SOCIAL DEVELOPMENTS
IN THE EUROPEAN UNION - 1999

Report 67
SOCIAL DEVELOPMENTS IN THE EUROPEAN UNION

1999

First annual report

(Coordinators: Cécile Barbier and Philippe Pochet)

Commissioned by and produced for the European Trade Union Confederation and the European Trade Union Institute

Brussels, December 2000
**Table of Contents**

**General introduction**
- The measures of the action programme 1998-2000: an overview ........................................... 6
- Evaluation ........................................................................................................................................... 10
- The players ........................................................................................................................................ 10
- The future ......................................................................................................................................... 11

**PART I**

**European employment policy in 1999**
*Christophe Degryse and Philippe Pochet* ....................................................................................... 15

- Introduction ......................................................................................................................................... 15
- 1. From Essen to Luxembourg, the background to Community employment policy ................ 16
- 2. The Amsterdam provisions ........................................................................................................ 17
- 3. Evaluation of Amsterdam ........................................................................................................... 18
- 4. The guidelines ............................................................................................................................. 19
- 5. Integrating employment into the macroeconomic procedures .................................................. 22
- 6. The financial cost ......................................................................................................................... 23
- Conclusion ......................................................................................................................................... 24

**The novelty of the place of social protection in the European agenda in 1999 through "soft law"**
*Caroline de la Porte* .......................................................................................................................... 27

- Introduction ......................................................................................................................................... 27
- Background ......................................................................................................................................... 27
- 1. Adoption of Communications of the Commission in the area of social protection in 1999 .............................................................. 30
- 2. Effective political support for raising social protection in the European agenda ................ 33
- 3. A focus on the health care aspect of social protection ................................................................ 35
- 4. Position of different players with regard to European social protection ................................. 37
- Conclusion ......................................................................................................................................... 41

**European social dialogue: a mixed picture**
*Christophe Degryse* .......................................................................................................................... 43

- Introduction ......................................................................................................................................... 43
- 1. Changes in the players ................................................................................................................ 43
- 2. Agreements and procedures ....................................................................................................... 47
- 3. Content and approach .................................................................................................................. 48
- 4. Prospects ....................................................................................................................................... 52
- Conclusion ......................................................................................................................................... 54
PART II

The social action programme 1998-2000
Cécile Barbier and Philippe Pochet

I. Jobs, skills and mobility
I.1. Creating jobs and preventing unemployment
I.2 Promoting free movement

II. The changing world of work
II.1. Modernizing work organization and promoting adaptability
II.2. Anticipating industrial change
II.3. Seizing the opportunities of the information society
II.4. Creating a safe and healthy workplace

III. An inclusive society
III.1. Modernizing and improving social protection
III.2. Promoting social inclusion
III.3. Achieving equality and fighting discrimination
III.4. Encouraging a healthy society

IV. The external dimension of social policy
IV.1. Enlargement
IV.2. Promoting social progress on the world stage
General introduction

European social policy seems to be at a new turning point. The smooth switch to the euro coincided with an almost unhoped-for economic upturn and drop in unemployment in most European Union (EU) countries. A new Commission is in place and the Social Affairs Commissioner, Anna Diamantopoulou, has stressed the need to create good quality jobs and to promote the economic, employment and social aspects in tandem. EU enlargement is also moving forward, as are the discussions on the “European model” and the risks of social dumping. All are good reasons for taking stock of the EU’s social dimension and the outcomes of the social action programme 1998-2000.

The report is divided into two broad parts. The first comprises summary articles on three issues, which we see as the main highlights of the past year.

First, of course, is employment and the follow-up on the Luxembourg process. Three particular aspects are highlighted here: the first-ever recommendations made by the Commission to the Member States on the implementation of their national action plans (NAPs); the new Cologne process creating a dialogue between policy-makers, the European Central Bank and the social partners; and the use of the Structural Funds (after their reform and Agenda 2000 which set the financial perspectives) to support the employment strategy.

The second tackles social protection and its sudden emergence as an issue which could (or should) be on the EU agenda. A Communication put forward at the end of the Santer Commission’s term (mid-July 1999) proposed a concerted strategy between the Fifteen on work and income, pensions and pension systems, social inclusion, and health protection. It was adopted at the end of November by the Employment and Social Affairs Council. Rarely has consensus been reached so quickly on an issue which was until recently claimed to be the archetypal province of subsidiarity. A strong focus is put on the contents and proposals of the different players.

The third issue selected is the Social Dialogue. Here, too, the overall picture is qualified. Once again, it proved difficult to establish an independent framework for negotiations (one notable exception is the signature of an initial sectoral agreement on working time for seafarers, made the basis of a Council directive). Even so, a series of developments in the Social Dialogue will pave the way for future progress. They include changes to UNICE’s internal rules, a major European Trade Union Confederation (ETUC) Congress and the early beginnings of the new sectoral dialogue committees.

Although focusing on topical developments in 1999, these articles also aim to show where the issues have evolved from and suggest what the future may hold. They supplement the second, more technical, part.

Part Two describes the measures taken up to 15 January 2000 under the Commission’s social action programme 1998-2000. Each individual measure is presented with a brief background where relevant, and links to other measures in the action programme. We have also added remarks, opinions and reports by the social partners, the European Parliament and the Economic and Social Committee. This does not set out to be a complete picture, but rather to focus on what we felt to be particularly important or relevant. Also, to keep it simple and down to a manageable
length, we have cut many texts back to the bone, but the exact references to the full texts or special Internet sites are included for readers who wish to go into more detail.

The measures of the action programme 1998-2000: an overview

It is difficult to paint a broad picture, made of measures of such distinct shades and colours as the Commission action programme. In fact, the programme falls into four broad headings. The first three relate to the internal dimension - jobs, skills and mobility (comprising 17 measures), changes in the world of work (16 measures), and an inclusive society (21 measures) in that order. The fourth broad heading is the external dimension of social policy (5 measures). Each heading is broken down into lines of action.

A more itemized breakdown of the contents gives a clearer picture of the overall structure of the programme and the number of measures planned.

- Heading One - “Jobs, skills and mobility” - is subdivided into two lines of action: the first, “Creating jobs and preventing unemployment” contains fourteen measures; the second, “Promoting free movement”, three measures.

- Heading Two - “The changing world of work” - comprises four lines of action: “Modernizing work organization and promoting adaptability” (six measures); “Anticipating industrial change” (three measures); “Seizing the opportunities of the information society” (three measures); and “Creating a safe and healthy workplace” (four measures).

- Heading Three - “An inclusive society” - is also broken down into four lines of action: “Modernizing and improving social protection” (six measures); “Promoting social inclusion” (six measures); “Achieving equality and fighting discrimination” (five measures); and “Encouraging a healthy society” (four measures).

- Finally, Heading Four - “The external dimension of social policy” - is split into two lines of action: “Enlargement” (two measures) and “Promoting social progress on the world stage” (three measures).

Fifty nine lines of action are proposed in all. Some comprise a series of measures, but the biggest focus is clearly on jobs, which accounts for a quarter of all the measures.

While most of the Commission’s proposals were put forward more or less as planned, some experienced serious setbacks. As we shall see, this points to a series of vexed issues.

In volume terms, there are as many measures as in the action programme which was intended to implement the 1989 Charter of Fundamental Social Rights of Workers. But the nature of the proposals are strikingly different. Seven distinguishing features can be identified in the present action programme.

1. A notable lack of binding instruments (directive and regulations). For comparison: nearly 40% of the 49 measures in the 1989 action programme were proposals for directives, 25% of them on health and safety of workers (Pochet, 1991).
The 1998-2000 programme most often focuses on adapting (working time) or expanding (free movement) past laws, but rarely puts forward new legislation (one exception being national rules on information/consultation of workers). And even just adapting past legislation is clearly a daunting task. The most striking example of this is the preliminary discussions for the revision of the European Works Councils Directive, which got under way in October 1999 just after the deadline laid down in the directive itself. Unlike the early 90s, where the tactic was to use the EWC Directive to break the deadlock on other issues linked to informing and consulting workers, there now seems to be no movement on any of the proposals. The position on health and safety at work is worse still.

While specific difficulties can be pointed to for each individual case in this area, the consistent problems and hold-ups seem indicative in themselves. The lack of movement and tangible results on health/safety and information/consultation - both central to (and the most notable successes of) the 1989 programme - are telling.

2. The second point is so trivial as to hardly bear mentioning: that is the emergence of employment and the four pillars (employability, adaptability, entrepreneurship and gender equality). The European employment strategy has had major spill-over effects on incomes policy (job creation policies raise labour cost issues), social protection policies (employment activation measures require a rethink of unemployment policies and benefit levels; also, cutting indirect labour costs raises questions about the funding of social protection), family policies (need for child care provision and family support services to increase women’s labour force participation rate), and tax policies (public employment policies need extra tax revenues).

On a broader front, there will be piecemeal knock-on effects on Member States’ redistributive policies generally, and backwash effects on economic/business performance and growth. Incomes policy has been put on the agenda by the Cologne process; social protection is a process apart; tax policies have again been debated at Community level, although to no avail.

All but a few of the measures in the action programme refer directly or indirectly to the employment strategy and its lines of action. A closer reading, however, reveals a series of particular points.

2.1. Firstly, the consistent difficulty of including employment in the broad economic policy guidelines (BEPG). A comparison of the employment guidelines - and related reports - and the broad economic policy guidelines clearly shows that approaches to the causes of unemployment and how to solve it are still not completely in line (although no longer totally at odds either). That is clear from the tone and terms used. But it is a key point, because job creation comes about as a result of similar thinking and institutions working hand in glove; notwithstanding all the rhetoric, we are still far from this (e.g., in tax matters). How can tax systems be made more employment-friendly while avoiding harmful competition between national systems when there is no tax harmonization on unearned income or environmental taxes?

2.2. The second aspect concerns the development of indicators by which to compare and evaluate the performances of the different national systems. Little progress has been made on this front - whether as regards jobs or poverty and social exclusion - since the Essen Summit (1994). However, practically every European Council has made the ritual calls for rapid progress on the matter.
The difficulty as we see it is that this is currently being addressed as a technical issue when the choice of indicators is essentially a political one. Countries may rank significantly differently for long-term unemployment and poverty rates. Also, the further one goes in setting common indicators, the more binding the employment guidelines exercise becomes. This exercise still allows national policies to be slotted within categories set at European level, instead of taking the European guidelines into account when framing national policies. This will become more difficult if a set of indicators is worked out at European level and requires more thought about the consistency and relevance of the guidelines, which seem more the product of a political compromise than a structured analysis of labour market challenges.

3. The third point relates to poverty and social inclusion. These issues were included in the social action programme (no less than 6 measures planned) but until recently were not really linked to employment. Their return onto the agenda is particularly surprising given British and German opposition to the continuation of the “Poverty” programme (more symbolic than really operational and severely under-funded), and the Court of Justice’s blocking of the budget lines for it. This is a key aspect, because the degree of tolerance of inequality and poverty is a major distinction between the European and Anglo-American models. But this is only one aspect of the European model (which, more broadly, includes extended social protection systems, a vital social partner role in the labour market, and a major role for the State).
It also straddles the dividing line between employment and social security (and is also addressed in the concerted strategy for social security, see below), but with its own specific issues: access to housing, culture, etc.

The Commission has been very slow to act in this area. A Communication on exclusion was not put forward until very late in the day. One reason is that, until the Member States ratified the Amsterdam Treaty, there was no specific legal basis on which to base Community action in this particular problem area, at least until the Treaty’s entry into force (May 1999). An informal document was put out for consultation at the start of 1999, however.
The Member States - particularly Belgium, the United Kingdom and Portugal - are driving this matter, and social security matters generally, forward at the moment.

4. Point four is the sudden rise to prominence of social protection. The Commission Communication on social security adopted in July 1999 set a reference framework and common challenges (monetary union, employment strategy, enlargement), and proposed a concerted strategy for modernizing it built on four pillars:
- making work pay and providing secure income;
- making pensions safe and pension systems sustainable;
- promoting social inclusion; and
- ensuring high quality and sustainable health care.

These different issues each have their own momentum. Pensions are addressed in the action programme, while the second and third pillars were on the Community agenda even before that. What is new is the increasing focus on the prospects for population change. This is usually the “neutral” angle of attack taken to address the funding of public pensions. While some consensus is emerging around social exclusion (see above), pensions remains very much more of a battleground, and one in which players like the European Central Bank and European Round Table of Industrialists (ERT) have stepped in. Pensions are also on the agenda in different Member States, especially Italy.

5. The fifth feature is public health. This, it will be recalled, was included in a half-hearted and limited way in the Maastricht Treaty. For many years treated as a marginal issue, a series of very different occurrences combined to bring it to the foreground. Firstly, the “mad cow disease” and the dioxin crisis pointed up the health hazards of an agri-business system which seemed to have run out of control. Then, the Court of Justice ruling in the Decker case showed that the courts could be expected to take things in hand in this sphere. Thirdly, the debate on the ageing population has been focused on pensions, but that of the health costs of an ageing population lurks immediately beneath the surface. Finally, health has become bound up in the procedure for concerted strategies in social protection.

It is worth mentioning that the Commission documents in this area seem more alive to the issues of enlargement and the risks of two-tier health care systems.

6. The sixth feature is the information society (now being called “the knowledge-based society”). To observers of the debates five years ago on information superhighways and the information society, “the knowledge-based society” seems like an echo from a past agenda, while slogans like “An Internet connection in every school” and “An e-mail address for everyone” strongly resemble the old “A computer in every classroom” of ten years ago. Here again, apart from the paper for the Vienna European Council and the more recent but fairly general Communication on “e-Europe”, it is surprising that the Commission seems not to have foreseen the re-awakening of this issue.

The more specific Communication on employment in the information society was presented only in early February. However, the allocation of responsibilities means that the European Union has very little say over education. But the divide will be less between the “information rich” and “information poor” than between those able to sift out useful information, and those who will be submerged by poor quality information.

7. The seventh point relates to the external dimension of social policy. Social aspects are notable for their absence in the fairly half-hearted preparations for enlargement. And yet the social agenda, free movement, social dumping, international relocations, and so on are the focus of current public concern. Also, there is no clear European dimension to applicant countries’ reforms to their social security and health care systems. The Consensus programme set up to handle these issues has had little effect in an area where pressure from international institutions has been strong. Clearly, this is not a real Community priority.
Evaluation

The evidence of an analysis of the measures taken during the first two years of the action programme suggests an approach with no real core theme. In some ways, it bears the hallmarks of a transitional programme. Traditional issues have been ousted for a stronger focus on employment. The guidelines addressed a series of issues already dominant in the 90s. But that has not given overall consistency because the employment guidelines deal with a range of issues without any obvious order of precedence (apart from three headline-grabbing ones on employability). However, a return to growth, falling unemployment, budgets moving into balance - if not surplus for six Member States - are redrawing the map, and the debate is shifting from job creation to the quality of the jobs created. We shall now look at two distinct angles: the players and the future.

The players

The Commission, it can be said, has dealt effectively with the jobs issue and its various strands. It has emerged as a credible player and managed to give the makings of consistency to the layouts of national action plans. The remarkable feat it pulled off with the draft recommendations to Member States on implementing their NAPs has given it a powerful weapon for the future, although one which it is likely to use sparingly. The attempt to pull the different procedures into line is also an internal exercise in joined-up working between the different Directorates General. Romano Prodi’s idea to have the Commission working in subunits, one handling employment, is directed towards that end.

Some of the edge is taken off this undoubted success, however, by the Commission’s performance in a series of live issues which will, or are set to, have a major impact in the future debate. In all of these, the Commission has more often than not taken a back-seat role, so far at least. It has first of all failed to produce a Communication on the social aspects of globalisation. A Commission opinion before the WTO ministerial conference opened in Seattle would have been helpful. Concerning the knowledge-based society, the Communication on the employment aspects was not published until early February, i.e., very late in the day to influence matters at the Lisbon Extraordinary Summit. Likewise, the Communications on social exclusion were put forward just a month ahead of the Lisbon Summit. Given the pace of this ongoing debate, this is a surprising failure, unless it is a deliberate strategy to distance itself from issues espoused by certain Member States.

On other fronts, the Commission has given an effective impetus, only to be sidelined later on. Fundamental rights, where the Council is providing the secretariat, are a case in point. It is significant that information and documents submitted on a matter of such immediate public concern should be housed on the Council’s rather than the Commission’s Internet site. Likewise social protection, where the high-level group, having put forward a far-reaching document, is now housed on the Council’s rather than the Commission’s site. This, too, is illustrative of the member states’ will to regain control of the reins.
In these cases where the Commission shares the initiative with the Member States, some countries, namely Finland, the United Kingdom, Belgium and Portugal, have been particularly proactive. The Portuguese Presidency in particular has commissioned an impressive number of high quality studies.

Most striking about the Member States was the increased number of individual - but more often joint or three-sided - policy positions issued. The British government heads the list, issuing joint statements with Spain, Italy, Germany, Sweden and Belgium which itself put out a statement with France and Italy (which had previously published their own joint statement) plus Luxembourg. In short, the social agenda started moving after being stalled for several years. However, it is hard to see what results these many statements have had, apart from on tackling poverty and promoting social inclusion.

The social partners made little progress towards a free-standing Social Dialogue. Both sides seem to be sticking to their traditional positions, with the ETUC holding out for a free-standing framework for bargaining, and UNICE agreeing to negotiate only under the threat of legislation (and not always even then, as the national information/consultation episode showed). On the different procedures, while there is discernible progress on jobs and the macroeconomic dialogue, their involvement (or rather that of the unions, as the employers were concerned and involved from the word go) in the Cardiff process is hard to identify. On the other hand, both seem to have been sidelined in the fresh impetus in social security, which is disturbing given the importance of their role in this area. Finally, none of them (public authorities, employers, trade unions) seem to have a very clear role to play in a series of measures on modernizing work organization.

The European Parliament's role seems to have diminished. Its very few legislative proposals have been first mooted by the social partners. The new procedures, such as in social protection, assign it a marginal role, as do the BEPG. As regards the welter of Communications setting the future agenda, all the EP can do is to add its rhetoric to that of the Commission, which often appeals directly to the people for a verdict, as with “e-Europe”.

Just as employment must be regarded as a cross-cutting policy since the Amsterdam Treaty, other players have also stepped in. Clearly so in the case of the broad economic policy guidelines, but also in promoting entrepreneurship. This aspect is often downplayed, but there are policy debates (around SMEs) and practices (not least legislative simplification) which are spilling over into other spheres of European activity. It has moved from the clash between the Ecofin Council’s economic approach and the Social Affairs and Employment Council’s social stance to a debate around the problems and challenges facing business. Like the Cardiff process on the goods and capital markets, it is a debate in which the trade unions are not actively involved.

The future

Recent trends are clear. The highlights include the Commission proposals based on article 13 (non-discrimination) and especially the movement on poverty and social inclusion, as well as developments in social security. The British proposal included in
the Portuguese Presidency’s background paper for the Lisbon Extraordinary Summit on cohesion, employment and the knowledge-based society to “eradicate child poverty” by 2010 is particularly noteworthy. The Community social agenda is clearly now taking shape around issues which not so very long ago were unmentionable at European level. It could be a fresh attempt to give Europe a social face.

But is it enough? Rising employment and the prospect (being talked-up at least) of a return to full employment puts the type of new jobs and working conditions back on the agenda. Granted, action for inclusion and the focus on non-discrimination have spin-offs on working conditions, but that does not go to the heart of the problems and situations of insecurity. A study by the Dublin Foundation shows that working conditions worsened generally between 1991 and 1996 (a new survey is under way). Also, the quality of food, life, and work have come back to the fore; so a wider agenda than that of employment relationships proper may be emerging. All these elements are still scattered, fragmented, and not joined up between the different social players, but they could be brought together. There are also strong parallels with the period 1987-88, and the spate of studies and statements on a common European framework for labour laws, which eventually led to the social charter. That, too, was a time of economic euphoria.

History is not repeating itself, but there is a directionless search for a new all-embracing concept in the air. “Quality” could become the keyword of the quest for that new social and societal agenda at national and European level to cancel out the emerging counter-agenda of increased competition between national systems and minimum rules at European level.
European employment policy in 1999

Christophe Degryse and Philippe Pochet

Introduction

Employment is a live issue for Europe. Most Community documents refer to it. There are a spate of procedures and forums on the problem. And yet, leaving aside the European Social Fund, employment is a relatively new issue on the Community agenda. In a few short years, it has become a compelling issue.

Following a tentative post-Essen Summit effort in 1994, it emerged onto the European scene three years later with the advance implementation of the Amsterdam Treaty at the Luxembourg Extraordinary Employment Summit (1997). Of all the facts which influenced this sudden development, the sharp rise in unemployment from 1992 (coincidentally, the date on which the single market was completed) is certainly key.

Success with monetary union and the formal convergence of EU economies under the Maastricht criteria had an added double impact. One was a copycat process: if it worked for the single currency, why should it not work for jobs, too? Another was a spill over effect: with monetary union completed, what can be added to it?

This latter approach applies to more than just jobs. A similar approach has now been taken to social protection (see article by C. de la Porte) and taxation is firmly back on the agenda, although with no result as yet. Added to these facts are the strategies of players - including the European Trade Union Confederation - and the vagaries of timetables. Sweden was behind the coalition of Member States in favour of writing an "Employment" chapter into the Treaty. New Labour's electoral success in the United Kingdom allowed the issue to come onto the agenda, and the socialist's electoral triumph in France gave the final impetus.

This section briefly reviews the changes made by the Amsterdam Treaty and its implementation in the first two years (1997 and 1998). An description of some of the more technical aspects will also be found in the analysis of the implementation of the social action programme in Part Two.

We then focus on the three new developments of 1999. Firstly, the Commission's draft recommendations to the Member States. Secondly, the inclusion of the Luxembourg procedures into a broader whole comprising the Cardiff process for the market in goods and products, and the Cologne process on the macroeconomic framework. These three processes, known together as the "employment pact", now make up a comprehensive and complex set of procedures which the Lisbon Summit (March 2000) attempted to turn into a joined-up structure. Finally, we shall look at Structural Funds reform, especially that of the Social Fund which, together with the Community EQUAL programme will fund measures under the priorities set by the guidelines.
1. From Essen to Luxembourg, the background to Community employment policy

The EU’s concern with jobs stems indirectly from the establishment of economic and monetary union (EMU). The Maastricht Treaty laid down economic and financial convergence procedures (inflation, public finances, interest rates) which would qualify countries for the third phase of EMU. The results were such that the idea of transferring this approach to other areas - especially employment - gradually gained ground. Employment procedures tend to be assessed by the same yardstick as for EMU, so employment had to be addressed concurrently with monetary integration.

But the political and economic contexts are also important: ratification of the Maastricht Treaty took place at a time when nearly all the EU Member States were in a deep recession and unemployment was rising at an alarming rate. It was the period when Jacques Delors’ Commission launched its White Paper “Growth, competitiveness and employment - The challenges and ways forward into the 21st century”, adopted by the Heads of State and Government at the Brussels European Summit in December 1993. Stressing Europe’s failure to catch up with the fast pace of economic and technological change, the Commission suggested a series of policy guidelines, focussing particularly on enhancing competitiveness, implementing large-scale European infrastructure schemes (trans-European transport and energy networks), making national jobs markets more flexible, adopting a job-creating, environmentally-sound development model.

Initially, the White Paper also suggested that the Member States set themselves the aim of creating 15 million jobs in five years. It proved too politically demanding a hard target for the governments to swallow.

At the December 1994 Essen Summit, the Heads of State and Government turned these guidelines into five broad areas which they thought measures to tackle unemployment should focus on. They were vocational training, increasing the employment-intensiveness of growth, reducing non-wage labour costs, improving the effectiveness of labour market policy, and improving measures to help groups which are particularly hard hit by unemployment, especially young people, women and older workers.

But implementation of the ways forward suggested by the White Paper as extended by the Essen decisions did not measure up to the aims. The Twelve stopped short at non-binding procedures for the coordination and follow-up of national policies. The proposals on supplementary funding for large-scale transport and energy infrastructure schemes scarcely got off the ground. The proposals for minimum harmonized CO2/energy tax rules fared little better.

1993 was the year in which the Maastricht Treaty launching EMU entered into force, and a time when the Member States were putting in place major plans to reorganize public finances in order to meet the convergence criteria, so the context was less conducive to proactive and costly measures in favour of employment.

It is against this relative failure that we must consider the changes made by the Amsterdam Treaty.
2. The Amsterdam provisions

The Treaty contains a new “Employment” title comprising six articles, but these in no way alter the Maastricht Treaty provisions on Economic and Monetary Union. In other words, employment is not linked to the issues of monetary union, especially coordination of economic policies or setting the monetary policy objectives of the future European Central Bank (ECB).

Employment strategy

The Amsterdam Treaty’s “employment” provisions focus on developing coordinated strategies for employment, contributing to the achievement of a high level of employment in the EU, cooperation between Member States to that end, and implementing pilot projects. Employment is made a matter of common concern; the EU’s strategy must aim at promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change.

But the Amsterdam provisions transfer no national powers to the European level. In other words, national employment policies are not “subsumed at Community level”. Nor did the negotiators intend they should be. Likewise, it is expressly stated that these measures “shall not include harmonisation of the laws and regulations of the Member States”.

Procedurally, the Social Affairs and Ecofin Councils draw up “guidelines” each year which the Member States must take into account in their employment policies¹. These guidelines must be compatible with the broad economic policy guidelines (BEPG). They are based on a preliminary analysis by the Commission and the Council in a “joint annual report” on employment. This report is submitted to the European Council and contains an evaluation of the measures taken by the Member States to implement the previous guidelines. After each year, the Member States must submit an annual report to the Council and Commission on the national measures taken to implement the guidelines. The Council then assesses how much account the Member States have actually taken of the employment guidelines set by the EU. If appropriate - i.e., if certain policies are not in line with the jointly set objectives - it may make recommendations to them on a proposal by the Commission.

Far from harmonizing laws and regulations, or transferring national powers to the EU, the role which Amsterdam assigns to the Community is one of giving impetus to and coordinating national strategies within a framework set at European level; the aim is to encourage cooperation between Member States, support their action through exchanges of information and best practices, providing comparative analysis and advice, promoting innovative approaches and evaluating experiences and pilot projects.

Incentive measures

As well as the guidelines, the European employment strategy also provides for the possibility of “incentive measures”. The Council, acting by a qualified majority and under the co-decision procedure, may adopt incentive measures on employment to encourage cooperation between Member States through exchanges of best practices, evaluating experiences and launching pilot projects. Note, however, that article 137.3 requires it to act

¹ Acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee.
unanimously on “financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund”.

