European Union - European Industrial Relations?

Global challenges, national developments and transnational dynamics

Edited by
Wolfgang E. Lecher
and Hans-Wolfgang Platzer

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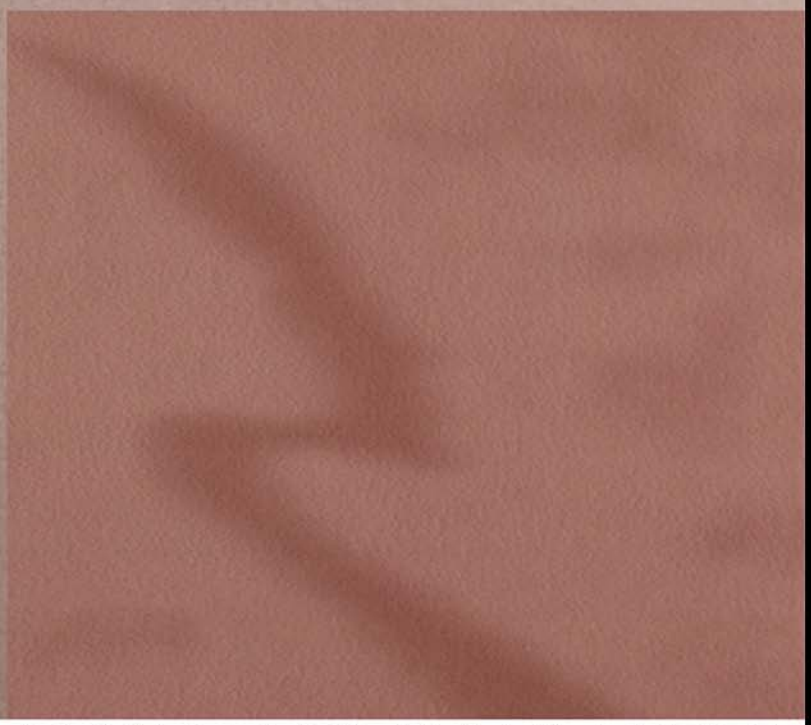

EUROPEAN UNION—EUROPEAN INDUSTRIAL RELATIONS?

Industrial relations has traditionally been a national affair, characterised by distinct local laws, practices and cultures. The process of European integration, exemplified by the Single Market Programme, the Maastricht Treaty and the imminent prospect of Economic Monetary Union, has created a framework within which national practices have been exposed to growing cross-border influences—including European Union legislation requiring European Works Councils to be set up in large transnational firms. Might European integration create the basis for a new distinctly European-level of industrial relations? And what impact would this have on existing national systems?

European Union—European Industrial Relations? explores the prospects for the emergence of a distinctly European pattern of industrial relations, in which the European-level organisations representing employers and trade unions gain in importance vis-à-vis their national organisations. In particular, individual contributions analyse the impact of the 'Social Chapter' to the Maastricht Treaty, which created a new institutional framework within which European-level employers and trade unions can negotiate and agree European social policy. The study also considers the likelihood of European-level collective bargaining, and what effect mandatory European Works Councils might have on existing national systems of employee representation. A final section offers a trilateral comparison between industrial relations in Europe, North America and Japan.

European Union—European Industrial Relations? is an extremely topical contribution to the key debates over Europe's future. It draws together a wide range of experience and perspectives from across Europe, and will prove stimulating and valuable reading for academics, policy-makers and those working in industrial relations.

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PREFACE

With the signing of the Maastricht Treaty, the European Union (EU) embarked on the journey to 'ever closer union', not only in the economic and currency field, but also politically.

The Treaty's 'Protocol on Social Policy', which excluded the United Kingdom, and its associated 'Agreement on Social Policy' (the 'Social Chapter') extended the scope for legislative activity by the European Union in a number of areas connected with employment and industrial relations. At the same time, the Treaty also created new avenues for collective bargaining at European level, with a range of options through which collective agreements can be concluded and implemented. The new legislative machinery was first used in the autumn of 1994 to introduce the Directive on European Works Councils, which requires some 1,000 European-scale transnational undertakings to establish mechanisms for employee information and consultation. The employers and trade unions at European-level have made use of their enhanced powers within the institutions for 'social dialogue' to come to an agreement on parental leave, which was turned into a Directive in June 1996 and will apply to all those countries covered by the Agreement on Social Policy. In May 1997, the 'social dialogue' machinery also yielded an agreement on a set of basic principles governing part-time work which will also take the form of an EU Directive.

The election of a Labour administration in the UK on the 1st May 1997 on a commitment to reverse the previous Conservative government's 'opt out' from the Agreement on Social Policy means that these, and any future, measures will now apply in all EU member-states. Accordingly, the conclusion of the Intergovernmental Conference at Amsterdam in June 1997 included bringing the mechanisms set out in the Agreement on Social Policy within the European Union Treaty proper as a new 'Social Chapter', with essentially unchanged objectives and procedures.

The programme for economic and monetary convergence, leading to currency union, will necessitate adjustment at national level in employment and social policy, and also in the conduct of collective bargaining: this, in turn, will trigger conflicts, especially of a distributional nature, both within and between the EU's member states. Given the enhanced scope

for legislation and negotiation created by the Maastricht Treaty and the ambitious objectives now being pursued in the economic and monetary field, the response, development and future structuring of industrial relations at transnational level will become an issue of growing importance, both for social policy and as a key element in the broader prospects for European integration.

The project for the completion of the Single European Market, with its parallel—but contradictory—dimensions of market liberalisation and deregulation on the one hand, and political intervention to shape a 'European social area' on the other, have already posed this issue as an object for research and raised a number of specific questions of increasing urgency:

1 How can the prospect of Europe-wide coordination, or possibly partial harmonisation, of employment and social policies be reconciled with the now dominant trend towards more differentiated, more flexible, and more decentralised industrial relations and collective bargaining arrangements?
2 What impact has the realisation of the Single European Market (SEM) had so far on national systems of industrial relations? Has there been convergence—both of institutional arrangements and of terms and conditions of employment? Or have traditional structural differences persisted? And what are the consequences of these developments for any future EU social, industrial, economic and monetary policies?
3 Could the implementation of the Social Chapter trigger a process, encouraged by the scope for social dialogue, in which the European-level organisations of employers and trade unions gain in importance vis-à-vis their national organisations, not only in the sphere of social policy but also in the field of—qualitative, non-pay-oriented—collective bargaining?
4 What levels (central organisations, sectors, transnational enterprises), what objects of regulation and what forms and procedures might characterise any such supranational, European level of industrial relations?
5 What do national and European trade unions and employers' associations hope and expect to gain, and what options do they perceive, in the fields of social policy, collective bargaining and European integration in the context of current and prospective developments?
6 Is it possible that, in the long-term, an authentic and distinctive European system of industrial relations will emerge, anchored in transnational collective bargaining in the classically understood sense of the term?

Trade unions, employers and academic research have only just begun to grapple with this both complex and, in many respects, quite novel set of problems. Moreover, discussion and analysis are rendered all the more difficult by the fact that the EU's international environment is itself undergoing far-reaching changes, whose impact on the process of EU integration is, as yet, difficult to gauge: of particular importance here are the economic

and political transformations in Central and Eastern Europe, rapid economic globalisation, and intensifying international competition not only between products but also between locations vying to become sites of economic activity.

This volume, which is the product of a joint research project conducted by the editors, seeks to reflect and encompass, both in its aims and approach, the complexity of the current employment and bargaining landscape in Europe, the intensity of transnational interconnections, and the broader political and social recasting of Europe.

The book's underlying structure, set out in greater detail in the Introduction below, is based on an integrated comparative approach which seeks to draw together the numerous spatial dimensions, the various levels of activity at which employment regulation is practised, the diverse standpoints of the numerous actors, and theoretical perspectives. The main components are as follows:

- Part I sets the context with a discussion of and theoretical reflection on the European and transnational institutions and levels within which the parties are organised and their activity conducted, and specifically in the light of the opportunities created by the Maastricht Treaty.
- Part II offers a series of political and strategic assessments by the key actors—enterprises, employers' associations, trade unions and political institutions—at European level, but where appropriate integrating the standpoint of their national constituencies, and at national level in the case of Germany and the United Kingdom.
- Part III focuses on the specific role and contribution of European works councils to the creation of a new form of transnational industrial relations.
- Part IV offers a comparative overview of trade union and industrial relations developments in the other two principal market capitalist models—North America and Japan—with special reference to the discussion surrounding the social and employment dimension to the North American Free Trade Area (NAFTA).

The overall approach and the specific aim of this volume—to analyse and explore the developing transnational structures of industrial relations in a manner which does justice to their innate complexity—call for a broad conception of industrial relations. 'European industrial relations' will not, therefore, simply be taken to mean collective bargaining in the 'classical' sense in which the social partners autonomously regulate substantive terms and conditions of employment—but now simply shifted to the European level. Rather, it will denote all forms of cross-border or supranational relationship between the social partners at the various levels at which they may exist, together with the interplay of national and EU institutions and the social partners in formulating and implementing employment and social policy.

A number of developments since the Maastricht Treaty came into force have served to underscore the increasing significance of the issues dealt with in this volume for the course of European integration:

1 The future advance of European integration has become a subject of unparalleled and intense controversy in every member state. In this context, the development of social and employment policies, and specifically of 'industrial democracy' in an EU context, have become issues of growing importance given the tensions posed between the pursuit of economic efficiency, the need for greater democratic legitimation and the prospects for popular acceptance of further European integration.
2 The European Commission's 1993 *White Paper on Growth, Competitiveness and Employment,* together with the 1994 *White Paper on Social Policy* (and the subsequent Medium Term Action Programme) have assigned a greater role and responsibility to the social partners at European level: this may generate more intensive transnational cooperation—but possibly also greater conflict.
3 The adoption of the Directive on the Establishment of 'European Works Councils' in Community-scale Undertakings by the Council of Ministers in 1994, after twenty years of stagnation in this field, has created a legal foundation likely to give fresh impetus to the development of transnational industrial relations at workplace level—issues addressed by a number of authors in this volume.

The contributions which make up this volume offer an assessment of the prospects for and limits to the development of a system of transnational industrial relations within the European Union—and the contrasts between it and other systems—by a diverse group of authors made up of practitioners and researchers from a number of European countries. Such a work cannot, and does not intend to, offer self-sufficient explanatory models or 'ready-made' stratagems. Rather, it sets out to indicate some of the avenues along which developments might proceed. Moreover, by offering descriptive background as well as more abstract reflection it will, we hope, promote the consideration of both these dimensions within the urgently needed practical and theoretical debate on this complex and controversial topic.

This book was first published in Germany in 1994 by Bund Verlag (Cologne) under the title *Europäische Union—Europäische Arbeitsbeziehungen? Nationale Voraussetzungen und internationaler Rahmen* and has been extensively revised and updated for the present English edition.

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Wolfgang Lecher and Hans-Wolfgang Platzer

INTRODUCTION

Global trends and the European context

Wolfgang Lecher and Hans-Wolfgang Platzer

Systems of industrial relations and collective bargaining are currently passing through a period of transformation which is remaking both their form and substance, in the process rearranging institutions and their relationships at every level—local, sectoral, national and supranational. Change is being propelled by two developments, each of a genuinely epoch-making character.

First, since the late 1970s the societies of the industrialised West have been in the grip of a far-reaching and complex structural transformation, the pace of which has accelerated during the 1980s and 1990s. Its main characteristics are:

1 The conjunction of a number of technological revolutions, in particular in the fields of microelectronics, information and data-processing technologies, and telecommunications.
2 Upheavals in corporate structures and the organisation of work.
3 Rapid growth of regional and global economic links.

The globalisation of economic activity, embracing not only decisions on production but also the location of research and development, is narrowing the differences between the main international competitors.

> Successful catching-up with the industrialised west, first by Japan, but now also by South East Asia and the Southern countries of the European Union, and even in Latin America, is not confined simply to corporate performance or levels of industrial investment, but increasingly includes the infrastructural preconditions for growth, such as education and training—that is, the locally available human capital. This is not merely blurring the former contours and gradations of the international division of labour, but also, and of necessity, overturning the traditional positions occupied by national economies in the global competition for jobs and incomes.
>
> (Jochimsen 1994:3)

As a consequence, industrial relations and collective bargaining have acquired an unprecedented importance in the competition between sites to attract economic activity. Not only are factors such as levels of and increases in pay and other terms and conditions set by collective agreement—such as working time and flexibility in work organisation—crossing national borders and entering into mutual competition, but this competition also encompasses the broader social climate within which collective bargaining takes place. This also applies at the macro-regional level of the 'European Social State'—that is, that complex structure composed of the national Western European social-welfare states together with the elements of a supranational European social policy. Growing market globalisation and the increasing international mobility of the factors of production are leading to 'regime competition' at both levels, in a process fraught with risk.

Second, since 1989 Europe has been experiencing a degree of political and economic upheaval previously unknown in peacetime:

- The disintegration of the Communist bloc ended the division of the continent and made possible German unification.
- On 1 January 1993 the Single European Market was completed, at least formally, with its 'four basic freedoms'—freedom of movement for goods and capital, for services and for labour.
- Following the Single Market programme, and in the immediate wake of the dramatic transformation in East—West relations, 1991 saw agreement on the Maastricht Treaty, establishing the European Union, with its project of the creation of a single European currency by 1999. The inclusion into the Treaty, which came into force in the autumn of 1993, of justice and home affairs, foreign and security policy, the introduction of an EU citizenship, and other substantive and institutional changes is intended to add a 'political' dimension to the previously essentially economic process of European integration.
- The agreement between the European Community (EC) and the European Free Trade Association (EFTA) countries on the creation of a European Economic Area (EEA) with structures similar to that of the Single Market, and the accession of a number of other (formerly EFTA) Western European countries to the European Union from the beginning of 1995 (Austria, Finland and Sweden) are further elements in this fundamental economic and political transformation of Europe.
- The effect of this twofold process of European 'opening'—that is, the development of the Single Market and the ending of the economic and political isolation of Central and Eastern Europe—has been to overturn supposed certainties as to [Europe's] main axes of development, its hierarchy of urban centres, and broad regional dynamic of development. Europe must accommodate itself

> to an open geography of growth, with enormous, and as yet not fully grasped patterns of development.
>
> (Jochimsen 1994:2)

NEW QUESTIONS

The disappearance of national borders to markets for goods, services, capital and labour, the globalisation of economic and technological competition, and the dramatic, and to some degree contradictory, course of political change in Western Europe and Europe as a whole, are posing a raft of new questions as to the future of industrial relations. For example, and of central concern here:

1 What effects are greater flexibility, deregulation and decentralisation having on the structures and development of national systems of industrial relations?
2 What changes are taking place in the organisational capabilities, capacity for action and respective strengths of trade unions and employers?
3 What are the preconditions and prospects for and constraints on a 'Europeanisation' of industrial relations?
4 At what levels, in what fields and within what timescale might an authentic and autonomous European structure of industrial relations emerge within the framework of the European Union?

These issues cannot be adequately explored simply by looking at the supranational social policies of the European Union. Rather, as has been emphasised on the associated issue of the 'social-welfare state content of an integrating Europe' (Flora 1993:754), the developmental problems of the social-welfare state must be seen in their broader contexts—which the present study sets out to reflect. Namely:

- problems of system adaptation in Western Europe;
- problems of system integration at European level;
- problems of system competition between Europe, the USA and Japan.

> The subject of 'Europe as a social-welfare state' touches on all… [these] contexts, but especially the first and the second.
>
> (Flora 1993:754)

The same broad considerations apply to industrial relations and collective bargaining—themselves a core element of modern social-welfare states and a key agency in regulating and structuring Europe's (social) market economies.

Political debate on and academic consideration of many of these issues are still at an early stage. Given the complexity and novelty of these areas, together with their interdependence, it is important to isolate the core questions and their ramifications. For our purposes here these are as follows:

1 Is European transnational collective bargaining possible?
2 Is it necessary—either to fulfil central functions emerging at EU level, to facilitate European integration, or as a constitutive feature of the basic model of social and economic organisation which characterises the EU and its constituent member states?

These two questions will be explored in detail in the light of the following assumptions, using a comparative approach where appropriate:

1 The completion of the Single European Market and the Maastricht project—which injected a new dynamism into the process of political, economic and social integration—have transformed the environment within which enterprises/employers and employees/trade unions at the various levels of industrial relations have to act.

