>
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<td>SADC</td>
<td>South African Development Community</td>
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<td>SDA</td>
<td>Social Development Agency</td>
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<td>SDS</td>
<td>Sustainable development strategy</td>
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<td>SEC</td>
<td>Stock Exchange Commission</td>
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<td>SGEI</td>
<td>Services of general economic interest</td>
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<td>SME</td>
<td>Small and medium-sized enterprises</td>
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<td>SMIC</td>
<td>Salaire minimum interprofessionnel de croissance (French minimum wage)</td>
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<td>SOGP</td>
<td>Senior Officials Group for Post</td>
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<td>SPD</td>
<td>Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)</td>
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<td>SSDC</td>
<td>Sectoral social dialogue commitee</td>
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<td>UEAPME</td>
<td>European Association of Craft, Small and Medium-sized Enterprises</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<td>UNICE</td>
<td>Union of Industrial and Employers’ Confederations of Europe</td>
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<td>UPS</td>
<td>Universal postal service</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>USO</td>
<td>Universal service obligation</td>
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<td>VAT</td>
<td>Value added tax</td>
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<td>WCL</td>
<td>World Confederation of Labour</td>
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<td>WCSDG</td>
<td>World Commission on the Social Dimension of Globalization</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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