**Employment Committee**

Procedurally, the entry into force of the Amsterdam Treaty also meant replacing the Employment and Labour Market Committee (ELC) set up at the end of 1996 with the Employment Committee (new article 130 of the EC Treaty).

The decision was formally adopted by the Council at the end of November 1999. This advisory Committee is tasked with monitoring the employment situation and employment policies in the Member States and the Community; formulating opinions (at the request of either the Council or the Commission or on its own initiative), and contributing to the preparation of the Council proceedings on the “employment package” (article 128 of the EC Treaty). Its tasks also include contributing to the procedure leading to the adoption of the broad guidelines of the Member States’ and Community economic policies, and taking part in the macroeconomic dialogue. In fulfilling its mandate, the Committee must also consult management and labour. Each Member State and the Commission appoints two members of the Committee.

### 3. Evaluation of Amsterdam

On balance, the Treaty mainly laid down a procedure for a twin-track dialogue. The first is a cross-cutting one to establish communication between Employment and Social Affairs Ministers, Ministers for Finance and Economic Affairs, the Commission, the European social partners, with input from the European Parliament, the Economic and Social Committee and the Committee of the Regions. The whole process is overseen by the European Council. A corresponding process is to be set up at national level, where different national and regional policymakers prepare and implement the guidelines with involvement by the national social partners.

The second process is a vertical dialogue built up around common hard targets and indicators between the European and national levels. It is an ongoing process, developing over time. It is also far removed from the standard process of adopting directives and the simple solemn declarations often found in the final communiques of European Councils. It falls, so to speak, somewhere between the two.

**Social partner involvement**

Both the European and national social partners have been assigned a key role in these procedures. But opinions vary as to how much difference this involvement is making. The European Trade Union Confederation (ETUC) finds that involvement varies with the Member State and guidelines. Some trade unions complain of having been consulted only on the fringes.

---


4 For an assessment, see Foden "The role of the social partners in the European Employment Strategy", Transfer 1999/4, pp. 522-540.
The Commission stresses that the Employment Committee has been overhauled, and its tasks will now include examining both the employment guidelines and the economic policy guidelines. It considers that the existing forums work well enough in keeping it informed of the social partners’ priorities, and keeping them informed and involved in the policies pursued.

It considers they have been steadily more involved at national level, but that the actions taken by them independently are too ill-defined. The Employment and Labour Market Committee and the Economic Policy Committee apparently believe that the social partners should have done more, especially to implement the guidelines on adaptability to the modernization of work organization, and life-long learning.

By contrast, the multi-layering of procedures lends to some confusion. Likewise the increased number of reports and meetings. As a result, a fairly broad consensus has emerged this year on slimming down procedures and improving timings so that a real interaction can take place. That is very much the gist of the Conclusions of the Lisbon Extraordinary Summit held in March 2000.

4. The guidelines

A consensus on content was not long in emerging around the Commission proposals. These are grouped around four pillars, and would remain relatively unchanged over the three years.

Three new guidelines were added and one withdrawn in the first year. The wording was refined and added to on numerous occasions. The ETUC called for guidelines on health and safety, undeclared work and employee rotation to be added.

The setting of specific targets, by contrast, proved more of a vexed issue: the aim of a 70% employment rate was dropped early on, not to resurface until the Lisbon Summit (the Presidency Conclusions expressly refer to the aim of “raising the employment rate (...) to as close as possible to 70% by 2010”. Finally, quantified targets were only set for the first three guidelines to start with. On a subsidiary note, common indicators to facilitate comparisons between Member States proved harder to work out than first thought (see below).

Creating good quality jobs

EAPN (the European Anti-Poverty Network) has stressed that the quality of national examples of “best practice” and the jobs created have not been sufficiently taken into account in implementing the European employment strategy.

It suggests that the failings evident in current national action plans can be addressed by:
1. building “sustainable employability” into the labour market;
2. avoiding conditionality and compulsion where the sole aim is to exclude the unemployed who are already disadvantaged;
3. recognizing the role played by unemployment benefits in enabling individuals to develop their re-employability during spells of unemployment;
4. take more account of people who are outside the labour market for long periods of time;
5. boosting the role of the social economy and community sector which have a full-fledged part to play in wealth production, to make the most of sources of new jobs;
6. ensuring that cutting labour costs for low-paid jobs does not result in pay cuts or lower social protection. (....).
The Council recommendations

One question about the recommendations procedure was whether or not the Commission would actually use the possibility now offered it by the Treaty, given that it was a politically sensitive exercise which the Council (i.e. the States themselves) would have to endorse by a qualified majority. The answer came in September 1999 with the second evaluation exercise, when the Commission identified eight areas where it found shortcomings in national actions. For each State, it identified the areas in which it needed to make progress:

The areas identified are:
- tackling youth unemployment (Belgium, Greece, Spain, Italy);
- preventing long-term unemployment (Belgium, Germany, Spain, Italy);
- reforming the tax and benefit systems (Germany, Greece, Italy, Netherlands, Austria);
- creating job opportunities in services (Belgium, Germany, Greece, Spain, France, Ireland, Italy, Portugal);
- reducing the fiscal pressure on labour (Belgium, Germany, France, Italy, Austria, Finland, Sweden);
- modernizing work organization (Greece, France, Portugal, United Kingdom);
- tackling gender issues in the labour market (Germany, Spain, Greece, Ireland, Italy, Luxembourg, Austria, United Kingdom);
- improving indicators and statistics (Germany, Greece, Spain, Italy, Netherlands, United Kingdom).

A ninth priority area was also cited: promoting lifelong learning (but this will be evaluated separately in 2000).

In all, the Commission made 55 recommendations, of which the Council accepted 53. A limited number of changes were also made to the initial text. The changes made by the Council and the number of recommendations addressed per Member State are shown in the table below. There are two types of changes: in the recommendations as such (r) or in the explanatory text (c).

Table 1: Number of recommendations and changes made

<table>
<thead>
<tr>
<th></th>
<th>COUNCIL</th>
<th>COMMISSION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>S*</td>
<td>R*</td>
</tr>
<tr>
<td>Sweden</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Finland</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Portugal</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Austria</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Ireland</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Belgium</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>France</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Italy</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Greece</td>
<td>6</td>
<td>0</td>
</tr>
</tbody>
</table>

* S = suppressed - R = recommendation - C = context
Two recommendations each were made to Sweden, Luxembourg, Denmark and the Netherlands, while Greece (six), Germany and Italy (5 each) were the countries with most failings. Italy originally had six recommendations, but two were merged.

This raised two issues. One was procedural: should the Commission consult the Member States first before issuing its recommendations? The other concerned the relevance of some of the recommendations, following a series of comments by the Member States concerned.

On the first, the Social Affairs and Ecofin Councils endorsed fundamental principles (see the Conclusions of the Jumbo Council of 29 October 1999) already worked out jointly by the Employment and Labour Market Committee and Economic Policy Committee. These were to the effect that:

- to conserve the value of the recommendations procedure, changes to the Commission Recommendation should be limited to those based on solid analysis; this principle should apply in particular having regard to the specific circumstances of the current year;

- changes to the recommendations should derive chiefly from explanations on the implementation of the policy and improved or updated statistics;

- the recommendations already included in the guidelines on each country’s individual economic policies established under the broad economic policy guidelines should be kept;

- the recommendations should be written in a way which clearly distinguishes the political challenges faced by the different Member States;

- consistency must be ensured between the recommendations addressed to the different Member States where analysis establishes the existence of political challenges common to a number of them.

The European Council endorsed this approach at the Helsinki Summit (December 1999) and asked Member States to pay particular attention in undertaking labour market reforms to the tax and benefit systems, service sector employment, organisation of work, life-long learning and equal opportunities for women and men.

At issue here is the development of a set of common criteria and indicators, for which there are political and technical difficulties to be overcome. The problems of getting agreement on them (only nine basic criteria have been approved so far) illustrates the uncertain nature of the exercise. It is worth pointing out that successive European Councils since Essen have repeatedly called for progress on this question.

In this connection, exponents of the Commission’s radar chart approach issued cautions about methods. They stressed that the choice of indicators influences country rankings, the need to include more qualitative aspects, problems with the methodology of standardization, the relative weighting of each criterion, and correlations between indicators. Finally, they emphasised the need to distinguish short-term factors connected with economic cycle from structural aspects.

On the draft Commission Recommendations to the Member States, UNICE calls attention to the specific features of each country and asks for “preference for a particular model” to be avoided. It thinks the Commission has put too much focus on certain categories of workers

---

5 or the implementation of this, see CEC, Joint employment report, 1999.
Social policy developments in the European Union in 1999

(young people, women, older workers) whose difficulties “are only symptomatic of a malfunction in the wider labour market (...)”.

The ETUC called for an evaluation of all the guidelines, rather than just eight of them. The opinions of the social partners, especially at national level, should be taken into consideration before the Commission finalizes the recommendations.

5. Integrating employment into the macroeconomic procedures

The linkage between employment and macroeconomic policies is where the fiercest criticism and most striking changes have come. Firstly, there was an improvement in the economic context in which the guidelines were implemented. Then, new coordination procedures were put in place between the players (governments, central bankers and social partners) after the June 1999 Cologne Summit in order to improve the policy mix. The strong focus put on coordinating incomes policy with monetary policy produced a visible degree of “institutional inventiveness”.

Also, low interest rates did much to stimulate growth in a number of countries, especially those outside the mark zone (Portugal, Spain, Italy, Finland and Ireland, which had previously had to pay a risk premium to the financial markets).

Spain is a good example of this fresh impetus. While it had opposed the setting of employment targets and sought exemption from the obligation of meeting the requirement of 20% of people in training or subject to equivalent measures under the Luxembourg guidelines, it is a fact that around 400,000 new jobs have been created there each year ever since. A similar process is at work in France, where consumer confidence (buoyed up by the Jospin administration’s proactive policy) has boosted growth. The resulting leeway offered by interest rate cuts and stronger growth can be used to reduce labour costs (taxation or social security), which is in line with guideline 14 (making the taxation and social security systems more employment-friendly) and, in some cases, to stimulate government investment which by the Commission’s own admission has fallen to a very low level. Even so, two countries stand out from this broader trend: Germany and Italy. Both have high government deficits and have not yet managed to restore confidence (due to a policy wavering between different conflicting models in Germany, and the rapid pace of budgetary adjustment in Italy).

This changing context is helpful to the guidelines, and should increase the effectiveness of some of them. In fact, most scientific studies agree that while training has only marginal added value in conditions of mounting or sustained unemployment, that ceases to be the case in situations of nearly full employment (Denmark, Ireland, Austria, Netherlands, Luxembourg or Portugal) or rapidly falling unemployment (Spain, Finland or even France).

The main new development is the employment pact, setting up a new dialogue between budgetary authorities, employee training providers and monetary policy-makers (Cologne process). It works through two meetings a year and at two levels, one technical, the other policy. The technical group met on 29 November 1999, the policy group on 8 November. Nothing official came out of these meetings, which is one of the principles of this dialogue.

---


The evidence of analyses is that even before it entered into force, the effects of monetary union were filtering through at national level by facilitating national social pacts\(^9\) and pay restraint rules. What is involved now is less the national level than the Eurozone as a whole, where a series of issues arise: what interaction should there be between the ECB and the European social partners? What type of coordination is most employment-friendly?

The explanation put forward by recent economic research is that the reason for Germany’s healthy inflation and employment performance is to be looked for in the interaction between the Bundesbank’s monetary policy and IG Metall’s pay policy\(^10\). To simplify, a “signalling process” takes place between the Bundesbank and the trade unions - particularly IG Metall - which results in the unions taking macroeconomic policy objectives into account. If those objectives are not met (in line with the Bundesbank’s rules), the bank puts up interest rates to keep the unions “in check”. Conversely, a policy of wage restraint\(^11\) may allow a more flexible monetary policy to be pursued.

Two questions arise. One concerns the level of centralized/decentralized collective bargaining in this new Eurozone area. What level will give the best results in terms of inflation and unemployment according to how tight a monetary policy is pursued? The other is which benchmark the ECB will use for wages. Will a relation similar to that which existed between IG Metall and the Bundesbank be recreated at European level? Will the ECB give more weight to a particular country in its assessment? For example, how will it react if wages rise sharply in one major country but remain level in another? How might that affect the players’ behaviour?

The different initiatives taken by national and European trade unions reflect attempts to get to grips with this new challenge\(^12\). The ETUC passed a key resolution on this precise point at its Helsinki Congress, held from 29 June to 2 July 1999. Various studies point out the limitations of these attempts at industry-, region- and Europe-wide coordination, but all conclude that it is too early to reach a final judgment because it is still in the making.

The interaction between the players, its outcomes in terms of coordination, and the impact on employment and growth, are central to future developments. As Hall and Franzese (1998: 529) put it “the establishment of monetary union in Europe will give rise to new problems of coordination which will not be automatically resolved by the existence of a relatively independent central bank” (unofficial translation).

### 6. The financial cost

Finally, we come to the funding of employment measures. Structural Funds reform and the amount of their post-Agenda 2000 budget clearly showed that the rise in funding for economic and social cohesion had come to a halt.

---


\(^11\) Even the concept of wage restraint has changed from an implicit yardstick of inflation plus average productivity gains to inflation plus a proportion of productivity gains. Note also that productivity gains in the metal industry are generally above average productivity rises.

\(^12\) See: European Metalworkers’ Federation, Eurofiet, Textile Workers’ Federation, Doorn Initiative comprising German, Belgian, Dutch and Luxembourg unions, IG Metall, ETUC.
The reason is that a central plank of the structural policy reform proposed by the Commission and approved by the Fifteen at the Berlin Summit was to reduce the population ceiling covered by the Structural Funds and so, in the long run, reduce the current level of funding for them. This reduction would to some extent be offset by a greater concentration of assistance in areas of greatest need.

The March 1999 Berlin Summit approved this two-pronged approach, resulting in a phased reduction of overall allocations to the structural and cohesion Funds from approximately 32 billion euros in 2000 to 29 billion euros in 2006. The overall budget for the entire period amounts to 213 billion euros, against the 239.2 billion initially proposed by the Commission.

The general drift, therefore, is clearly towards the rationalization and overall reduction of structural expenditure in the run-up to EU enlargement.

The fact that part of the European Social Fund’s (ESF) expenditure under the new objective 3 will go towards supporting Member States’ schemes under their national action plans for employment has slipped past almost unremarked. Funding for this objective amounts to 24 billion euros for the next six years - 12% of the total allocations to the Structural Funds.

Its list of tasks state that the Fund shall support measures to prevent and combat unemployment and to develop human resources and social integration into the labour market in order to promote a high level of employment, equality between men and women, sustainable development, and economic and social cohesion. In particular, the Fund shall contribute to the actions undertaken in pursuance of the European Employment Strategy and the Annual Guidelines on Employment.

This makes the ESF an instrument which the Member States can use to put their priorities into effect. It should facilitate a new dialogue between the European authorities and Member States, especially over setting national objectives. It is reasonable to assume, for instance, that the Commission will be particularly attentive to information society aspects (article 2.2.(b) - Scope) in view of the priority it seems to accord this area.

It is reasonable to wonder where these new developments may be leading. Are they tending towards priorities set not by the Member States alone but also by the Commission on the basis of its recommendations to governments on making their national action plans compliant with the European guidelines? The wording of the EQUAL Community Initiative Programme (transnational co-operation to promote new means of combatting all forms of discrimination and inequalities in connection with the labour market) suggest that this may not be stretching the bounds of credibility. It offers a choice of two thematic fields in each of the four pillars and states that “each Member State will be expected to choose at least one thematic field in each pillar (...) taking into account the recommendations issued by the Commission in the context of the European employment strategy”. (more details on EQUAL in part two, point 47).

Conclusion

It is still to early to assess the real impact of the Amsterdam Treaty provisions and the coordinated employment strategy. If nothing else, implementation of the strategy is arguably muddled, with an increase in the number of “processes” (Luxembourg, Cardiff, Cologne), forums for dialogue/negotiation/consultation, and priorities (the need to - even partially - re-issue the guidelines each year is debatable, for instance).

13 Draft Communication From the Commission to the Member States establishing the guidelines for Community Initiative Programmes (CIPs) for which the Member States are invited to submit proposals for support under the EQUAL initiative, COM (1999) 476 final of 13 October 1999.
This complexity reflects the difficulty of creating a credible, specifically Community sphere of activity in employment which does not encroach on national powers. It no less certainly reflects the difficulty of establishing a new process between players still trying to sort themselves out (e.g., the relations between the European Central Bank and social partners). It inevitably leaves less room for manoeuvre and so entrenches the “soft law” method (exchanges of experiences and best practice, peer pressure), but also a lack of binding policy objectives other than those set for themselves by the Member States (in their national action plans) and, possibly, in Council recommendations.

One danger, therefore, would be that a flurry of institutional activity (guidelines, reports on implementation, joint report, action plan, recommendations, etc.) might mask an effective undermining of social standards (non-sustainable jobs, low pay, “activation” of social security payments and tighter eligibility criteria, compulsion, etc.).

Then there is the danger of a particular welfare state model being taken as the yardstick for benchmarking exercises (performance comparisons) and elevated into a European norm. Studies have identified three main welfare state models in Europe (cf. Esping Andersen, Scharpf, Iversen, Wren14): the Scandinavian (or social democratic) model, the Anglo-American (or liberal) model and the continental (or Christian democratic) model. These models have developed historically out of specific institutional contexts, with particular players and political priorities. By setting an increased labour force participation rate as the priority in tackling unemployment, the European employment strategy may neglect other political objectives like equality, and so elevate one of them - in the present instance the Anglo-American model - into a Community “norm”. Admittedly, there now seems a lesser risk of this since the Lisbon Summit’s pledge to make tackling poverty and social exclusion priorities for the EU.

However, it must be admitted that the coordinated employment strategy has, within a matter of years, brought social issues which were still unmentionable in the early 90s onto the European agenda. The debate is opening up, and there are still many open questions. This article concludes with three of them.

The recommendations exercise came much earlier than some observers expected. The fact that the Commission was then on its way out may have some bearing on that. Be that as it may, it widened the prospects for further development. The question is whether these recommendations will now enter into play in national debates and change the balance of power between social partners in the Member States. That could be an interesting spin-off of the European employment strategy. But therein lies another danger: the Ecofin and Social Affairs Jumbo Council’s demand to examine the recommendations before they are published may result in the Member States making their own recommendations to themselves in areas where they see fit. This would not be advance democracy in practice.

As regards the link between employment and the macroeconomic guidelines, a degree of institutional ingenuity seems to point to a minimum consensus on the need for dialogue between the players. But here more than elsewhere the players in this dialogue must get on the same wavelength before they can set what will doubtless be a very cautious joint process in motion. Will they succeed? The firewalls between macroeconomic and employment strategy issues have not been dismantled, but ways forward are open.

---

As regards financial resources, finally, the general context paints a bleak scenario in that social cohesion is to some extent losing out to enlargement. Even so, the interaction between the employment strategy and Structural Funds activity has been strengthened, such as to make structural funds money available to put the Amsterdam provisions into effect. However, the EU’s self-imposed financial straitjacket for the period 2000-2006 could stand in the way of this prospect.

The lack of reliable information on how the guidelines are really being implemented at national level means that only a guarded analysis and assessment can be given.
The novelty of the place of social protection in the European agenda in 1999 through “soft law”
Caroline de la Porte

Introduction

Traditionally, social protection has clearly not been a priority in the European agenda, and the diverse actors involved in the area are more often than not frustrated by the relative standstill of advancement of European social policy. The focus of this article will be on the steps taken in 1999 through the soft law¹ instrument in the puzzle of European social protection. Compared to the political climate at the beginning of the last decade of the millennium, several factors have led to a heightened will to set out, in a more substantive manner, a socio-economic and political identity for European social protection. It is to be taken into account that social protection issues are not merely discussed among actors prioritising action in that area, but also among actors with a traditionally rather inflexible attitude — regarding the development of European social protection. In order for the higher place of European social protection on the European agenda to be advantageous to the quality of life of European citizens, a particularly prudent approach and careful monitoring of the positions and actions of different actors should be adopted.

The first part of this article will be devoted to analysing the milestones - and the critical development of the political climate - of the European social protection strategy in the 1990s, with a particular focus on the developments in 1999.

The second part will shed light upon the position of the diverse players – social partners, European Parliament and the European Anti-Poverty Network - involved in the process of conferring European social protection with a socio-economic and political identity.

Background

It is to be kept in mind that when the legal basis of the European Community was first established, by the means of the Treaty of Rome of 1957, the competency of the Union in the area of social security had to be linked to the project of economic unification. The contours of a European social policy started appearing in the 1970s. In 1971, the Commission had already presented outlines for a Community “social action programme”, partly resulting from the emergent elaborate plans for implementing EMU in the Werner report, where it was emphasised that EMU was of such eminence and would not be possible to successfully realise without bringing together the social and economic spheres. The Paris summit of October 1972 called upon the Community institutions to draw up a social action programme with concrete measures when the second stage of EMU was foreseen. In 1974, the Council

¹ It is of interest to note that “soft law” became a recognised instrument in the social policy area following the Maastricht Treaty, after which the green (COM (93) 551) and white (COM (94) 333) papers on social policy successively came out. The ground was thus set for the approach to gain momentum, and in 1995, when A. Larsson became the Commissioner of DG V, the Social Affairs, Employment and Industrial Relations Directorate General, the actions in the social policy area were pursued through this instrument. “Soft law” refers to all non-legally binding provisions - that in a more indirect and soft manner, lead to changes among EU member states - including communications, recommendations, opinions, memorandum, communiqués, codes of conduct, internal rules. (Pathways for Social Protection in Europe, Pieters, D., and Nickless, J., for the Ministry of Social Affairs and Health of Finland, October 1998, pp. 10-12.)
approved the first social action programme\textsuperscript{2}, which focused on the re-enforcement of equal
treatment between men and women, minimum standards with regard to employment, and the
social dialogue. Many commentators saw the 1974 social action programme as a turning
point in European politico-economic and ideological identity, where the social dimension of
Europe was not merely seen as being subordinated to the economic dimension, but was
instead conceived as being on an equal footing. However, this optimistic interpretation holds
more for the discourse than the practice regarding the \textit{essence} of social protection. It must
nevertheless be mentioned that during the decade that followed the first social action
programme, the legally binding harmonisation was initiated, and a majority of the directives
regarding protection of employment, health and safety at work, and equal treatment. During
the 1980s, opposition towards the "monolithic harmonisation" strategy and the 'legalistic
orientation' started emerging\textsuperscript{3}, and the softer approach slowly began to surface.

The 1986 European Single Act represents an attempt to re-enforce the legal basis for the
intervention of the European Community in social affairs, but it was highlighted that social
security strictly remained an area of national competency. In 1989, the Charter of
Fundamental Social Rights of Workers recognised the importance of the possibility for the
European Community to intervene in social security. Article 10 of the Charter highlights that
all workers have the right to adequate social protection. The social action programme
adopted following and in relation to the Charter set out for the elaboration of two instruments
that were to be adopted as recommendations in 1992\textsuperscript{4}.

The two Council recommendations adopted in 1992 acted as pillars for social convergence:
- The first recommendation was explicitly on the convergence of objectives and policies of
  social protection (92/442);
- The second recommendation pertained to the definition of common criteria to assure
  sufficient resources and social assistance in the social protection systems of the EU
  member states (92/441).

Although these two documents were rather significant symbolically, they have, when it
comes down to it, been ineffective. They were however eye-openers and precursors for the
future in the recognition that the social security systems of member states - despite their
different traditions, ranging from the Anglo-Saxon minimal type of social policy to the more
universalistic Nordic social policy - are confronted with common challenges. However, these
documents did not \textit{in essence} contribute to a common European social protection philosophy
and ethos and the political climate at the time did not incite the diverse actors' will to follow-
through on the opportunity provided by the 1992 convergence strategy.

The 1993 green and 1994 white papers on social policy were, like the 1992
recommendations, documents of figurative policy. The former emphasised that social and
economic progress should be conceived in tandem, and the latter continued along the same
lines, setting for a balance to be achieved between economic and social policies. The
European hypothesis that was to be the core and justification of the discourses formulated
during the rest of the 1990s – social protection is a productive factor and sustainable social
and economic growth are mutually reinforcing rather than conflicting – emerged in the white
paper\textsuperscript{5}. In 1995, the Commission published a communication “The future of social protection,
a framework for a European debate” (COM (95) 466) which, further to the recognition of
common objectives of EU member states, identified the necessity of EU member states to -

\textsuperscript{2} Pakaslahti, J., The Social Dimension of the European Union: burden, necessity, destiny ?, Ministry
of Social Affairs and Health of Finland, Helsinki, 1996, p. 21.
\textsuperscript{3} Pakaslahti, J., op. cit., pp. 23 - 24.
\textsuperscript{4} Antoons, J., “Politiques européennes de sécurité sociale", Courrier Hebdomadaire CRISP (Centre
\textsuperscript{5} Pakaslahti, J., op. cit., p. 40.
while maintaining their particular social protection arrangements – adapt their systems to respond jointly to common challenges, as they would necessarily increasingly interact through the internal market and the economic and monetary union. It was recognised that social protection - defined as collective transfer systems designed to protect a country’s inhabitants against social risks - was an essential part of the European model of society. However, the discourse was more affirmative than the actions, limited to the submission of bi-annual social protection reports indicating progress that had been made in the diverse sectors. The communication made explicit reference to problematic issues, which would be taken up at a later stage, particularly in the 1999 communication on social protection. These issues include the problems of the decreasing proportion of the working population compared to the increasing proportion of pensioners, the need to tailor social protection in a more employment-friendly manner, the need to somewhat rearrange the financing of social protection systems, the necessity to reform the health-care systems.

The communication “Modernising and Improving social protection” (COM (97) 102) was the next milestone in the progressive development of European social protection. The “mainstreaming” route, consisting of a horizontal integration of social protection issues within other European policies, was the guiding principle of the communication. Mainstreaming, through a more integrative approach, aims to mobilise as many actors as possible in the debate on social protection to raise awareness of the challenges confronting the system.

The 1995 and 1997 communications, although touching upon important issues, remained rather vague and did not set out strong guiding principles for European social protection.