   A first analytical step here will be to review the developments of the 1980s as a foundation for approaching the 1990s. Specifically:
   - How has this changed environment been perceived by participants both nationally and at other levels of industrial relations?
   - Against the background of global change, to what extent and in what direction are these developments influencing the organisation, political objectives and strategic interests of the actors, and the practice of industrial relations in fields such as: reform and adaptation of national strategies, decentralisation of industrial relations, 'Europeanisation' and coordination of national strategies; strategic combinations of national and transnational-European elements; establishment of specifically European structures for collective bargaining?
   - How are the legal and institutional instruments and options offered by the Maastricht Treaty's 'Social Chapter' viewed by employers and trade unions? What are the medium- and long-term implications for collective bargaining of Economic and Monetary Union (EMU)?
2 Drawing on the perceptions of the actors of the process of European integration, and with appropriate regard to the specificities of national industrial relations arrangements and previous experience in this field at European level, we set out to clarify the following questions:
   - What forms of development of European industrial relations and collective bargaining are conceivable, and feasible, in the short and medium term; what are the actors' main options?
   - In what fields, at what levels and with what institutional features might the emergence of European forms of negotiation be possible? What issues could be regulated, and how would provisions be implemented? In what fields might this complement national practices, extend them (by 'adding value') or, in the medium term, even replace them?
   - What adjustments would be required of both national and transnational actors?

3 The European Union's external environment—that is, the processes of globalisation and their effects on the future shape of industrial relations within an integrated Europe—is also incorporated into the study. Given the complexity of this international context, and the relative paucity of research into the supranational aspects of industrial relations, we do not set out to offer systematic, global and interregional comparisons of structures and developments in this field. Rather, our concern is to provide an overview of current issues and developments in industrial relations in Japan and the USA as a counterpoint to the European social-welfare state model.

THE POLITICAL, ECONOMIC AND SOCIAL-POLICY CONTEXT AFTER MAASTRICHT

Long-term trends in the process of integration

The Maastricht Treaty was based on the three 'pillars' of Economic and Monetary Union (EMU), a common foreign and security policy, and cooperation on justice and home affairs. The Treaty was not structured in accordance with a single guiding principle, such as federalism. Rather, it was the outcome of political negotiation, a compromise between twelve nation-states, and as such represents the aggregation of a large number of mutual concessions and trade-offs. At the same time, the Treaty was more than the random expression of a series of negotiations: it built on and reinforced three themes with a lineage traceable throughout the history of the Community (Wessels 1992):

1 The overall volume of political issues to be dealt with by the Community's central institutions was, once more, substantially extended. The institutions and representative bodies of the European Union acquired the capacity to deal with nearly all the traditional tasks of the state—albeit through widely varying procedures.
2 Powers were transferred to the Union to a greater and more unambiguous extent than ever before, notably in the case of the single currency. Some attempt has also been made to demarcate the powers of the member states and the European Union more clearly than previously through the inclusion of a 'subsidiarity' clause and a more specific allocation of tasks.
3 The strengthening of the long-term trend towards European integration manifested itself in the institutional structure and decision-making procedures of the European Union. For example, the establishment of a Committee of the Regions allows local and regional governments to participate in EU policy. 'Social dialogue' between the social partners

at European level, examined in greater detail below, was given an enhanced status. The number of possible decision-making procedures to be applied within the Council of Ministers and between the Council and the European Parliament has also been increased as a direct consequence of the extension of Union powers—with all the associated problems of transparency and efficiency. And finally, reflecting the desire for greater institutional differentiation, special provisions were agreed for individual member states (ranging from abortion in Ireland—Article 40.3.3, Irish Constitution—to the British opt-out on social policy and monetary union). These provisions continue the approach, previously followed in practice, of integration via a 'two-speed Europe' and 'Europe à la carte'.

As with previous defining moments in the history of the European Community—the Messina Conference, which led to the establishment of the EEC in 1958, or the passing of the 1986 Single European Act, which inaugurated the Single European Market—the long-term implications for European integration and the durability and appropriateness of individual Treaty articles, as well as the Treaty as a whole, can only be gauged in the most general and provisional terms at this stage; all the more so, as the treaty came into force during a period of recession compounded by crises in economic structures, labour markets and economic innovation against a background of currency turbulence and broader global upheavals (Platzer and Ruhland 1994).

This 'shadow of the future' which now lies over the further development of the EU inevitably complicates any attempt to anticipate or forecast moves towards the Europeanisation and transnationalisation of industrial relations. Looking at the construction of the Treaty as a whole, two elements are of particular significance for the prospect of a European industrial relations: the project for economic and monetary union (EMU) and the new, expanded, scope for EU social policy.

Economic and Monetary Union (EMU)

The proposals for EMU mark a qualitatively new step in the process of European integration, centralising and integrating decisions on monetary policy, and ending competition between national currencies and monetary institutions. Accession to monetary union would mean the abandonment of national sovereignty across the whole range of monetary decisions and a transformation of the environment in which the EU's national economies would operate.

Political and academic controversies surround the project as a whole, its preconditions—both economic and in terms of which member states would be eligible to join—its legal and institutional form, its necessity at the present stage of European integration, and its intended or unintended

economic and political consequences. In any event, EMU—however ultimately realised—would impinge greatly on industrial relations and collective bargaining.

It is generally accepted that the implementation of a single European currency would compel collective bargaining to adhere rigorously to the dictates of economic stability, forcing it to bear the burden of many of the major economic adjustments previously absorbed by the buffer of exchange rate mechanisms. For any critique of the project for currency union which begins from a concern for social policy, the main risk would be:

> that the possibilities for changing nominal exchange rates will be lost…. The process of adjustment in an economic and currency union demands substantially more sacrifice from working people than a mechanism for adjustment executed through a correction in exchange rates. Employees will have to suffer a phase of unemployment…, which ultimately will compel a cut in real wages far beyond any cut in pay necessitated by devaluation.
>
> (Busch 1991:267)

This sceptical position is contrasted with the view which argues that the completion of the Single European Market has already imposed tight limits on the conduct of national collective bargaining:

> More than ever before, investors now react to the varying trends within collective bargaining in individual countries…. If collective bargaining in a country does not take account of what is going on around it and is awarded poor marks by investors, this will prompt a shift of capital to other European countries…. This is true irrespective of whether there will ever be a single currency. A decision 'against Maastricht' would not lower the pressure on collective bargaining being exerted by the growing integration of all the markets in Europe. Against this pressure have to be set the advantages of liberalisation and integration—that is, the welfare and growth gains which will also benefit Europe's employees.
>
> (Pohl 1992:755)

Whether EMU will be achieved fully within the timescale originally envisaged at Maastricht (1997–9) remains uncertain. Should it be implemented, existing Treaty provisions would soon be shown to have a number of shortcomings in the field of collective bargaining.

Efforts to supplement the decision to proceed with EMU with provisions to safeguard free collective bargaining in the negotiations for the Maastricht Treaty met with no success: the Treaty excluded freedom of association and the right to strike and lock-out. However, EMU will not only place growing pressures on the parties to collective bargaining—and, in particular, the trade unions—to tread a path consistent with the dictates of economic

stability; it will itself generate a need for cross-border collective bargaining because of the need to establish some general framework conditions at EU level. On this argument, the EU would eventually be confronted with a need to create the legal prerequisites for a system of European collective agreements. Given the diverse legal and industrial relations traditions and practices in the member states, however, no swift harmonisation can be expected in this sphere.

As a result, the existing asymmetrical course of development within the European Union—and specifically the relationship between rapidly advancing 'market integration' (post-Maastricht in the monetary, finance and credit sphere) and lagging political and social integration—is likely to become even more unbalanced at precisely the point at which economic policy, social cohesion and collective bargaining are most interdependent. Collective bargaining, by nature both a social and an economic regulative, occupies a central and a strategic role in the process of European integration. Viewed from the standpoint of both the functional demands of integration and the pressing issue of the popular acceptance of economic integration, to what extent, and through what forms, might a 'Europeanisation' of industrial relations serve as a key regulative not simply of employment issues, but ultimately of the EU's social market economy as a whole? Neither the Maastricht Treaty, nor its successor negotiated at Amsterdam in June 1997, offers any legal basis for collective bargaining in the 'classical' sense at European level. The problems and challenges raised by this initial position will be taken up at various points in the course of this volume.

Maastricht and social policy

The outcome of the negotiations on social policy in the Maastricht Treaty have to be seen in the light both of prior developments in this area and of the far-reaching political and economic changes presaged by the Treaty. Set against the ambitious economic aims of the Single Market programme formulated in the mid-1980s and the associated comprehensive catalogue of measures (the 'White Book') for liberalising and deregulating the European market, the social policy content of the 1986 Single European Act, intended to offer a 'social dimension' to the SEM, was meagre. The 'Social Charter of Fundamental Social Rights of Workers', adopted by the European Council (with the exception of the UK) in December 1989, was not a legally binding instrument. Nonetheless, it had the status of a 'solemn declaration' on the part of those governments which agreed to it, and was seen by employees and trade unions as constituting a signal of their intent.

The Social Charter did, however, find practical political and legal expression in the Action Programme drawn up by the European Commission immediately after the Charter was agreed and which proposed fifty measures to promote and realise the SEM's 'social dimension'. By the time the SEM was formally

initiated in 1993, the EC's legislative record in this area presented a divided, but in general very patchy, picture. Some progress was achieved, for example in the field of health and safety at work, where Directives were adopted in areas such as work on visual display units (VDUs) and hazardous materials. In contrast, progress in the field of employment law (terms and conditions of employment, distortions to competition as a result of atypical contracts, working time and European works councils) was halting, and several Directives either failed to be accepted by the Council of Ministers or were substantially diluted. The substantive and legal problems associated with these complex issues undoubtedly contributed to the slow pace of progress; however, a crucial role was also played by the legislative procedures offered by the Single European Act, and specifically the combination of the need for unanimity on many proposals with British reluctance and refusal to entertain them.

In addition to this limited legislative activity, the 'social dialogue' between the European trade unions (represented by ETUC—European Trade Union Confederation) and associations for private-sector and public employers (UNICE—Union des Confédérations de l'Industrie et des Employeurs d'Europe; and CEEP—Centre Européen des Entreprises Publiques), established in 1985 and formally anchored in the Single European Act (SEA), also offered some possibilities. The aim of the mechanism was to offer scope for regulation on social policy issues via agreement (Article 118b of the SEA). Eight joint positions have so far been issued. However, the limited ability of the employers' side to enforce compliance by their members, combined with constraints rooted in differing trade union traditions and the decentralised scope for implementation, has meant that none of these agreements has had any real impact within the member states. As a result, although 'social dialogue' acquired the character of an increasingly important multinational forum for discussion, it has not, as yet, become a strategic instrument for social concertation at European level. A framework accord negotiated between ETUC and CEEP in 1991 for the fields of energy and road transport marked a qualitative step forward towards European collective agreements.

Given the ambitious goals of political union and EMU set during the negotiations for the Maastricht Treaty, the majority of member-state governments decided in 1990/1 that the unsatisfactory progress made in the social field under the Single Market programme had to be remedied through an enlargement and tighter specification of the Community's competence in the field of social policy. Specifically, proposals were made to accelerate decision-making through more simple majority voting in the Council of Ministers. This objective threatened to become a major stumbling block to agreement in December 1991 because of the insistent British 'No' during the final phase of negotiations. Resolution of the conflict was found through the unprecedented device of dealing with the issue through a separate Protocol on Social Policy, which 'authorised' the eleven member states

(without the UK) to use the institutions and mechanisms of the Treaty to develop social policy in the Community.

In an effort to raise the profile of the 'Social Dimension', the Maastricht Treaty also upgraded the role of the 'social dialogue'. The provisions on social dialogue, which originated in a joint proposal from ETUC, UNICE and CEEP, extended the functions of and institutional arrangements for social dialogue. Scope for 'contractual relations' between the parties was created by the addition of a clause allowing for the conclusion of collective agreements in Article 4 of the Agreement on Social Policy.

The effect of Maastricht was therefore to place the future social policy of the EU on a more secure institutional and substantive foundation, albeit one initially complicated by the UK 'opt-out', which raised new issues of competition between EU member states, as well as adding political and legal complexity. Between 1993 and 1997/8, this foundation consisted of the 'old system' (the Treaty of Rome, Single European Act, secondary Community law), together with a 'new system' built on the 'Protocol on Social Policy', embracing originally the eleven member states, but now in addition Austria, Finland and Sweden. The UK's 'opt in' to the Agreement on Social Policy, following the election of a Labour government in May 1997, will at least remove one area of controversy and complexity.

Whether and how the significance of European social policy will change under the Maastricht and now Amsterdam arrangements will be shaped by the following four considerations:

1 The inscribing of the principle of subsidiarity in the Treaty.
2 The reformulation the powers of the Union.
3 The extension of the scope for action by the European social partners in the processes of consultation, decision-making and implementation.
4 The procedural and political problems created by the Social Protocol, including the British opt-out between 1993 and 1997/98.

Under Article 2, Sections 1 and 2, the Council may now use Directives which require qualified majority to adopt 'minimum requirements'—to be applied so as to avoid prejudice to small and medium-sized undertakings and with 'regard to the conditions and technical rules obtaining in each of the member states'—in the following areas (to quote the Agreement):

- improvements, in particular of the working environment, to protect workers' health and safety;
- working conditions;
- information and consultation of workers;
- equality between men and women with regard to labour market opportunities and treatment at work;
- the integration of persons excluded from the labour market.

Community powers on social matters were also extended to include: social security and the social protection of workers, including termination of employment; conditions of employment for third-country nationals regularly living in EU countries; financial contributions for the promotion of employment and job creation, without prejudice to any provisions relating to the Social Fund; and representation and collective defence of workers and employers, including codetermination.

Given the national significance of these policy areas, the political and social sensibilities they touch on and their financial implications, the 'eleven' decided that any action by the Community on these issues required unanimity. They also expressly excluded pay, rights of association, the right to strike and the right to impose lock-outs (Article 6). Given the tensions built into the Treaty, any prognoses about the future shape and direction of the European social areas remain fraught with uncertainty.

Moreover, the economic environment within which social policy operates is changing rapidly. The development of new technologies, globalisation of markets, intensified international competition and the crisis in Europe's labour markets are creating a new context in which traditional fundamental distributional and policy conflicts are likely to re-emerge with renewed vigour.

In the first place, there is the collision between efforts, prompted by social policy considerations, to develop European Union legislation in the social and employment sphere through the setting of minimum standards, and the drive, prompted by the pursuit of competitiveness, to make labour markets more flexible, to deregulate social and employment affairs, and to cut wage and non-wage labour costs. Second, there is the conflict between supply-side and demand-oriented economic policies to tackle structural and labour market crises. The European Commission's 1994 White Paper *Growth, Competitiveness and Jobs* represents a form of 'mixed strategy' combining neo-Keynesian recommendations—such as loan-financed demand creation through the building of trans-European transport links—with neo-classically inspired proposals to contain wage costs and make labour markets more flexible.

The conjunction of these macro-economic alternatives and the new social policy framework created by the Maastricht Treaty is likely to lead to a growing 'Europeanisation' of the structures through which social conflicts may be acted out. As a consequence, the question of the shape of any future 'European industrial relations area' has become a pressing one, not only for social policy but also for European integration as a whole.

En route to European industrial relations?

The trade unions face a difficult prospect, both in terms of their own efforts at European cooperation and as far as the creation of a system of European industrial relations anchored in the option of collective agreements is concerned. The reason is twofold (see Lecher 1996:36ff).

First, the internationalisation of capital is a longstanding and highly developed process which has enjoyed an additional boost through the realisation of the Single European Market. Transnational cooperation between companies and groups of companies, and cross-border mergers and acquisitions continue to grow. Compared with the obligations placed on individual national undertakings, transnational groups have for decades successfully avoided disclosing information about employment issues or the international criteria on which they base their decisions. Capital and companies have broken through national borders wherever the national basis for their operations—both as sellers and producers—has become too restricted and national differences in incomes, taxes, currencies, subsidies, the legislative regime and, not least, terms and conditions of employment offer more scope for a profitable organisation of their operations on an international basis. The political drive to establish a single currency will evidently restrict the scope for national budgetary, fiscal and employment policies: as a consequence, the decisive factors in determining international costs and competitiveness will be wages, working conditions, working time and forms of employment.

Second, in contrast, the fact that human relationships are usually rooted, maintained and developed at local level means that labour does not have the same innate drive to vault over national, regional or even local borders. The internationalisation of dependent labour is, therefore, the product of a need of capital—raising the question as to whether the internationalisation of labour will proceed according to the same principles as the internationalisation of capital. For labour, that is from the standpoint of the interests of employees and trade unions, for example:

1 Capital should go to labour, and not vice versa.
2 The internationalisation of production should proceed at a pace manageable by national, regional and local labour markets.
3 Investment directed at rationalisation should be consistent with human needs and not made solely on cost grounds in response to international competitive pressures.

One fundamental condition for ensuring that this autonomous interest of 'labour' enjoys greater consideration in the process of internationalisation is closer cooperation between trade unions, especially exchanges of information, and a serious attempt to establish a common international (in this case European) system of industrial relations anchored in collective bargaining. Such an endeavour will inevitably entail some international and supranational coordination of collective bargaining. However, the institutions and organisation of national trade unions and systems of industrial relations poorly prepare them to tackle such a task. For example, national unions in the EU are characterised by a number of major differences:

- centralised versus decentralised principle of organisation (Belgium and

Denmark as examples of centralised organisations, and the UK and possibly France of relatively decentralised ones);
- unitary versus politically and confessionally divided movements (Germany and Britain exemplify the former, and the majority of competing movements in a number of countries the latter, although with the exception of France and Portugal most are moving closer together);
- degree of juridification (highly legalised systems in Germany and France, with more informal procedures, at least in bargaining, in Britain and Ireland);
- relationship between law and collective agreement (strong reliance on collective agreements in Denmark; strong presence of the state in France);
- dominant level of collective bargaining (mostly—still—at industry level, but with a marked shift to plant-level bargaining and diminishing significance of central organisations);
- unitary v. dual system of employee representation (purely trade union, as in Denmark and the UK, v. 'works councils' exhibiting varying degrees of autonomy in most other European countries);
- stark differences in levels of union density (70–80 per cent in Belgium and Denmark; barely 10 per cent in France and Spain);
- strategy of cooperation or conflict (traditionally cooperative orientation in the case of Central and Northern Europe in the context of a philosophy of codetermination; a predominantly—if weakening—conflictual approach in the Latin and Anglo-Saxon countries).

The circumstances under which Europe's employers' associations are able to integrate employer interests and articulate them collectively at national and European level are also changing. The central, and as yet not definitively answerable, question is that of the impact of increasingly flexible and international corporate structures and strategies on the existing pattern of employer representation, and in particular on relations within and between existing employers' associations and national and transnational constellations of interests.

The integration of the European market in the face of the 'Japanese—American challenge' is leading to a growing concentration of capital at national level and the emergence of oligopolistic market structures at European and global level. This in turn acts to undermine employer cohesion as the interests of less efficient enterprises, weak branches and peripheral regions increasingly diverge from those of the winners in the process. This transforms the circumstances under which employers' associations can aggregate and articulate a common employer interest—creating new difficulties both from a territorial and a functional perspective. The new industrial landscape of Europe is characterised by the emergence of horizontally integrated 'strategic alliances' and 'global partnerships', vertically integrated supplier networks, the establishment of larger corporate entities on the principles of vertical integration and economies of scale (as in the chemical

and consumer goods industry) and new flexible interplant networks on an (inter)regional and European level—developments which are also reconfiguring how companies articulate their interests both on employment and trade issues. In addition to a new 'topography of work' (deformalisation and informalisation, new skills, tertiarisation, etc.), these as yet uncertain changes in the collective organisation of capital are themselves forging new and complex relationships in the field of industrial relations and collective bargaining.

Nevertheless, the first steps towards trade union coordination in the field of collective bargaining can now be discerned. Moreover, the possible contours of a future pattern of European collective bargaining are beginning to crystallise out of the initial pragmatic moves of the actors, the emerging forms of negotiation and the potential objects of negotiation. However, the enormous range seen in national systems of collective bargaining between corporatist models and those anchored in free collective bargaining means that the future direction of collective bargaining at European level remains highly uncertain. Not all national union centres represented in ETUC have the power to conduct collective bargaining, including two of the largest, the Deutscher Gewerkschaftsbund (DGB) and the British Trades Union Congress (TUC). Finally, there are concerns that efforts to push ahead too fast with collective bargaining structures and negotiated solutions might be directly mirrored in a weakening of social dialogue and possibly even of Community powers to pass directives and regulations in the social field.

Given these caveats, however, the following first steps towards a future structure of European collective bargaining can now be seen:

1 In 1988 ETUC won a commitment from its national members to call for the 35-hour week at national level: this demand has been raised in most countries. However, national trade unions were left entirely free to determine where, when and with what variations they would bargain on this objective—a freedom made full use of.
2 A developed and more effective form of international collective bargaining might consist in bargaining simultaneously in several member states on a common issue, such as training, with the aim of concluding parallel collective agreements, each rooted in national law. The problem here would be the varying provisions for the successful implementation of such settlements at national level; these are weak in Great Britain and likely to prove more effective in Central and Northern Europe.
3 The implementation of the Directive on European Works Councils (EWCs) in Community-scale Undertakings, as well as existing voluntary agreements on European consultation, also offers a further opportunity. EWCs could seek to move to a form of European company agreement with the managements of their undertakings. It would also be conceivable, and highly desirable from the standpoint of improving trade union

cooperation, that trade unions active in each national subsidiary coordinate their activities and use the information brought to the EWC as a basis for genuine collective discussions with corporate management. This would, however, require solidly institutionalised cooperation between the various national trade unions represented in the company.

In the longer term, of course, genuine European collective bargaining in the classical sense might be possible between the ETUC's European Industry Federations and the sectoral European employers' associations. Although neither side currently has the powers or institutions for collective bargaining, we can distinguish a number of possible approaches:

- agreements solely intended to regulate the European dimension of existing collective bargaining (e.g. protection for employees working abroad);
- agreements on new issues which, although susceptible to national regulation, are inadequately regulated or unregulated because of their European dimension (biotechnology, agency employment in construction, environmental protection, rest periods in trans-European transport, etc.);
- agreements to establish existing national collective agreements in a legal form at European level in order to make it more difficult for national employers' associations to abrogate them (especially where national trade unions are weak and divided, as in France, Portugal or Greece);
- agreements to harmonise national collective agreements, especially with European currency union, in order to secure social, and also income-related, minimum standards);
- the 'Euregios', and within them the interregional trade unions, which also offer an interesting prospect for European, regional-level collective bargaining focused, for example, on the problems of border regions (regulation of migrant labour, mutual recognition of social security provisions and vocational qualifications)—such supranational, regional agreements could serve as an first step towards stimulating subsequent, EU-wide collective bargaining.

Such steps towards a direct, autonomous form of collective bargaining, based on employers' associations and trade unions, need to be distinguished from the other forms of agreement which could be struck within the machinery provided by the Maastricht Treaty under the social dialogue. The first of these are agreements between the social partners at EU level ('summits' on subjects such as the introduction and implementation of new technologies, equal opportunities, vocational training and qualifications, or, possibly, the setting of minimum wages on a percentage national basis). Second, there is the possibility of so-called 'compensatory social dialogue', under Articles 3 and 4 of the Agreement on Social Policy, under which

the social partners can reach agreement within a nine-month period which, if they request, may be implemented in the form of a Directive. Subjects could include social reports, as practised in France, employment documents and precarious employment.

The series of official discussions between ETUC, UNICE and CEEP on the proposal for a Directive on European Works Councils at the beginning of 1994 did not result in any agreement to adopt this procedure. Although the employers showed some willingness to compromise after a difficult internal discussion, the initial soundings foundered primarily on the rigid position of the Confederation of British Industry (CBI). The ETUC delegation was only willing to engage in talks if UNICE accepted in advance the following preconditions:

- a recognition of the right to information and consultation of employees at transnational level;
- a right to negotiations in transnational companies to shape information and consultation mechanisms and establish European works councils;
- where negotiations broke down, the creation of a transnational employee system of representation.

Following the collapse of talks, the General Secretary of ETUC called on the European Commission to prepare a draft Directive on the Establishment of European Works Councils under the provisions of Article 2 of the Agreement on Social Policy (that is, without compensatory social dialogue), urging that the Commission's proposal should follow the compromise arrived at under the Belgian Presidency in the autumn of 1993. The Directive, which did indeed closely correspond to the Belgian compromise, was finally adopted by the Council of Ministers in November 1994.

Finally, there is also the option of 'corporatist' negotiation, under which agreements are concluded with the Commission, or any future genuine European executive, involved as a third negotiating party in addition to trade unions and employers. Because of the weaknesses of all three potential actors at European level this remains a remote prospect.

Irrespective of the type of negotiation which comes about, the following problems would need to be resolved:

- the problem of enabling agreements to become enforceable—that is, of achieving legal equality between national and supranational collective agreements;
- the issue of registering agreements at European level;
- the possibility of procedures for extending collective agreements to non-signatory parties: as yet, these have operated very differently in different national contexts;
- binding regulation of industrial conflict—that is, strikes and similar

actions—in conjunction with existing national and prospective international law and rights in the area of collective bargaining and collective agreements;
- recognition of the right of association and establishing the context and limits of the law on collective bargaining.

It would, however, be misplaced to make the development of substantive transnational collective bargaining dependent on the fulfilment of these latter provisions, especially as they were not broached as possible objects of legislation under the Maastricht Treaty, and to some extent have been expressly ruled out as such. Might, for example, the principle of the 'normative force of reality' seen in national experience also apply in the case of European collective bargaining? In other words, could the practice of collective negotiations create its own legal superstructure?

The present volume seeks to offer a range of approaches, and a diversity of responses, to these questions by bringing together a variety of contributions not only from academic specialists but also from practitioners directly involved in the development and implementation of policy in the field of European industrial relations.

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Part I

TOWARDS EUROPEAN INDUSTRIAL RELATIONS?

1

ON COURSE FOR EUROPEAN LABOUR RELATIONS?

The prospects for the social dialogue in the European Union

Dirk Buda[1]

The Protocol on Social Policy authorised the member states belonging to the European Union (EU) at the time to take decisions by a qualified majority in important areas of social policy in order to make further progress in implementing the 1989 Community Charter of the Fundamental Social Rights of Workers. At the same time European employers' and trade union organisations (hereinafter referred to as the 'social partners') were given a more important role: before proposals for legislation are submitted by the European Commission, they must be consulted, can negotiate on the proposal before them and conclude an agreement and thus virtually take the place of the European legislator.

In principle the Protocol established the concept of 'horizontal subsidiarity', which the Commission and European employers' and workers' organisations had set themselves as a goal, providing a means of mediating between regulation by the law and by collective agreement at European level in the future. In all the member states labour and social policy constitute a 'policy mix' (varying from one member state to another) of provisions based, on the one hand, on the law and, on the other, collective agreements at cross-industry, sectoral and/or company level (Bispinck and Lecher 1993). It is thus only logical, and in the final analysis indispensable, for the European social partners to assume greater responsibility as it becomes easier to regulate social policy at Community level (for example in the areas of working conditions and worker information and consultation).

As far as the Commission is concerned, the crucial issue is not the way in which the proposed 'foundation' of minimum requirements in the field of social policy, on which the Community Charter is based, is put into effect, but simply that this type of minimum approximation is brought about at all where there is a need for transnational European action and, for example, where there is a threat of 'social dumping'.[2] As regards informing and consulting workers in transnational undertakings, the Commission and the Council

of the eleven member states initially made it clear that they wished to take action on the basis of the Agreement on Social Policy (hereinafter referred to as the 'Agreement').[3] However, are the European social partners ready and able to take advantage of the new opportunities for consultation and, especially, negotiation? Under what conditions could a European system of labour relations develop in the future and what form might it take?

To answer these questions we must start by looking at the existing structures and progress made so far in 'social dialogue' at Community level. After this, it is worth taking a closer look at the procedures for consultation and negotiation and the part to be played by the European social partners as provided for by Articles 3 and 4 of the Agreement. We can then attempt to examine how the 'social dialogue' might be developed into a 'minimum system' of European labour relations.

THE SOCIAL DIALOGUE AT COMMUNITY LEVEL: DEFINITION, STRUCTURES, BACKGROUND

Talks between the ETUC and the European employer's organisations UNICE and CEEP are generally described as social dialogue at Community level and were launched on the initiative of the President of the Commission, Jacques Delors, in 1985 (often called the 'Val Duchesse talks', after the place in Brussels where the first meeting was held on 31 January 1985). With the introduction of Article 118b in the EEC Treaty by the Single European Act in 1986, these talks became an institution, since the Commission was officially given the task, according to Article 118b, of 'developing the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement'.

The institutional structure of the social dialogue

Employers' associations and trade unions have, of course, been involved extensively in the European policy process at Community level for decades. It is worth having a look at the various structures of the social dialogue in the broader meaning of the phrase, where a functional distinction should first be made between two things:

- the dialogue by European institutions *with* the employers' and trade union organisations;
- the dialogue *between* the European social partners (with or without the participation of European institutions).

The first category includes consultation within the context of Community legislative procedures, which is practised in a variety of organisations, committees and special working groups with varying composition and modus operandi. These include the Economic and Social Committee, the advisory committees

in various areas of Community social policy (e.g. health and safety at work, freedom of movement for workers, European Social Fund) and joint committees and informal working parties at sectoral level (e.g. European Coal and Steel Community (ECSC), agriculture, transport, telecommunications).

The second category comprises dialogue at sectoral level (in the joint committees and informal working parties), and at the level of transnational undertakings, in addition to the above-mentioned dialogue at the level of the umbrella organisations. In some instances this has met with a fair amount of success: examples include the recommendation on working hours for employees in agriculture or the agreements in transnational undertakings on the establishment of pan-European information committees.

The Economic and Social Committee could never, however, become an institution of dialogue between management and labour, as it is not a joint organisation but is made up of individual members which have formed three different groups. The same applies to the advisory committees on social policy, which are made up of national tripartite delegations (employers, trade unions and national representatives of government). It is only the talks between the cross-industry umbrella organisations of the European social partners that have any genuine political weight.

This form of dialogue at the level of the cross-industry umbrella organisations has not been in existence just since 1985. As early as the beginning of the 1970s, arrangements were made for dialogue at Community level with the social partners' umbrella organisations, with the creation of the Standing Committee on Employment and the organisation of 'tripartite conferences'. This dialogue represented an extensive effort to introduce joint action ('concertation') between employers, trade unions and governments (with the involvement of the EC Commission and the Council) at a time when European sights were set on convergence of economic policies with a view to creating an economic and monetary union in 1980 (sic!) and harmonising social policy (1974 Action Programme on Social Policy). This ambitious project failed, however, and petered out in the mid-1970s in the wake of the general crisis in EC policy, diverging member-state policies and the ideological confrontation between the social partners (Grote 1987; Kohler-Koch and Platzer 1986).

A fresh start in the 1980s

The hitherto successful attempt to resuscitate the social dialogue in 1985 was prompted and nurtured by various interconnected factors:

- the (temporary) economic upturn in the mid-1980s;
- the acceleration in European integration after a long crisis, brought about by plans for the European internal market;
- diminishing ideological and political confrontation between the social partners.

Unlike the tripartite joint action attempts of the 1970s, the focal point of the talks fostered since 1985 by the EC Commission is on promoting dialogue between the social partners. The expression 'social dialogue' reflects the fact that there are (still) no proper labour relations at European level and that an effort is being made to develop them under Article 118b. At the same time the emphasis is placed on the social partners' independence and the principle of mutual recognition.

The dialogue takes place without any participation by the Council or the national governments, and the EC Commission confines itself, in principle, to playing the part of a moderator. It also differs from the first attempt in one crucial respect: no new institutions were created, informal structures being preferred, established by the social partners themselves.[4] This pragmatic approach to social dialogue had, as the Commission saw it, several purposes:

- to build up and develop a climate for discussion between the social partners to promote mutual understanding, not only between employers and trade unions, but also of the complexities of labour relations and social systems in the member states;
- to provide support for the 1992 internal market from the social partners, especially the trade unions;
- to bring the social partners closer together on issues of (minimum) social harmonisation in Europe and ways of cultivating the social attributes of the internal market.

Stages in the development of the social dialogue[5]

In the initial phase (1985–8) the first priority was to involve the social partners in the plans for completing the internal market, of which the trade unions in particular were still wary. At the same time a forum was created which brought progress in the discussion on the need to develop the social aspects of the market, which later led to the Community Charter being adopted.

In a Macro-economics Working Party the social partners managed to reach agreement on the basis of a cooperative growth strategy and to adopt 'joint opinions' on the Commission's annual economic reports. A second Working Party on Micro-economics dealt with questions surrounding the introduction of new technologies and drafted a joint opinion on training and motivation and on information and consultation of workers.

The dialogue was bolstered by the establishment in 1989 of a political Steering Group, made up of high-ranking representatives of the three European umbrella organisations and their national member organisations. The adoption of the Community Charter of the Fundamental Social Rights of Workers and the Social Action Programme of the Commission implemeriting it also provided fresh stimulus. The Social Action Programme provided

for consultation of the social partners' umbrella organisations on Commission proposals in areas where there were no advisory committees (e.g. labour law).