In 1998, as a follow-up to recommendation 92/441, the Commission presented a report on the social assistance systems in the EU member states, which took into account the European context and policies of the latter part of the 1990s. It particularly made reference to the European Employment Strategy and the modernisation and improvement of social protection in Europe (COM (97) 102). The report is focused around three axes in the fight against poverty, namely, the position of minimum income schemes in social protection systems and an overview of the recent trends in the use of the schemes, how to actively promote employment among those receiving the minimum income, and the increasingly clear development of an individualised approach to social integration. The report is an interesting comparative document, but unfortunately lacks development of a European response to social assistance. The main findings are that since the end of the 1980s, the number of European citizens benefitting from and dependent on minimum income has increased, attributed to two main factors: the higher and persistent level of unemployment in many European countries, and a rise in the numbers who have experienced social disruptions in their lives. It also appeared that, despite different trends across the EU member states, minimum income schemes do not act in isolation, but are part of a range of various social benefits, social services and aid in kind. It was pointed out that “availability for work” criterion included in national provisions of social assistance schemes took on a renewed significance with the economic and budgetary constraints the Member States were facing since the end of the 1980s. Overall, many efforts still need to be made to make beneficiaries (especially long-term) more employable, and to integrate active employment measures in social assistance schemes. The policy prescriptions are three-fold: firstly, to optimise the social protection, focusing on increased consistency between social minima and other social benefits, as well as assuring better coverage of essential needs, secondly, and in line with

---


7 Social disruptions are phenomena often resulting from the increasingly “risky” society, in A. Giddens’ understanding of the term, where individuals have to face increasingly risky phenomena, including family breakdowns, forced migration, homelessness, delinquency, prison, over-indebtedness.
the European Employment Guidelines, to create mechanisms to increase access to employment, and lastly, to develop social and economic integration criteria.

Overall, it appears that social protection initiatives through soft law during the 1990s were not discursively strong or influential and European social protection remained a “taboo” issue.

1. Adoption of Communications of the Commission in the area of social protection in 1999

It is above all important to take into account the environment in 1999 that led to a more generalised interest in social protection issues. Firstly, there were increasing concerns about what has become a structurally high level of unemployment and social exclusion, as well as the changing demographic structure of the population, with an ageing population and in an increasingly affirmative manner, a new gender balance. Secondly, the transformation of the macro-economic environment, with the build up to and the ongoing adaptation to the EMU has led to a revival of interest in the politico-ideological aim to assure a good quality of life for all citizens. Moreover, the interdependence and interaction between the countries participating in EMU is increasing continuously. Thirdly, the extension of the enlargement strategy to all candidate countries, including Turkey, on an equal footing has led the actors involved in EU social policy to perceive the clear-cut difference between social protection among the EU member states and among the candidate countries. There has thus been a realisation that the social element as a productive factor that the Europeans are so proud of and the existing particular balance between economic growth and social protection can not be maintained if no actions are taken to confer a substantive socio-political identity to it. Finally, the culmination of the impact of soft law, through the so-called “process of Luxembourg”, refers to a re-enforced co-operation between member states and the EU institutions that led to the formulation and application of the European Employment Guidelines. The process has proved to be a powerful political instrument in that it has led to a common European Employment Strategy.

It is interesting to keep in mind that – particularly since the adoption of the European Employment Guidelines in 19978 – social protection is more often than not linked to employment. The discourse favours a shift from passive to active protection policies and the issues of prevention and rehabilitation are filtering into the core of the European social protection discourse. This manner of making social protection more employment-friendly is complementary to the priorities of the employment strategy centred around functional flexibility, the continuous development of human capital and skills upgrading. Security is thus drawn from being employable through adaptation to new circumstances rather than on having the same lifelong job9. The 1998 Employment Guidelines classify the trend in the European social protection and employment policy as a “new culture of employability”, which is more specifically defined as the capacity for people to be employed, entailing “not only the adequacy of their skills but also incentives and opportunities offered to individuals who seek employment”10. Employability is the political buzzword that defines the responsibility of public policy, in terms of the creation of equal opportunities for commodification, rather than in

---

8 The “employment guidelines” are defined as “common lines of approach for both objectives and means” and draw in the experience of multi-lateral surveillance of economic policies and its success in fostering convergence. (Tronti, L., “Benchmarking employment performance and labour market policies: the results of the Research project”, European Employment Observatory, 1999, p. 1).


Social policy developments in the European Union in 1999

terms of decommodification of individuals, which was one of the motors to Esping-Anderson’s evaluation of the extent of coverage and fairness of welfare states in Three Worlds of Welfare Capitalism. It is interesting to note that political commitment to “employability” more often than not in tandem with pressures on educational institutions to improve their efficiency and adjust their output to market demands. Moreover, this is combined with a tendency to decentralise responsibility for human capital development to the individuals, who are its owners11.

In 1999, diverse players – European Commission, the member states by the means of the European Council, the social partners, the European Parliament - increased activities in European social protection. The underlying aim of the European social protection strategy is to ensure a good quality of life to all European citizens, not only to the privileged, healthy and young working population, but equally to the socially excluded, the elderly and persons suffering from health problems. The President of the new Commission, Romano Prodi, has insisted on the fact that it is more efficient to seek solutions to challenges through concerted European strategies, rather than acting only at national level.

“Non-traditional” actors with diverging aims, have also, rather suddenly, illustrated interest in and taken initiatives in social protection. The Economic Policy Committee is going to set up a working group responsible for examining whether pension and health care systems are financed soundly. No details are disclosed on criteria to be used to this effect. Broad economic policy guidelines (COM (99) 143 final) encourage member states to reform pension and health care systems in order to be able to face the financial burden due to the ageing population and to cater to the future active population. Concerning employment, member states are on the one hand invited to adapt tax and benefit systems to ensure that they effectively support employability and job creation, and are also encouraged to financially plan for investment in human capital and other active labour market policies. They are also fostered to reduce the overall tax burden and particularly the tax wedge on low paid labour via reduced spending or shifts to environmental, energy and consumption taxes12. The European Round Table of Industrialists (ERT13) has published a report encouraging the players concerned to set out a common set of principles for reform and to enact a coordinated pension reform strategy14. Opening up a market for private pensions and stimulating greater competition between private pension providers, encouraging individuals to take responsibility for saving for their retirement, providing tax incentives for employee contributions to company-sponsored schemes and removing fiscal barriers to private pension investment are among the recommendations the ERT makes to EU Member States15. The diverse aims of the players could conflict with the initiatives by the more traditional social protection actors.

During 1999, the rather peculiar context and conjuncture partly explain the significant progress that was made in European Social Policy. Altogether, three communications were adopted : the first - “Towards a Single Market for Supplementary Pensions16” COM (99) 134,

13 The ERT, created in 1983, is a forum of 47 industrial leaders aiming at promoting competitiveness and economic growth in Europe, and at improving Europe’s competitive position in the global market. (Presentation ERT, see http://www.ERT.be )
15 Idem, p. 8.
16 Supplementary pensions refer to pension plans organised through occupational activities (second pillar) or independently (third pillar), and by definition supplement public state pension schemes.
Social policy developments in the European Union in 1999

11 May 1999 - was of technical nature and did not in substance contribute to European social protection.\footnote{With regard to the free movement of worker in the EC, the Council has already adopted a directive in June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community space. The directive will come into force in June 2001.}

The second communication “Towards a Europe for All Ages promoting prosperity and intergenerational solidarity” COM (99) 221 is of more essential policy substance than the one on supplementary pensions in that solidarity and equity between generations is the underlying principle. In response to the challenges of the relative decline of the population of working age and the ageing of the workforce, the pressure on pension systems and public finances, the growing need for old age care and health care, the growing diversity among older people in terms of resources and needs, and the relative risk of poverty of women that were not traditionally bread-winners, various policy conclusions have been formulated.

The policy priorities in the framework of the communication are taken up in the communication – “A concerted strategy for modernising social protection” COM (99) 347 - indicating coherency of the European social policy discourse.

The third communication adopted on 14 July 1999 by the soon-to-resign European Commission was the most surprising paper of the three in terms of the policies set out. The pivotal Communication sets out a strategy for social protection around four axes that can be considered as the core of the European social model promoting quality of life for all citizens. The four pillars and their respective aims are:

- **Employment**\footnote{In December 1999, the registered EU unemployment rate was 8.8%, Eurostat news release, 1 February 2000.} : To make work more profitable and assure a steady income.
  The new increasingly complex context with the emergence of new working arrangements and the constantly developing technological progress requiring constant up-dating of skills have led to a response prescribing a balance between security and flexibility as well as between rights and responsibilities. In order to make work pay, tax and benefit systems should be redesigned to incite workers to take up a job and to encourage employers and entrepreneurs to create jobs and opportunities. The legislative systems should integrate temporary and part-time work contracts effectively, and the social protection systems should be adapted to assure replacement incomes when necessary, to allow reconciliation of working and family life.

- **Old age**\footnote{Of total social protection expenditure across the EU, 39.2% is spent on pension systems. (EUROSTAT, Social Protection Data 1996).} : To ensure pensions in the framework of viable pension schemes.
  The pension systems are to guarantee a decent replacement income for pensioners, and to promote active ageing, namely through life-long learning and flexibility in retirement arrangements. Attention needs to be paid to groups that risk exclusion, notably older women, who are faced with the problem of poverty resulting from their low participation in employment.

- **Social Inclusion**\footnote{1.5% of social protection expenditure across the EU is for social inclusion. (EUROSTAT, Social Protection Data 1996).} : To promote social integration of underprivileged groups.
  Social protection systems should ensure that all persons are able to live in dignity, and necessary attention must be paid to the groups that do not have the tools to assure for their own well-being, through the provision of minimum income benefits, access to housing and health services, and participation in society. Particular efforts should be made to activate
appropriate measures and incentives for integration into the labour market, in line with the employment guidelines.

- **Health Care**\(^{21}\) : To guarantee a high and sustainable level of health care. Accessibility to health care services and the enhancement of preventive policies in view of improving health are priorities. It was highlighted that it would be important to take into consideration the increasing proportion of elderly persons, and the corresponding need for health care. The high cost of innovation in medical technology, in spite of its positive contribution to health care, was pointed out as a factor to monitor careful.

In the light of enlargement towards the East, the development of social protection systems in the candidate countries, to reach the level of social policy in the EU member states, is crucial. The communication indeed presents the current state of affairs – that poverty and deprivation have become widespread, that unemployment is high, that accession to the single market means that the candidate countries will be exposed to strong competitive pressures that will increase social exclusion, unemployment and poverty – but does not set out specific steps to take to reform the social protection systems, aside from making reference to two of the legal acquis: equal treatment, co-ordination of social security systems.

A specific section is devoted to health care, which is complex in several different aspects (see “A Focus on the Health Care Aspect of Social Protection”).

The context of the reality of the changing world of work, new family structures and dramatic demographic changes have definitely influenced, to some extent, the necessity to propose a strategy for the future. Moreover, the increased interdependence between Member States’ economies through EMU affects all areas, including social protection. Through the communication, the aim was to confer European social protection with a political identity, and it appears, contrary to the non-resolute process over the past decade, that in 1999 the political will to raise the profile of social protection emerged successfully. Nevertheless, the consequent actions must be monitored closely, alongside the action of other non-traditional actors, which could backfire on what seems, at a first glance, to be a rather positive development.

2. Effective political support for raising social protection in the European agenda

In the area of social affairs, one of the political priorities of the Finnish Presidency\(^ {22}\) (July – December 1999) was to adopt, at Council level, an agreement to pursue actions, through a high-level working group, in regard to the July 1999 communication. On 29 November 1999, the EU Council for Labour and Social Affairs decided to set up a group of high-level officials from the 15 EU member states, to operationalise the objectives set out in the Commission’s July Communication on social protection. The follow-through to the communication by the means of political action is an essential step, further illustrating that the context in 1999 was unusual, and led to more interest for social protection among different actors. At European level, there is to be enhanced dialogue in the area of social protection, and where necessary, member states will be supported to improve their social protection systems, tailored of

\(^{21}\) 27% of social protection expenditure across the EU is for health care. (EUROSTAT, Social Protection Data 1996).

\(^{22}\) It is to be noted that the role of the Presidency Chairman for the Council for Labour and Social Affairs - by emphasising national priorities - is to a certain extent influential on the development of the social protection process. (Kari, M., “EU:n Sosiaalipoliitikka uuden vuosituhanne alkaessa”, 6 February 2000).
course to their national socio-economic context. The interdependency of economic and social development has been central in European discourses on social policy during the 1990s. This was equally highlighted by the Council as the cornerstone for an economically and socially viable Union. The Council concluded that the improvement and modernisation of social protection “should be a coherent action, parallel to and interactive with the European employment strategy as well as to the macro-economic dialogue”\(^{23}\). In addition to the four axes of social protection - employment, old-age income, social inclusion, health care - set out in the Commission’s Communication, equal opportunities and constructive use of new technologies in the dialogue and development of social protection are emphasised. Moreover, the role of social partners is perceived as essential in the modernisation of the social protection process, as well as association of the European Parliament, the Economic and Social Committee, the Committee of the Regions and social security institutions. Concerning the external dimension of social protection, in particular the enlargement strategy of the European Union, the Council highlighted the importance of paying attention to assuring a balance between economic and social development in the applicant countries. The ultimate aim is to set out guiding principles in social protection, reminiscent of the European Employment Guidelines that resulted from the Luxembourg process. A preliminary conclusion on the development of European social protection in 1999 appears to be quite remarkable. From July to November 1999, not only was a remarkable and more political consequent document published by the Commission in the area of social protection, but also, the EU member states agreed to pursue actions through a high-level working group.

The political priorities of the Portuguese Presidency (January – June 2000) will now partly direct the actions that will be taken by the group. In its document “Employment, Economic Reforms and Social Cohesion – towards a Europe based on innovation and knowledge” of January 2000, the Portuguese Presidency of the EU set out the cornerstones of the strategy to be pursued throughout its Presidency which hints at the manner in which the modernisation of social protection will be tackled. The aim of achieving a sustainable social protection is integrated into the ambitious goal of creating “the world’s most dynamic and competitive area\(^{24}\)” in the transition to what has been identified as a new innovation and knowledge-based paradigm. The approach of the strategic document of the Portuguese Presidency corresponds to the “3-key areas triangle” at the heart of the approach of the Directorate General of Social Affairs and Employment: growing macro-economic interdependence (through the broad guidelines of economic policy), deepening co-operation on employment (through the European Employment Strategy), increased investment in the social policy of the European Union (through the concerted strategy for its modernisation)\(^{25}\).

The European Employment Strategy, focusing around combating unemployment and increasing the employment rate, is perceived as complementary to the modernisation of social protection. Compared to the four axes of the July 14 communication, as well as the enhancement of equal opportunities, use of new technologies in the organisation of social protection, the role of the social partners, and assuring social policy development in the enlargement towards the East, prioritised by the Council under the Finnish Presidency, suit has been followed in some respects. Regarding the employment axis, the cornerstones are the creation of jobs in the services sector, the inversion of the trend towards early retirement from the labour market, an increase in the rate of female employment, encouraging equal opportunities. Moreover, employability, adaptability, active employment policies and lifelong learning are fundamental elements to the employment policy. The sustainability of pensions – on average about 40% of expenses in social security among the EU countries – is an


\(^{25}\) Speaking note, Commissioner Diamontopoulou, ETUC Executive Committee, Brussels, 3 December 1999.
important stake, and, through the high-level working group set out to modernise social protection, the priority will be to carry out a forecast study on the sustainability of pensions for 2010 – 2020. The Presidency recognises that social exclusion may emerge in different forms, and in a preventive light would like to develop integrated, targeted programmes for vulnerable or excluded social groups, with a particular priority for the eradication of child poverty by 2010. The aforementioned high-level working group is also charged with the task of preparing a monitoring panel with indicators for monitoring the social situation, in order to set clearer policy objectives in the long-term. In addition, the objective of social inclusion is to be mainstreamed in education, training, employment and social protection systems.

It is however worrying that the Portuguese Presidency has omitted certain areas - health care, social protection policies with regard to the East and alternative methods of financing social protection – which are likely to affect the overall quality of life of Europeans. At the dawn of the new millennium, the working group set out to meet monthly. One of the factors highlighted as essential by a number of Member States in the group is the importance of the Presidency’s approach in establishing social protection as a subject in its own right beside economic discussions. It must be taken into account that although the group will hopefully raise the political profile of social protection, the means to achieve this will principally be the exchange of information and best practices, which has in the past proved not to be the most effective means.

As health care is an area with rather vaguely defined borders, in which there are rather alarming emergent patterns, a more detailed examination of the actions in that area has been made.

Following the focus on health care, and in order to foresee and to understand the active dimension of the social protection strategy, to identify the place, strategy and competency of the diverse actors – ETUC, FERPA, UNICE, EP, EAPN - in the process. Their positions with regard to the four priorities of the Commission, the mechanism for monitoring and developing the European social protection strategy, and social protection in the context of an enlarged Union will be set out. Any additional specific positions and the thread identifying each position will be clarified.

3. A focus on the health care aspect of social protection

Health care is essential for the successful operationalisation of an employment-friendly European social protection, but health care issues are often left on the side-line, although they account for 27% of social protection expenditure across the 15 members of the European Union, representing between 5 and 10% of GDP among the EU member states. Below, the recent steps taken will be explicated, and a presentation of the problematic issues concerning health care will be made.

Health care issues are hesitantly making their way into the social protection area although it is more on the discursive than the active dimension. The Communication “The future of social protection, a framework for a European debate” (COM (95) 466) 95 underlined the importance of maintaining equitable access for all to health care, coupled with efficient cost-management. Member states were encouraged to co-ordinate their respective specialised health services and complementarily develop them. In the 1997 Communication “Modernising and Improving social protection” (COM (97/102), the same guiding principle of equitable access to health care and cost control was pursued, with the ultimate aim of improving the efficiency and the quality of health care systems, in order to be able to respond

---

27 Special thanks to Rita Baeten (OSE) for clarifying elements with regard to health care policies.
28 EUROSTAT, Social Protection Data 1996.
29 “Modernising and Improving social protection”, COM (97)102, p. 15.
to growing demands, especially in the light of the ageing of the population. The 1997
document further developed the question of the extent to which and the conditions under
which health care systems could help saving costs while fostering a better quality of services
and ensuring access for all.

In the 1999 Communication on a concerted strategy for the modernisation of social
protection, one of the four priorities was “to ensure high quality and sustainable health care”. The
guiding principle acting as the backbone for the two previous communications was
pursued. Moreover, a particular emphasis was put on preventive policies, through the
promotion of healthier lifestyles. For political reasons, a cost-saving link had to be made with
prevention in order to include such policies in the communication, but the argumentation of
the causal effect of preventive policies on the reduction of costs must be approached with
care, as the link cannot automatically be made. The need to control the high cost of health
care - linked partly to the ageing of the population and partly to expensive medical
technology – was underlined. Regarding medical knowledge and technology, for the
“efficiency and effectiveness” of health systems, the communication promotes strengthening
coopération between Member States on evaluation of policies and techniques.

The tasks of the high-level working group that was set up on 29 November 1999 by the
Council under the Finnish Presidency to activate the four axes in the 1999 Commission
communication on social protection included working towards the improvement of health
care. However, in the Council conclusions it was explicitly set out for public health issues to
be tackled separately. There is therefore a danger for health care not to receive the attention
it deserves as there is a problem of definition of health care issues in relation to social
protection and public health. Both at member state and EU level, health policies are decided
upon by different players in separate entities – each having their own specific priorities -
which explains the difficulty of a clear-cut delimitation of health care issues in the framework
of social protection.

The working group began its work during the Portuguese Presidency30, in January 2000, and
the risk of health care being cast on the sideline has been materialised as there are no plans
to deepen the strategic aims around that axis. This is partly due to the fact that the strategy
of the Portuguese Presidency, with the overall aim of making Europe the most dynamic and
competitive area, is focused around employment. It is easy to integrate social inclusion
policies into employment, as it is a means to integrate excluded persons. The same goes for
assuring good quality of life to the elderly bracket of the population, where the aim of the
policies sets out for an extension of their productive contribution. However, for health care,
the link with productivity and employment is less evident.

Although health is a policy area for which competencies are divided and sometimes over-
lapping, it is important to underline that health is a stake for which EU member states would
like to retain decision-making power. Increasingly, this aim is being threatened by the
European Court of Justice – through the Kohll (C-158/96 of 28 April 1998) and Decker (C-
120/95 of 28 April 1998) cases - emerging as a potentially influential political actor. For the
ruling of both instances - the Kohll case dealing with a dental consultation in another Member
State, and the Decker case concerning the coverage of a purchase of glasses in another
member state – the decision was not in conformity with the dispositions in Regulation
1408/71, which sets out for coverage in another Member State, as long as there is a
preliminary agreement between the mutual insurance companies. In both cases, provision of
health care services had been sought in another Member State, without the preliminary
agreement of the mutual insurance company in the country of origin, from which full

30 In the strategic document of the Portuguese Presidency, “Employment, Economic Reforms and
Social Cohesion – towards a Europe based on innovation and knowledge”, the areas of focus and
actions planned are set out.
coverage of costs was then demanded. The implication of the ruling is that Member States would lose control over the management of their health care systems if EU residents would increasingly have recourse to medical services – particularly costly hospitalisations - in another Member State, without the agreement or implication of the mutual insurance players. Indeed, new cases concerning the coverage of health care costs are now on the table, which could reconfirm the increasing decision-making role of the Court of Justice in health care issues across the Union. In the Smits (C-157/99) case, the plaintiff argues that no preliminary authorisation should be required from the mutual insurance company of the EU national for 'unusual' or 'adequate' treatments in another member state. The VanBraekel (C-368/98) case concerns the reimbursement of hospital fees in a member state where the mutual insurance company is not located. In the Ferlini case, the plaintiff is arguing that the double-rates practiced by the Luxembourg hospital centre – one for persons that are covered by a mutual insurance that is located in Luxembourg and one for persons not covered by the system – are unfair.

If the stake of the political power of the Court of Justice in the financing of health care is being avoided, it is partially because more specifications may have to be included in the Treaties in the area of free movement of goods and services. Specific circumstances for coverage of health care and social protection goods and services would have to be set out and this would be difficult. However, if the member states and the Commission take the backseat they will increasingly be policy-takers rather than policy-makers.

4. Position of different players with regard to European social protection

*European Trade Union Confederation (ETUC)*

Overall, the ETUC welcomes the Commission's July 1999 Communication on a concerted strategy for modernising social protection, and notably the principles and the enhanced collaborative elements to set out a true social protection strategy. The ETUC considered the will to activate a deeper co-operation among the actors concerned - based on the four pillars (see above) - as an important step forward, but insisted on the fact that “modernisation” of the social protection systems should not reduce social coverage or the solidarity-based motor common to the EU member states, in favour of a more loosely tied together system. The ETUC is particularly concerned about the gaps and the somewhat superficial, unrealistic or ambiguous aspects of the communication, as it seems that some of the activities proposed had not been thought through in terms of practical implementation. Firstly, the task of tackling alternative funding had not been touched upon, and the ETUC proposes enhanced actions in that area as it would not be able to accept a reduction in resources in favour of employment. Secondly, the formulation of a European strategy through the mechanism of the exchange of good practices in the high-level group was conceived as an ineffective instrument if the aim were to achieve substantive change. The diverse European social protection systems are considered by the ETUC as so strongly rooted that no real benefits could be obtained from an exchange of experiences. Instead, the ETUC proposes setting “social convergence guidelines”, according to the logic of the employment guidelines, catering to diverse systems and leaving the implementation modalities up to the EU member states31. The ETUC finds

---

31 ETUC's promotion of the drawing up social convergence guidelines at European level was already decided upon during its 9th Congress, held in Helsinki on 29 June to 2 July 1999. ETUC had stated that the binding guidelines should be set out on the basis of the proposals made in the 1992 recommendation on the convergence of objectives and policies of social protection. During the Congress, ETUC prioritised the development of actions around five axes:

1. financing of social security (shifting the burden of taxation towards other productive factors);
the high-level group of EU member state officials incomplete as the social partners are excluded from it. Alternatively, the setting up of a “Social Protection Committee” is proposed, which could be modelled after other committees, such as the “Employment Committee”, and participation of the social partners, in addition to the high-level civil servants, should be assured through the committee. Finally, the ambiguous elements and terms of the communication that were identified by ETUC indicated that the terminology used could favour funded systems at the expense of PAYG ones. Moreover, a mere minimum coverage, through the non-clarity of expressions such as a “decent replacement income”, “encouraging flexibility in retirement arrangements”, “providing incentives (in the promotion of social inclusion)” rather than a more complete coverage could arise.

In regard to the external dimension of social protection, the ETUC criticised the Commission for encouraging the candidate countries to “work towards the development of efficient, effective and sustainable social protection systems” without providing elements to operationalise the rather global but empty aim. This was underlined in the context of the enhanced enlargement strategy. The ETUC encourages the Commission to set out social protection guidelines targeted at the candidate countries.

**European Federation of Retired and Older People (FERPA)**

The FERPA’s position with regard to the Commission’s communication to a great extent followed suit of the ETUC opinion.

Elements highlighted include the necessity to review the financing of social protection systems and to implement alternative methods.

The setting out of social protection guidelines by the high-level working group should include:

- shifting the financial burden of financing social protection from work to other productive factors;
- adapt the social security systems to the changing world of work;
- set out a percentage of the GDP for financing social security;
- minimum standards for salaries, pensions, and social assistance.

FERPA believed it would be important to draw up social protection guidelines for the candidate countries.

**Union of Industrial and Employers’ Confederations of Europe (UNICE)**

The UNICE has, compared to the ETUC, a more sceptical view of the Commission’s communication. Its line of criticism is centred on the necessity to develop European social protection systems towards an insurance-based motor. In this regard, a reduction of the

2. set a requirement for a minimum level of GDP expenditure for social protection on the basis of the average of the three countries with the highest expenditure level;
3. guarantee adequate health care for all;
4. adapt social security systems to the changes in the labour market and make it possible to reconcile professional and family responsibilities;
5. create some minimum standards for social protection across the Union.


overall tax and contribution burden is proposed, and is characterised as a condition for optimal employment creation. Moreover, the place of employment and the employment guidelines are prioritised by the UNICE, and are considered as the core of social protection reform. The four priorities of the Commission’s communication are conceived in a positive light, with a particular emphasis on employment. It is of interest to note that employment is mentioned in different respects throughout the UNICE position paper, whereas the other objectives - to make pensions safe and the pensions systems sustainable, to promote social inclusion, to ensure a high quality and sustainable health care – are elaborated upon only with reference to the problem of their financing, towards more individual coverage.

Regarding the instrument set out to achieve the aims, UNICE agreed with the approach proposed by the Commission: structured exchanges of experience between member states to monitor policy developments in social protection systems. UNICE highlighted that social protection reform should not be carried out in parallel to the employment policy. Instead, the two approaches should be fully integrated, clearly according the spotlight to employment. Social protection systems should on the one hand promote worker employability and adaptability, and on the other hand, employers should be provided with appropriate conditions for the creation of jobs.

As for the financing of social protection systems, the UNICE, like ETUC, notes that the Commission has failed to touch upon the issue in the communication. The means proposed to finance social protection systems is private insurance arrangements, although maintaining a (minimum) social safety net to those in need is mentioned. In sum, the UNICE’s view with regard to the four poles of the Commission’s “concerted strategy” – referring to guaranteeing a good quality of life to diverse social groups: the active population, pensioners, socially excluded, and persons with health problems - is that employment and private insurance arrangements are to be the core of the future social protection systems. The mechanism for monitoring and developing the European social protection systems, mainly through the exchange of experiences, in a high-level group, is seen as appropriate.

No mention is made by the UNICE of an external dimension of social policy, in particular in regard to the candidate countries.

**European Parliament (EP)**

It must be taken into account that the EP’s position is a draft report of the perspective from the Committee on Employment and Social Affairs, and can not be taken as representing the whole of the EP. The EP\(^{34}\) recognises the advancement that has been made since the 1992 social convergence recommendation, and perceives the July 1999 communication as a crucial step providing for the materialisation of social convergence through an analysis of common challenges and formulation of common objectives for modernising the Member States’ social security systems. The European social convergence strategy is defined by the Parliament as “an instrument for promoting macroeconomic objectives for sustainable growth and structural changes on the labour market to increase the level of employment, improve competitiveness and increase productivity.”\(^{35}\) Among the four objectives, emphasis is put on social inclusion and care of diverse categories of citizens, including the vulnerable groups and the elderly. The fundamental right to high-quality health care is supported, while mentioning the segregative risk that could arise by privatising social risks. The EP also emphasises the need to ensure social security rights for atypical workers.

\(^{34}\) Andersson J. of the Committee on Employment and Social Affairs, prepared the EP’s position in regard to the Commission’s communication, COM (99) 347.

It is interesting to note that Parliament’s position goes into considerable detail regarding the mechanisms to carry out to reach the four objectives set out in the communication. The Parliament encourages the Commission to develop three instruments to monitor and to assure a reform-oriented development of the EU social security systems at national level: benchmarking criteria, evaluation systems, and guidelines. Other means suggested to pursue social convergence were the drawing up of a separate report on poverty, particularly targeting the situation of underprivileged groups, the setting out of guidelines for the establishment of an acceptable minimum subsistence level in EU member states, and the drawing up of statistical indicators for targeting the situation of social exclusion and poverty.

The process of operationalising the modernisation, through a high-level group responsible for the yearly social protection report, was considered as appropriate, but the Parliament made it clear that it would like to partake in the group from the outset. The Parliament highlighted the importance of including various actors in the process: Ecofin Council, Councils responsible for social affairs and employment, social partners, applicant countries for EU membership, NGOs, social security institutions, the Economic and Social Committee, and the Committee of the Regions. The model to be formed for social protection monitoring and reform along the lines of the Luxembourg process, was perceived as appropriate. The alternative methods of financing suggested by the Parliament include different taxes, rather than the heavy tax on labour: taxes on environment, energy and consumption, and on capital. The Parliament expressed concern about the fact that the issue of financing had not been tackled in the Communication.

With regard to the candidate countries for EU membership, the Parliament suggests drawing up a separate social action programme in the specific context on enlargement. Moreover, in the yearly report on social protection, the Parliament expects detailed information on the situations in the applicant countries, particularly regarding the vulnerable groups – poorly educated women, the disabled, orphans, ethnic minorities. A developmental approach is also encouraged in the analysis of the situation in the applicant countries through setting out the modalities for the applicant countries to follow to modernise their social security systems in line with the European social protection reform.

**European Anti-Poverty Network (EAPN)**

EAPN did not publish an official position paper on the Commission’s “Concerted strategy for Modernising Social Protection”, but rather, a broader opinion on their view of the future of social protection. In general, the paper indicates that they are in favour of the European-level approach of social protection adopted in the communication COM (99/347) and focusing around increased flexibility of the solidarity-based welfare systems to cater to different lifestyles and age-groups. With regard to the four axes, focus was on individualised support for socially excluded people, which is logical considering the nature of activities of EAPN.

EAPN expressed the wish to participate in a debate implicating actors concerned.

With regard to the mechanisms to enhance the social dimension of Europe, EAPN favoured the adoption of social protection guidelines based on the model of the employment guidelines, the setting up of centres to monitor poverty, and the establishment of mechanisms to measure the impact of policies on poverty and social exclusion.

---

36 “Social Protection or Exclusion: A Choice for Europe”, EAPN, September 1999, EAPN website (www.eapn.org). It is to be kept in mind that the paper was published based on a seminar organised in March 1999, and that the communication (COM (99) 347) was not taken into account.
With regard to the financing of social protection, EAPN highlighted the non-correspondence of the current system, based on the “traditional” job market, and encouraged taxation to shift from earned income to all forms of revenue.

Conclusion

Upon a brief analysis of the development of the place of social protection in the European agenda, with a particular focus on 1999, it appears that significant progress has been made on the discursive and active levels during the last year of the millennium. It now has a higher political profile, and many players, some of them not traditionally involved in the area, are attempting to shape its political, economic and social identity. It is essential for the high-level working group to focus on actions in the four priority areas – employment, pensions, social inclusion, health care – and to carefully study the potential effect of the diverse initiatives, in order for the boomerang effect not to be counter-active. An exhaustive and careful analysis should be made on the effectiveness and appropriateness of different paths, including the establishment of minimal norms, monitoring social protection development in member states according to the recommendations made, and benchmarking.

Although it is clear that the political profile of social protection has been raised on the European agenda, it is to be kept in mind that it is principally through the soft law mechanism, in particular through the exchange of best practices and information. Some authors refer to the soft law mechanism as the “information guidance” axis of policy-making. According to this type of classification, the other types of policy instruments, or “sets of guidance” are financial guidance (financial support through the structural funds as well as the often-avoided issue of the financing of social protection) and legal guidance (legal instruments that must be integrated by member states into their treaties). Optimally, the three should be used in conjunction to optimise policy-making. In the social protection area, information guidance has developed positively. However, financial guidance, as has been highlighted by diverse actors, can no longer be left on the sideline. The financing needs to be reformed so as to on the one hand respond to common challenges in Europe - the ageing of the population, the high unemployment rate, the increasing number of socially excluded - and on the other hand to adapt the system to integrate individuals with diverse lifestyles into the social protection systems. Concerning legal guidance, the Maastricht Treaty sketched the aim of the Community Social Policy as a high level of employment and of social protection, a high standard and quality of living, and economic and social cohesion. In May 1999, the Amsterdam Treaty was ratified, providing the opportunity for more action on the legal axis to take place in social policy. However, because of the crisis of the Commission no initiatives have been taken yet to pursue actions in that area, and it is too soon to evaluate the effects of the Treaty. To conclude, it is important to emphasise that actions need to be taken in all three axes of European social policy – the information, financial and legal guidance, with a focus on the first two axes. The emergence of a European social protection is en route and is taking its own specific form.

---

37 Pakaslahti, J., op cit., p. 82.
38 Pakaslahti, J., op cit., p. 36.
39 Pakaslahti, J., op cit., p. 80.
European social dialogue: a mixed picture  
Christophe Degryse

Introduction

The late 90s was an eventful period for the European social dialogue. The entry into force of the Amsterdam Treaty and the incorporation of the Maastricht social agreement into it signalled a revival of social Europe. This time, however, the want of a common vision by the Fifteen would make the Community social partners the focal point. On paper, everything was in place to assist this new impetus. And yet, after the signature of three cross-industry agreements between the Val Duchesse partners (UNICE, ETUC, CEEP), it quickly became clear that the political will to turn this dialogue into the spearhead of social policy was lacking on the employer's side. It was as if they had concluded a European collective agreement more as the result of a calculated tactic (to fend off legislation, or not expose themselves to intervention by the European Parliament, for example) than an overall strategy. The Commission’s attempts to revitalize it proved to no avail, with the notable exception of the sectoral dialogue which continued to make headway.

A long-term view of Community industrial relations since their inception reveals that issues like information/consultation, training, and the macroeconomic dialogue have remained constant, although the context has changed considerably. For example, 15 years ago the macroeconomic dialogue appeared relatively marginal, while today the third phase of the euro, the creation of the European Central Bank and the Cologne process have put it at the centre of the agenda. By contrast, life-long learning, which so many had thought would provide the basis for far-reaching progress in the Social Dialogue, has been reduced to a far more limited concept of employability.

Ostensibly, the dialogue has had few tangible results so far, but a new broad mix of players and procedures have effectively revolutionized it. This article first reviews what we see as the key recent developments, then considers the main agreements to come out of the Social Dialogue, and how the procedures have developed. The final section will look at the contents of inter-branch and sectoral bargaining and the processes of the dialogue (including the macroeconomic dialogue), map out future prospects, and draw conclusions.

1. Changes in the players

Union of Industrial and Employers' Confederations of Europe (UNICE)

The prospects of an increased role for consultations and negotiations led to some redefinition of the social partner representative organizations. Although not originally part of the Community Social Dialogue, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) reached agreement with UNICE on a method of cooperation within the framework of the Social Dialogue. The agreement, signed in December 1998, provides for closer coordination between the two employers’ organizations as a result of UEAPME’s appeal to the Court of Justice of the European Communities over being left out of negotiations leading to agreements (agreement on parental leave). For the record, the Court of Justice dismissed UEAPME’s complaint and recognized the legitimacy of the signatory organizations to the agreement. The new coordination with UNICE, giving entrenched recognition to UNICE’s representation of the European employers, is now carried out through preparatory meetings between the two organizations to agree on joint positions to be argued in the Social Dialogue forums. Essentially, therefore, it amounts to increased consultation and concertation. In July 1999, UEAPME merged with the European Committee for Small and Medium-sized
Independent Companies (EUROPMI) to increase the influence and representation of self-employed businessmen and family firms. The resulting organization represents some 10 million small and medium-sized firms across the EU. Also part of this general trend towards reshaping the players were the repeated demands by the managerial association Confédération européenne des cadres (CEC) for the cross-industry dialogue to be opened up to other representative partners (see also the agreement with Eurocadres, below).

Craft workers, self-employed, managerial staff, family businesses: there is no escaping the fact that the wider role given to social partner consultations in the Treaties, and the quasi-legislative role devolved on the participants in the Val Duchesse dialogue, raises implicit questions about their representativeness.

Internally, UNICE’s Council of Presidents approved the principle of alterations to its internal rules on 4 December 1999, chiefly to its decision-making procedures. UNICE weights votes by country size. The percentage vote for a qualified majority is 71% (or 80% for certain decisions, such as approval of the budget, acceptance of new members, etc.). More controversial was its decision to adopt the same “super-qualified majority” to engage talks with the ETUC, although agreements still had to be approved by consensus. Only time will tell whether this cautious change reflects an entrenched sticking point on the social front, or a tentative step towards a more proactive stance. Whatever else, powerful external pressures were at work, especially from the European Parliament which remains highly critical of the content of the agreements reached by the social partners and could have used UNICE’s internal rules as an argument in favour of an overhaul of the social chapter.

On the strategic front, UNICE spelled out its position on the Social Dialogue in a document entitled “Releasing Europe’s employment potential: Companies’ views on European social policy beyond 2000” (September 1999). It includes a section on what the employers’ organization calls “A qualitative approach to European social policy to release Europe’s employment potential”. It repeatedly expresses fears about what it sees as excessive interventionism by all levels of government in social policy and “rigidities” in social legislation. As a result, it gives qualified support to the European social dialogue which it sees as a means of working out guidelines and shared objectives based on exchanges of opinions to promote a deeper understanding of one another’s positions. It has specific reservations, however, about the social legislation which the dialogue can lead on to since the Maastricht Treaty. This is why UNICE has for so long denied that it is mandated by its member organizations to negotiate collective agreements with the European Trade Union Confederation. Today, the European employers take it as read, according to UNICE, that where European level action is appropriate, “the social partners are better placed to find balanced and mutually acceptable solutions”. However, the acceptance of the role of the Social Dialogue is offset to some extent by the affirmation that “this system (the European social system - Ed.) is incompatible with the imposition of forced convergence by the European legislator”.

All in all, the European employers remain wary of the role of co-legislators which the European Treaty has assigned to them and the trade unions, and half-hearted about the need for Community legislation in social matters. If convergence there must be, it must come through the market.

---

1 The Commission has commissioned a study on this. The results for the cross-industry level can be found on: [http://www.econ.ucl.ac.be/TRAV/recherche/dg5.html](http://www.econ.ucl.ac.be/TRAV/recherche/dg5.html)

2 A more comprehensive analysis of these changes will be made when the final text of UNICE’s new articles becomes available, which it was not at the time of writing.

3 In UNICE’s own words, “to encourage progressive and market-driven convergence towards the most successful social policy practices of Member States, as opposed to forced harmonisation”. 

- 44 -
The European Trade Union Confederation (ETUC)

On the trade union side, institutional changes in the European Trade Union Confederation (ETUC) are indicative of its growing legitimacy. In March 1999, France’s CGT - a long-standing critic of European integration - joined the ETUC. Admittedly, its membership application was opposed by another French trade union, CGT FO, for historical reasons, but there is no escaping the fact that with the CGT, CGT FO, CFDT and CFTC inside the European Trade Union Confederation, virtually the entire French trade union movement is now represented at Community level. As regards representation, one other noteworthy event was the understanding on cooperation signed on 8 July 1999 by the CEC (Confédération européenne des cadres) and Eurocadres (European Council of Professional and Managerial Staff, a member of the ETUC). It mainly provides for the setting up of a joint Liaison Committee and their participation in the Social Dialogue bodies and processes.

One highlight of the year was the European Trade Union Confederation’s ninth Statutory Congress, held in June-July 1999. One key aim was to work out ways of guiding and defining the qualitative content of collective bargaining policy at European level, and setting the ETUC’s priorities for the next four years. It focussed on the EU’s enlargement to the Central and Eastern European Countries (CEEC) and the future of social protection. It passed two resolutions which clarify the ETUC’s broad political priorities. The first, entitled “Towards a European system of industrial relations” focusses on the need for social regulation of economic and monetary integration, and to strengthen the European social dialogue. It stresses the need for action at European level to promote jobs and coordinated collective bargaining to ensure fair wages and improved living and working conditions EU-wide. It emphasized the importance of European works councils to the progressive Europeanization of industrial relations and trade unions. The second resolution deals with general European trade union policy. It stresses the importance of upholding the European social model, and what Europe’s response should be to globalization. It also addresses the different aspects of European integration: monetary union, employment, the future of social protection, EU enlargement and reform of the EU institutions.

Both documents demonstrate the European trade unions’ commitment to fostering the emergence of a sort of social European Union, which is held up as a sine qua non condition for convergence between the Member States while maintaining the improvements made and jobs.

The Congress was also a platform to call for further progress in the negotiating dimension of the Social Dialogue as the necessary accompaniment to European political integration. The ETUC considers that the main aim of regulation must be harmonization of working and social conditions. This is one of the main points of difference between the ETUC and UNICE; the latter, as we saw, believes that the European social dialogue and the imposition of “forced convergence by the European legislator” must be regarded as mutually exclusive, whereas the ETUC takes the opposite view that “legislation and negotiation are complementary and equally necessary to develop the social acquis” (although the ETUC puts framework agreements negotiated through the Social Dialogue first). Strengthening the European social dialogue is a priority for the Confederation, which believes that its full potential has not yet been exploited due to UNICE’s reservations and unwillingness. Indeed, it specifically calls on the European Commission to play a key role by pressing the employers to show more commitment to the Social Dialogue.

\footnote{Approval of the CGT’s membership was accompanied by a side agreement between the CFDT and the UNSA (Union Nationale des Syndicats Autonome, a full member of the ETUC, admitted at the June 1999 Executive Committee) on representation on the Executive Committee.}
At its Congress, the European Trade Union Confederation (ETUC) announced its intention of calling on UNICE and CEEP to engage in talks with a view to reaching a new agreement laying down the scope, content and rules of the European system of industrial relations to complement national systems (the interaction between the national and Community levels and between cross-industry and sectoral dialogues had been highlighted at the Congress). Further development of that European system should include dispute settlement procedures and “full recognition of specific trade union rights in the EU Treaty, beginning with the International Labour Organization (ILO) Conventions on freedom of association, collective bargaining, the right to strike, child labour and forced labour”. Finally, beyond the European social dialogue proper, the ETUC called for a coordinated policy of national collective bargaining, definition of a “European solidaristic pay policy”, and, in the longer-term, Europeanization of trade unions. In a letter to UNICE, it proposed five new negotiating issues and three work topics. We shall see below (pages 51-52) that this call met with a lukewarm reception from the employers.

I cannot conclude without a reference to other developments on the trade union front in the past three years, not least the stepping-up of strategic cross-border coordination between national trade union confederations (see the Doorn process bringing to German, Dutch, Belgian and Luxembourg unions). Alongside this cross-industry initiative, there was also an industry initiative by the German metalworking industry union IG-Metall Westphalia, which invited Belgian, Dutch and Luxembourg trade unionists to sit in as observers in negotiations for collective agreements5.

At the very least, these developments signal a desire to extend cross-border trade union cooperation and to develop the role of the social partners at Community level further.

The Commission

Following on from the Communication of 20 May 1998 on the Commission’s strategy for “adapting and promoting the Social Dialogue at Community level”6, twenty two Sectoral Dialogue Committees were set up in 1999 and laid down their work programmes. They stemmed from the Commission’s avowed desire to adapt both sectoral and cross-industry consultation procedures. For the record, the Commission had also stressed its desire to encourage the further development of contractual relations, and to assess the agreements presented to it on a case by case basis. It also stated its aim of reforming the Standing Committee on Employment, specifically by changing its composition (see part 2).

Also, in the run-up to the EU’s enlargement to Central and Eastern European countries, the Commission set itself the longer-term aim of fostering links between the social partners in the Fifteen and the applicant countries with a view to gradually building up cooperation at both cross-industry and sectoral level. That in turn means developing structured Social Dialogue in these countries so as to involve the trade unions and employers’ organizations in the EU’s pre-enlargement initiatives (see below).


2. Agreements and procedures

Significant movement in the players in 1999 was matched by developments in the procedures for passing social laws. Before the Maastricht Treaty, there was only one possibility: the Council would adopt a directive, and the Member States would incorporate it into their national law. Now, there are four different ways (see diagram below).

The first is through an agreement between the social partners to be implemented by them at national level. This is the road the ETUC wants to go down. To date, there is only such agreement - a 1997 framework agreement in the agricultural sector on improving waged agricultural work. This invites the social partners at national, local and workplace level to negotiate the reduction in working time. It sets limits on overtime and specifies rest periods and paid leave. Regrettably there is too little information to say precisely how far the provisions of the agreement have been taken into account or disregarded in national bargaining.

Another way is via an agreement between the social partners subsequently implemented by a European directive. There are three examples of this at cross-industry level (see below) and, in the year’s most striking development, the first sectoral agreement on working time in sea transport has also been turned into a directive. The agreement sets maximum daily and weekly working hours, guaranteed paid annual leave, minimum hours of rest, and sets the minimum age for night work. It applies to all seafarers on board seagoing ships registered in a European Union country.

The third way is European legislation implemented at national level by a collective agreement. This is the case, for example, with the European Works Councils Directive, which is implemented through agreements between workers and management in the multinationals concerned.

Finally, there remains traditional legislation implemented in the usual way, if the European social partners decide not to exercise their powers on the matter. One issue currently on the agenda is whether autonomous social partner negotiations are possible on health and safety matters (in theory, “yes” since the Amsterdam Treaty came into force) and, if so, on what basis, in light of the existence of the Luxembourg Advisory Committee on Safety and Health. The ETUC can accept negotiations on the health and safety aspects of work organization, but not on health and safety rules, which can only be set on the basis of technical and scientific criteria guaranteeing the highest possible level of protection.

Table 1: Four procedures for Social Europe

<table>
<thead>
<tr>
<th>Agreement field</th>
<th>Implementation by agreement</th>
<th>Implementation by legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Working time in agriculture (7/97)</td>
<td>- Parental leave (12/95)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Part-time work (6/97)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Working time in sea transport (9/98)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Fixed-term contracts (1/99)</td>
</tr>
<tr>
<td>Legislation field</td>
<td>- European Works Councils</td>
<td>- Posting of workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Reversal of the burden of proof</td>
</tr>
</tbody>
</table>

3. Content and approach

Cross-industry dialogue

Three framework agreements
The late 90s are a good standpoint for a first review of the results of the Social Dialogue, because most of the first cross-industry framework agreements were negotiated in the latter half of the decade. For reference, UNICE, ETUC and CEEP concluded three framework agreements which led on to Community directives. The first was on parental leave, the second on part-time work and the third on fixed-term employment contracts.

The first framework agreement was concluded on 14 December 1995. Six months later, on 3 June 1996, it was turned into a Community Directive adopted by the EU Council under the Maastricht Social Agreement procedures. It mainly confers on men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months (with protection against dismissal). These are minimum requirements, so the Fifteen are free to introduce more favourable national measures. As the ETUC stresses, this directive improved social/employment law in five of the fifteen countries.

The directive on part-time work entered into force on 20 January 1998, but has only been fully in effect since 20 January 2000. Its main purpose is to ensure that workers affected by new flexible work organization arrangements receive comparable treatment to full-time workers on indefinite contracts. Here again, the ETUC points to the improvements made by this directive to the situation in countries where it was previously unregulated, namely Britain and Ireland (accounting for some 5 million workers).

The recent framework agreement on fixed-term work merits closer attention. UNICE, the ETUC and CEEP settled the contents of the agreement on 18 March 1999. Some three month later (on 28 June 1999), the Council implemented it in a directive (Directive 99/70/EC, the first such to apply to all Fifteen EU Member States straight away). The purpose of the directive is to put into effect an overall framework of general principles and minimum requirements on fixed-term work to ensure equality of treatment between workers (nearly 14 million Europeans work on fixed-term contracts). In fact, the directive had already been foreshadowed by the social partners when concluding their agreement on part-time work. The preamble to that agreement announced their intention of considering the need for similar agreements relating to other forms of flexible work, namely fixed-term contracts and temporary work.

The directive on fixed-term work provides that fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract unless different treatment is justified on objective grounds. Employment contracts of an indefinite duration (open-ended contracts) are stated to be the general form of employment relationship. It also aims to prevent abuse arising from the use of successive fixed-term employment contracts. To this end, the Member States are invited to introduce measures such as setting objective reasons justifying the renewal of such contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the maximum number of renewals of such contracts or relationships. At the same time, employers are asked as far as possible to facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.

---

7 The Directive (96/34/EC) was amended and extended to the United Kingdom by Directive 97/775/EC of 15 December 1997. It was implemented in the Member States on 3 June 1998 (15 December 1999 for the United Kingdom).

8 For the United Kingdom, it entered into force on 7 April 1998 and must be brought into effect by 7 April 2000 at the latest.
Here as elsewhere, the Member States may introduce more favourable provisions for workers than those set out in the directive. But they may also provide that the agreement does not apply to initial vocational training relationships and apprenticeship schemes, or employment contracts which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

The directive entered into force in all Member States on 10 July 1999 with a requirement that it be implemented by 10 July 2001 at the latest. "The signature of the framework agreement on fixed-term work was a clear success for the European social partners who got the result which the Commission had for years failed to get" (Vigneau, 1999). The Commission's own proposal for a directive on temporary work had in fact been blocked chiefly by the United Kingdom since the early 80s, and had had to resign itself to withdrawing its proposal for want of agreement in the EU Council.

What conclusions can be drawn from this agreement? The framework agreements negotiated have been criticised as unambitious compared to the more highly-developed corpus of social laws in some Member States. Because the framework agreements set only minimum requirements, for example, their impact on national laws will depend on each State's level. But it could also be said that convergence of social laws is still vital in the medium- and long-term to build up a basic foundation of specifically European established social gains, and in view of the EU's eastwards enlargement. The aim of convergence is to avoid lacunas in the law which may be openings for social dumping, by raising labour standards. Also, the technique used involves action on two fronts: European and national. In other words, neither the national nor European levels have a monopoly on the social dimension - it forms part of an interaction between these two levels which should over time develop the national and European agendas alike.

The quality of the European social dialogue, therefore, can be assessed just as usefully from its setbacks. For that reason, the next paragraph looks at the failure of the framework agreement on information/consultation of workers at national level.

And a failure
The social partners are not always inclined to engage negotiations. In July 1997, the Commission launched the first round of social partner consultations on information and consultation for workers at national level. The aim was to try and work out at Community level a general framework for informing and consulting workers so as to plug the loopholes in Member States’ laws (including failure to prevent social problems, inadequate penalties for breaches of rights,...). The idea was to try and set up workplace procedures for informing and consulting employees on matters which directly affect work organization and their employment contracts.

The second phase of consultations, to consider the practical contents of a Community initiative in this area, was launched on 5 November 1997, placing the ball in the social partners’ court. The ETUC gave its backing to the Community initiative in February 1998, followed in March by the CEEP. After much stalling, however, (Pochet and Arcq, 1998) UNICE flatly refused on 16 October 1998.

The Commission therefore decided to use its powers under the Treaty to initiate legislation. On 11 November 1998, it adopted a Proposal for a Council Directive establishing a general framework for informing and consulting employees in the European Community. Its basic starting point was that national provisions and practices have not always managed to anticipate and prevent the social problems that may be caused by changes in the general running of the firm, and that consultation on measures to alleviate the social consequences of strategic economic decisions comes too late to be of use. Also, inadequate penalties for breach may throw into question the effectiveness of the right to be informed and consulted.
The Renault Vilvoorde affair (the surprise closure of one of the French carmaker’s Belgian plants) is still fresh in the memory...

UNICE argued that under the subsidiarity principle, the European Union had no powers to regulate matters which were the responsibility of the Member States, pointing to the vast body of national laws on the matter. In September 1999, the employers’ organization spelled out its views in its document on the future of European social policy (UNICE, 1999). It argued that “legislative action at European level should:
- be limited to cases where the issue under consideration has transnational aspects and can therefore not be satisfactorily regulated by Member States, or when it is necessary to prevent unfair competition (...);
- take the form of broad frameworks defining objectives and principles at European level but leaving the choice of how to implement them to the Member States (...);
- fully take account of companies’ needs for flexibility, workers protection needs and access to jobs for the unemployed;
- fully take account of the need to promote entrepreneurship in Europe (...)

On this basis, UNICE, argued, the European Union had no business regulating information and consultation of employees in companies at national level.