The dialogue between the social partners was conducted in two new working parties: Prospects for a European Labour Market and Education and Training. In 1990 and 1991 alone, five joint opinions were adopted, including key opinions on mobility and the operation of the labour market in Europe, and on work organisation and the adaptability of the labour market. The dialogue was given considerable additional impetus through the Intergovernmental Conference which led to the establishment of the European Union in 1993. The negotiations on the reform of the Treaties were distinguished by the willingness of most of the member states to introduce qualified-majority decisions in the Council for some areas of social policy in order to overcome obstacles in these areas in implementing the Community Charter of the Fundamental Social Rights of Workers. As a result an ad-hoc working group of social partners was formed to tackle the question of how both sides' influence in this area could be increased.

On 31 October 1991 UNICE, CEEP and ETUC adopted a joint proposal addressed to the Intergovernmental Conference, which provided for mandatory consultation of the social partners on Commission proposals in the field of social affairs, and a negotiation and agreement option for the social partners with possible implementation of such agreements. This proposal was carried over almost verbatim into the Agreement (between the Eleven) on Social Policy at the meeting of the European Council in Maastricht and thus became an integral part of the EU Treaty.

In October 1992 UNICE, CEEP and ETUC formed a new Social Dialogue Committee, which, under the new circumstances, operates as a forum for orienting the dialogue.[6] This Committee has laid down terms of reference for two additional working parties: on education and training, in existence since 1989, and on macro-economics, where the group has been reactivated and has been concentrating on redefining a cooperative growth strategy and the *White Paper on Growth, Competitiveness and Employment*.

Strengths and weaknesses of the dialogue so far: taking stock

If we consider how unpromising the initial situation was at European level until the beginning of the 1980s, the fact that any direct dialogue has been established between the social partners must rank as an achievement in itself. It has certainly led to a better understanding of the respective positions, not only between ETUC, UNICE and CEEP, but also between national member organisations, whose national circumstances vary. The large number of joint opinions adopted in the field of the economy, employment

and labour illustrates clearly that consensus can be reached on major issues at European level.

The outcome so far is certainly promising but must be seen in the context of a series of problems and weaknesses which, at least so far, have marked the development of the dialogue. Little progress has been made in meeting goals set at summit meetings, especially with regard to constructive discussion at national or sectoral level of the results of Community social dialogue. Dialogue at Community level has thus made no real impact on labour relations in the member states. It has also proved difficult to arrive at a consensus on developing the social aspects of the internal market through dialogue between the social partners.

In essence, these weaknesses can be attributed to some basic problems experienced by the parties, which are still in evidence:

- fundamental differences in political opinion between employers and trade unions on developing the social aspects of Community policy to achieve harmonisation at a minimal level;
- differences in perception by the employers' organisations and the trade unions of the purpose of social dialogue and the prospects for collective agreements at European level;
- problems experienced by the umbrella organisations on both sides with regard to their own terms of reference and their inability to get their member associations involved.

The result has been that social dialogue has still not gone beyond discussions and statements on paper and has largely been determined by the course of EC policy in general and the Community's social policy initiatives in particular. Autonomous dialogue between the social partners prompted by a joint willingness to aim for common operational solutions on the basis of their own plans and ideas has remained the exception. (The examples, which include some achievements at sectoral level, as in agriculture and the retail trade, or the framework agreement between ETUC and CEEP, represent major exceptions.)

With the joint proposal of 31 October 1991 addressed to the Intergovernmental Conference, however, the employers' associations first showed themselves willing to consider the possibility of 'agreements between management and labour'. This proposal also meant that the umbrella organisations, UNICE, CEEP and ETUC, recognised each other as parties to possible negotiations at European level.

THE ROLE OF EUROPEAN SOCIAL PARTNER ORGANISATIONS AS DETERMINED BY THE PROTOCOL ON SOCIAL POLICY

The Protocol on Social Policy, which formed an integral part of the Treaty on European Union, created a new set of conditions framing European

social policy and the development of the social dialogue. At the same time, however, the provisions of the EC Treaty are still in force, so that, at least until the outcome of the 1997 Intergovernmental Conference is ratified, Community social policy has two separate and complementary legal bases:

1 The provisions of the EC Treaty as amended by the EU Treaty.
2 The provisions of the Agreement on Social Policy (all the member states with the exception of the United Kingdom), an integral part of the Protocol on Social Policy (all the member states) annexed to the EU Treaty.

The Agreement on Social Policy (hereinafter referred to as 'the Agreement') contained two main innovations:

1 A new definition of social policy in Article 2 in the form of extension of qualified-majority decision-making (by the signatories) to the following areas of social policy in addition to the protection of health and safety at work:
   - working conditions;
   - the information and consultation of workers;
   - equality between men and women with regard to labour market opportunities and treatment at work;
   - the integration of persons excluded from the labour market.

   Other areas still require unanimous action and are thus de facto the sole responsibility of the member states (social security and social protection for workers) or are explicitly excluded from European legislative action (right of association and the right to strike).
2 A new definition of the social dialogue in Articles 3 and 4 in line with the joint proposal of ETUC, UNICE and CEEP, dated 31 October 1991. In accordance with Article 3, the Commission is given the task of consulting 'management and labour' on proposals in the field of social policy in two stages: first of all in general on planned Community action, and subsequently on the 'content of the envisaged proposal'. This proposal is accompanied by an option for the social partners to negotiate and conclude an agreement within nine months, during which time the Commission is required to hold its proposal in abeyance. Under Article 4 such agreements are to be implemented in accordance with the respective national procedures and practices or 'at the joint request of the signatory parties by a Council decision on a proposal from the Commission'.[7]

In a communication concerning the application of the Protocol on Social Policy the Commission explained how it intended to implement the Protocol on Social Policy and the Agreement. On the one hand, it established criteria governing the choice of legal basis for future social policy and, accordingly, possible use of qualified-majority decision-making. On the other hand, it determined the practical arrangements for application of the new consultation

and negotiation procedures for social partners introduced by Articles 3 and 4 (European Commission 1993).

In principle, the social dialogue under Article 118b of the EC Treaty and Article 4 of the Agreement can also lead to negotiations and agreements between 'management and labour', irrespective of any proposals for legislation. As expected, however, the employers' confederation, UNICE, sees possibilities for negotiations and agreements only in direct connection with the Commission's social policy initiatives (see the interview with Zygmunt Tyszkiewicz in *Social Europe* 2/1992:17–20). The social partners' role and the development of dialogue between them will thus largely depend on the extent to which the Commission makes use of its new options in social policy.

Social policy initiatives on the basis of the Agreement?

The Commission based its decision as to which legal basis is to be chosen—EC Treaty or Agreement—on the following considerations:

- nature of the proposal;
- attitude of the social partners to it;
- the need to ensure that the social dimension progresses at the same pace as other Community policies and hence that the Council is able to reach decisions by qualified majority;
- the desire to ensure that all workers throughout the Community benefit from the proposed measure;
- the possibility for all member states to move forward together.

In effect the Commission will decide on a case-by-case basis whether to make use of the Agreement. This also is true of proposals made under the Social Action Programme for implementing the Community Charter of the Fundamental Social Rights of Workers which are still before the Council. With regard to the protection of health and safety at work, however, Article 118a of the EC Treaty, which already provides for qualified-majority decision-making, is preferred (European Commission 1993).

As the Commission is keen for the provisions of the Agreement to be incorporated in the EC Treaty in the course of the 1996–7 Intergovernmental Conference, thus providing a single base for European social policy, it is inclined to be cautious in the current transitional situation. The provisions of the Agreement will be used, as they were in the case of information and consultation of workers in transnational undertakings, only in particular circumstances and only after all the opportunities for all member states to move forward together have been exhausted.

A new approach to consultation of European social partner organisations

The origin of the new procedures lies in Article 3 of the Agreement, which provides for 'consultation of management and labour at Community level'. This gives the Commission the task of organising consultations of European social partner organisations prior to the formal submission of a proposal by the Commission. The Commission has laid down the following technical procedure for these consultations:

- first phase of consultation on the possible direction of Community action;
- decision of the Commission to press on with its initiative;
- second phase of the consultation on 'the content of the envisaged proposal'.

Consultation essentially means that a Commission document is passed on, with the social partners having a period of six weeks each to give their opinions. At the latter's request special consultation meetings can also be held. In the course of the second consultation on the content of the Commission's proposal, the social partners can forward an opinion or a recommendation to the Commission or inform the Commission of their wish to initiate negotiations.

The Commission has drafted criteria to deal with the key issue of which organisations can be considered as social partners for the purposes of consultation at Community level. These organisations must accordingly:

- 'be cross-industry or relate to specific sectors or categories and be organised at European level';
- 'consist of organisations which are themselves an integral and recognised part of member states social partner structures with capacity to negotiate agreements and, [be] representative of all member states as far as possible';
- 'have adequate structures to ensure their effective participation in the consultation process' (European Commission 1993).

A list of the social partner organisations which fulfil these criteria was compiled on the basis of a study on the representativeness of such organisations conducted in collaboration with the member states. Apart from the major cross-industry umbrella organisations UNICE, CEEP and ETUC, the list also contains several European organisations representing certain categories of workers or undertakings, such as UEAPME (European Association of Craft, Small and Medium-sized Enterprises) or CEC (European Management Confederation), Eurochambres (Confederation of European Chambers of Industry and Commerce) as a specific organisation, and a series of sectoral employers' organisations (e.g. in the area of the distributive trades, banking, insurance and transport).[8] The Commission has thus defined which organisations

are to be consulted under Article 3. However, this is by no means tantamount to recognising these organisations as possible parties to collective agreements.

Under the Treaties the new consultation procedure is mandatory only within the context of the Agreement. In order to standardise its approach, the Commission has, however, committed itself to applying the procedures of Article 3 of the Agreement, irrespective of the legal basis (EC Treaty or Agreement), particularly as it need not be specified in the first phase of consultation. This means that the consultation procedure will be conducted in respect of all social policy initiatives. In addition, the Commission has already signalled its willingness to provide for possible formal consultation on proposals for legislation of a horizontal or specific sectoral nature which have social implications. Here, however, the Commission reserves the right to decide whether and how such consultation should be conducted.

NEGOTIATIONS, POSSIBLE AGREEMENTS AND THEIR IMPLEMENTATION

On the occasion of the consultation, the social partners may inform the Commission of their intention to negotiate with a possible view to concluding an agreement on a given proposal from the Commission. During these negotiations, which normally will not last more than nine months, the Commission should interrupt its work and suspend the proposal. The social partners are fully autonomous in their bargaining for the purposes of the negotiations themselves and any agreements which may be concluded (cf. European Commission 1993). Any extension has to be decided on jointly by the organisations involved and the Commission.

Should the social partners be unable to come to an agreement, the initiative is once more with the Commission, which can (but need not) submit its proposal to Council. If an agreement is concluded, Article 4 of the Agreement provides for two possible ways of implementing it:

1 the social partners jointly request that the Commission propose that the Council adopt a decision on the implementation of the agreement.
2 They prefer to implement the agreement in accordance with the practices and procedures specific to the social partners and the member states at national level.

We can assume that the social partners will, generally speaking, prefer the first variant, as this is the only way to achieve a uniform and immediately effective implementation of the agreement which has been concluded. However, the second variant is a distinct possibility if, for example, the Council should refuse to implement an agreement concluded by the social partners or if such an agreement were made in areas excluded from legislative action under the Protocol on Social Policy (Hepple 1993; Langlois 1993).

If an agreement between the social partners is implemented by a Council decision,[9] the Council can, in the Commission's view, not amend this agreement. The Commission will therefore merely propose that the Council implement the agreement as it stands by means of a decision (or not, as the case may be). The Commission will base its proposal on an examination of the representative status of the contracting parties, the legality of the provisions of the agreement under Community law and the adherence to the provisions covering small and medium-sized enterprises (SMEs) in Article 2(2). Although the Commission will not refuse implementation by means of a Council decision if the social partners so desire, it can influence the negotiations and the agreement indirectly as a result of its ex-post monitoring of the implementation of agreements.

The social dialogue in the throes of change

The Protocol on Social Policy enhanced the social dialogue by introducing a mandatory consultation procedure at Community level which accords a more important role to the European social partners' umbrella organisations as a whole, rather than only to the traditional organisations UNICE, ETUC and CEEP. It is not only the prospect of possible negotiations and agreements which could replace European legislation which is important, but the more general prospect of participation by European social partner organisations in social policy initiatives and perhaps initiatives with social implications too. This could certainly strengthen the 'Europeanisation' process which is already being induced by the internal market.

The new approach to consultation is, however, still only procedural, introducing formalised arrangements, and does not provide an institutional solution to social dialogue at Community level as a whole. Its distinguishing feature is the conjunction of a dialogue in the framework of the Social Dialogue Committee developed at political level by UNICE, ETUC and CEEP, who recognise each other as partners, and the consultation procedures described above directed at the broad range of organisations the Commission has afforded European social partner status. (In a proposal concerning the implementation of the Agreement, UNICE, CEEP and ETUC declared that they wished to be consulted jointly in future.)

At present the Commission does not consider it advisable to tackle the question of creating a consultation body and of institutionalising the social dialogue as a whole. Where consultation is concerned, experience with the Standing Committee for Employment, in which there is broader representation of social partners, has hardly been promising so far.[10] As regards dialogue between the social partners, the Commission takes the view that only the organisations themselves are in a position to build up their dialogue and negotiation structures on the basis of the principle of mutual recognition. On the other hand, however, the Commission has

the task, under Article 3, of promoting this dialogue and has therefore emphasised its willingness to 'promote the development of new linking structures between all the social partners' (European Commission 1993: Point 26).

The creation of linking structures for sectors or groups of occupations, which hitherto were not or were only partially represented by the three main players, ETUC, UNICE and CEEP, would simplify the consultation procedures and would undoubtedly enhance their representativeness during negotiations and the legitimacy of possible agreements. A further advantage would be that they would prevent simple multiplication of individual players who would be an additional obstacle to what is already a difficult enough process, virtually extinguishing any prospects of an agreement. These are, however, only theoretical considerations, since the first question is, of course, how far negotiations and agreements between the main players are on the agenda at all.

Previous experience of the social dialogue shows very clearly that social policy initiatives at European level or prospects of the same have always stimulated the relations between the social partners. There is no doubt that social policy initiatives taken by the Commission can give rise to negotiations and possibly agreements between the social partners.

The employers might well prefer an autonomous collective agreement to the (as they see it) 'threat' of political and administrative regulation. If, however, a Council decision had a fair chance of success, the trade unions might lose interest in negotiating a solution, particularly as implementing any agreements would inevitably be a difficult process. The following factors are therefore important for further development:

- use of the provisions of the Agreement by the Commission;
- the subject of the Commission's envisaged proposal;
- the chances of the Council's adopting the proposal.

The dichotomy between the EC Treaty and the Agreement made negotiations and agreements difficult, however. The British employers saw no reason to enter into negotiations and ETUC could not, for political reasons, conclude any agreements which do not apply to British workers.[11] This problem will only be eliminated by incorporating the provisions of the Agreement in the social policy chapter of the EC Treaty as provided for in the Amsterdam Treaty.

Two points on which further development hinges have so far not been resolved satisfactorily and also need to be clarified:

- the question of the application of the Agreement's provisions at sectoral level;
- the question of recognising the right of association at Community level.

For negotiations between organisations which represent only certain sectors or groups of occupations, the Commission has reserved the right to examine the issue before suspending its proposal (European Commission 1993: Point 30). On the one hand, this is constructive and logical, as it will prevent a legal initiative from being blocked completely when negotiations involve only a small proportion of the employees. On the other hand, the Commission would have to exclude at least this sector in going through with its proposal, if it does not wish a priori to stand in the way of sectoral agreements.

No European right of association or right to collective action (strike) exists as yet[12] and the Agreement expressly excludes this area from European legislation. This gives rise to a contradictory situation in which the Commission has the task of promoting dialogue between the social partners, including with a view to concluding agreements, but, on the other hand, has no powers to lay down binding legal and institutional conditions which might be conducive to a possible system of European labour relations. Interestingly enough, the Agreement lags behind the EC Treaty on this specific question, as the Treaty does not entirely exclude this area.[13]

The Protocol on Social Policy represented a major step towards increasing the social partners' responsibility for European social policy and towards simplifying the contractual basis for developing the social aspects of the European Union. However, progress towards European labour relations is still only a theoretical possibility and will depend heavily on European social policy in particular and the direction taken by European integration in general, requiring players with a keen interest in European labour relations and with a corresponding ability to take action at European level.

POSSIBLE EVOLUTION OF THE SOCIAL DIALOGUE TOWARDS A EUROPEAN SYSTEM OF LABOUR RELATIONS: KEY AREAS, FACTORS AND LEVELS OF ACTION

In principle, two basic points of view can be identified in the discussion of the problem of constituting European labour relations:

1 *The Euro-pessimist's line of argument:* this stresses the weakness of the social dialogue and points out that the ground has not been prepared to mobilise trade unions on a transnational/European level and/or to create the necessary basic legal conditions (European right to strike and the authority to lay down legal provisions in that respect); it also stresses the need for legal provisions on the harmonisation of minimal social standards (which are largely non-existent) (Keller 1993; Däubler 1991:314ff; Altvater and Mahnkopf 1993; in more subtle terms Hepple 1993, Teague 1993, Guarriello 1992; and highly negative, Streeck 1992;

stressing the lack of legal prerequisites, Blank 1992; pointing to the absence of any European mediation body, Vrobuba 1995).