This unwillingness sent the information and consultation issue back to the established Community decision-making procedure: a Commission legislative proposal, scrutiny by the European Parliament, an Opinion by the Economic and Social Committee, and a decision by Council and Parliament. As a result, the balance of power took a political turn. Significantly, by the end of 1999 - more than a year after the Commission published its draft - the proposal has still not found its way onto the agenda of an EU Council meeting. Very strong opposition from some Member States makes it unlikely that the proposal will pass into law any time soon (despite the fact that since the Amsterdam Treaty entered into force, information/consultation can be decided on by a qualified majority). Everything, therefore, hinges on the will and determination of the forthcoming EU Presidencies. But it is a matter of record, for example, that it took nearly fifteen years for the Council to adopt the European Works Councils Directive in the face of entrenched opposition from the employers. It is more than likely that the social partners will assimilate this type of fact into their strategy towards the Community Social Dialogue.

Sectoral dialogue

Within this mixed picture, interesting, although less high-profile, developments have taken place in the sectoral social dialogue. A long series of agreements have been concluded in the past two years in the see transport industry (working time, see above), railways (sectors excluded from the Working Time Directive), and on child labour in the footwear industry and retail trade. Other agreements have focussed on the promotion of employment (postal services, telecommunications, cleaning industry), vocational training (agriculture, textiles and clothing, cleaning, hotels and catering, tourism), health/safety (agricultural sector). Codes of conduct and social labels (e.g., concerning child labour among other things in the footwear, textile and clothing industries). Some genuinely ground-breaking agreements have been reached, like the 1997 agreement for the agricultural sector. Also of note is the 1998

---

9 UNICE followed the same hard line in its opinion on the Commission’s proposal for a directive, finding it pointless, against the subsidiarity and proportionality principles, and even a threat to jobs: “it poses serious risks for the capacity of European companies to adapt and, therefore, for employment without making it possible to achieve its objectives”.

- 50 -
agreement between the social partners in the maritime transport industry, implemented by a Council directive adopted in June 1999.

Also, as mentioned in the introduction, the Commission Communication on its strategy for adapting and promoting the Social Dialogue resulted in the setting-up of twenty two sectoral committees (cf. table).

Finally, the number of institutional players was increased by the creation of a Federation of Transport Workers’ Unions in the European Union.

There were, of course, some failures, too, chiefly in the road transport (weekly working time of mobile workers) and fishing industries (working time). But the general trend in the sectoral dialogue clearly reveals a growing willingness by the social partners to set themselves common rules at industry level.

Table 2: Sectoral Social Dialogue Committees (SSDC)10

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>Workers</th>
<th>Employer</th>
<th>Old Committee</th>
<th>Old informal group</th>
<th>New SSDC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>EFA</td>
<td>GEOPA-COPA</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Insurance</td>
<td>UNI-Europa</td>
<td>CEA ; BIPAR ; AECI</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Banking</td>
<td>UNI-Europa</td>
<td>BFEU ; ESBG ; EACB</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Footwear</td>
<td>ETUF-TCL</td>
<td>CEC</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Wood</td>
<td>EFBWW</td>
<td>CEI Bois</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Railways</td>
<td>ETF</td>
<td>CER</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Commerce</td>
<td>UNI-Europa</td>
<td>EUROCOMMERCE</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Construction</td>
<td>EFBWW</td>
<td>FIEC</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Culture</td>
<td>EEA</td>
<td>PEARLE</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Horeca</td>
<td>ECF-IUF</td>
<td>HOTREC</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Inland navigation</td>
<td>ETF</td>
<td>IUIN + ESO</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Cleaning</td>
<td>UNI-Europa</td>
<td>EFCI</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Sea fishing</td>
<td>ETF</td>
<td>EUROPECHE</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Postal services</td>
<td>UNI-Europa</td>
<td>POSTEUROP</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Private security</td>
<td>UNI-Europa</td>
<td>COESS</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Personal services</td>
<td>UNI-Europa</td>
<td>CIC Europe</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>(hairdressing)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sugar</td>
<td>ECF-IUF</td>
<td>CEFS</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Tanning</td>
<td>ETUF-TCL</td>
<td>COTANCE</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Textiles</td>
<td>ETUF-TCL</td>
<td>EURATEX</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Sea transport</td>
<td>ETF</td>
<td>ECSA</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Road transport</td>
<td>ETF</td>
<td>IRU</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Temporary work</td>
<td>UNI-Europa</td>
<td>CIETT</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>UNI-Europa</td>
<td>ETNO</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Air transport</td>
<td>ETF ; ECA</td>
<td>AEA ; ERA ; IACA ; ACI Europe; ACCA</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Electricity</td>
<td>EPSU ; EMCEF</td>
<td>EURELECTRIC</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Media</td>
<td>EFJ</td>
<td>UER ; ENPA</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Local public services</td>
<td>EPSU</td>
<td>CEMR</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Graphics</td>
<td>UNI-Europa</td>
<td>INTERGRAF</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>9</td>
<td>15</td>
<td>22</td>
</tr>
</tbody>
</table>

**Macroeconomic dialogue**

Finally, 1999 was also the year in which the European Employment Pact was established and a macroeconomic dialogue initiated. For a point of record, the idea of a European Employment Pact was first launched by Germany at the end of 1998. The original idea was to strengthen EU action on employment through effective coordination of Member States’ taxation, fiscal and incomes policies.

The idea was first embraced enthusiastically by some of Germany’s partners - France and Italy among them - and the European Trade Union Confederation. As negotiations progressed, however, it became clear that the Fifteen were not all on the same wavelength. Some wanted the EU to set verifiable, binding, quantitative targets for European economic policy, while others thought economic growth could not be legislated for and that Member States’ credibility would suffer from too measurable a failure in this area. A week ahead of the Cologne Summit, these differences of opinion prevented the “Jumbo” Council (Ministers for Economic Affairs and Finance plus Ministers of Labour and Social Affairs) from reaching an ambitious pre-agreement on the contents of the Pact, leaving the German Presidency with the task of brokering a compromise position to be put to the fifteen Heads of State and Government.

The Fifteen endorsed the compromise, and the Cologne Summit adopted a resolution and a report on the European Employment Pact based on three pillars: the European employment strategy, economic reforms and macroeconomic dialogue. It dovetails with the Luxembourg and Cardiff processes and adds a third: the macroeconomic dialogue. This aims to involve the European Central Bank, representatives of the EU Council, the Commission and the social partners to improve the interaction between wage development, fiscal policy and monetary policy. The dialogue’s task is to find a balanced policy mix geared to growth and employment (see also the article on employment in this part).

The ETUC’s first reaction to the announcement of the draft employment pact was to welcome this proposal which, “focussed on increased coordination of macroeconomic policies and a strengthening of the European strategy for employment (...) represent the makings of an effective solution to Europe’s ills”. The ETUC had calculated that increased coordination of macroeconomic policies geared to a sustainable, domestic demand-led recovery should enable the EU to achieving a sustainable growth rate of 3.5% while improving the employment rate.

However, it was not entirely satisfied with the outcomes of negotiations at the Cologne European Council. A statement by its General Secretary, Emilio Gabaglio, said he was “deeply concerned that no decision has been taken to re-target European economic policy on stimulating employment on the basis of strong, non-inflationary growth”. He was also convinced that the current monetary and fiscal policy mix “is far from the right answer to the post-EMU economic and employment scenario”. Considering the employment pact, as essentially “procedural”, the ETUC nevertheless said it would play an active role in the macroeconomic dialogue to get policies capable of making the most of existing growth and employment potential.

UNICE also took a position on the Employment Pact. It argued that “Member States are primarily responsible for the implementation of the reforms needed to the labour market”, and had misgivings about a pact involving binding commitments, preferring “a voluntary process of exchange of information and dialogue at EU level”. Nevertheless, UNICE supports the three objectives set out in the proposal, namely “to ensure a tension-free macroeconomic policy, a better implementation of the coordinated employment strategy in the Luxembourg process and a strengthening of structural reforms in line with the Cardiff process”.

- 52 -
4. Prospects

The late 90s seems to mark a turning point in the employers’ attitude to the European social dialogue. The refusal to negotiate an agreement on national information and consultation rules seems to point up the limits to the Social Agreement procedure.

The European Trade Union Confederation left UNICE in no doubt about its desire to continue “preliminary work” on issues like telework, discrimination and, more generally, the development of the employment pact intended to establish a macroeconomic dialogue.

The ETUC believes many areas of work remain. Aside from those cited above, they include non-standard employment relationships, access to life-long learning, working time, complementary social protection, etc. But UNICE’s internal debates offer dim prospects of any negotiations on these topics at the present time, and in some instances they may have to be referred back to national and local levels. In a bid to revitalize the Social Dialogue, the ETUC suggested to UNICE and CEEP that they should settle on priority issues for negotiation, instruments and a timetable. A comparison of UNICE and CEEP’s responses to the ETUC’s proposal is instructive. The trade union identified five possible issues for negotiation.

The first was temporary work. This was the third of the three aspects of non-standard employment - the others being part-time work and fixed-term work, both of which had led to agreements.

UNICE is in the midst of wide-ranging consultations to determine whether or not an employers’ negotiating platform can be worked out. It is typical of the way UNICE operates to want to go into talks with a specific negotiating mandate.

The CEEP, by contrast, was mandated from the outset to engage negotiations on the three aspects of non-standard employment. Although “it does not consider the latter issue to have the same importance as the other two”, if negotiations were to start up, the CEEP would assume its responsibilities.

The second issue suggested by the ETUC was telework and the scope for concluding a voluntary agreement on it (i.e., without a prior Commission proposal). UNICE and CEEP though the issue should be looked at closely, but only after additional studies or awareness-building campaigns. UNICE stressed the need to distinguish what was specific to telework from other features of the employment relationship.

The third issue put forward was lifelong learning, on which a series of Social Dialogue Joint Opinions had been issued since 1986. Both employers’ organizations acknowledge the value of these Opinions, but UNICE considers it essentially a matter for workplace action, while CEEP stresses that, as the EU has no specific powers in the matter, any agreement would have to be reached autonomously.

The fourth proposal was on complementary social protection. Both employers’ organizations agreed to engage discussions subject to prior technical groundwork and the outcomes of a joint seminar held on 17 November 1999.

The fifth proposal was for a revision of the Working Time Directive. Both UNICE and CEEP were against this, although CEEP suggested taking forward a debate already begun with the European Trade Union Institute on a broader concept of the “stages of life” which included family and social life alongside working life.
The ETUC had also put forward three issues on which joint recommendations might be possible. They were discrimination (articles 13 and 141 of the ECTreaty), sexual harassment\(^{11}\) and the Observatory on industrial change recommended by the October 1998 report\(^ {12}\) of the high-level group of experts on industrial change chaired by Mr Gyllenhammar (set up after the closure of the Renault Vilvoorde plant).

UNICE’s response was to suggest concentrating on finishing off the agreed work programme before adding new items to it.

CEEP thought sexual harassment was a matter for the Member States. It wanted to build on measures already taken to tackle discrimination, and look at the technical side of aspects not yet addressed. It reaffirmed its support for the Observatory on industrial change.

It seems clear from these responses that the substantive progress hoped for by the ETUC will not come about without pressure from outside.

**Conclusion**

It is clear that the momentum given to the Social Dialogue by Maastricht and Amsterdam is being thwarted by a lack of political will from the employers’ side. While, within the space of a few years, the social partners managed to prove their ability to add to the Community social acquis by adopting three framework agreements on key issues, the setback over national information and consultation rules and their inability to agree on a common agenda show up certain fault lines in the process and raise questions about its dangers and weaknesses.

This analysis concludes with a consideration of some of them.

Institutionally, the enhanced Social Dialogue has naturally gone hand in hand with wider powers for those engaged in it - the social partners. Obviously, they do not have “the final say” in the process developed at Maastricht, but greater powers for them can only be achieved at the expense of those of other institutions, starting with the Commission: while the Single Act tasked the Commission with “endeavouring to develop the dialogue between management and labour”, by Amsterdam its task had become only to “facilitate their dialogue”. This modest loss of powers is clearly due to the expanded responsibilities acquired by the social partners, but is not without consequences. The European Parliament, too, has lost out to the increase in the social partners’ powers, being ousted from the initiation, negotiation and decision-making stages. Obviously, this is an attribute of the negotiation process, but it prompts the question whether this lack of a role for the EP has not tipped the balance of power between the negotiators or, at the very least, gives only a partial picture of social realities.

Another likely medium- or long-term risk of an expanded role for the social partners is of their being left to their own devices in what is still an inherently unequal power relationship. To some extent, policymakers would walk away from their responsibility for social Europe by leaving it mainly if not solely to the social partners. The aftermath of the failure to reach agreement on national information and consultation rules revealed the reluctance of EU Council Presidencies to put on their agenda an issue on which the social partners cannot agree. As we saw earlier, the Commission put forward a proposal for a directive to the Council within a month of UNICE’s refusal to negotiate. But more than a year on, the clear

---

\(^{11}\) On which the European employers did not want to engage negotiations (see part 2, point 46).

reluctance of some Member States to address the issue meant it had still not made its way onto the Council agenda.

The obvious objection here is that this is a purely “pre-Maastricht” scenario, where a stalemate created by some States can throw any hope of a compromise into question. But, to some extent, the situation may be more difficult still, now. If the social negotiators cannot agree, how much less likelihood than before is there of the political negotiators doing so? The question also arises whether the social partners have factored this into their bargaining strategies. UNICE seems resolved only to bargain under the threat of legislation, and only then where it is a credible threat (which seems not to be the case for the proposal on information and consultation).

As to the content of the agreements: their undeniable contribution to developing a “Community social acquis” must not overshadow the fact that the Social Dialogue has no purchase on fundamental macroeconomic issues. Put simply, matters of competition policy, monetary policy, fiscal decisions, and the social consequences of the broad economic policy guidelines are not on the social partners’ negotiating table. But, these are all central to the blueprint for a social Europe. The Cologne European Council’s decision to establish a “macroeconomic dialogue” involving the social partners and European institutions could be an important milestone along this road, but it is still too soon to tell.

Finally, it must be stressed that industrial relations do not cover all the wider social issues, but are focussed on employment. The scope for agreements between management and labour does not extend - or only indirectly - to poverty, housing, social exclusion, immigration, or disability, all of them new issues on the Community agenda. Is there a danger here of social Europe becoming a ring-fenced area for workers and businesses, with its own negotiating procedures, common standards and objectives, but no purchase on the “non-employment” aspects of social policy?
I. Jobs, skills and mobility

I.1 Creating jobs and preventing unemployment

1. “Ensure the full implementation of the employment strategy, centred around annual presentation and assessment of the Employment Guidelines and, where appropriate, the formulation of Recommendations to Member States.”

1998 was a key year on the employment front, when the new procedures laid down by the Amsterdam Treaty were tested out (see also article by C. Degryse and P. Pochet in part one). For openers, there was the implementation of the decisions taken at the Luxembourg Extraordinary European Summit on Employment (November 1997). This, it will be recalled, laid down four pillars - employability, adaptability, entrepreneurship and equality between men and women - broken down into nineteen guidelines. The first half 1998 witnessed a long series of meetings and reports of all kinds. The EU States incorporated these nineteen priorities into national action plans (NAPs), following the inconclusive experience of Essen (1994), where national reports were variable as to both content and form. The Commission took proactive steps to create a modicum of consistency in the presentation of measures. Having received the national plans, the Commission undertook a cross-cutting analysis of them. Notwithstanding a broadly positive verdict, the Commission identified a series of shortcomings1, including an over-emphasis on the “employability” and “entrepreneurship” pillars. It hoped that future national plans would be more balanced to take the other European priorities into account.

The highlight of 1999 was the first recommendations drawn up by the Commission2 on the implementation of the employment policies, addressed by the Council to the Member States where they were given a mixed reception (see article C. Degryse and P. Pochet in part one). The Commission’s justification for these first recommendations was the legal basis given them by the entry into force of the Amsterdam Treaty. The method favoured - immediate publication for public consumption - could also be seen as a parting shot by outgoing Social Affairs Commissioner, Padraig Flynn. The nine areas identified by the Commission relate to: tackling youth unemployment; preventing long-term unemployment; reforming the tax and benefit systems, with a particular focus on older workers and women; promoting lifelong learning; creating job opportunities in services; reducing the fiscal pressure on labour; modernising work organisation; tackling gender issues in the labour market; improving indicators and statistics. Before being approved by the Helsinki European Council of December 1999, the recommendations were endorsed by the joint “Labour and Social Affairs” and “Economic and Financial Affairs” Council of 29 November.

The Commission made only a few minor changes to the employment guidelines for 2000 to take account of Member States’ remarks3. The changes reflect the hopes placed in the job-creating capacity of the information society, and the desire to keep older workers in the labour market for longer. They also point up the need for a preventive approach, the role of the public employment services in local job creation, and the social partners’ involvement in

---

modernising work organisation. In November 1999, in its first formal consultation following implementation of the Amsterdam Treaty, the European Parliament echoed the Commission in calling for more specific quantifiable targets to be set so as to make the guidelines into concrete proposals which could be turned into practical measures in the Member States. None of its proposals were incorporated, however. For the positions of the social partners, see the article on “European employment policy in 1999”.

2. “Ensure that the Broad Economic Guidelines and the Employment Guidelines are mutually reinforcing and promote a consistent economic strategy for growth, stability and employment designed, among other things, to raise employment levels and provide a solid and sustainable base to improve living standards in the Union.”

The broad economic policy guidelines (BEPG) are central to the attempt to coordinate Member States’ economic policies. The introduction of the euro brought the Council’s setting of the BEPG into sharper focus as articulating and reflecting the Fifteen’s coordinated strategy on growth and jobs.

The adoption of the broad economic policy guidelines is the end point of a complex institutional process triggered off by the Commission’s annual economic report, which contains guidelines and proposals. Notwithstanding the rhetoric about a mutual reinforcement of the broad guidelines and the Luxembourg process, and the references to it in the text of the BEPG, the last two years’ BEPG reveal a clearly different tone on employment and social protection to that which came out of the Luxembourg process.

On labour market reforms, the 1998 BEPG are based on the employment guidelines, but with a sharper focus on active labour market initiatives, reducing the tax pressure (taxes and social security contributions) on labour, reforming social protection systems, making work “pay”, and conditions in which the organisation of working time can help improve jobs.

The broad economic policy guidelines of the Member States for 1999 urges the Member States to:
- review their pension and health care systems in order to be able to cope with the financial burden on welfare spending of the ageing of the population and the need to influence future labour supply
- review and adapt their tax and benefit systems to ensure that they actively support employability and job creation;

---

5 Based on article 103 of the EC Treaty.
provide for the necessary financing of investment in human capital and other active labour market policies, within the constraints of national budgetary positions;
reduce the overall tax burden and especially the tax wedge on the lower paid via reduced spending or shifts to environmental, energy or consumption taxes.

A more guarded approach towards wages, however, is evidenced by this extract from the EU Economy Review (which replaces the annual economic report):

“In the present situation, while the strong profitability position achieved in many Member States, allied to generally favourable competitiveness and labour market conditions, may in certain cases justify having real wage increases more closely aligned with labour productivity developments, this is undoubtedly not the case for all countries”9.

The Lisbon Extraordinary European Council (March 2000) looked at rationalisation of procedures and their interaction. The Portuguese Presidency’s briefing document10 sought to clarify and simplify the various procedures.

The ETUC has repeatedly called for the employment and BEPG procedures to be put on an equal footing. While approving many aspects of the Presidency document, the ETUC pointed out that it risked strengthening the BEPG and called for the Intergovernmental Conference to put the different procedures on a par in the Treaty11.

One final point to make is that the Commission has published a Communication on mainstreaming employment across Community policies12. It is provided for by article 127 of the Treaty, and should be an annual report. On employment rates, the Commission published a report13 which, among other things, stresses the importance of the employment rate as a measure of economic performance.

3. “Enhance exchange of best practice and innovation and the provision of analytical material on the employment and labour market situation in the Member States.”

and

4. “Assist in the development of an agreed comparable database in Member States, and agreed indicators, in order to monitor implementation of the Employment Guidelines.”

Benchmarking is not, on the face of it, a suitable means for comparing social systems. Most specialists look more to consistency policy approaches than any particular indicator to explain employment results. The Commission uses different studies to underpin its approach14.

---

12 Communication from the Commission: Community policies in support of employment, COM (99) 167 of 21 April 1999.
Social policy developments in the European Union in 1999

The Commission designed a peer review system to select the best examples of national practice.

“The identification and dissemination of good practice is a key aim of the European employment strategy. A “peer review” system was set up: the idea was to subject the results of specific policies implemented under national action plans to scrutiny by independent panels of experts from all sides to assess and determine if and how they might be exported to other Member States. Lists of good practices were drawn up on the basis of measures proposed by each country and submitted to their peers. The policies which secured most backing were selected”\textsuperscript{15}.

In the wake of the Essen Summit, a decision was taken to develop tools for analysis, research, exchanges of information and experiences on employment and the labour market. But it was not until three years later that anything operational materialised\textsuperscript{16}. Established for a period of three years running from 1 January 1998 to December 31 2000, their aim was to foster cooperation in analysis, research and monitoring, identify best practices and promoting exchanges and transfers of information and experience, and develop an active information policy\textsuperscript{17}. The Employment and Labour Market Committee, and the social partners, are to be involved in the activities.

Comparability of statistics is essential both to measuring the effects of employment policy, and instigating benchmarking procedures. Even so, it is a supremely political issue. Emphasis on a particular indicator (e.g., unemployment benefit or the poverty rate) may lead to widely-differing conclusions. In a report to the Vienna Council in December 1998, the Commission noted that the Member States had already agreed on nine indicators (the most general ones) but that no consensus had yet been reached on the others\textsuperscript{18}(18). In particular, the Member States were called on to ensure rapid implementation of Council Regulation No 577/1998 on the organisation of a labour force sample survey in the Community.

Based on the Commission proposal of September 1998\textsuperscript{19}, the Council adopted a Regulation on structural statistics on earnings and labour costs\textsuperscript{20}. This is a key instrument both for the Commission and the European Central Bank for the use of comparable data on earnings and labour costs, on which only certain Member States currently keep statistics.

\textsuperscript{17} The Decision required the Commission to submit an interim report on the results of the specified activities by 31 December 1999 at the latest, and a final report by 31 December 2001 at the latest.
\textsuperscript{18} Commission Report on ways of improving the comparability of statistics to monitor and evaluate progress under the European employment strategy established in view of the European Council in Vienna, COM (98) 698 of 1 December 1998.
\textsuperscript{19} Draft Council Regulation (EC) concerning structural statistics on earnings and on labour costs, COM (98) 491 of 3 September 1998.
Social policy developments in the European Union in 1999

5. “Launch a debate on how to tackle the problem of undeclared work and promote exchanges of good practice on how to encourage such work into the open.”

One problem with Community action is that the European Union simply passes binding legislation - chiefly Directives - and verifies whether they have been incorporated into national legal systems. But it has no powers of local inspection to check whether national legislation is being applied. A 1996 Recommendation called on the Member States to coordinate the activities of the competent services to tackle the illegal employment of third country nationals21.

As part of the action programme, the issue of undeclared work was addressed in a report22 based on disputed figures, but which distanced itself from the highly legalistic approach of harmonisation of social laws to look at the harder realities of the labour market. The Commission believes that the problem of undeclared work can be viewed as an issue of individuals taking advantage of the system and undermining solidarity in the process, or as the outcome of greater flexibility in the labour market and slower adaptation of existing legislation. For that reason the policy options proposed range from highlighting the counter-productive consequences of undeclared work via tougher sanctions and awareness campaigns to prevention through adapting inappropriate legislation to reflect new labour market realities and reducing burdens and obstacles. The Commission believes that implementation of several of the employment guidelines, such as those on developing entrepreneurship and encouraging adaptability, will help to discourage undeclared work. The ETUC has called for a specific course of action on the matter.

Following on from this Communication, the Council adopted a code of conduct inviting the Member States to observe a series of principles to improve coordination of their activities in combating social security fraud, undeclared work, and in the field of transnational hiring-out of workers23.

6. “Stimulate a Europe-wide debate on the modernisation of Public Employment Services (PES) as a tool for tackling unemployment.”

Essen put “modernisation” of employment services onto the agenda. This, of course, is what is described as an “active” employment policy according to the OECD list.

The Commission considers that it is high time public employment services (which attempt to match labour supply and demand, in particular) were modernised to support the European employment strategy with a view to “activating employment policies and preventing long-term unemployment”. A December 1998 Communication on the matter24 says that these services have an “essential” institutional role to play for each of the four employment guideline priorities. But they have to adapt to an environment that is changing rapidly. These changes,

---

22 Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee, the Committee of the Regions and the social partners on undeclared work, COM (98) 219 of 7 April 1998.
23 Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 22 April 1999 on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers, OJ C 125 of 6 May 1999.
24 “Modernising public employment services to support the European employment strategy”, COM (98) 641 of 13 November 1998.
says the Commission, require the PESs to rethink their institutional role, working methods, goals and objectives. In passing, it should be noted that although it admits the need for guarantees of a certain standard of living, the report also espouses the idea that excessively generous unemployment benefits may have disincentive effects on jobseekers. It argues that by linking unemployment benefits to active job search efforts and/or participation in active programmes, PESs can alleviate such disincentive effects and enhance labour market efficiency.

7. “To promote the development of innovative forms of job creation through local development measures, including territorial employment pacts and the social economy, under the Structural Funds.”

The Structural Funds are addressed in point 9 and in the introductory article, so the focus here is on the territorial pacts which resulted from the Commission President’s 1996 proposal for a European employment pact.

In a progress report on the implementation of the territorial employment pacts published in June 1997, the Commission listed the 89 or so pacts which had been concluded in regions and towns which had received technical assistance to draw up practical action plans to promote employment. In an own-initiative opinion of 9 September 199825, the Economic and Social Committee suggested various ways of enhancing the effectiveness of territorial employment pacts (TEPs). Strengthening the partnership between all the players involved is also a key objective, especially involvement by private partnership, universities and training agencies. Finally, because of their role as a local development instrument, the TEPs must be consistent with regional and national development strategies, and in particular with employment policies. The Committee of the Regions is also concerned with consistency. In its Opinion, it argued that “employment pacts should not lead to the creation of yet another separate sector in a still more fragmented society. On the contrary, TEPs must be a rallying point for local actions (…)”26.

A major conference hosted by the Commission on 10 November 1999 to evaluate the effectiveness and results of the territorial employment pacts concluded that 55,000 jobs could be created.

The CEEP focussed on the local dimension, regretting that the guidelines “do not place greater importance on the local level”27. It wanted the guidelines to include a more general reference to the four pillars of social policy: “Having regard to the sharp rise in local public/private partnerships, the Member States shall encourage initiatives which implement the four pillars of the guidelines in territorial pacts geared towards sustainable development and employment”. It makes the case for adding a fifth, cross-cutting pillar to the guidelines - local areas and production systems.

---

27 Opinion 98/21.
8. “To develop a culture of entrepreneurship, in particular through the priority actions identified in its recent Communication on fostering entrepreneurship in Europe.”

One of the four priorities lines of action laid down by the November 1997 Luxembourg Extraordinary European Council as the basis of the employment guidelines was entrepreneurship (the others being employability, adaptability, and equality between men and women). The problematic is to define exactly what entrepreneurship means in practice, and how to encourage it. A series of Communications and initiatives dealing directly or indirectly with this issue were adopted. They include the implementation of the action plan for the single market\(^{28}\), the development of venture capital\(^{29}\), and the action plan on innovation\(^{30}\). It even formed the title of a Commission Communication\(^{31}\).

In the wake of the recommendations made to the Cardiff European Council by the BEST task force, set up in 1997 to look at ways of improving the quality of legislation and eliminating the unnecessary burdens which restrain the development of SMEs in particular, the Commission submitted a Communication\(^{32}\) and an action plan to the Council in September 1998. The Communication and action plan pull together the measures generated by all these policy initiatives into an overall framework for achieving the key aims of promoting entrepreneurship as a means of improving the competitiveness of and growth opportunities of European companies, and creating sustainable jobs. The Industry Council adopted this action plan in 1999\(^{33}\). Key measures in the action plan include: education, training, access to finance, research and innovation, improving public administration, employment and working conditions. In this connection, the Commission will collect good practice based on the network for the modernisation of work organisation (see also point 18). Most of the measures are aimed at small and medium-sized firms.

Strengthening the role of SMEs is a recurrent theme in various Commission Communications, and appears again in a Communication on the role of venture capital markets in stimulating growth of small and medium-sized firms and promoting a new entrepreneurship in Europe\(^{34}\). The Commission identifies various lines of action based on six priorities:

- promoting integration of risk capital markets in Europe;
- eliminating the institutional and regulatory barriers to their development, including in Community legislation;
- improving the taxation system for risk capital;
- promoting the development of SMEs in the high tech sector;
- increasing the supply of qualified entrepreneurs and experts;
- reducing the cultural barriers to entrepreneurship.

The idea is to give these “new global players” the means of their own development, through their potential for generating large numbers of jobs. The Commission stresses that “in the USA, the digital economy is building on the critical mass of SMEs and innovative, networked start-ups”\(^{35}\). The Commission also believes that many Member States should realise the


\(^{30}\) Action plan on innovation in Europe, COM (96) 589 of 20 November 1996.


\(^{33}\) Action plan to promote entrepreneurship and competitiveness, Conclusions of the Industry Council of 29 April 1999.

\(^{34}\) Cf. footnote 29.

\(^{35}\) “The competitiveness of European enterprises in the face of globalisation - how it can be encouraged”, COM (98) 718 of 20 January 1999.
need to simplify the rules and Regulations on starting up new businesses, with a particular focus on the development of venture capital to fund innovation\textsuperscript{36}.

Entrepreneurship has also been the focus of attention by the European Trade Union Institute and the Swedish SALTSA research programme, while national and comparative studies have been carried out on the way in which this pillar has been incorporated into national strategies\textsuperscript{37}.

9. \textit{“Encourage Member States to further increase the level of investment in human resource development and lifelong learning under the Structural Funds, particularly the ESF, in line with the Commission’s proposals for reform.”}

In the broader setting of structural policy reform\textsuperscript{38}, the objectives of the ESF have been redefined to take account of the context of the new European Employment Strategy (EES) and the inclusion of the new Employment title in the Amsterdam Treaty (see article by C. Degryse and P. Pochet in part one). In concrete terms, the ESF will fund the new Objective 3 (human resources), which is mainly focused on supporting the adaptation and modernisation of Member States’ policies and systems of education, training and employment. The Structural Funds allocation for Objective 3 amounts to 24.05 billion euros for the period 2000-2006 - 12.3% of total Structural Funds budgetary resources.

The new Regulation (EC) 1784/1999\textsuperscript{39} lays down five broad policy fields for the ESF closely linked to the four pillars of the employment strategy:
- developing and promoting active labour market policies to combat unemployment;
- promoting equal opportunities for all in accessing the labour market, with particular emphasis on those exposed to social exclusion;
- promoting and improving training, education, and counselling as part of a lifelong learning policy;
- promoting a skilled, trained and adaptable workforce, innovation and adaptability in work organisation, and developing entrepreneurship;
- specific measures to improve women’s access to and participation in the labour market.

The Regulation also takes in the need to:
- support local initiatives concerning employment (including territorial employment pacts);
- take account of the social and labour market dimensions of the information society;
- foster equal opportunities for women and men as part of the gender mainstreaming approach. The ESF also contributes to the implementation of the Community Initiative for combating discrimination and inequalities in connection with the labour market (EQUAL) (see also point 47).

The ETUC\textsuperscript{40} considers the Regulation’s overt reference to the European employment strategy to be a very important element of Structural Funds reform, but insists that all the


\textsuperscript{40} Structural Funds Reform, ETUC Proposals, 15 November 1998.
Structural Funds must contribute to its implementation, including the territorial employment pacts. The ETUC wants the level of skills included in the eligibility criteria for Objectives 1, 2, and 3, because upgrading skills is a key way of tackling unemployment. On the ESF more specifically, the ETUC stresses that giving binding force to preventive measures to facilitate workers' adaptation to industrial and structural changes will help prevent unemployment and enhance competitiveness.

One final point to make is that 1996 had been declared the European Year of Lifelong Learning.41


A significant focus of institutional activity over the past two years has been on taking forward the development of the new generation of EU programmes in the fields of education (Socrates) and vocational training (Leonardo). Based on guidelines laid down in 1997, the Socrates and Leonardo programmes now hinge on common general aims: support for mobility, language skills, transnational cooperation networks and innovatory pilot projects, dissemination of the use of information and communication technologies, and the establishment of terms of reference. These courses of action are the same as those found in the previous programmes, so the really new aspect is the greater focus on the gradual establishment of terms of reference for education and training policies and systems.

Leonardo is the first programme to have been adopted, and also that which came out of the action streamlining exercise most substantially changed. It now hinges on three aims (instead of nineteen before), namely integration of young people, access to quality continuing training, and supporting the contribution to job-related training. These specific aims are implemented in the five (down from twenty-three) areas now common to training, education and youth programmes: mobility, pilot projects, language skills, transnational networks and reference tools (surveys, analyses, exchanges of information and good practice, ...). It has funding of 1.15 billion euros for the period 2000-2006.

As regards Socrates, the European Parliament and Council reached agreement on the total funding for the programme in November 1999 - 1.85 billion euros. The agreement was reached in the Conciliation Committee, and enabled the second phase of Socrates to be launched on 1 January 2000. The European Parliament forced a programme review clause to accommodate EU enlargement to the Central and Eastern European countries. As a result, Council and Parliament could increase the Socrates budget, based on a Commission report, in 2004.

11. “Encourage the social partners, at their various levels of responsibility, to conclude as soon as possible agreements with a view to increasing the possibilities for training, work experience, traineeships and other employability measures in Europe’s workplaces.”

---

The Commission has been fairly judgmental (see article on employment). A compilation of good practice is in the pipeline (see point 18).

**12. “Ensure that equality of opportunity is mainstreamed within the Guidelines.”**

Article 3 of the EC Treaty makes gender equality a cross-cutting objective. Since the employment guidelines were adopted in December 1997, equal opportunities have been one of the four pillars of the European Employment Strategy. Within the Commission, the work programmes of all Directorates are analysed from a gender perspective. A report on the follow-up of the 1996 Communication on gender mainstreaming reviews the progress made since then, in three areas in particular: employment and the Structural Funds, external relations (including development cooperation and fundamental rights of women), and education, training and youth. The Commission stresses the need to mainstream the gender dimension into the enlargement process and the information society.

The second annual report on equal opportunities paints a more upbeat picture of progress on equality in the year under review, based mainly on the new Amsterdam Treaty provisions, placing the gender dimension at the heart of the employment guidelines, and strengthening mainstreaming strategies within Commission departments by introducing gender-proofing structures and procedures to ensure that the gender dimension is effectively mainstreamed across all policy areas. A third report reviews developments in the current action programme.

The annual report for 1998 deals with mainstreaming equal opportunities in the employment strategy, development cooperation, education, training and youth, research and development and the reformed Structural Funds.

As well as describing developments in 1999, the fourth annual report foreshadows new initiatives: a new gender equality programme (2001-2005) encompassing a wide-ranging set of gender equality policies from domestic violence to women's human rights overseas; amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions by including new provisions on important issues, such as sexual harassment in the workplace, and by specifying better some of the existing provisions. The report summarises the seven rulings given by the Court of Justice in 1999: three in cases brought in the United Kingdom, one in Austria (two applications) two in Germany and one in France.

Balanced participation of women and men in the decision-making process was the focus of a specific Commission report on developments since the adoption of the Council

---

44 “Incorporating equal opportunities for women and men into all Community policies and activities - ‘mainstreaming’, COM (96) 67 of 21 February 1996. The Commission has also published a glossary of terms on equality between women and men entitled: “100 words for equality”.
Recommendation of 2 December 1996 on the matter. Generally-speaking, under-representation of women has not changed considerably, but the report looks at the situation in the Member States of the EU and the European Economic Area in relation to the four priorities laid down in the Recommendation (adopting a comprehensive, integrated strategy designed to promote balanced participation of women and men in the decision-making process; encouraging and supporting all social and economic players to put equal opportunities into practice; promoting the collection and publication of statistics to provide a clearer picture of how women and men are represented at all levels of the decision-making process, and identifying good practice; promoting balanced participation by women and men at all levels in governmental bodies and committees).

13. “Seek to develop, in co-operation with the Member States, family-friendly employment strategies to bring about real and rapid progress in care provision both for children and adult dependants.”

In line with the third framework action programme on equal opportunities for women and men (1991-1995) and the programme for implementation of the “Social Charter”, Recommendation 92/241/EEC on child care stressed the importance of measures enabling men and women reconcile their work and family responsibilities to enable women to participate in the labour market on equal terms with men. A report on the application of the 1992 Recommendation based on Member States’ replies to a Commission questionnaire of 1992 looks at childcare provision in the Member States under four broad headings: 1) quality of services, 2) parental leave, 3) work-related measures and 4) burden sharing. The report concludes that the Recommendation has stimulated the debate on some aspects of work-life balance policy (like the role of employers and men’s position on custody rights) but that Member States’ replies reveal no more direct impact on childcare provision for parents and children EU-wide.

The work/life balance has also featured in the guidelines for Member States’ employment policies since 1997, with the emphasis on an adequate provision of good quality care for children and other dependants in order to support women’s and men’s entry and continued participation in the labour market. Among other ways to consider of improving the employment situation, the Commission suggests in its Report on employment rates that action be taken on the "demand" (GDP and employment growth, development of the service sector, part-time work, etc.) and "supply" (child care services, raising skill levels, etc.) side factors of the economy. Finally, the 1999 employment guidelines invited Member States to design and implement programmes to promote family-friendly policies, including affordable, accessible and high quality care services for children and other dependants, as well as parental and other leave schemes.

In a resolution on the protection of families and children, the European Parliament called in particular for a stronger role for the European Family Policy Observatory currently operating

under the aegis of the Directorate General for Employment and Social Affairs and for the 1992 Recommendation to be turned into a Directive\textsuperscript{53}.

Finally, the conclusions of the Lisbon European Council (March 2000) stressed the need to “further all aspects of equal opportunities, including reducing occupational segregation, and making it easier to reconcile working life and family life, in particular by setting a new benchmark for improved childcare provision”.

14. “Present a Communication on raising employment levels of people with disabilities.”

In a working document published in autumn 1998\textsuperscript{54}, the Commission said it would be paying particular attention to the employment of people with disabilities in its work around the employment guidelines in 1999. It had found that the employment rate of disabled people was 20 to 30\% below that of non-disabled people (the employment rate for the rest of the population being 70\%). So, a specific guideline (number 9) calls for Member States to pay “special attention to the needs of the disabled, ethnic minorities and other disadvantaged groups and individuals”, and the development of “appropriate forms of preventive and active policies to promote their integration into the labour market”\textsuperscript{55}.

At the Social Dialogue Committee meeting of 19 May 1998, the social partners adopted a joint statement emphasising among other things the promotion of equal opportunities for people with disabilities, and focussing on ability rather than disability. The statement also includes recommendations to employers, trade unions and public authorities, while a compendium of good practice on the employment of people with disabilities had been sent to the Vienna European Council of December 1998.

At a conference on “European employment policy for people with disabilities” (Dresden, 24 and 25 February 1999), the European Commission, the ETUC, the UNICE, and the European Disability Forum drew a series of conclusions, in the wake of which the Council adopted a resolution\textsuperscript{56} on equal employment opportunities for people with disabilities, calling on the Member States to place particular emphasis on the promotion of employment opportunities for people with disabilities and to develop suitable preventive approaches within their national policies, in cooperation with the social partners and non-governmental organisations.

I.2 Promoting free movement

15. “Presenting a package of proposals to adapt and update the key legislation in this area.”

The main development in free movement of the persons is a Commission proposal\textsuperscript{57} aiming to widen and facilitate various aspects of the exercise of the right of residence. It


\textsuperscript{57} Proposal for a European Parliament and Council Regulation amending Council Regulation 1612/68 on freedom of movement for workers within the Community; proposal for a European Parliament
establishes a right of residence for unemployed job-seekers, trainees, the parents and children of the worker and his spouse, any other member of the family of the worker or that of his spouse who is dependent on the worker or is living under his roof (consensual partner, children of any age, in particular), regardless of their nationality. It also provides that members of the worker’s family will retain the right of residence if the marriage is dissolved provided they have lived in the host country for a period of three consecutive years. It also specifies that the first residence permit issued to the worker must be valid for at least five years and automatically renewable for a period of ten years, and restricts the derogation’s enabling the national authorities to withdraw the right of residence. Finally, it prohibits all discrimination on grounds of sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation.

This proposal stems from the follow-up to the Veil group’s recommendations, dealt with in a Communication in which the Commission reviews initiatives already taken, in particular under its 1997 action plan and those in the pipeline. Legislative action aside, the Commission also plays up the importance of giving the public and all the players concerned better information about their rights (public authorities, employers,...).

Most of the progress now being made on the right of movement and residence within Union territory is through reducing restrictions on the exercise of that right. Among these, Member States’ discretion to refuse entry or terminate residence on public policy, public safety or public health grounds was dealt with in a Communication in which the Commission seeks to clarify individual rights and its own position as regards the application of Community legislation and case law. In a sense, the Commission points out the limits to Member States’ discretionary powers as regards citizens’ rights, especially as regards excessive delays in processing applications, deportation of second generation migrants, improper processing of records, and failure to inform applicants properly of the grounds for refusal.

16. “Further development of EURES and
17. Developing co-operation with national authorities and the social partners so as to ensure the efficient functioning of the existing legal framework.”

The EURES network - a network of Member States’ employment services, their partners if any, and the Commission - was set up in 1993 to ensure the exchange of information to


58 On public policy and public security grounds in particular.
59 Set up in 1996 to assess problems in the field of free movement and propose solutions.
60 Communication on the follow-up to the recommendations of the High-Level Panel of the Free Movement of Persons, COM (98) 403 of 1 July 1998.
62 Especially by developing the “Citizens of Europe” initiative - now “Dialogue with Citizens and Business”, since June 1998; developing and enhancing the EURES employment network; the Euro-Jus network for legal assistance and advice via Commission offices in the Member States,...
63 Communication from the Commission (…) on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health, COM (99) 372 of 19 July 1999.
be made available to potential users. It is based on a computerised, uniform exchange procedure. The Member States’ employment services, the Commission via the European Coordination Bureau, public or private partners of the employment services, and employers and trade unions designated in agreements setting up a cross-border EURES network are members of the EURES network. These “Community employment opportunities” can be accessed on the Internet at the Europa site. The network extends to the member countries of the European Economic Area (EEA) through a dialogue between the directors of public employment services (PES) of the EEA countries. At the end of 1998, the PES signed a memorandum of agreement to exploit “the full potential of the EURES network as a common instrument of the PES to support free movement of workers and accomplish the European labour market”.

In July 1998, the Commission adopted the Report on EURES activities for the period 1996-1997 which describes and assesses the main developments and results in 1996-97. The Commission believes that the development of a European employment strategy and the establishment of economic and monetary union will inevitably produce a more integrated employment market. The challenge for EURES is to become a fully integrated service within the employment services. For that, the volume of job offers processed through the network must achieve a “critical mass” to optimise service provision to all users.

II. The changing world of work

II.1 Modernising work organisation and promoting adaptability

18. “Present a Communication on work organisation and adaptability to facilitate and complement implementation of the adaptability pillar of the Employment Guidelines (consulting social partners on a possible framework agreement on all elements of work organisation, including working time flexibility, and identifying the issues to be addressed at EU level to adapt the legal frameworks to encourage more adaptable contractual arrangements, including the link between social protection and changing working patterns).”

The Communication on the modernisation of work organisation follows on from the Green Paper “Partnership for a new organisation of work”, in which the Commission calls on the social partner to be proactive in areas like continuing training, working time over working life, the diversification of employment relationships, new technologies, incentives through forms of participation and equal opportunities. In its proposal for employment policy guidelines 2000, the Commission again urges the social partners “to agree and implement a process” (negotiated agreements again?) to modernise the organisation of work. In addition to the other areas of discussion (reduction of overtime and development of part-time work and career breaks), it suggests that the subjects covered might include training and retraining, the introduction of new technologies, new forms of work and working time issues like the annualization of working time and access to training.

---

65 Provided for under Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community
66 http://europa.eu.int/jobs.eures
67 Memorandum of agreement between the public employment services of the EEA for the development of the EURES network, 16 November 1998.
The Commission has set up and runs, with national institutes and the European Foundation for the Improvement of Living and Working Condition, a **European Network on work organisation** to stimulate organisational innovation.

The European Parliament has called on the Commission to submit a strategy for drawing the line between those areas in which the Commission is to encourage agreements between the social partners and those in which it is to specify the necessary legislative measures to be taken.\(^{70}\)

In their joint contribution to the Vienna Summit, the **social partners** pledged to put forward an analysis of best practice and attempt to identify the reasons for success through a common scheme of evaluation. Their analysis was submitted to the Lisbon Extraordinary Summit (March 2000).

19. **“Present a Communication on adapting and promoting social dialogue at Community level.”**

The Communication on **adapting and promoting the Social Dialogue** published in May 1998 hinges on two issues: adapting the Social Dialogue to the new challenges of social and employment policy, and reviving the dialogue after the problems encountered in issues recently addressed.\(^{71}\) To that end, the Commission proposes four priority areas of work: improving the efficiency of information channels, rationalising methods of consultation, especially by reorganising the Standing Committee on Employment (SCE), setting up a new partnership for employment, and encouraging sectoral and cross-industry bargaining. More detailed information on this can be found in C. Degryse's article on the Social Dialogue in part 1. The main focus here is on the reform of the Standing Committee on Employment.\(^{72}\) This was being called for as early as July 1997 by the European Parliament, in a call for the Standing Committee on Employment to be reformed as a matter of urgency and for coordination mechanisms to be introduced between that committee and the Employment and Labour Market Committee.\(^{73}\) Under the Council Decision of 9 March 1999,\(^{74}\) the task of the **Standing Committee on Employment** "shall be to ensure, in compliance with the Treaty and with due regard for the powers of the institutions and bodies of the Communities, that there is continuous dialogue, concertation and consultation between the Council, the Commission and the social partners in order to enable the social partners to contribute to the coordinated employment strategy and to facilitate coordination by the Member States of their policies in this field, taking into account the economic and social objectives of the Community as reflected in both the Employment Guidelines and the Broad Economic Policy Guidelines". The members of the Council or their representatives, the Commission, and representatives of the social partners at European level are to take part in the work of the Committee.\(^{75}\)

---

\(^{70}\) Resolution A4-0182/99 of 13 April 1999 on the Communication from the Commission on “Modernising the organisation of work - a positive approach to change”.


\(^{73}\) Resolution A4-0226/97 of 18 July 1997 on the Commission communication concerning the development of the social dialogue at Community level.


\(^{75}\) There is a maximum of 20 social partner representatives organised in two equal delegations. The social partner delegations cover the whole economy, being composed of European organisations.
20. “Consult the social partners in 1998 on the need for Community action on the protection of teleworkers.”

The Commission pledged to consult the social partners on the expediency of EU action on the protection of teleworkers. With this in view, the Commission adopted a Recommendation\(^76\) in 1998 calling on non-signatory Member States (Germany and the United Kingdom) to ratify the International Labour Organisation (ILO) Convention on home work. The Convention aims to improve working conditions and terms of employment to ensure equal treatment - still far from achieved - between homeworkers and other wage earners as rapidly as possible. The Recommendation also requires Member States to inform the Commission of the measures taken pursuant to the Convention to enable it to monitor the national situation.

The ETUC had proposed an autonomous initiative by the social partners.

UNICE and CEEP thought the problem should be examined in detail, but only after additional exploratory studies or awareness-building campaigns. UNICE stressed the need to draw the line between what is specific to teleworking as opposed to other aspects of the employment relationship.

21. “Present proposals to protect workers currently excluded from the working time Directive.”

Working Time Directive 93/104/EC\(^77\) excluded air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training from its scope. Parliament and the Economic and Social Committee specifically pressed the Commission when the Directive was being passed to take the necessary steps to regularise the situation of workers in these sectors. Building in particular on the work done in the sectoral committees, the Commission opened the first phase of social partner consultations in July 1997 by publishing a White Paper\(^78\) in which it recommended a differentiated approach distinguishing between activities which could be accommodated under the original Directive (non-mobile workers) and those requiring a specific sectoral approach which would be left to the social partners.

After a second round of consultations, the social partners reached an agreement in the railways sector in June 1998 and in the sea transport sector the following September, but failed to end a stalemate in the road industry. In November 1998, the Commission put forward a series of legislative proposals\(^79\). The provisions of the 1993 Directive were representing either general interests or more specific interests of supervisory and professional staff and small and medium-sized businesses.

\(^{76}\) Commission Recommendation on the ratification of ILO Convention No 177 on home work, OJ L 165 of 10 June 1998.


extended to all non mobile workers, namely those in air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and doctors in training. Mobile workers in the other sectors were given four weeks' guaranteed leave, and maximum annual working hours. Transitional provisions and specific arrangements are planned to take account of sector-specific features.

The Commission put forward a new text for the rail transport industry.

For road transport, by far the most significant sector due to its strategic importance for the economy, the number of employed and self-employed workers concerned (6.5 million), and the impact on public safety, an annexed proposal makes special provision for working time, breaks, rest periods and restrictions on night work.

Using the scope afforded by article 139 of the EC Treaty, the Council adopted the Directive on the organisation of working time of seafarers based on the sectoral agreement concluded between the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). The Commission judged that this Directive needed backing up by a specific Directive to cover third country ships using Community ports so that all seafarers were afforded the same level of protection. As a result, Parliament and Council adopted another Directive on the matter in December 1999.

After nearly a year's worth of negotiations, the social partners in the civil aviation industry also reached an agreement on working time in March 2000 covering 100,000 flight personnel (pilots and cabin crew). The agreement limits annual working time to 2,000 hours (the parent Working Time Directive fixes it as 2,304 hours). Working time includes "stand-by periods as defined by prevailing legislation" and reduces flying time to 900 hours - less than the statutory provision in some Member States. Like those in the sea transport sector, this agreement can be backed up by a Directive under article 139 of the EC Treaty.

The differentiated approach followed by the Commission received the qualified backing of both CEEP and the ETUC, which nevertheless had deep misgivings about the annualization principle. UNICE and UEAPME advocated a strictly sectoral approach and dismissed the

---

80 The Commission proposed a derogation to the minimum four weeks' leave provision for share fishermen in order to take account of Europêche's objections. The derogation was reversed in the Council's common position which brought the provisions into line with those planned for sea transport.


82 Adjustments to Communication COM (98) 662 as a result of the entry into force of the Amsterdam Treaty, SEC (99) 581.


85 The partners concerned are the Association of European Airlines (AEA, representing the national carriers), the European Regional Airlines Association (ERA), the International Air Carrier (IACA), the European Transport Workers' Federation (ETF, for cabin crew) and the European Cockpit Association (ECA, for pilots).
distinction between mobile and non mobile workers. Industry employers' organisations, however, had no inherent objections to the texts proposed by the Commission. The AEA (air transport) approved the extension of the guarantees offered by the Directive to all personnel. The IRU (road transport)\textsuperscript{86} and the ECSA (shipping), in agreement with the relevant industry unions, stressed the need to set aside an area for the application of possible future sectoral agreements.


Following a first Commission report (PEPPER I)\textsuperscript{87}, the Council Recommendation of 27 July 1992 intended to promote employee participation in profits and enterprise results went virtually ignored\textsuperscript{88}. That, at least, was the finding of the second Commission report on the same subject in early 1997\textsuperscript{89}. This report classified the Member States into three categories:

- countries with an established tradition of encouraging profit-sharing (France and the United Kingdom). During the period reviewed (1991-1995) both countries regularly extended the range of schemes and the amount of tax benefits available under them. There was a significant increase in schemes and the number of employees concerned in both countries.

- countries which regard such schemes as mainly a social partner responsibility (Belgium, Denmark, Germany, Greece, Spain, Italy, Luxembourg, Portugal, Austria and Sweden). Some countries recorded a slight increase in PEPPER schemes (Germany), in some there was no change (Denmark), while in others they declined (Spain).

- countries with a recent trend towards supporting participation schemes (Ireland, Finland and the Netherlands). Their provision is expected to increase in the future.

In January 1998, the European Parliament called for a programme to promote the exchange of information and best practice on financial participation schemes between EU Member States\textsuperscript{90}. It also called on the Commission to conduct a new study into the impact of PEPPER schemes in Member States on employment, productivity and wage flexibility, and to assess the conditions for introducing such schemes in enterprises, in particular small and medium-sized enterprises.

Provision has been made in budget line B4000 in the 2000 budget to fund studies and meetings on financial participation on the basis of the PEPPER II report.

Financial participation was also on the agenda of the ETUC's member organisations. It suggests a series of minimum safeguards. Financial participation is in addition to other forms of participation and must be seen as an aspect of worker participation. The arrangements

\textsuperscript{86} The failure of negotiations in the road industry led to a specific proposal being drawn up. As the Commission stressed, however, the negotiations clarified the issues and proved a valuable basis for drafting the proposal.