2 *The Euro-optimist's line of argument:* this sees the social dialogue as an opportunity and appeals for it to be used to complement national labour relations in building up a European collective bargaining policy; it underscores the importance of strengthening the European trade union organisations and their environment; it points to the active role of the Commission in social policy despite the patent weakness of European social policy in general (Jacobi 1992; Goetschy 1993; more complex, with emphasis on the various levels of action, Platzer 1991, Lecher in Bispinck and Lecher 1993; proposal for development of ETUC as a member-oriented trade union, Rath in Lecher 1994).

The (Euro-realist's) approach outlined below considers the ability and willingness of the players to take action at European level, seen in conjunction with their more general interests, especially as determined by European integration and the current status of and progress made in labour relations in the member states of the European Union.

On the employers' side the situation is clear: given the basic political line currently being taken, which is marked by a desire for flexibility, decentralisation and deregulation, the employers are not interested in European labour relations—with the exception of European information policies for employees in certain undertakings. Although we cannot rule out some sectoral interest groups based on technical/corporate or Euro-protectionist considerations, this is a weakness on the part of the players, most of whom regard themselves purely as industrial and economic federations. At cross-industry level, interest in negotiations and agreements can really only be expected as a reaction to the 'threat' of Commission proposals for legislation on social matters.

On the workers' side the situation is rife with contradictions: trade union programmes have been calling for European agreements and collective agreements for over twenty years, yet nothing can disguise the scant interest of workers and trade unions in genuine European labour relations. Witness the fact that to date there is still no real mutual information, let alone effective pan-European coordination, on questions of collective bargaining—a prerequisite for European labour relations (European Metalworkers' Federation 1993).

THE TRADE UNIONS' PROBLEM WITH THEIR INTERESTS IN EUROPEAN AGREEMENTS

In addition to the objective and frequently emphasised obstacles to formulating European trade union policy, such as the lack of a corresponding legal framework and the different levels and modalities of regulation at national

level, there are still differences of interests between 'weak' and 'strong' trade unions within the European Union. The process of economic and political integration in Europe, which must be regarded as an extraneous determining factor in European trade union policy, is referred back to national level repeatedly, as this policy is mainly conducted via the Council and the member states (a tendency which is reinforced in the EU).

It is worth making the following distinctions in defining trade union interests here:

1 They have *similar* interests in the framework of collective agreement policy in general, created by the levelling effect of the internal market and, especially since the mid-1980s, the de facto neo-liberal policy pursuing the same aims in virtually all the member states. These interests are, however, (still) catered for relatively well through national labour relations, especially in member states with strong trade unions. Any coordination to date has been programme-based, but there has been nothing genuinely geared to a European sphere of action.
2 They have what are essentially *common* interests with respect to minimum social standards at European level to prevent or limit the risk of social dumping in the internal market. A twofold strategy would be appropriate here, combining a call for statutory European regulation with more intensive use of the scope provided by the social dialogue. In this respect too there is of course a consensus on paper, but in practice differences in national conditions prevent trade unions from stating their interests at European level actively and effectively. This is true not only of trade unions in both richer and less developed member states, but also of 'weak' and 'strong' trade unions in the richer member states.

Defining a genuinely European trade union policy which would serve these interests is made more difficult by the following factors:

1 The low motivational impact of minimum social standards at European level: in the richer member states with strong trade unions the best that can be said of them is that they help to defend the status quo. In the less developed member states these standards are often regarded—albeit largely unjustly—as an obstacle to investment.
2 The absence of any official European body alongside the Commission (whose role is often overestimated) and the Parliament, which is still weak in the area of legislation, obliging the trade unions to turn to national governments.
3 The absence of trade union power at European level to persuade employers to enter into negotiations independently of any legislative proposals by the Commission.

In a climate marked by neo-liberal economic policy, deregulation, increasing unemployment, social change and declining attractiveness of the trade

unions, national labour relations in most member states of the EU are in deep trouble. It certainly seems sensible to promote European-level labour relations to secure the social models prevalent in Europe, but it is difficult when everybody is concentrating on coping with their 'homework' (Jacobi 1992). The trade unions find themselves in a strategic dilemma. As deregulation and decentralisation of national labour relations increase, European attempts to re-regulate are, in a sense, more of a necessity but even more problematic. And as long as the extensive networks of national labour relations still exist, the conditions for extending them to include a European dimension are more favourable, but there is less interest, particularly in the member states with strong trade unions.

THE EFFECTS OF THE DIRECTION TAKEN BY EUROPEAN INTEGRATION

Apart from the question of the application of the Protocol, the key project of the Treaty on European Union—European Economic and Monetary Union (EMU)—will certainly have a major impact on the European policy of the trade unions and the prospects for development of European labour relations. Whether and in what form this project will be implemented may well determine in part how far a genuine European policy on collective agreements (including questions of pay) will be required in addition to more intensive coordination of national policies on collective agreements. Three different scenarios can be envisaged (Busch 1994:210ff.).

Internal market plus the European Monetary System (EMS)

The continuing existence of a flexible system of exchange rates means that flexibility in wages and prices will not become the decisive instrument for adjustment in the event of external trade imbalances. If the unit labour costs in the Community developed at different rates, the 'stronger' national trade unions would, as in the past, be exposed to a certain amount of indirect rather than direct competitive pressure from the 'weaker' national trade unions. This would not provide any impetus for a genuine European policy on collective agreements, nor can more intensive coordination of existing national policies on collective agreements even be expected.

Partial EMU plus the EMS

If bargaining for pay remained entirely in the hands of national trade unions, direct pressure in terms of competition could arise in the context of a partial EMU, that is monetary union between the core countries. The risks (of low pay and social dumping) largely depend on which states participate in the phased process of integration.

> If the Union was restricted to France, Luxembourg, the Netherlands and Germany [it is also conceivable that the new member states, Austria, Sweden and Finland, might also participate], it would have the advantage of being an extremely uniform group of countries in terms of productivity, unit labour costs and macro-economic environment. France, with its extremely low level of trade union organisation, would be the Achilles heel of the trade unions' collective agreement policy in such a Union. If the mini-Union was extended to take in the low-wage countries, Portugal, Ireland and Spain, the risk would be increased.
>
> (Busch 1994:214)

At the least, pan-European coordination of policy on collective agreements would be necessary in a partial EMU and is, in principle, a possibility between the trade unions of the mini-Union described above. The concept of a two-speed Europe would, however, pose political problems.

Full EMU

An EMU encompassing the entire European Union (except for the UK and Denmark) would lead to the reverse of the first scenario, namely severe, widespread competitive pressure. Depending on how one assesses the scope for action by the trade unions, this situation can be described as constituting a danger of 'disintegration of the trade unions' (national) wage cartels in Europe' (Busch 1994:214) or as an impending 'European wage cartel' (Flassbeck 1992). Undoubtedly, coordination or centralisation of policy on collective agreements in a full EMU would be all the more necessary but also considerably more difficult to achieve due to the imbalances involved.

As far as the prospects for European labour relations are concerned, moreover, the form taken by European integration in general is a relevant factor. European policy has certainly become a focal point for social interest groups, first as a result of the internal market and especially now with the plans for the EMU. The crucial factor is, however, how far this policy is negotiated and pursued by the member states through the EU at intergovernmental level or whether it is a genuine supranational European policy. It also makes a difference whether 'negative' integration takes place, as was and is largely the case in the internal market with liberalisation and the principle of mutual recognition, or whether increasingly 'positive' integration is pursued in the form of minimum harmonisation and active economic and structural policies. The composition of the EU will certainly have repercussions too: on the one hand, the enlargement to Austria, Sweden and Finland strengthens a latent trend towards a union with a pronounced internal market character, but on the other, it contributes considerable potential in terms of national labour and social policies and established labour relations.

On the whole—leaving aside the question of the realisation of the EMU—the current trend, shaped by subsidiarity and rapid enlargement to the east, is towards 'negative' integration with little minimum harmonisation and weaker 'positive' integration in mainly intergovernmental form. Only further strengthening of the European Parliament would give the EU a more authentic European political dimension and also, therefore, a focal point for the social partners.

POSSIBLE LEVELS OF ACTION AND POINTS OF REFERENCE FOR A PHASED STRATEGY TOWARDS A MINIMUM SYSTEM OF EUROPEAN LABOUR RELATIONS

Neither simply clinging on to national labour relations nor an absolute 'to be European or not' is an appropriate response to the challenges in the EU. A wiser course would be to set our sights on developing a 'minimum system' of European labour relations to complement those at national level, taking into account the different forms (information, coordination, centralisation of policy on collective agreements) and levels of pan-European activity which need to be linked as far as possible. The scope, chances of success and limitations of this minimum system should also be assessed as realistically as possible in order to avoid false expectations and disappointment.

European company level

European trade unions already have operational experience at European company level through some forty European information and consultation committees established by means of voluntary agreements. In addition, a large number of transnational meetings of workers' representatives from European undertakings take place with the support of the Commission for the purposes of exchanging information and preparing the ground for negotiations to set up new committees. (For an illuminating analysis of the meetings in transnational undertakings promoted by the Commission, see *European Industrial Relations Review* 1993:15–19.)

Prior to 1994, only a limited number of transnational undertakings were willing to conclude agreements voluntarily. The Council's adoption of the Directive, however, provided impetus for negotiations, leading either to the setting-up of European committees or to agreements on specific procedures for information and consultation in transnational undertakings. In the event of no agreement being reached, the minimum requirements of the Directive apply, which provide for the setting up of a European works council.

The progress achieved so far can essentially be described as an interplay of several linked factors (which I have previously termed a 'phased strategy'):

- the encouragement of interest among workers in information and consultation, which are obviously needed in transnational undertakings;
- the interest on the part of some undertakings in European information policy to create a corporate identity and to ease implementation of certain restructuring processes;
- the existence of a European Directive which includes a requirement to negotiate;
- indirect political support from some member states in enterprises with public participation;
- financial support for European meetings of workers' and management representatives from undertakings provided by the Commission in response to an appropriate initiative from the European Parliament.

Information and consultation committees could, in the medium term, contribute to the development of a trade union strategy within a company. On this basis negotiations and framework agreements could well follow and they would be implemented at plant level. One could envisage a range of topics of mutual interest: equal opportunities for women and men, training, worker mobility, etc. Experience to date, however, leaves little doubt that simple information and consultation by company management and basic coordination on the trade union side will be the rule for a long time to come.

The European company level is important to the prospect of generating power for the trade unions to take action and shape developments in Europe and is thus of vital significance to the move towards European labour relations. On the one hand, an operational basis is being formed which is important if any capacity for transnational conflict is to be created, and, on the other hand, it could provide a real impulse towards not only planned, but also actual, European coordination on non-wage issues in national collective bargaining policy.

European sectoral level

On the employers' side, there is a profusion of sectoral and branch associations, the vast majority of which regard themselves purely and simply as industrial or economic associations without any mandate for social affairs. On the workers' side there are sectoral and multi-sectoral European branch confederations which are members of ETUC. Social dialogue at sectoral level within the framework of the joint committees and informal working parties largely comprises consultations with the social partners on social aspects of Community sectoral policies, though in some cases there is more intensive dialogue between the social partners, which has already led to recommendations, memorandums and joint statements.

Given the dynamics of the situation at European company level described above, many European industry federations are mainly concerned with

supporting existing information and consultation committees and other European meetings of workers with a view to negotiating on the setting up of new committees. Sectoral and/or branch working parties can ensure that European company syndicalism will be avoided and that European policy on wider aims can be coordinated. (However, the multinational character of many transnational companies makes it more difficult for the repercussions to 'spill over' on to the sectoral level.) As national labour relations in the member states of the EU are largely established at sectoral level, the best approach would be to strengthen European coordination on non-wage issues of collective bargaining policy within the European trade union industry committees. Here, there are areas of common interest such as working hours and organisation of work.

If the plans for an EMU or a partial EMU were brought to fruition, European coordination at least, and perhaps even centralisation of wage policy in the form of European framework agreements (with salary scales), would be on the agenda at sectoral level. However, the European trade union industry federations are not prepared for this in either practical or intellectual terms.

Consultations under the Agreement, which also apply to sectoral social partner organisations, will probably only result in negotiations and agreements under certain circumstances. This will very largely depend on how far Commission social policy proposals can be expected for specific sectors or how far exemptions in horizontal proposals give rise to negotiations at sectoral level. Interest groups could also be formed in problem sectors affected by industrial change or on the basis of convergence between the social partners on some European policies (such as telecommunications). For example, the social partners could develop joint programmes for carrying out Community initiatives, such as ADAPT; however, these would be based on a multi-sectoral and interregional approach.

The advantage of a more intensive social dialogue with prospects of agreements at sectoral level would be that the content of the dialogue and the provisions of any possible agreement which did come about would be practical and would tie in with national collective bargaining policy. It could also result in beneficial cross-fertilisation between dialogue at cross-industry and sectoral levels by helping to launch and implement European cross-industry (framework) agreements. In view of the crucial problem of the weakness of the players' position, and especially the refusal of most of the employers' associations even to be considered as partners to a dialogue with any mandate for social matters, these considerations are somewhat theoretical. In the major industrial sectors, sectoral agreements will probably become possible only in the wake of cross-industry agreements and/or agreements at European company level.

European cross-industry level

The initial situation and the potential outlook have already been described in detail and can be summarised as follows: the employers (UNICE) emphasise their willingness to participate in a dialogue but the only prospects for negotiations and possible agreements are seen in conjunction with legal initiatives from the Commission; from the workers (ETUC) there are, admittedly, calls for negotiations on various matters—also unrelated to the Commission's proposals—but in practice there is an unmistakable preference for legal regulation.

In theory, European agreements could either lay down real minimum standards or provide for further negotiations to be conducted towards a specific regulatory target at another level (sectoral and/or national) or for such aims to be implemented at that level (European framework agreement). Subjects which might be considered suitable are the non-wage issues of collective bargaining policy mentioned above. Since cross-industry regulation is not usually relevant within the context of national labour relations, it will, however, be more difficult to establish practical European (minimum) standards and aims. This abstract problem could also become a practical one for players who have no power to conclude collective agreements and therefore would also prefer European agreements at sectoral level.[14]

Further development of the social dialogue at cross-industry level, which at present is concentrated on the implementation of the *White Paper on Growth, Competitiveness and Employment* and on labour market issues,[15] with a view to genuine European labour relations, is thus closely linked with the Commission's social policy initiatives. The consultations under Article 3 of the Agreement might give rise to negotiations and agreements on the issue involved, as was the case with parental leave. Autonomous negotiations on politically less vexed topics than minimum social standards (e.g. mobility of workers and training) are conceivable; at present, however, the employers' organisations have neither a mandate nor any desire to take advantage of this opportunity.

One definite advantage at cross-industry level is that the dialogue between the social partners is more highly developed politically and that the players thus have relatively more freedom to act, but even here there is a conspicuous lack of momentum towards European labour relations. The combined effect of corresponding social policy proposals from the Commission, increased power to act and shape developments at other levels (sectoral and European company level) and the creation of a clear legal framework (European right of association and the right to take industrial action) could strengthen the prospect of agreements.

European interregional level

Interregional trade union councils have been in existence for more than ten years, operating across borders within interregional/European employment areas, in particular to safeguard the specific interests of frontier workers. The topics on which interregional/European dialogue between social partners might ensue[16] are more likely to be found, however, in the field of vocational training and further training in structurally and economically comparable, but not necessarily adjoining, regions. An intensive exchange of views already takes place in the framework of the Commission's specific support programmes. (Under the FORCE Programme, for example, on the topic of vocational training and qualification requirements in individual branches of industry in Catalonia, Rhône-Alpes, Baden-Württemberg and Emilia-Romagna.) In conjunction with the new EU Community initiatives this dialogue could receive fresh impetus. There is, however, little prospect of agreements between social partners, apart from joint statements on EU support programmes.

THE STRATEGIC QUESTION: (ONLY) EUROPEANISED NATIONAL LABOUR RELATIONS OR (ALSO) A MINIMUM SYSTEM OF EUROPEAN LABOUR RELATIONS

Unfortunately, visions of the trade unions as 'intermediary organisations' (Jacobi 1992) at European level by analogy with their national role will remain pure fantasy for the foreseeable future: there is nothing in the EU framework which approaches the building of a State, nor can a relationship between employers and workers which resembles the national 'conflict-partnership' (Müller-Jentsch 1991) be established on a European scale in the foreseeable future, as the trade unions do not have the necessary capacity for action or dealing with conflicts. From that point of view it is entirely appropriate to describe the Commission's attempts to promote Community social dialogue as 'deficient Eurocorporatism' (Vrobuba 1995).