\textsuperscript{87} PEPPER I Report (Promotion of Employee Participation in Profits and Enterprise Results), Social Europe, supplement 3/91.

\textsuperscript{88} Council Recommendation 92/443/EEC concerning the promotion of participation by employed persons in profits and enterprise results (including equity participation), OJ L 245 of 26 August 1992.

\textsuperscript{89} Report from the Commission (PEPPER II - 1996), COM (96) 697 of 8 January 1997.

should be negotiated at national and industry level. Dead-end schemes are to be avoided. The funds should be jointly managed by management and workers. Financial participation must be an additional source of income, not an alternative to wages. Government must underwrite the success of financial participation, so tax cuts are essential.

The ETUC calls on UNICE to conclude a framework agreement on the matter (comprising industry-wide bargaining, worker participation, a code of conduct,...)\textsuperscript{91}.

\textbf{23. “Bring forward clear guidelines concerning state aids for training.”}

The rules used to assess public aid for industrial training were laid down in a decision dating from 22 July 1998\textsuperscript{92}. The Commission proposes incorporating the conditions for exemption into a separate Regulation\textsuperscript{93}. Back in 1996, the Commission published a Communication on the control of State aid and cutting labour costs (18 June 1996).

\textbf{II.2 Anticipating industrial change}

\textbf{24. “Follow up the High Level Group’s recommendations in developing future policies in this area.”}

In early 1998, in the wake of the Renault affair, the European Commission set up a high-level group of experts on \textit{economic and social implications of industrial change}, chaired by Mr Gyllenhammar. Its report, published in October 1998\textsuperscript{94}, made a series of specific recommendations in particular on:

- strengthen the Social Dialogue as means of adjusting to change and tackling the crises produced by industrial restructuring;

- all companies with over 1,000 employees should produce a “managing change” report setting out the company’s policies and programmes of training employees to maintain their employability and adaptability to new demands and outline what progress is made towards equal opportunities.

- setting up a \textbf{European Observatory on industrial change} to act as a resource centre for economic forecasts, especially on the most vulnerable sectors, and provide a forum for meeting, discussion and information exchange. The social partners agreed on this, and the practical arrangements are under discussion.

The report also addresses infrastructure for new technologies, employability and life-long education and training, the creation and development of SMEs, new areas of employment like primary personal services, creative arts and entertainment, and management of the social repercussions of restructuring.

\textbf{25. “Pursue the adoption of minimum standards for national information and consultation.”}

\textsuperscript{92} Communication from the Commission - Framework on training aid, OJ C 343 of 11 November 1998.
\textsuperscript{93} Draft Commission Regulation on the application of Articles 87 and 88 of the EC Treaty to training aid, http://www.europa.eu.int/comm/dg04/lawaid/aid3.htm#B
The value of common European rules on information and consultation of workers has been recognised since the 70s\textsuperscript{95}. The adoption of the European Works Councils Directive\textsuperscript{96} strengthened the Community legal framework in this respect by creating a basic foundation of rights and a method of implementation which accommodated and was adaptable to companies’ national and particular circumstances. The Commission’s considered view was that the economic restructuring and technological change under way in Europe required a closer alignment of national laws on informing and consulting employees in order to promote socially acceptable change and ensure that employment growth remained the overarching priority.

Following the initial responses received to its Communication on worker information and consultation published in 1995, the Commission decided to launch social partner consultations in November 1997, in the vexed situation created by the closure of the Renault factory in Vilvoorde. In contrast to the ETUC and CEEP’s stated willingness to engage negotiations under the Social Agreement provisions, UNICE walked away from the discussions on this issue. The credibility gap opened up by UNICE’s attitude led to an extraordinary Social Dialogue summit being called on 2 June 1998 in a bid to defuse the tensions created first by the employers’ uncompromising stance, then the Commission’s decision to move forward with the traditional legislative method.

The Commission proposal\textsuperscript{97} requires companies with at least 50 employees to inform and consult their workers on a series of key matters: the recent, reasonably foreseeable development of the undertaking’s activities and its economic and financial situation, the structure and development of employment within the undertaking, including, if relevant, measures envisaged to offset any potential negative developments, and finally, decisions likely to lead to substantial changes in work organisation or employment contracts. These provisions are without prejudice to any more favourable national provisions. Taking the European Works Councils Directive as its basis, the proposal allows the Member States or the social partners at national or workplace level to provide for wider rights.

UNICE maintained its opposition in principle to the draft Directive, which it had put forth to the document disseminated for consultation to the social partners: that Community action in the matter would fall foul of the principles of subsidiarity - the Member States already had their own machinery for information and consultation - and proportionality. The Commission had addressed these issues. A Community legal framework was necessary to ensure equal treatment between European workers: statutory provision in two States - the United Kingdom and Ireland - was either non-existent or fell short of the proposed framework; also, leaving aside problems of enforcement of national or Community legislation, workers' representatives were in many cases involved too far downstream of the process to ensure that the social implications of strategic decisions were effectively taken into account. The Commission also stresses that the proposed threshold excludes SMEs, which account for 97% of European firms. Basically, UNICE took issue with the forward planning of employment in the workplace in the form introduced by the draft Directive. UNICE’s objection to the provision for cancelling


decisions taken in breach of the draft Directive’s information and consultation obligations - one of the main lessons of the closure of the Renault factory in Vilvoorde - speaks for itself.

The ETUC welcomed the Commission’s decision to bring forward a Directive and made a series of suggestions for clarifying certain of its ideas. It proposed that the rights be more precisely worded so as to be properly enforceable.


The European Works Councils Directive provided for a review within three years of being incorporated in national laws (22 September 96). In October 1999, the Commission put out an initial draft centred essentially on a comparative analysis of implementation. In the same month, the European Parliament called for the Commission to expedite its review of the Directive to ensure that information and consultation are effective and take place before decision-making, and for the Directive to be completed in order to speed up the rate of installation of works councils and to give them the capacity to operate autonomously. Meanwhile, more than 600 European works councils had been set up in an estimated total of 1,200 to 1,500 firms.

The ETUC Executive Committee adopted a resolution on this, calling among other things for the threshold to be lowered from 1,000 to 500 workers, the repeal of the exemption Regulations for ideological guidance undertakings and commercial shipping, representation from accession countries, and recognition of the role of the European Industry Federations.

UNICE thought it too early to move towards a review when fewer than half the groups concerned had a works council. She wanted more time to include problems and progress found in the field.

II.3 Seizing the opportunities of the Information Society

27. “Present a report to the Vienna European Council on the prospects for the development of electronic commerce, open networks and multimedia tools and their impact on training and employment.”

The impetus given to the information society by the 1993 White Paper on growth, competitiveness and employment resulted in the Commission gradually building up a more overall approach to accommodate the different challenges of the new concept. The Commission believes that the information society is a job growth area provided increased efforts are made to promote an enterprise culture in the EU, develop a flexible, but robust, policy framework, invest more in employability and adaptability of people, and boost skills

---

101 Resolution B5-0185, 0186, 0196 and 0199/1999 on the restructuring of firms in the face of globalisation, of 28 October 1999.
102 For a list of agreements cf. Dublin Foundation: www.europfound.ie.
and levels of technical literacy\textsuperscript{104}. The Commission makes dissemination of technologies, organisational change and boosting skills top priorities for the EU. Its recommendations to the Member States aim to draw these elements together within the framework of national overall information society strategies coordinated at EU level and closely linked into the national employment plans.

\begin{quote}
28. \textit{“Develop specific actions to maximise the contribution of the Information Society to promoting employment, equal opportunities and social inclusion, and build awareness of the social and labour market implications of the Information Society.”}
\end{quote}

The statement of the Social Affairs Council of 29 November 1999 on the job-creating potential and social dimension of the information society are worth mentioning. As regards the Commission, two Communications were in the pipeline for the first half of 2000. One on strategies for jobs in the Information Society was published in February\textsuperscript{105}. The other - on inclusion and participation in the knowledge-based society - is scheduled for April.

\begin{quote}
29. \textit{“Continue to build an Information Society dimension into other policies and actions.”}
\end{quote}

\textbf{II.4 Creating a safe and healthy workplace}

\begin{quote}
30. \textit{“Focus on the effective implementation and application of existing legislation and complete the current Community programme on health and safety at work (1996-2000).”}
\end{quote}

The new social action programme bears out the loss of momentum in new rule-making for safety and health protection in the workplace since 1992. The emphasis, therefore, is on effective implementation of existing rules and adapting them to technical progress, instead of developing or extending the legislative framework.

Although the adoption of pending proposals is extremely slow going, the Council has taken a decision on the chemical agents Directive\textsuperscript{106} and issued conclusions on the protection of worker at risk from asbestos\textsuperscript{107}. Other initiatives in 1998 were to adapt existing legislation to

\textsuperscript{104} “Job opportunities in the Information Society: Exploiting the potential of the information revolution”, COM (98) 590 of 25 November 1998.


\textsuperscript{107} Council Conclusions of 7 April 1998 on the protection of workers against the risks from exposure to asbestos, OJ C 142 of 7 May 1998.
technical progress\textsuperscript{108}, the main one being the adaptation of the Directive relating to work equipment for preventing falls from a height\textsuperscript{109}.

In 1999, the European Parliament and the Council adopted the Directive relating to the protection of workers potentially at risk from \textit{explosive atmospheres}\textsuperscript{110}. The Council amended the Directive on the protection of workers from the risks related to exposure to carcinogens at work in order to extend the scope to mutagens and set limit values for occupational exposure to hard wood dust\textsuperscript{111}.

Health and safety, however, remains very much on the social and economic agendas. The report "Economic Impact of Occupational Safety and Health in the Member States of the European Union", published in 1998 by the European Agency for Safety and Health at Work, stresses that the costs of work-related injuries and diseases to Member States’ economies range from 2.6% to 3.8% or from 0.4% to 4.0% depending on the indicators used and points out the value of developing common methods of evaluation to give a more precise and consistent measure of the cost/benefit performance of occupational health and safety legislation.

The Commission published a report\textsuperscript{112} on the Member States’ implementation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding, and another on the implementation of the 1993 Working Time Directive. The legal basis for this latter Directive at the time was a qualified majority, not that of health and safety Directives proper.

The Commission addressed scaffolding in a new proposal through an amendment to the \textbf{Work Equipment Directive} (655/89)\textsuperscript{113}.

\begin{quote}
31. “\textit{Present proposals to update and complete existing legislative instruments (e.g. scaffolding; carcinogens), adapt standards to technical and scientific progress (e.g. limit values for occupational exposure to chemical substances; exposure to biological agents at work), and examine the need to cover risks that are not presently covered (e.g. musculo-skeletal disorders, new working patterns).}”
\end{quote}


\textsuperscript{112} COM (99) 100, of 15 March 1999.

\textsuperscript{113} COM (98) 678 - 2\textsuperscript{nd} amendment to the Work Equipment Directive - temporary work at a height
The amendment to Carcinogens Directive 90/394 made two quite welcome changes: one extended the scope to mutagens, while the other established a limit value for occupational exposure to hard wood dust (29 April 1999).

A new proposal was made on exposure limits for chemical substances\(^{114}\). A proposal on biological agents was also tabled\(^{115}\).

The ETUC put musculoskeletal disorders at the top of its agenda through a large-scale awareness-building campaign\(^{116}\). Finally, the Bilbao Agency launched a wide-ranging campaign on the same issue in connection with Health and Safety Week in October 2000.

The Dublin Foundation is planning a study on work organisation-related health and safety hazards.

32. “Seek to improve statistical data on occupational health and safety in Europe so as to identify the most significant risks.”

There are three sources of data. One is that on employment injuries harmonised by Eurostat. The second is that on occupational diseases (of which there is a non-binding list at Community level). But statistics are still not really comparable here\(^{117}\). Finally, the Dublin Foundation for the Improvement of Living and Working Conditions carried out wide-ranging surveys in 1991 and 1995\(^{118}\). A new survey is in hand, and processing of results will get under way in mid-2000.

33. “Promote Europe-wide dissemination of information on best practices, in particular through the European Agency for Health and Safety at Work and the social partners, especially relating to SMEs and risk management.”

The European Agency for Safety and Health at Work\(^{119}\) was established on paper in 1994, but only became operational in 1997. It is based in Bilbao\(^{120}\). Since 1997, it has worked with “focal points” - resource centres - in each Member State. It has published a series of reports, including one in March 1999 on how economic instruments can improve health and safety at work. Its output is closer to a compilation of national data than European studies proper. Laurent Vogel of the Trade Union Technical Bureau argues that “The quality of its work depends very much on that of the national contributions and their comparability. Some of its priorities reflect real demands (musculoskeletal disorders, stress, dangerous substances), while others are more borderline and can be side-tracked by the employers looking to put business profits before occupational health (like the debate on cost-benefit aspects)”\(^{121}\).


\(^{115}\) COM (99) 432, codification of Biological Agents Directive 90/679.

\(^{116}\) On this, see the special report in TUTB Newsletter No. 11-12, June 1999.

\(^{117}\) TUTB Newsletter No. 11-12, June 1999.

\(^{118}\) The results can be consulted on the Foundation’s site: http://eurofound.ie


\(^{120}\) Full information on the Agency can be found on its website http://europe.osha.eur.int

\(^{121}\) Mutualité française, Santé et Travail, No. 29, October 1999, p.10.
The SAFE programme (Safety Actions For Europe) was intended to improve safety, hygiene and health at work, especially in SMEs. It was introduced in 1995 and amended by the Commission in 1997\textsuperscript{122}, but has still not been approved by the Council.

Nothing else has emerged since a brochure on risk management in 1997.

III. An inclusive society

III.1 Modernising and improving social protection

34. \textit{"Pursue the agenda for joint reflection set out in the 1997 Communication and present, in early 1999, an evaluation of the progress made. This will include an assessment of the implementation of the 1992 Council Recommendation on convergence of social protection systems, with a view to updating it and linking the convergence process more closely with the employment strategy."}

With the new vistas opened up by economic and monetary union, enlargement and the ageing of the population, the debate on the future of social protection in Europe has intensified each year. This is reflected in the changing nature of the reports on social protection in Europe\textsuperscript{123} which are increasingly tied into an emerging policy planning framework. The Communications of 1995\textsuperscript{124} and 1997\textsuperscript{125} were important milestones in this process.

The Commission’s most recent report on social security, adopted in July 1999, sets an agenda and common challenges (monetary union, employment strategy, enlargement), and proposes a concerted strategy for modernising it\textsuperscript{126} built around four key objectives:
- to make work pay and to provide secure income;
- to make pensions safe and pension systems sustainable;
- to promote social inclusion; and
- to ensure high quality and sustainable health care (see also C. de la Porte’s article in part one, especially for the positions of the social partners and the EP).

The method is based on that of the employment guidelines: frequent exchanges of information with discussions centred on what would become a more “policy-oriented” than academic annual report on social protection. The basic precept of the Communication is that the single currency may increase competitive pressures on labour costs, of which social security contributions make up a significant part (see \textbf{article} and the BEPG, \textbf{point 2}). The high-level group operating under the aegis of the Council was set up with remarkable speed. The group was split in two, one for social security matters, the other for health issues. The social partners do not sit in this group which meets monthly.

\begin{itemize}
\item \textsuperscript{122} Commission proposal COM (95) 282, OJ C 262 of 7 October 1995 and amended proposal COM (96) 652, OJ 92 of 21 March 1997.
\item \textsuperscript{124} “The future of social protection: a framework for a European debate”, COM (95) 466 of 31 October 1995.
\item \textsuperscript{125} “Modernising and improving social protection in the European Union”, COM (97) 102 of 12 March 1997.
\item \textsuperscript{126} “A Concerted Strategy for Modernising Social Protection”, COM (99) 347 of 14 July 1999.
\end{itemize}
35. “Focus in particular on making tax and benefit systems more employment friendly and on overcoming the difficulties faced in making the transition to self employment.”

Consistency between taxation, social security and employment is a recurrent theme at Community level. It has been taken further in the documents coming out of DG II (Economic and Financial Affairs) than DGV (Employment and Social Affairs). It was already included in the five Essen objectives (see article on employment).

The legislative highlights include the proposals for reducing taxation on labour-intensive jobs, which is the Ecofin Council’s remit. So, the Council adopted a Directive on the experimental charging of a reduced VAT rate on labour-intensive services, under which some labour-intensive services may attract a reduced VAT rate:
1. Small services of repairing: (bicycles, shoes and leather goods, clothing and household linen, including mending and alteration);
2. Renovation and repairing of private dwellings, excluding materials which form a significant part of the value of the supply;
3. Window cleaning and cleaning in private households;
4. Domestic care services (e.g. home help and care of the young, elderly, sick or disabled);
5. Hairdressing.

The Member States were authorised to choose no more than three of the five categories of services listed, and informed the Commission of their choice. It then put forward a proposal for a Council decision in December 1999.

In a study of the national action plans on employment 1999 (NAPs), with special reference to the implementation of guideline 14, we reached the following conclusions:
- there is a consensus at both Community and Member States level on targeting employment policies on reducing the tax burden on labour, especially the low-paid and/or specific groups;
- these measures are generally offset financially by the levying of taxes on polluting activities and energy, notwithstanding that the Community-level debate on the issue is not far-advanced. Taxation of savings do not feature in most cases. Last year (1998), however, trade-off measures were rarely mentioned;
- the tax cuts announced are a fairly significant percentage of GDP. They have ceased being cosmetic measures, and the return to growth plus budgetary leeway gives credence to the implementation of these intentions;
- however, it is unclear from the NAPs whether or not the proposed measures cover the entire cut in the tax burden and whether they are parallel to or dependent on it. Some governments also seem in reality to be wagering on growth and related job creation to offset the tax cuts.

128 Proposal for a Council Decision authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 1977/388/EEC, COM (99) 705 of 20 December 1999.
In its opinion on employment, UNICE argues that “offsetting cuts in non-wage labour costs by increasing the tax burden on other factors of production would run counter to the aim (...).”

36. “Present proposals for the reform and simplification of Regulation 1408/71 on the co-ordination of social security schemes.”

Regulation No 1408/71 coordinates social security schemes to ensure that all Community workers and members of their families receive equal treatment and entitlement to social security benefits, regardless of the place of their employment or residence. It has been repeatedly amended since. Various changes have been made to the Regulation and in the wake of the December 1992 Edinburgh European Council’s demands for it to be simplified, the Commission published an action plan for free movement of workers130 explaining the need to bring the coordination rules up to date, and proposing to simplify the Regulation in the light of changes in national laws and ECJ (Court of Justice of the European Communities) rulings131. It makes three major changes over the basic Regulation:

- an extension of the personal scope of co-ordination rules to all persons covered by national social security systems (including the self-employed, family members, refugees, students, third country nationals),
- an integration of pre-retirement schemes and an open-ended extension of the material scope through a non-exhaustive list to ensure that new benefits can be included in the future
- it extends the period for which an unemployed person may seek work abroad from three to six months.

The different EU Presidencies are deciding how to go about examining these simplification proposals. For the time being, they are being taken article by article, so it likely to be at least another two years before the various issues raised can be looked at as a whole.

The special session of the Tampere European Council of October 1999 on the creation of an area of freedom, security and justice called for the Commission to draw up a scoreboard with a timetable and the measures required over the next five years. Among the proposals already put forward, that to extend the social security Regulation to third country nationals has run into difficulties over a failure to agree on its legal basis since the Amsterdam Treaty entered into force. The Commission is suggesting article 42 of the EC Treaty (social security, co-decision) while the Council is proposing a legal basis which does not apply to all Member States - article 63.4 (rights of third country nationals, unanimity and consultation of the European Parliament). In preliminary substantive discussions in the Council, moreover, some Member States have been noticeably reluctant to address this issue and a gradual restriction of the scope (from everyone to specified categories).

On the issue of third country nationals, UNICE called for “an in-depth study of the complex questions which it would inevitably raise”132. On an extension to economically non-active persons,

UNICE “feels that the link between work and social benefits should be maintained”. Likewise, it believes that the rules should not be extended to pre-retirement schemes. “Extending such

---

Social policy developments in the European Union in 1999

rights is inappropriate at a time when these schemes are under discussion and likely to be abolished or replaced by flexible retirement arrangements”. It believes that no changes should be made to the position of the unemployed.

In December 1999, moreover, the Commission put forward proposals for a limited coordination of social security systems with accession countries under the European agreements133.

37. “*Present a proposal to update and complete the legislative framework for equal treatment in social security schemes between women and men taking into account, in particular, the case law of the European Court of Justice.*”

The Court of Justice has given a series of rulings on this, in particular on the right of part-time workers not to be discriminated against as regards access to occupational pension schemes134. As regards general schemes, the Court’s judgement in De Vriendt and others135 clarified the scope of the exception to the principle of equal treatment still permitted under article 7.1. of Directive 79/7 of 19 December 1979.

The Commission’s first proposal on equal treatment dates back to 1987136: it refused to take the EP’s amendments into account and has been deadlocked ever since. An unsuccessful attempt was made in 1998. In September 1999, Parliament called on the Commission to submit to it a revised proposal for a Directive taking into account the political commitments into which the Commission had entered and developments in the areas concerned137.

38. “*Provide further analysis of demographic trends and deepen the debate on their implications for economic, social and employment policies, in particular at a major European Symposium on demographic change.*”

Two reports on population trends have been published, in 1995 and 1997. A report on demographic change and the labour market was published in 1999138. But the impact of these trends provides the undercurrent to the debates on social security (point 34), the ageing of the population (point 44) and the need to increase labour force participation rates (point 1).

39. “*Follow-up the 1997 Green Paper on supplementary pensions.*”

Supplementary pensions are a hotly-debated issue. Obviously, it is a politically live issue with clear economic interests at stake.

---

133 Proposal for a Council Decision on the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part, and (individual accession countries) on the other part, with regard to the adoption of provisions for the co-ordination of social security schemes, COM (99) 675 to 684 of 20 December 1999.


137 Legislative Resolution A5-0007/1999 on legislative procedures in progress as at 1 May 1999 in the sphere of women’s rights and equal opportunities, of 16 September 1999.

138 In DGV’s Employment and Social Affairs series.
Supplementary pensions first appeared on the free movement agenda. The thorny issue of portability of supplementary pension rights which in countries like the United Kingdom and the Netherlands make up the bulk of workers’ pensions, was dealt with in a Directive which guarantees the preservation of vested rights, cross-border payments, and specific measures for posted workers.

The Green Paper pointed out two things. One was demographic: by 2025, 40% of the population will be aged 65 years or older, compared to about 23% today. The second is that an efficient stock market could provide higher returns for lower contributions from earnings. For example, assume the target is a fixed supplementary pension of 35% of salary on the basis of a 40 year working life and the real rate of return on assets is 2%, the cost of pension contributions is 19% of salary. If the real rate of return is 4%, the cost is 10% of salary, and at a 6% rate of return, falls to just 5% of salary.

This scenario has moved from free movement to the economic performance of firms, and hence their efficiency, to justify an increase in the second pillar.

The Commission has published the results of its consultations. The Communication lays down three main principles for coordination of supplementary pensions rules: framing a proposal for a Directive on prudential rules for supplementary pension funds (2nd pillar); the removal of obstacles to the free movement of workers; and coordination of Member States’ tax systems.

III.2 Promoting social inclusion

40. “Present a Communication on social inclusion.”

The new objectives written into the Amsterdam Treaty include strengthening economic and social cohesion, and combating social exclusion (article 2). In the first half of 1999, the Commission put out a discussion paper entitled “Towards a Europe for all: how should the Community support Member States in their efforts to promote social inclusion?” to clarify what Community action was possible in this area. It contained a “possible outline” Community action programme and an interesting annex on the development of poverty in the EU. In the run-up to the Lisbon European Council on employment, economic reforms and social cohesion, the Commission drew its thinking together in a Communication on building an inclusive Europe which foreshadows the presentation of a new action programme against social exclusion. EAPN - the European Anti-Poverty Network - proposed a three pillar strategy: a) promoting the effective exercise of fundamental rights by all, b) promoting an integrated approach and action, c) promoting participation and partnership.

41. “Present a report on the implementation of the 1992 Recommendation on minimum income.”

140 Green Paper on Supplementary Pensions in the Single Market, COM (97) 283 of 10 June 1997
143 EAPN, A Europe for all: For a European strategy against social exclusion, 6-7 May 1999, for more details: http://www.eapn.org
For reference, the Recommendation itself came out of the action programme relating to the implementation of the European Charter of Fundamental Social Rights of Workers and formed a pair with a Recommendation on the convergence of social protection objectives and policies.

A descriptive report was drawn up with an annexed table listing the national minimum income schemes, main associated benefits and services. The Commission believes that the Recommendation has helped to stimulate Member States’ discussions and debates and that the schemes that it covers are continuously evolving and need to do so in a holistic way, in terms of general social policy action and, particularly, employment policy. The debate should be developed and prepare the ground for implementing the new article 137 of the EC Treaty.

**42. “Examine the possibility of presenting a proposal setting out a framework to promote the integration of those excluded from the labour market and of proposing incentive measures to combat social exclusion, once the Treaty is ratified.”**

Point 3 of the concerted strategy for social security provides for promoting social inclusion. The Commission Communication on building an inclusive Europe (see point 40) foreshadows the multiannual programme of action against social exclusion to be brought forward in May 2000.

**43. “Develop at EU level statistical indicators on poverty and social exclusion.”**

Technical work has started and a special Eurostat group has been set up to work on harmonising statistics. For want of any clear powers in the matter, and pending ratification of the Amsterdam Treaty, the Commission has sought to address this in various invitations to tender. The forthcoming programme on tackling social exclusion is likely to include a major “statistical indicators” aspect (see also point 42).

**44. “Present a Communication on issues affecting older people.”**

The question of older people is a political issue in the different Member States as regards pensions (and health care). At European level, increasing the number of people over 50 still in the labour market has also become a Commission priority.

The Commission published a Communication on issues affecting older people as its contribution to the UN International Year of Older Persons. It examines the challenges posed by ageing, which the Commission believes has four dimensions, namely: the relative decline of the population of working age and the ageing of the workforce; the pressure on pension systems and public finances stemming from a growing number of retired people and a decline in the working age population; the growing need for old age care and health care; and the funding of pension systems which have left insufficient pension cover for many older women.

---


145 Draft Recommendation on the implementation of Member States’ employment policies, COM (99) 445 of 8 September 1999.

Under the European Employment Strategy, Member States have been invited to develop measures aimed at maintaining workers' capacities. The Commission believes that to maintain an increasing number of older people at work it will be vital to strengthen their employability, which includes investing in their skills, their motivation and their mobility. It also stresses that the new versions of the Socrates and Leonardo programmes for the period 2000-2006 are putting more emphasis on lifelong learning. The social partners are invited to play a special role in how to pay further attention to the age dimension in human resources management.