The expression 'transnational pluralism' (Streeck 1992), on the other hand, does describe fairly accurately the effect of increasing internationalisation on national labour relations but understates the scope and need for progress in the European Union. Under certain circumstances (e.g. if the Commission made use of the Agreement or if events were to turn towards EMU), opportunities might arise for, or the pressure of circumstances might favour, a minimum system of European labour relations based on those at national level.

Member state policy—as implemented via the EU and geared to the convergence criteria which have now been institutionalised—will, regardless of whether the EMU materialises, also lead to stronger competitive pressure throughout the entire European Economic Area and to indirect Europeanisation

of national labour relations (without any help from the trade unions), in the sense that policy objectives and the basic conditions shaping them (which are already problematic enough as it is) will gradually be conditioned by European imperatives—a factor already palpable through the austerity policies of all member states in the sphere of public-sector collective bargaining.

The only alternative to this purely passive process open to the trade unions is to modify the situation at least to some extent and take steps to ensure that a minimum system of European labour relations is created as a complement to national arrangements. The first priority is to promote a culture of information, consultation and cooperation (and perhaps also negotiation) in European companies. This must, however, be accompanied by an effective system of mutual information and coordination on collective agreement policies in the member states. Only then will it be possible to formulate and enforce European agreements at sectoral and/or cross-industry level, constituting a useful complement to national labour relations, which are contingent upon the anticipated developments in the (social) policy of the EU described above.

NOTES

1 This article sets out the author's personal views and does not necessarily reflect the opinion of the European Commission. It was not included in the original German version of this publication, but it appeared in Mesch, Michael (ed.), *Sozialpartnerschaft und Arbeitsbeziehungen in Europa* (Vienna, 1995). Our thanks to the publisher for the authorisation to publish a slightly amended and updated English version.

2 For information on the application of the Community Charter of the Fundamental Social Rights of Workers and the 1989 Social Action Programme, see the Commission's annual reports published in the Social Europe series; for medium-term prospects, cf. European Commission 1995:15–25 and 28–9.

3 After protracted and inconclusive discussion by the Council, the Commission decided in November 1993 to take action on the basis of the Agreement. After consultation and failure to convene negotiations between the social partners a new proposal was tabled which was largely based on the compromise reached in October 1993 in the Council by the eleven member states. The Council ultimately adopted the Directive on the basis of Article 2 of the Agreement on Social Policy on 22 September 1994: Directive 94/45/EU, OJ No L254 of 30.9.1994, pp. 64.

4 These are informal working parties made up of representatives of the three European umbrella organisations and the national affiliates of UNICE and ETUC. Between 1989 and 1991 there was a political Steering Group, replaced in 1992 by the Social Dialogue Committee. Summit meetings with the Presidents or General Secretaries of the three European umbrella organisations and their national affiliates have taken place at irregular intervals at the invitation of the President of the Commission, Jacques Delors (1985, 1987, 1989, 1992,

1993, 1994). The new President of the Commission, Jacques Santer, will continue to hold them.

5 Cf. The European Commission's report in 1991 on the development of the social dialogue with documentation of the results. Other reports include Hepple (1993); Goetschy (1991); Christensen, in European Trade Union Institute (1993b) 43–58.

6 This Committee is currently made up of 45 members in all, plus 2 observers from EFTA countries (Switzerland). On the employers' side: UNICE Secretariat (3), national member organisations of UNICE (15 European Union and 1 EEA=16), CEEP (4) and one EFTA observer. On the trade union side: ETUC Secretariat (3), national member organisations of ETUC (15 European Union and 1 EEA=16), European industry committees (3) and one EFTA observer.

7 Irrespective of this, Article 2(4) of the Agreement provides that each member state may entrust management and labour at their joint request with the (national) implementation of directives adopted in the field of social policy. This possibility has not been taken into account in the remainder of the analysis, as it is less relevant to a 'Europeanisation' of labour relations.

8 The list reflects the fact that UNICE in particular on the employers' side still has problems with representativeness, which might have a major effect on negotiation prospects. Most of the organisations on the list were already consulted in connection with the 1989 Social Action Programme on the basis of an informal agreement between the Commission and management and labour.

9 In the German, Danish and Dutch versions of the Agreement the expression 'decision' within the meaning of Article 189 of the EC Treaty was not used. The Commission assumes, however, that it is a decision which is meant.

10 However, this is also partly a question of the political nature of this tripartite body, which meets only twice a year under the chairmanship of the respective Presidency. The meetings are generally marked by prepared statements from all participants and seldom resemble genuine dialogue. The Commission's latest Social Action Programme provides for a reform of the Standing Committee on Employment (cf. European Commission 1995:12).

11 This was also one reason why negotiations never started on information and consultation in transnational undertakings. However, no general conclusions should be drawn from this. Information and consultation is rather special: whether through a European (framework) agreement or a Directive, the issue at stake was negotiations and agreements between management and labour at the transnational company level. In fact, the December 1995 social partners' agreement on parental leave, implemented through a Directive adopted in June 1996, does exclude the UK, under the terms of the Social Protocol.

12 International conventions relating to social legislation do exist, however (in the context of the International Labour Organisation and the Council of Europe's Social Charter), and they could be incorporated into Community law (cf. Blank 1992:656ff).

13 Article 118 of the EC Treaty at least assigns the Commission the task of promoting cooperation with the member states in this area. In conjunction with Article 235 ('stopgap clause'), even legal initiatives are currently at least theoretically possible (on the basis of the EC Treaty). If the provisions of the Agreement were transposed into the social policy chapter of the EC Treaty at the 1996/7 Intergovernmental Conference, the right of association and the right to strike would be excluded entirely from European legislation.

14 This applies, for example, to the DGB (German Federation of Trade Unions), although in the past it held general reservations in respect of the prospects

for agreements and implementation thereof through a Council decision, (cf. Kreimer-de Fries 1992.)

15 In addition to the existing Working Parties on Macro-economics and Education and Training, the Social Dialogue Committee formed a further Working Party on the Labour Market on 11 February 1994 to deal with the following issues: integration of young people into working life, equal opportunities for women and men at work, and new forms of organisation of work and employment within the meaning of the White Paper. The social partners are now working on a practical contribution to implementation of the conclusions of the Essen European Council of December 1994 (cf. European Commission 1995:6–9).

16 A distinction is to be made here between this dialogue and the partnership with economic and social bodies in implementing, at national and regional level, programmes within the framework of the EU's structural policy.

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2

NATIONAL INDUSTRIAL RELATIONS AND THE PROSPECTS FOR EUROPEAN COLLECTIVE BARGAINING

The view from a German standpoint

Berndt Keller

> It still takes two to tango and, in a world with free capital movement, your partner may choose not to dance.
>
> (Esping-Andersen 1990:188)

INTRODUCTION

In contrast to the monistic systems of industrial relations in the Nordic countries, the UK and Italy, where employee interests are represented exclusively through trade unions and trade union bodies, German industrial relations are characterised by a dual structure of representation:

1. Trade unions, composed of members who in principle join voluntarily, operate at sectoral or branch level where they are responsible for collective bargaining—the vast bulk of which is conducted at that level.
2. Works councils *(Betriebsräte),* constituted as statutory forms of employee interest representation and open to the entire workforce irrespective of union affiliation, act exclusively at workplace—establishment *(Betrieb)*—level, or by delegation at undertaking or group level.

This allocation of roles is mirrored by a distinct allocation of rights and powers: works councils must represent workforce interests solely by peaceful means or, in the event of disagreement, through arbitration procedures established under statute law. They are subject to a legal injunction to maintain industrial peace and cooperate with the employer. In contrast, trade unions have a legal right to strike rooted in the German constitution, the Basic Law. In practice, there is an evident divergence between these formal provisions and the informal practice which characterises the reality of workplace industrial relations. Despite the unambiguous formal and legal separation between unions and works councils, which practise a cooperative

division of labour within this overall 'contradictory unity', there is usually close coordination between works councils and unions on the strategies to be pursued at workplace and sectoral level.

The German system of collective bargaining ranks as moderately centralised, compared with other EU or OECD countries (Keller 1995a: 129ff). Although clearly more centralised than the United Kingdom, it is much less centralised than the Nordic countries. Regional negotiations in the core branches (metalworking, chemical industry) are centrally coordinated by both sides and there is barely any variation in agreed terms between regions in the same industry. The influence of the national central confederations for each side is not especially pronounced. Neither the DGB (the German trade union confederation) nor the central employers' confederation (the BDA) is party to collective agreements, although the German statute regulating collective bargaining (the *Tarifvertragsgesetz*) does not expressly rule this out (Weiss 1987:111, 120). Company-level collective agreements, found in many small and medium-sized workplaces, embrace only a small minority of employees.

As in other national systems, both within and outside the European Union, German industrial relations have seen a double shift of power and influence since the 1980s. First, there has been a shift in the locus of negotiation and regulation towards the workplace—that is, a decentralisation of collective bargaining. This process has added to the already important role and influence of works councils in the overall system of employment regulation. This is most clearly evident in the field of working time, but has also been encouraged in other areas of collective bargaining, such as training or the introduction and implementation of information and communication technologies.[1] Collective agreements are increasingly coming to be framework accords whose substance is specified by the actors at workplace level who bear the responsibility for fine-tuning them to their own specific circumstances. Under the 1972 Works Constitution Act the instrument for this process is the works agreement *(Betriebsvereinbarung)* concluded between company management and the works council, with somewhat weaker legal standing than a collective agreement proper *(Tarifvertrag)*. This trend towards decentralisation has brought with it a high degree of flexibility in its various coordinated forms, in stark contrast to the situation in a number of other countries. Moreover, it is a process which does not inevitably imply a loss of power on the part of trade unions; rather, it could entail unions redirecting their main focus towards providing a greater service role to works councils.

Second, and parallel to this process of internal decentralisation, national economies are subject to an increasing degree of internationalisation, discernible in phenomena such as cross-border mergers and acquisitions and manifested too through the political integration of EU member states. It is to the consequences of this process that we devote the bulk of this chapter.

Compared with Great Britain, discussion of this issue began fairly late in Germany and was pushed into the background in the early 1990s by the overarching subject of German unification. As yet it has been heavily, possibly excessively, focused on the level of the workplace or enterprise, with insufficient attention directed at the problem of higher levels of regulation. Much of the discussion has also turned, not unnaturally, on the crucial problem of whether European works councils should be pursued via EU legislation or through agreements freely reached between the social partners at workplace level. This implicitly raised the issue as to the most appropriate instrument of regulation (law v. agreement) and their mutual relationship.

The proposal for a Directive on establishing European works councils or other mechanisms for the information and consultation of employees in community-scale undertakings and groups, initially put forward in 1990, failed to find support from all member states, and progress was blocked by the need for unanimity on the Council of Ministers required under Article 100 of the EEC Treaty. The opportunity to unblock this obstruction emerged only with the Social Protocol of the Maastricht Treaty on Political Union, under which decisions in this area can be taken with a qualified majority on the basis of eleven (now fourteen) member states, without the participation of the UK. This extension of qualified-majority voting allowed the Directive to be adopted in the autumn of 1994[2]—a step only possible because those governments which were strongly in favour of further integration (such as those of Belgium and Germany) occupied the Presidency of the European Council and took the necessary initiatives.

Based on the stalemate which prevailed before the Maastricht Treaty, since the mid-1980s a number of national and workplace employee organisations sought to make a virtue out of necessity and establish European works councils on the basis of voluntary agreements with individual multinational companies. The successes of this 'dual strategy' are neither quantitatively nor qualitatively overwhelming. By the mid-1990s there were a total of forty European works councils (Hall *et al.* 1995:155ff). Put differently, European works councils were established in 2 per cent or at most 3 per cent of all those concerns which subsequently fulfilled the criteria of the Directive for the introduction of representation. Moreover, in the overwhelming number of cases, the participation rights agreed were generally confined to information disclosure or a discussion forum on business plans rather than works councils with true codetermination rights, comparable with those provided for under German national legislation.

The number of voluntary agreements continued to rise to around 100 by the date at which the Directive had to be transposed into national law, in September 1996. Nonetheless, despite the devotion of considerable resources, the strategy of voluntary agreements proved to be of only limited scope: they primarily served as pioneers or intermediate solutions in order to create positive precedents for the process of political bargaining over

a binding statutory regulation. They failed to establish an extensive network of functioning European works councils—something which has only become possible with the implementation of the Directive.

The discussion, in train since the late 1980s, on the virtues of limiting managerial prerogatives in favour of bilateral decision-making procedures is not, however, the main focus here. It is only indirectly relevant to the core question raised here as to the possibilities—or, as we would argue, the impossibilities—of a European system of collective bargaining. Tackling this core issue leads on to uncertain ground, in terms of both the practice of collective bargaining and previous research. Despite this, in what follows we venture an assessment of the current situation and offer some prognoses for the future—in a form which, hopefully, is relevant to both research and practical policy-making.

It has become customary to focus on issues of organisational theory in current discussions on the European Union: however, it is also vital to delve into the issue of how interests are articulated. This is of more than academic interest. In contrast to the completion of the Single Market in the early 1990s, the advent of economic and monetary union at the end of the 1990s via fixed exchange rates and a common currency could endow collective bargaining with a crucial role in economic regulation and adjustment, creating a new need to develop corresponding negotiating structures.

EUROPEAN COLLECTIVE BARGAINING FROM A GERMAN STANDPOINT

At first sight, and observed from the specific standpoint of the German system of industrial relations, any supranational structure for industrial relations would presuppose an institutionalised system of collective bargaining at branch or sectoral level. National levels of regulation would merely be complemented or rounded off but not replaced by a new international level of regulation. European collective agreements would then function in an analogous way to purely national, probably framework, agreements—setting minimum standards, broad objectives and procedural rules. These general provisions would be concretised by European works councils in a 'second' negotiating round with management which, in order to guarantee the necessary degree of workplace flexibility, would tailor them to the specific circumstances of the individual undertaking. In contrast to national collective agreements, implementation would have to take place in two steps: first, through European works councils and, second, through national works councils which would continue to exist in parallel. This multi-step procedure would inevitably create novel problems of achieving a reasonably uniform degree of 'transposition' to and between the various levels.

Such a system would naturally require not only a degree of political commitment but also a number of institutional prerequisites. For example,

there would have to be organisations which could function as negotiating parties for each side and be both able and willing to conclude European collective agreements. These organisations, which would have the task of vertically integrating the interests of their respective constituencies, would also have to be given a bargaining mandate by their national affiliates together with the necessary material resources and personnel. At present, and for the foreseeable future, such supranational organisations are unlikely to come into existence for either side. Each side is faced with a number of internal difficulties which would have to be resolved before external problems could be tackled.

The trade unions have for some time been attempting to develop their international industry-level organisations both quantitatively and qualitatively, and to enhance their rights within general international trade union organisations. As yet, these initiatives have been pursued with varying degrees of intensity and been rewarded with varying degrees of success, depending on the branch involved.[3]

Since 1991 the European Industry Federations, which can be viewed simply as sectoral organisations or as bridgeheads to autonomous sectoral trade unions, have had full membership rights within the ETUC with voting rights on all issues aside from financial matters, matching the rights accorded to the national affiliates. However, solidaristic trade union 'internationalism' has so far remained purely verbal, and the horizontal and vertical coordination needed to make it a reality is far from being realised. National trade unions have also generally given only relatively meagre financial and political support. Moreover, and with a few exceptions, most European trade union federations remain too small and too weak to negotiate (Stöckl 1986).

Such problems in achieving coordination would be very considerable in any process of international sectoral bargaining as the range of interests and priorities—on negotiating claims, objectives and strategies—would be even greater than at national level. The European trade union federations would have to be internally democratic and do the following:

- establish international collective bargaining committees;
- give their European negotiating committees either a general or an ad hoc mandate;
- if necessary, be able to organise industrial action.

However, there is no realistic prospect in the foreseeable future that national trade unions with independent bargaining strategies will transfer their bargaining powers to international trade union bodies. The same applies for the organisation of cross-border mobilisation—let alone industrial action—especially as there is no European legislation regulating industrial conflict.

On the employers' side there are no comparable industry organisations—at most associations and alliances within narrowly demarcated sub-sectors such as motor manufacturing or chemicals. Moreover, there is no serious

discussion within UNICE on the establishment of true industry associations aside from the informal European Employers' Network. In all probability some considerable time must elapse before the establishment and operation of sectoral European employers' associations. And even if such associations were to be established, whether they would be able to act in a way that matched current German practice must remain highly uncertain.[4] Moreover, national employers' associations would have just as many problems as trade unions in transferring bargaining powers to supranational organisations.

It is also difficult to see what advantages UNICE would derive from the existence of fully fledged international industry-level employers' associations compared with the current fragmented situation. Any divergence from the status quo, which has now persisted for many years and which is marked out by its systematic obstruction of collective bargaining, might simply lead to a 'status quo minus', that is, to the introduction of such bargaining. In contrast to much national experience, any further differentiation within the pattern of employers' associations at this level would clash with the central interests of the existing association. As a result such differentiation is highly improbable.

Previous experience suggests that UNICE gives up strongly established positions only on precisely calculated and purely tactical grounds—and typically when it has good reason to suppose that continuing a blockading tactic would no longer prevent a binding, and from UNICE's point of view more stringent, Directive. Then, and only then, has UNICE been prepared to seek a voluntary agreement. (On second thoughts, the situation for the ETUC is more the reverse: why negotiate when it can have statutory regulation?)

Leaving aside these objections, what might happen—as a matter of sheer conjecture—were international industry-level organisations for both the trade unions and the employers not only to come into existence but to be able and willing to conclude collective agreements. How such agreements would be implemented at lower levels would still represent a wholly unresolved problem. This problem has been intensively discussed in the past in the US industrial relations context under the rubric 'administering the contract'. This issue has not received a great deal of attention in Germany because of the high degree of legal regulation of industrial relations. However, its central importance in the present context is evident in view of the fact that British or Irish workplace agreements are not legally binding and cannot therefore be enforced as such in the courts.

This central aspect of control is given far too little consideration in the current discussion. For example, the Maastricht Treaty itself says nothing specific on mechanisms for ensuring that agreements are complied with. The Protocol on Social Policy (Article 4:2) says simply:

> Agreements concluded at community level shall be implemented either in accordance with the procedures and practices specific to management

> and labour and the Member States or…by a council decision on the proposal from the Commission.
>
> (Protocol on Social Policy, Article 4:2)[5]

The instruments for implementation are not part of community law but rather remain wholly within the competence—and are hence at the discretion—of national decision-making bodies. Given the lack of any supranational law on collective bargaining and collective agreements, it is impossible to ensure even a reasonably uniform degree of implementation of the substance of European collective agreements: and the degree of divergence between national systems means that any such provision is not even probable. A solution based on the lowest common denominator—that is, the average of the various national systems of regulation—runs the risk of degenerating into a European non-solution. Moreover the creation of an EU-wide system of law on collective bargaining to offset the problems of implementation at national level is not on the political agenda.

Rather than considering this problem from the standpoint of the legal prerequisites for administering the contract, we should instead consider the potential contractual parties. Implementing agreements could, in practice, be undertaken by employee representatives at the various levels—that is, on European works councils and national works councils. As far as the German context is concerned, it is difficult to conceive of other suitable institutions (such as quality circles or semi-autonomous work groups). Hence one necessary if not sufficient precondition for European collective bargaining would be the existence of an extensive network of effective European works councils. Or, put differently, the effective operation of the one level—industry agreements—would presuppose the effective operation of the other level—workplace or enterprise employee representation. As noted above, we are still far removed from a situation in which these conditions might be met.

Despite these reservations we can proceed with our conjecture—at least a little further. The possible subjects of supranational collective bargaining would inevitably be more limited than those at national level. In order to become a suitable subject for bargaining, an issue would have to have the following characteristics and functions:

- to promote a positive outcome, in the sense of a non-zero sum game, for both sides;
- to have a transnational dimension;
- not to be able to serve as a test for the industrial strength of each side.

The range of possible objects of negotiation would be likely to remain limited in practice even if these theoretical criteria could be fulfilled. For example, pay issues, which remain the central object of classical national collective bargaining, would be excluded as they constitute a zero-sum

game by definition and would be classified as 'distributive bargaining'. Moreover, substantial differences in productivity levels and trends, and hence in pay, will remain for the foreseeable future. An across-the-board increase in pay is ruled out as it would eliminate the specific comparative advantages of, primarily, the southern EU member states. The opposite strategy of levelling down would founder on the resistance of employees and their organisations in the northern high-wage countries. The notion of prescribing minimum wages, such as *x* per cent of average pay in each respective country, is also unrealistic as a number of countries, including Germany, do not have a national minimum wage.

The most suitable subjects for integrative bargaining, in the sense used by Walton and McKersie (1991), would be issues such as health and safety, and initial and continuing training. A number of external factors would favour such a qualitative rather than a quantitative approach in negotiating at European level on an issue such as training. These include the shrinking of younger age cohorts, the inward migration of comparatively unskilled workers, and the ever shorter practical lifetime of acquired skills and knowledge. Moreover, such qualitative aspects have gained in importance in national bargaining since the mid-1980s.

Finally, the degree of statutory or agreed regulation varies enormously between countries: for example, the regulation of minimum terms and conditions, sex equality, the duration and distribution of working time, including flexibility, dismissal protection, protective legislation for various atypical forms of employment, and work humanisation. The EU member states are all welfare states to some—but very varying—degree. Many potential objects of negotiation are already regulated by law in a number of countries and as a result have general applicability: the prospects for tackling these issues via collective agreements at supranational level would therefore be very slim.

At the very least, substantial national differences mean that achieving the 'correct' mix of the two complementary rather than alternative instruments for implementation—law and agreement—at European level is highly problematic and remains unresolved, making it impossible for provisions achieved through one form to be offset against the other. Any problems which could not be tackled by agreement would have to be resolved by statute law to avoid major gaps in the regulatory framework. The amount of 'variance' in the character of agreed regulation is clearly much greater than with statutory prescription, which tends towards imposing uniformity. The density of agreed regulation is also typically lower. Where they operate within a statutory framework, the trade unions are generally better placed as they do not have to use scarce resources to negotiate rights on a case-by-case basis in a process in which they also have to make concessions (*do ut des,* I give that you may give).

In addition to institutional preconditions, any system of European-level collective bargaining would also require the fulfilment of a number

of specific political preconditions. Again in an analogy with the corresponding German regulation, in addition to the basic social right of freedom of association, some form of autonomous authority—irrespective of its specific institutional shape—able to set rules at European level would have to be established. Free collective bargaining would require, for example, as a minimum: the right to strike and where appropriate to lock out; an obligation to maintain industrial peace during the lifetime of agreements—something not currently found in all member states; and the means to regulate the transnational scope and enforceability of collectively agreed accords under Community law. In contrast, agreement on conciliation procedures for resolving collective differences could remain a matter for autonomous negotiation on the part of the parties to collective agreements.

However, there is no prospect of any such regulation on a common European statutory environment for industrial action or free collective bargaining coming about in the foreseeable future. The institutions of the European Union, in their capacity as semi-state institutions at supranational level, have no desire to create the necessary framework political conditions and because of existing divergences of interest could not create such structures even if they wished to. Systems of free collective bargaining in the sense understood in Germany do not exist all member states. For example, the state is an active participant in industrial relations in France, Italy and Spain, both formally and informally, and pay and other working conditions are not always set via free and direct negotiation between trade unions and employers (tripartism v. bipartism) (Ferner and Hyman 1992; Bispinck and Lecher 1993).

The issue of the legal and actual scope of collective agreements is also regulated in quite different ways at national level. The UK, for example, has nothing equivalent to the German system under which collective agreements can be extended to non-signatory parties and organisations, which means that a far smaller percentage of employees there is covered by collective provisions. The coverage rate in Germany is around 80 per cent; in the UK it has now fallen below 50 per cent. The same applies for the Latin countries, which also generally have extension mechanisms or provisions. The fact that these strategically fundamental matters are not regulated by earlier community law, the Social Charter and its associated action programmes or in the Social Chapter of the Maastricht Treaty is surely no coincidence. Rather, it is a product of the fact that the political system of the European Union is, and is likely to remain, more pluralistic and fragmented than it will be Euro-corporatist and integrated (Streeck and Schmitter 1991). The required loss of sovereignty on the part of member states, even in the absence of full political union, is highly improbable.

The other potential driving forces, the negotiating parties themselves, will not be able to create the necessary prerequisites, even using the scope for social dialogue under community law. (It should be remembered that

the trade unions within the ETUC could not agree among themselves on whether there should be a ban on lock-outs: the official statement simply 'condemned' the practice.) Although the Social Chapter extended this scope, both in terms of content and regulatory capacity, the social partners will not agree to use the *decentralised* possibilities for social dialogue in the foreseeable future in order to arrive at 'contractual relations including agreements', as provided for by Article 4:1 of the Social Chapter (Keller 1995b). Fundamental differences of approach will continue; that is, employers' associations which previously showed no interest in negotiating voluntary agreements will not begin to do this at sectoral level. Moreover, the mere fact that negotiations may now be conducted within the context of the social dialogue is far from being identical to free collective bargaining in the strict sense—a process which includes the possibility of industrial action from either side. (The opposite view can be found in Guéry 1992.)

This has led to a situation in which none of the relevant actors, if for different reasons, is willing to create the legal and practical requirements for European collective bargaining. The argument advanced by some critics since the entry into force of the Maastricht Treaty would therefore seem to be entirely correct: it cannot be the task of trade unions and employers' associations to make use of the evident extension of their formal scope within the framework of social dialogue at sectoral or branch level to formulate 'quasi-Directives' which allow the Commission to evade the consequences of its own inactivity or incapacity in the field of social and employment policy. The political actors are merely demonstrating opportunism when they use the rediscovered notion of subsidiarity—a principle open to varying legal interpretation—as a pretext to avoid intervening in the sphere of trade union and employer self-regulation. Instead they are seeking to abandon their statutory right of initiative, give official recognition to the priority of bilateral accords, and offer a quasi-guarantee of their legal standing.

Negotiations within the context of the social dialogue do not offer a realistic means of overcoming political stalemates but in fact are an expression of a new vacuous formula which, in practice, is serving to obstruct fresh social and employment Directives in a 'deregulated space'.

And finally, national states could seek to undermine EU legislation by adding a specific interpretation when transposing it into domestic law.

CENTRALISATION OR DECENTRALISATION AS ALTERNATIVES?

The argument so far has been directed towards establishing the political impossibility of European collective bargaining—although it might be reasonably countered, from a non-German perspective, that this view is overly dependent on the German model of industrial relations and its institutional and legal

prerequisites, and therefore demonstrates a Germanic bias. However, if we have learnt at least one thing from the discussions in this area of the past two decades (for example, on the Fifth Directive in the 1970s or the Vredeling proposals for a Directive in the 1980s) it is that any attempt to use the institutions and rules of one national system as a reference model and transpose them on to other countries is condemned a priori to fail on political grounds. Inasmuch as this is the case, any attempt or any search for a homogeneous model of European industrial relations which is too closely tied to a national model is and will remain fruitless. Complete harmonisation within the framework of a 'European collective bargaining union' would indeed clash with any aspiration to maintain national diversity. Nonetheless, some degree of convergence is necessary both in the interests of integration and of realising the social dimension of the Single Market.

However, although the critical standpoint expressed here so far has been rooted in observations based on the German system, the practical impossibility of European collective bargaining can be established using other, more general, arguments. This requires a more comparative form of analysis which looks at the political choices available. Collective bargaining arrangements are characterised by two principle strategic options, well documented at national level: a more centralised and a completely decentralised system.

One institutional precondition for a centralised solution at European level would be that the European central organisations for the employers and trade unions conduct collective bargaining on the basis of close coordination with their national affiliates. As already indicated, neither the ETUC nor UNICE are practically in a position to do this. As already mentioned, in Germany neither the national employers' association, the BDA, nor the trade union confederation, the DGB, is a party to collective bargaining. As a consequence it is difficult to see how either of these institutions could conduct such negotiations at supranational level. Similar considerations apply to the United Kingdom. Moreover Germany's industrial unions are no more prepared than its employers' associations to cede their collective bargaining powers, undisputed at national level and hence a key component of their autonomy, to European organisations. The same applies to the 'stronger' associations in other countries. Only trade unions such as those in France could hope for some form of compensation for their national 'weaknesses' at European level (Lecher 1993).

Finally, by its very nature, this level of collective bargaining could yield a very inflexible outcome which would be unattractive for both sides. Problems in transposing the basic principles and guidelines of framework agreements have already been indicated for a country with a moderate level of centralisation. These problems would be even more insurmountable in systems with a high degree of centralisation, where implementation would have to take place in three stages.

The lack of the appropriate institutional prerequisites in several important EU member states means that this does not represent a realistic choice and, moreover, would be one which had little to commend it to either side. The tasks of the ETUC and UNICE will therefore lie more in tripartite political bargaining and in the representation of general employer and employee interests which transcend sectoral boundaries through lobbying the European institutions, principally the Commission as the initiator of community policy and the Council of Ministers as the legislator, as well as through non-binding joint declarations à la Val Duchesse. They will not extend their activities to bilateral collective bargaining or the autonomous conduct of collective bargaining.

The other conceivable option would be a completely decentralised system of collective bargaining conducted exclusively at company level—in a construction analogous to national systems such as the British one. Within such a monistic system, workplace employee representatives would have the power to negotiate on all issues across the board, without there being any attempt to coordinate and reconcile particular interests above the level of the individual workplace. National experience of such systems suggests that such an arrangement leads to considerable variation in pay and other conditions. Moreover, such systems incur high transaction costs in terms both of personnel and the need for a much larger number of negotiations with their associated risks. Within such a framework, branch-level institutions on both sides would become largely redundant. Central union bodies and employers' associations would lose their role of stabilising and aggregating specific interests and reducing transaction costs.[6]

Neither the German trade unions nor employers' associations have any particular interest in promoting such a development, which is referred to within the German system as 'Balkanisation' or, more recently, as 'Japanisation'. Debate since the mid-1980s, irrespective of its various complexions, has repeatedly shown this to be the case. Although the employers' associations are eager to install a 'more flexible' system of industrial relations in general and collective bargaining in particular they are not seeking the complete abolition of the German model via the sort of decollectivisation seen in Britain in the 1980s. Such demands have indeed occasionally been proposed by minority organisations within the employer camp,[7] but these have not proved capable of winning over the majority of employers' associations.

A COMPANY-BASED SYSTEM OF TRANSNATIONAL COLLECTIVE BARGAINING

One further—and, as we shall see, more convincing—case against the argument that transnational collective bargaining will be impossible to establish in practice runs as follows. The institutional and political preconditions

asserted above are not in fact necessary for European collective bargaining to come about. Rather, in view of the fact that all national systems of collective bargaining are 'native' to their own setting, it could be contended that 'structure follows strategy'; that is, the actors begin to develop institutions and procedural rules when negotiations have been conducted on a sustained basis without formally regulated relationships. The collective representation of interests usually precedes the establishment of institutions.

This solution to our problem is not simply one which we should not rule out. It could prove to be the most likely of all the scenarios—albeit one which, were it to come about, would no longer correspond to the type of relatively integrated system of European-level bargaining assumed so far. The problems of aggregating and mediating interests, which inevitably multiply with increasing centralisation, suggest that this solution would have to begin on a decentralised basis. In this scenario there would be no process of partial convergence towards a definitive new model with central generally binding provisions. Rather, what would emerge would be a variegated bargaining landscape of several levels dealing with a diversity of issues peopled by a plurality of participants, and sharing only some common features.

Below we pursue one possible strand of development which might characterise such a process. Ever since its first collective bargaining conference in the spring of 1993 the European Metalworkers' Federation has been discussing measures such as regular reports on the trade union situation in the engineering branch, the establishment of a European registry of collective agreements with on-line access, and coordination between sub-sectors such as the automobile industry with a view to linking national processes of collective bargaining. Amongst the subjects not dealt with in detail are a number of possible precursors of a 'European collective bargaining strategy' such as nationally conducted but internationally informally coordinated negotiations on the same issues, for example cuts in working hours or overtime limits, mutual assistance during industrial action, and joint action to support national or cross-border agreements.[8] Such initiatives could emerge in relatively homogeneous units and build towards a greater and, in national terms, as yet unprecedented diversity in European industrial relations.

This is one possibility. However, our main argument follows an entirely different direction. It is quite conceivable that the managements of multinational undertakings could, in the not too distant future, decide that they should begin to act in the field of employment regulation outside the scope of central organisations and their disciplines and without the prior existence of a formal legal framework. They might, for example, enter into direct negotiations with 'their' European works council on problems specific to their organisations, such as training or working-time flexibility, with the aim of concluding company-level agreements or accords.

The view which the European central organisations would have of such 'high-trust—low-conflict' initiatives would be relatively clear. As representatives

of the general supranational interests of employees in Europe, the ETUC would not seek to block such a development—and indeed could not do so given its constitution and make-up: based on their own national experiences, the trade union centres which make up the ETUC have very diverse views of what is an optimum level of negotiation (workplace, region/branch, nation). The ETUC could not therefore risk favouring one approach over other national models.