The Commission believes that to address the ageing challenge it will be vital to look for ways to reverse the trend towards early retirement, to explore new forms of gradual retirement and to make pension schemes more sustainable and flexible. In all Member States, the pension benefits provided by the basic public schemes (1st pillar) can be added to by contributing to two main forms of supplementary scheme: company or industry occupational schemes, generally run by the social partners (2nd pillar), and individual schemes, normally taken out with life insurance companies (3rd pillar). The Commission considers that one solution for making pension systems sustainable may involve finding an appropriate balance between funded and PAYG (pay-as-you-go) systems147. In another Communication148, it notes that in some Member States, supplementary schemes account for half of all pension payouts and that the value of assets held by occupational pension funds established in the Fifteen is equivalent to approximately 23% of the Union's annual GDP (see also point 39).

On the health front, the Communication on the development of public health policy149 put a particular focus on the health implications of ageing, which are also the subject of medical and social research under the fifth Community framework programme for research. Employment discrimination on the grounds of age, among other things, is dealt with in the proposal for a Directive based on article 13 of the EC Treaty (see also point 49).

The FERPA in particular has been highly critical of the Commission’s active ageing approach as opening the door to an obligation to remain in the workforce.

45. “Propose a programme for the integration of refugees.”

Reflecting the areas to which these matters were allocated in the European Treaties before the entry into force of the Amsterdam Treaty, the European Commission adopted two further proposals in December 1998 on refugees, asylum seekers and displaced persons150. The first of these proposals takes the form of a joint action (third pillar) to share responsibility for

---

150 Proposal for a Council Decision on a Joint Action establishing measures to provide practical support in relation to the reception and the voluntary repatriation of refugees, displaced persons and asylum applicants, COM (98) 733 of 16 December 1998; proposal for a Council Decision establishing a Community action programme to promote the integration of refugees, COM (98) 731 of 16 December 1998; amended proposal for a Council Decision on a Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union establishing measures to provide practical support in relation to the reception and the voluntary repatriation of refugees, displaced persons and asylum applicants, including emergency assistance to persons who have fled as a result of recent events in Kosovo, COM (1999) 181.
the temporary protection of a mass influx of displaced persons. It would have an annual budget of 14 million euros. The other proposal is for a European Community action programme to promote the integration of refugees in the European Union (1999-2000). It would have total funding of 15 million euros over two years. Between them, the joint action and action programme cover the entire process from the application for asylum up to integration into society of those with refugee status or other forms of protection in a Member State. In September 1999, the European Parliament asked the Commission to submit a proposal for a European Refugee Fund, covering structural measures for the reception, integration and repatriation of refugees.

Following the Tampere European Council (October 1999), the Commission put forward a proposal to create a European Refugee Fund, which would replace joint action 1999/290/JAI. It draws together in a single, five-year instrument all actions relating to the reception of asylum seekers, integration of refugees and voluntary repatriation. As a result of the Kosovo crisis, a distinction is made between funding for “structural” measures and emergency assistance in the event of a mass influx of refugees or displaced persons into the territory of one or more Member States. The budget allocation for 2000 is 26 million euros, with a reserve of 10 million euros for emergency measures.

III.3 Achieving equality and fighting discrimination

46. “Promote equality between women and men through a dual strategy: ensuring that equal opportunities is mainstreamed into all relevant Community policies, and developing specific actions to improve the situation of women, including actions to combat the problem of sexual harassment in the workplace, in support of gender-balanced participation in decision-making, and focusing on the problem of violence against women.”

The Commission Recommendation of November 1991 on the protection of the dignity of women and men at work defined sexual harassment and recommended that the Member States take action to promote awareness that conduct of a sexual nature, or other conduct based on sex affecting dignity at work is unacceptable. Social partner consultations revealed differences over methods: the employers’ organisations thought measures should be decided at national level, while the trade unions did not see the situation changing without a binding Community instrument. In a second consultation paper the Commission put forward avenues for discussion on a comprehensive prevention policy include workplace-specific rules and procedures. The social partners thought this was not a matter for negotiation, and asked for it to be dealt with by legislation. The Commission subsequently published two studies in 1998 on workplace sexual harassment in the Member States.

The issue of balanced participation had already been addressed in a 1996 Council Recommendation. On 22 October 1999, the Labour and Social Affairs Council adopted

---

151 Legislative resolution A5-0012/1999 on the legislative procedures in progress in the sphere of citizens’ freedoms and rights, justice and home affairs (....), of 16 September 1999
152 Proposal for a Council Decision creating a European Refugee Fund, COM (99) 686 of 14 December 1999 based on article 63.2.b TEC.
154 Communication of the Commission on consultation of management and labour on the prevention of sexual harassment at work, COM (96) 373 of 24 July 1996.
conclusions on the implementation of the Beijing Platform for Action in which it “urges Governments and encourages the political parties and social partners to adopt further active measures and strategies to reach the goal of equal participation”\textsuperscript{157}.

A series of initiatives were taken to address violence against women. Following on from the STOP programme\textsuperscript{158} and the Daphnë initiative\textsuperscript{159}, the Commission put forward a series of measures to tackle violence against children, young persons and women\textsuperscript{160}, to extend the Daphnë initiative under a Community action programme. The programme is still in the pipeline and is likely to have a budget of 20 million euros.

47. “Present a proposal for legislation to combat racial discrimination once the new Treaty is ratified, and launch a broad debate on the use of Article 13, including the possibility of a framework programme to combat all forms of discrimination.”

The Commission has also adopted a Communication\textsuperscript{161} and three proposals to tackle discrimination in the EU. The idea is to make use of one of the new Amsterdam Treaty provisions (article 13) which gives the Community new powers in this area in order to support and strengthen existing national provisions. The Commission believes that these three proposals will constitute a comprehensive basis for action, providing a minimum level of legal rights not to be discriminated against, supported by practical action to promote the effective application of those rights on the ground\textsuperscript{162}.

The Directive outlawing discrimination in employment makes discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation illegal\textsuperscript{163}; the other Directive prohibits discrimination on the grounds of racial or ethnic origin in a wider range of fields: employment, education, access to goods and services, social protection\textsuperscript{164}. The action programme aims to support and add to the implementation of the Directives through the exchange of information and experiences and by the dissemination of good practice in legislation and other fields\textsuperscript{165} (see also the Community programme on equal opportunities for men and women, and an action programme to combat social exclusion).

The European Commission is proposing a new initiative, EQUAL, to support “transnational co-operation to promote new means of combating all forms of discrimination and inequalities

\textsuperscript{157} Adopted by the Labour and Social Affairs Council, 22 October 1999.
\textsuperscript{159} Joint Action 97/154/JAI, concerning action to combat trafficking in human beings and sexual exploitation of children, (Daphnë initiative), OJ L 63 of 4 March 1997.
\textsuperscript{161} Communication from the Commission (...) on certain Community measures to combat discrimination, COM (99) 564 of 25 November 1999.
\textsuperscript{162} For a recent analysis, see Olivier de Schutter, “La mise en oeuvre de l'article 13”, Notabene 113, February 2000.
in connection with the labour market\textsuperscript{166}. EQUAL will also take due account of the vocational integration of asylum seekers. The programme offers a set of two alternative actions in each of the four pillars of the Luxembourg procedures. It states that “each Member State will be expected to choose at least one thematic field in each pillar (...) taking into account the recommendations issued by the Commission in the context of the European employment strategy”.

The ETUC broadly welcomed the programme, but suggested some areas might be improved. It thought the entrepreneurship aspect should focus not just on upgrading jobs in the social economy, but skills levels, too. A new theme on innovative forms of work organisation should be added to adaptability. The gender equality aspect should include closing pay gaps and provision to improve the work/life balance. It also wanted the role of the social partners to be clarified\textsuperscript{167}.

UNICE, by contrast, took a critical stance. It supported the EQUAL programme, but thought it should concentrate on its key-objective of fighting discrimination rather than trying to bring together – under a single initiative – all the previous programmes (i.e. Adapt, Employment). It also claimed that the draft guidelines lacked clarity and that the implementation procedures were far too complicated and bureaucratic\textsuperscript{168}.

\textbf{48. “Pursue the strategy set out in its 1996 Communication on equality of opportunity for people with disabilities to take account of the needs of people with disabilities in measures taken under Article 95.”}

The publication of the evaluation report\textsuperscript{169} on the Helios II programme in favour of people with disabilities, which ended in 1996, was an opportunity for Parliament\textsuperscript{170} to call on the Commission to draw up specific measures under the new opportunities offered by the Amsterdam Treaty. Parliament has also called for official recognition of sign language and for measures to ensure universal design in multimedia applications to accommodate sign language\textsuperscript{171}. Finally, a Council Recommendation established a standardised model parking card for people with disabilities\textsuperscript{172}.

A conference on employment for people with disabilities was also held in Dresden in February 1999 in connection with the employment guidelines. It aimed to build on the ways forward mapped out by the Commission in 1998\textsuperscript{173} to further inform the debate on employment for people with disabilities. The conference was followed up by a Council Resolution in June 1999, on equal employment opportunities for people with disabilities\textsuperscript{174}.

\textsuperscript{166} Draft communication from the Commission to the Member States establishing the guidelines for Community Initiative Programmes (CIPs) for which the Member States are invited to submit proposals for support under the EQUAL initiative, COM (99) 476 of 13 October 1999.

\textsuperscript{167} ETUC comments, 12 November 1999.

\textsuperscript{168} UNICE comments on the draft guidelines for the EQUAL Community Initiative, 5 January 2000.


\textsuperscript{170} Resolution A4-0471/98 on the report from the Commission on the evaluation of the Third Community Action Programme to assist disabled people (Helios II), of 15 December 1998.

\textsuperscript{171} Resolution B4-0985/98 on sign languages, of 18 November 1998.


\textsuperscript{173} Commission Staff Working Paper - “Raising employment levels of people with disabilities the common challenge", SEC (98) 1550 of 22 September 1998

In their Resolution, the Fifteen’s Ministers stress the importance of the national action plans on employment in favour of people with disabilities. They call for them to be strengthened within the framework of the national employment policies and in cooperation with the social partners and non-governmental organisations for people with disabilities.

The Resolution also stresses the need to make full use of the existing and future possibilities of the European Structural Funds, in particular the European Social Fund, and relevant Community initiatives, to promote equal employment opportunities for people with disabilities. It also calls on the Member States to attach particular attention to the possibilities offered by the development of the information society in terms of employment opportunities and responding to the challenges to which the disabled people are confronted.

49. “Implement the Action Plan against racism and ensure the successful start-up of the European Monitoring Centre on Racism and Xenophobia.”

Following a European Parliament Resolution on racism, xenophobia and anti-Semitism and the results of the European Year against Racism175, the Commission published an action plan against racism176 focused on four strands: paving the way for legislative initiatives based on new article 13 TEC (see point 47); mainstreaming the fight against racism and discrimination across all Community policies and programmes; developing and exchanging new models; strengthening information and communication action by raising awareness of the dangers of racism.

The European Monitoring Centre on Racism and Xenophobia held its first meeting in Vienna on 21 and 22 January 1998. Its tasks are to study the extent and development of the phenomena and manifestations of racism, xenophobia and anti-Semitism, analyse their causes, consequences and effects and examine examples of good practice in dealing with them. To that end, it collects, records and analyses information and data from research centres, Member States, Community institutions, international organisations and non-governmental organisations. It is also responsible for setting up and co-ordinating a European Racism and Xenophobia Information Network (Raxen).

To ensure that the activities of the two bodies complement each other, the Commission also put forward a draft cooperation agreement between the European Monitoring Centre on Racism and Xenophobia and the Council of Europe177. The agreement provides for regular contacts to be established between the Director of the Monitoring Centre and the General Secretariat of the Council of Europe, in particular, the Secretariat of the European Commission against Racism and Intolerance (ECRI)178.

The European Monitoring Centre on Racism and Xenophobia published its first annual report (1998) in early December 1999 describing the situation regarding racism in the EU Member States179.

176 Action plan against racism, COM (98) 183 of 25 March 1998
179 The annual report falls into two parts: “Giving Europe a soul” describes the process of setting up the Monitoring Centre, and “Looking reality in the face”, which examines the situation regarding racism and xenophobia in the European Community.
The Commission published a report on the aims and actions carried out in the European Year against Racism (1997)\(^{180}\). Finally, the Commission also produced a Communication on countering racism, xenophobia and anti-semitism in accession countries\(^{181}\) suggesting future paths for the development of strategies implemented in the accession countries.

50. “Carry forward the debate on fundamental rights, building on the report of the Comité des Sages.”

The need to recognise a series of fundamental civil and social rights, and incorporate them into the Amsterdam Treaty, was originally aired at the first Social Policy Forum in March 1996 and given more substance by the work of the Comité des Sages\(^{182}\). Although it did not lead to the inclusion of a Bill of Rights in the Amsterdam Treaty, the work was taken forward in 1998 by an expert group on fundamental rights, chaired by Prof. Simitis. Their report, published in February 1999, deals with the status of fundamental rights in the Amsterdam Treaty, and then addresses the factors and conditions that ought to be considered in promoting the explicit recognition of fundamental rights. Their recommendations include a proposal for reformulating fundamental rights adapted to the exigencies of the European Union. All rights should be set out in a single text, which should itself be inserted into a special part, or a particular Title of the Treaties. The place chosen “should clearly illustrate the paramount importance of fundamental rights and unmistakably indicate that the activities of the European Union must at all times, and under all circumstances, be guided by respect for these rights”\(^{183}\).

In its resolution on the area of freedom, security and justice, adopted in April 1999, the European Parliament welcomed the German Presidency’s intention of initiating an EU Charter of Fundamental Rights\(^{184}\). The next stage is to draw up an EU Charter of Fundamental Rights in accordance with the decision of the Cologne European Council. The procedural details were settled at the Tampere Special European Council (October 1999): the Charter will be drafted by a body (now “Convention”) of 62 people\(^{185}\). Contrary to the Commission’s wishes, the secretariat for the Convention’s activities will be provided by the Council\(^{186}\). The Charter is being drafted under the chairmanship of former German President Mr Herzog\(^{187}\) and is meant to be finished in time for the European Council being held under the French Presidency in December 2000. The next intergovernmental conference (IGC) is

180 Report from the Commission on the implementation of the European Year against Racism (1997), COM (99) 268 of 3 June 1999.
185 Fifteen representatives of the Heads of State or Government of Member States, one representative of the President of the European Commission, sixteen members of the European Parliament, and thirty representatives of national Parliaments. Two representatives of the European Court of Justice, one representative of the Council of Europe and one from the European Court of Human Rights, may also attend as observers. The Ombudsman, members of the Economic and Social Committee and Committee of the Regions, along with social groups and experts, are to be invited to give their views.
186 All the documents will be posted on the Council’s website: http://db.consilium.eu.int/df/default.asp?lang=en
187 First meeting of the body responsible for drawing up a draft EU Charter of Fundamental Rights, Brussels, 17 December 1999.
also due to complete its work at the end of the same year. It will then have to be considered, as the Cologne European Council decided, “whether and, if so, how the Charter should be integrated into the treaties”.

It is a priority for the ETUC, whose September 1999 Executive Committee took a position on the matter\textsuperscript{188}. The ETUC believes that the Tampere process must lead to the inclusion in the Treaty of:

- a binding Treaty obligation for the Member States (and the Union) to adhere to international instruments (Universal Declaration of Human Rights, European Convention on Human Rights, ILO Declaration on Fundamental Principles and Rights at Work, Community Charter of the Fundamental Social Rights of Workers, Revised European Social Charter, UN Convention on the Rights of the Child), combined with a sanction procedure (political and/or legal), and
- selected individual and collective universal core rights directly enshrined in the Treaty and with priority to EU-specific cross-border and transnational trade union and workers’ rights:
  - national and transnational trade union rights of association, collective bargaining and trade union action, including the right to cross-border sympathy action and strike;
  - national and transnational rights for workers to information, consultation and participation;
  - the right of equal treatment and equal opportunities for men and women;
  - prohibition of all forms of discrimination, racism and xenophobia;
  - ban on child labour;
  - the right of occupational health and safety protection;
  - the right to a minimum income including social protection in case of unemployment;
  - freedom of movement within the EU, including for third country nationals who are legally resident in the EU.

Close cooperation has been established between the European trade union movement and civil society. The ETUC and Platform of European Social NGO plan to take their joint campaign forward.

III.4 Encouraging a healthy society

51. “Take forward the debate on the development of public health policy and addressing the emerging demographic challenges and new threats such as communicable diseases.”

Cf. points 44 and 55.

52. “Pursue the strategy on combating tobacco consumption.”

The main legislative highlight was the adoption, after nearly ten years in the making, of the Directive banning the advertising of tobacco products\textsuperscript{189}. It permits limited exceptions for

\textsuperscript{188} The incorporation of fundamental civic, social and trade union rights into the European Union Treaties, 16-17 September 1999.

transitional periods of up to five years, after which all direct advertising will be illegal and the scope for indirect advertising and sponsorship strictly limited.\footnote{Report from the Commission (...) on progress achieved in relation to public health protection from the harmful effects of tobacco consumption, COM (99) 407 of 8 September 1999.}

For the record: European Union subsidies to tobacco growing, chiefly in Italy and Greece, amount to 900 million euros, or 2.4\% of the EU’s total budget.

\begin{boxedquote}
53. “Implement the existing health programmes (AIDS, communicable diseases, cancer, drug dependence, health monitoring and health promotion) and press for the adoption of the outstanding proposals (rare diseases, pollution-related diseases and accidents and injuries).”
\end{boxedquote}


\begin{boxedquote}
54. “Deepen the exchange of experience on efforts to improve the efficiency, cost-effectiveness and quality of health systems.”
\end{boxedquote}

In 1998, the Commission published a stocktaking and forward study of possible new EU public health measures\footnote{Communication from the Commission on the development of public health policy in the European Community, COM (98) 230 of 15 April 1998.}. It maps out three strands of action for the future: improving information for the development of public health, reacting rapidly to threats to health, tackling health determinants through health promotion and disease prevention. Also of note is a Commission staff working paper on public health and enlargement which asks questions about the risks of a two-tier health status.\footnote{http://www.europa.eu.int/comm/dg24/health/ph/key_doc/index_en.html} Health forms one of the four pillars of the concerted strategy for modernising social protection (see point 34 and article by C. de la Porte in part one).

\section*{IV. The external dimension of social policy}

\subsection*{IV.1 Enlargement}

\begin{boxedquote}
55. “Work to ensure the gradual involvement of accession countries in social policy programmes and activities - and in particular the employment strategy - while promoting the social and civil dialogue as essential pillars of the European social model.”
\end{boxedquote}
On top of Community programmes in areas like education, training, youth, culture, SMEs, the environment and energy, the Commission has also laid down practical arrangements for **accession countries** to take part in **health and social policy** programmes.

Under the Europe Agreements or their Additional Protocols, accession countries pay the costs of participation in the programmes themselves, but may top up their own budget contribution from their annual PHARE Programme allocation.

The ETUC, UNICE/UEAPME and CEEP published a joint declaration on the Warsaw Conference of 18 and 19 March on **the role of the social partners in EU enlargement**, given added importance by the Helsinki European Council’s approval of an enlargement to 13 applicant countries. In it, the social partners acknowledge that “**Enlargement of the European Union to the East and South is a process of historic importance. (...) It confronts the candidate countries and the European Union with the double challenge of profound economic and social reform currently taking place in almost all candidate countries, and of taking over the Community acquis. The tasks to be fulfilled require the active participation of the social partners who must fully live up to their responsibilities by contributing to the enlargement process, both at the national and the European level. (...) ETUC, UNICE/UEAPME, and CEEP invite the European Union and the governments of candidate countries to involve the social partners, in an appropriate way, in the enlargement process**”.

---

**56. “Assist applicant countries to ensure full adoption and implementation of the acquis in the social policy field and contribute through financial assistance to the development and adaptation of the social infrastructure in the candidate countries.”**

The **enlargement** process set moving in March 1998 with the calling of bilateral conferences with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia will be extended in 2000 to the other applicant countries, namely Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia. This will involve both sides stepping up their reforms (institutional for the Union, chiefly economic and administrative for the applicant countries). For the EU, this depends on the next round of Treaty revision being completed and its results being ratified before the new members join. The intergovernmental conference (IGC) which got under way in February 2000 is supposed to have completed its work by year-end.

---


199 Abstract of joint declaration of social partners, Warsaw, 19 March 1999.
For applicant countries, membership of the Union means taking over all the rights and obligations of the EU’s system and institutional framework known as the acquis communautaire (established body of Community laws and Regulations). The social and employment acquis makes up a particularly long head of the accession negotiations due to the volume of Community legislation and Regulations concerned, embracing everything from employment policy through equal opportunities, anti-racism to health and safety at work. One underlying issue of enlargement for the applicant countries is the impact of adapting their social systems to a market economy environment. Although not a feature of the accession negotiations as such, one pillar of the “European social model” is the agglomeration of national social protection systems, linked together but differing widely as to funding and operation from country to country.

The applicant countries of Central and Eastern Europe are being given practical help in preparing for membership partly through aid to agriculture and rural development under a pre-accession instrument for agriculture (SAPARD), and partly through regional policy instruments, under a newly-established financial mechanism, the Instrument for Structural Policies for Pre-accession (ISPA). Both instruments will provide support, to the accession strategy from 2000 onward. The latter will add to measures already taken under the current PHARE Community programme.

PHARE provides economic assistance to support economic and social reforms in Central and Eastern European countries. It was initially limited to Poland and Hungary, but was soon extended to the other CEEC. It forms part of the broader package of assistance given by the Group of 24 industrialised countries (G-24). It is tied to progress on political and economic reform. Since 1993, the three Baltic countries, the former republic of Macedonia and Albania have been brought within the PHARE Programme. In 1995, PHARE was supplemented with the CONSENSUS programme which aims to promote cooperation with the Central and Eastern European countries in social protection taken as meaning all social services systems, including health care. CONSENSUS is the social aspect of the Europe Agreements. The ETUC has published its own detailed analysis of social security systems in the CEEC.

TEMPUS, a trans-European mobility programme for university students, was set up under the economic assistance scheme for Central and Eastern Europe.

An Economic and Social Committee report on the employment and social situation in the applicant countries pointed out that, like that of the European Parliament, its demand for a
White Paper to be drawn up on the social situation and social policy in the applicant countries had not yet met with a response\textsuperscript{207}. The ESC again called on the Commission to do so, and stressed the need for involvement by the social partners in the applicant countries.

UNICE had also recognised the need to take over the full social policy acquis and for the necessary measures to be implemented before enlargement, not just after\textsuperscript{208}.

IV.2 Promoting social progress on the world stage

\begin{table}[h]
\centering

\begin{tabular}{|l|}
\hline
57. “Present a Communication on the development of the external dimension of European social policy.” \\
\hline

\end{tabular}
\end{table}

No such Communication has yet been presented.

\begin{table}[h]
\centering

\begin{tabular}{|l|}
\hline
58. “Maintain support in particular in the ILO for the promotion of internationally recognised core labour standards, and seek to enhance co-operation between the ILO and the WTO in this respect.” \\
\hline

\end{tabular}
\end{table}

The European Union argued for a comprehensive round of \textit{trade negotiations} which would help the WTO keep up with rapid and far reaching economic change, and meet the concerns expressed by civil society\textsuperscript{209}. The EU Council adopted its position on the Millennium Round of multilateral trade negotiations in the WTO only at the end of October\textsuperscript{210}. On the social front, the Council suggested establishing a substantive dialogue with its partners in a \textbf{Joint ILO/WTO Standing Working Forum} on trade, globalisation and labour issues. The developing countries objected to working conditions being put on the WTO agenda. In November, the European Parliament welcomed the Council’s position, and called for a joint WTO and ILO working programme to implement the ILO’s 1998 conference Declaration on Fundamental Principles and Rights at Work\textsuperscript{211}. Wherever the blame is to be laid between the representatives of civil society and the US government’s flawed final negotiating position, the Seattle conference’s failure to call a new round of WTO talks threw the need for world trade to take more account of social and environmental aspects into stark relief.

\begin{table}[h]
\centering

\begin{tabular}{|l|}
\hline
59. “Maintain an emphasis on co-operation in the field of social policy in bilateral relations.” \\
\hline

\end{tabular}
\end{table}

\textsuperscript{207} Information Report of the Economic and Social Committee on employment and the social situation in the applicant countries, of 7 July 1999, OJ C 258 of 10 September 1999.

\textsuperscript{208} UNICE position on the commercial implications of EU enlargement in the Central and Eastern European countries, 2 December 1997.

\textsuperscript{209} Communication from the Commission to the Council and to the European Parliament: The EU Approach to the Millennium Round, COM (99) 331 of 8 July 1999.

\textsuperscript{210} Conclusions of the Council of 26 October 1999 on preparations for the Third Ministerial Conference of the WTO.

The European Trade Union Institute (ETUI) was established in 1978 on the initiative of the European Trade Union Confederation (ETUC) to deal with European aspects of economic, social and political developments of particular importance for workers and their trade unions.

Das Europäische Gewerkschaftsinstitut (EGI) wurde auf Initiative des Europäischen Gewerkschaftsbundes (EGB) im Jahr 1978 gegründet, um sich mit den europäischen Aspekten der wirtschaftlichen, sozialen und politischen Entwicklungen zu befassen, die von besonderer Bedeutung für die Arbeitnehmer und ihre Gewerkschaften sind.

L’Institut syndical européen (ISE) a été fondé en 1978 par la Confédération européenne des syndicats (CES) pour traiter des aspects européens des développements économiques, sociaux et politiques qui revêtent une importance particulière pour les travailleurs et leurs syndicats.

OBSERVATOIRE SOCIAL EUROPEEN
RUE PAUL EMILE JANSSEN, 13
B - 1050 BRUXELLES
TEL: 00 32 2/537 19 71
FAX: 00 32 2/539 28 08
E-mail: ose.eur@skynet.be
Internet: http://www.ose.be

EUROPEAN TRADE UNION INSTITUTE
BOULEVARD DU ROI ALBERT, 5 (bte 4)
B - 1210 BRUSSELS
Tel: 00 32 2 / 2240-470
Fax: 00 32 2 / 2240-513
E-Mail: etui@etuc.org
Internet: http://www.etuc.org/etui

ISBN : 2 - 930143-70-3
D/2000/3163/30 EUR 15 / BEF 605