UNICE would not oppose such an informal decentralised system, primarily because the low level of regulation involved would largely correspond with its own approach to social and political organisation. Indeed, it would serve its own interests, as it would recognise and inscribe its preferred preference for agreements as opposed to legislation.

Such a development, which would have a certain experimental character as a system rooted in the 'organisation and management of diversity' with fewer formal rules, might also prove attractive for a number of actors at other levels. For example, agreements spanning an entire multinational undertaking could respect the priority of national collective agreements, including any better local provisions, according to the principle of subsidiarity—although there would undoubtedly be long-term feedback effects on national agreements. In all probability there would be a combination of national and transnational regulation, with the latter gradually becoming more important and eroding the former as a result of growing economic integration and changed conditions of competition—actual or supposed. In the most favourable scenario, the link between the two levels could mirror that seen in other fields of social policy so that transnational agreements would have a complementary character and set minimum conditions which could be improved on, but not worsened, at national level. Such agreements would be binding and ensure a degree of uniformity, but would also have a sufficient flexibility to ensure that competitiveness was not prejudiced or existing higher national standards put at risk. Agreements could also be built up on the so-called 'cafeteria principle', with a selection of options from a given limited range.

The problems of implementation referred to above would be eased simply because of the lower level at which bargaining is conducted compared with other models considered above. This would also establish a positive connection between the level and the objects of negotiation: the more decentralised/centralised the level of negotiation the more specific/more general the object of negotiation can and must be. Implementing the content of agreements via the law would play a much smaller role.

Flexibility in its various forms (numerical, external, functional, occupational or related to remuneration) would be easier to attain in decentralised negotiations. And inasmuch as this is the case, the 'grassroots' scenario, in which the relationship underpinning collective bargaining would be constructed through a form of micro-corporatism, would tend to work with the grain of the

trend towards the decentralisation of regulation and industrial relations to the workplace. Such tendencies have been very evident since the 1980s, may now be irreversible and are likely to intensify in the future.

The Euro-optimists, who forecasted that the eleven (fourteen) EU member states would pass a Directive on European Works Councils without the participation of the UK, have been proved right. This step has created a key institutional precondition for the above model in the form of functioning actors who have some negotiating experience with 'their' management and hence have the potential to constitute nuclei in a system of enterprise-based collective bargaining.

Such a shift towards a decentralised, company-based approach to European collective bargaining would, in all probability, not take effect simultaneously but would advance piece by piece to yield a 'patchwork' of industrial relations arrangements in Europe. This would be strongly voluntaristic in character, virtually devoid of statutory regulation, and would therefore exhibit the disadvantages of national systems with a similar structure, notably the British. It would culminate in supranational negotiations in a limited but fluctuating number of undertakings with headquarters in a variety of countries.

This Euro-level form of 'workplace bargaining' would most probably come about in relatively highly internationalised sectors, and along relatively homogeneous product and service lines or for specific product markets served by multinational concerns. Such conditions can be found, for example, in motor manufacturing, insurance, some sections of the chemical industry and transport. Other, primarily nationally oriented sectors, and most notably the core 'sovereign' areas of the public sector, would remain largely unaffected.

Such a fragmented form of industrial relations and collective bargaining would offer to the analyst a novel range of problems characterised by a complex 'new impenetrability' (Habermas) of converging and diverging trends. The practical consequence would be a development in the direction of US American labour relations, with marked divergences between regions and sectors, depending on economic performance, within a unified economic space. Employee protection would be relatively low, and employers' associations would generally be weak, with pressures on trade unions to evolve along the lines of business unionism. This would represent fairly narrowly defined economic interests and would be forced to pursue them through collective rather than political bargaining.

In contrast the forms of 'union exclusion' seen in Britain and 'union busting' as seen in the USA in the 1980s would be much less probable. Nonetheless, trade unions would have to recast their strategic outlook within such a European model of interest representation. Dutch trade unions, for example, have proposed establishing coordination panels for European works councils in multinational undertakings. Whether such coordination via external organisations can succeed must be open to question

on a number of grounds: first, the employers have a manifest lack of interest in such a development; second, the trade unions involved are a highly heterogeneous grouping; and, third, European works councils would not necessarily allow themselves to be used as a source of information for collective bargaining.

In general, industrial relations would be decentralised, more fragmented, more deregulated and less tripartite. Such a form of transnational pluralism would fit very well with a European minimal state still lacking fully developed political institutions. Workplace syndicalism, which has become deeply entrenched since the 1980s at national level, would now be supplemented by an equally stable company-level syndicalism and 'egoism' at supranational level: this would continue to benefit insiders at the expense of outsiders, would internalise the benefits and externalise the costs. Curiously, such a polarity might have a certain attraction for European works councils as it would make it more difficult for companies to pursue a strategy which has been of great concern to employee representatives in international companies—the playing off of workforces in different countries against each other.

Extensive fragmentation at the micro level of the workplace or company would be associated at the macro level with a distribution of costs and benefits which would be even more unequal than that seen with any reasonable degree of centralisation. In macro terms, such a model would also be burdened with all the disadvantages of fragmentation (removal of comparable competitive conditions, marked wage differences between employees doing comparable work). Such developments can be seen in traditionally decentralised systems and are emerging with voluntary European works councils agreements concluded at enterprise level. It would be very difficult for industrial unions and central employer associations to coordinate divergent workplace interests.

CONCLUSION

For the reasons outlined above, such a development towards an enterprise-centred system of transnational collective bargaining represents a reasonable probability. Would such a development be desirable, however? Approaching the issue from this angle would mean re-engaging, at a European-level, with the two views of social policy encountered at national level. The one is concerned to release market forces through free trade, boost productivity and improve the supply side with a minimal state whose impact on the market economy should not go beyond ensuring compliance with a small number of broad framework regulations. Social integration would follow quasi-automatically from economic integration and without any deliberate attempt to pursue it through distinct political action. The social dimension would be a consequence of economic integration.

The other viewpoint emphasises the well-documented imperfections of the market and the consequent need for systematic intervention through an active state. The social dimension has an independent role, and is a necessary precondition for, not merely the consequence of, economic integration: as such it must be consciously promoted by Community action.

Seen from this latter position, political regulation of the conditions of employment at macro level would be necessary within the context of public policies to strengthen the development of the social dimension of the Single Market—quite correctly dubbed as the EU's Achilles' heel by Jacques Delors. In addition to existing individual rights, the EU will have to guarantee social and collective rights in the future if it wants to overcome the massive shortfall of popular legitimacy and acceptance of the Community on the part of its citizens, as well as to forestall possible losses in 'social' productivity.

NOTES

1 Although German law requires that weekly working times (or, where appropriate, annual hours) must be set by industry collective agreement, the detailed implementation of hours arrangements is a matter for works councils. Increased scope for flexibility in industry-level agreements has required greater works council involvement as arrangements are tailored to local workplace needs.
2 The fact that the UK was granted an opt-out, effectively creating a two-speed Europe in this field, was evidently no real obstacle to the Eleven. Moreover, the Directive is affecting British companies both directly—where they have sufficient employees in countries covered by the Directive—and indirectly through various pressures to include UK employees in these arrangements (see Chapter 6).
3 I do not propose to deal with the special position of international trade union committees in border regions. Cooperation within the framework of the Interregios is closer than usual, but represents a special case: cf. Müller 1994.
4 The distinction, typical for Germany, between trade associations and employers' associations, with their specific division of responsibilities between economic and social matters, is not found throughout the EU.
5 For a possible interpretation, cf. Guéry 1992:581–99.
6 One unresolved problem in this case is how the relationship between 'pattern setting' and 'pattern following' would appear. At present, collective bargaining in Germany in practice exercises a leading role for negotiations in other countries, such as Belgium and the Netherlands.
7 Such as the small business association the ASU *(Aktionsgemeinschaft selbständiger Unternehmen)*.
8 See Lang and Sauer 1989; Blank 1992; Janssen 1993.

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3

THE EUROPEAN DIMENSION TO COLLECTIVE BARGAINING POST-MAASTRICHT

Martin Coen

Conventional constitutional theory customarily offers three different models for the integration of a number of states: a federal state, a confederation of states and supranational organisation. In a federal state, both the constituent units and the federation itself have the character of a state, although only the federal government is sovereign in terms of international law: the constituent parts (states) are subject to the federal constitution. In contrast, in a confederation of states, the sovereignty of the individual states remains untouched. The confederation is not a state itself, but can act only on those issues which have been allotted to it: it exercises the type of authority over its members which would characterise any voluntary association with a binding set of rules. A supranational organisation is also not a state, but assumes those tasks assigned to it by its member states and exercises them on their behalf.

The process of European unity is distinct from all these conceptual structures. The confusion which this can create can be seen in the fact that German constitutional theory has had to employ the type of special construction which Pufendorf once desperately resorted to in order to categorise the Holy Roman Empire—a 'monstro simile'.[1] The Maastricht Treaty is also difficult to lodge within a conventional juridical category. However, recognising its structure is of considerable importance in setting about the task of assessing its impact on economic and social policy—and on strategies for collective bargaining.

Turning initially to the powers assigned to the European Union in the Maastricht Treaty, it is important to distinguish between the powers assigned by the Conference on Political Union and those dealt with by the Conference on Economic and Monetary Union.

The assignment of powers which took place in the context of the Conference on Political Union does not correspond to any customary conception of the international transfer of powers. Most such processes have entailed either the extension of already existing Community powers or those which have been judged by all the member states jointly to be necessary in order to round off or extend the existing powers. The powers assigned to the

Community affect training, professional qualifications and cultural policy, social policy, youth policy, health, consumer protection, infrastructure, and industrial policy, economic and social cohesion, research and technology policy, policy on environmental protection, together with development policy. In all cases, constitutionally the member states remain the bearers of responsibility for the areas of policy concerned. The shaping of policy by the community is restricted—in a way comparable with its tasks in other fields—to coordinating and complementing the policies of the member states and the financing of their own programmes. In none of these areas does the transfer of powers lead to any determination of policy by the Community replacing the policy of the member states.

In contrast, these powers must be distinguished from those transferred in the context of the Conference on Economic Union and the sovereign powers which would have to be transferred in order to facilitate monetary union. At the level of the member states, economic policy and monetary policy constitute a unity, especially insofar as, although they may be exercised by different institutions, they are established at one and the same constitutional level. In Germany, monetary policy—at least domestic monetary policy (liquidity and interest rate policy)—is exercised centrally by the Bundesbank, and economic policy by the Federal government and the two legislative bodies. Pay setting is left to the two parties to collective bargaining, with the system of pay determination also highly centrally determined—as a consequence both of the structure of the trade unions and employers' associations and of its administration.

One might suppose that Economic and Monetary Union would have to be established within one and the same constitutional model. In order to achieve the same unity in these areas as that which is observable at the level of the member states, the Community would have to bring together all the powers needed for the shaping of a central economic and unified monetary policy, possibly on the basis of a staged programme.

However, as structured by the Conference, economic and monetary union is not based on such a unified constitutional model. Whilst exclusive powers in monetary policy will be transferred to the Community, economic policy remains a matter for the member states—with the consequence that the state will become detached from its currency. In contrast to monetary union, which is characterised by a central, exclusive Community competence, economic union will be restricted to mere coordination at Community level, and will be exercised at member-state level. The major reason for the separation of these powers, especially the continuing responsibility of the member states for economic policy, is that the central and primary shaping of economic policy by the Community would presuppose a so-called dominant Community budget.

In order for the Community to exercise responsibility for the control of the economy throughout the whole Community, it would need access

to a budget at least equal to the volume of the central budgets of the member states. Such a dominant budget would in turn presuppose that the member states would have to transfer responsibility for their systems of social insurance and, in particular, of infrastructural policy to the Community—as happens in all developed federations. It is estimated, for example, that in the USA a fall in the regional income of any state is automatically offset by more than one-third via transfers from the Federal budget and national social security system. In contrast, in the EU the equivalent effect is only 1 per cent. In the strongly federal Swiss Confederation, the central state disposes of 56 per cent of all public spending (including social insurance); the EU's central budget is only 2.5 per cent of Community public spending.

Without the transfer of further central activities to the Community, a volume of Community expenditure sufficient to establish its quantitative dominance is unimaginable. The transfer of such activities to the Community would require a transfer of legislative competence across the range of economic and social policies. The transfer of sovereignty implied by such a centralisation of economic management would presuppose the reshaping of the Community into a real State—in the conventional sense of the term. However, at present there is no political willingness to envisage such a massive relinquishment of sovereignty on the part of member states in core areas of public policy and activity: this situation is unlikely to change in the foreseeable future. None of the member states currently runs its economic management on as decentralised a basis as that which characterises the European Union. This therefore represents a constitutional experiment based on political exigencies—not on any recognition that this might be a superior approach.

The constitution of European economic union, as established on the basis of the Maastricht Treaty, is constructed on the foundation of the Community as a community of states. Its function is not to undertake central economic management but rather to coordinate the economic policies of the member states through Community procedures established for that task. The management of the economy by the member states is to take place in accordance with guidelines set out in Articles 102a and 103 of the Maastricht Treaty.[2]

These guidelines include an obligation on member states to organise the conduct of economic policy to ensure the convergence of economic performance in the individual member states. The relinquishment of such a key tool of policy as the ability to alter exchange rates, as required under monetary union, means that only through convergent policy and performance will it be possible to minimise the amount of adjustment required by each national economy. The stability-oriented policy of the central bank must therefore be back up by stability-oriented conduct on the part of the state, employers and trade unions. If a single currency

comes about before participating countries have achieved relatively convergent labour costs, and in particular a pattern of pay increases based on productivity growth, the closing off of any scope for exchange rate adjustments will mean that adjustment will take place primarily through an increase in prices in those countries where wage costs have exceeded the level warranted by productivity growth. Because there is no scope for exchange rates to serve as a buffer, price increases in one country could extend to the entire Community or set in train a downward employment spiral, with the consequence that demands for financial transfers from countries with higher economic growth would increase.

Under a single currency national labour markets would therefore become truly competitive markets: the consequence would be an increase in the responsibility of pay and social policy for employment levels. The German Federal Constitutional Court looked at this issue when examining the complaint that the domestic German legislation ratifying the Maastricht Treaty was unconstitutional, and in which the question was expressly raised as to the effects of a central monetary policy and the coordination, that is, the decentralised economic policy, of the member states under Article 102a ff. During the Court's oral proceedings, the then-President of the Bundesbank, Helmet Schlesinger, stated that without harmonisation of economic and social policies, regional unemployment would occur (*Frankfurter Allgemeine Zeitung,* 3 July 1993). In the view of the President of the Central Bank of the *Land* of North Rhine/Westphalia, Reimut Jochimsen, 'any structure in which only monetary policy but nothing else is integrated will be built on sand'; he added that it was therefore necessary to ensure the coordination of pay, financial and social policies (*Handelsblatt,* 4/5 June 1993).

Since the establishment of EMU will remove the possibility of using exchange rates to protect national competitiveness and employment, collective bargaining will have to comply with economic imperatives to an unprecedented degree unless it is prepared to court the risk of major disequilibria in the economic development of different member states. According to the principles behind monetary union set out in the Maastricht Treaty, it cannot be ruled out that this encompasses not only economic exigencies but also a legal obligation, as under Article 102a and 103, for member states to follow policies which promote economic convergence. This means, however, that inflation rates must be held down and, it is claimed, that pay growth must be tied to productivity growth. The European Commission also assumed in its 1990 study on EMU that monetary union will influence the behaviour of the parties to collective bargaining and, for example, that pay discipline would be tightened. For Professor Sievert, former Director of the *Sachverständigenrat*—the Independent Council of Economic Experts—this constituted the most important aspect of monetary union (*Frankfurter Allgemeine Zeitung,* 26 September 1992). In future, systems of pay determination will become the buffer for overall economic adjustment, replacing exchange

rate fluctuation: once the ability to vary nominal exchange rates has been removed, labour market flexibility, and in particular pay flexibility, is the most important instrument of economic adjustment. Monetary union will therefore confer a clear responsibility for real pay and hence for employers' true costs, as under a single currency monetary policy must always be conducted in the knowledge that it is both *Realpolitik* and pay policy, given the fact that the monetary conditions under which workers in any given country enter into intra-European competition, and which determine the level of prices on the goods market, can no longer be changed according to the money wages which these workers demand.

Since EMU is committed to greater price stability, pay setting—because of its impact on employment in the European regions—will be forced to take on a much greater ex-ante rationality. This means that it must consciously refrain from disrupting the sustainability of macro-economic relationships in order to minimise any pre- or post-pay-increase passing on of costs. Under these conditions, the price mechanism will be better able to fulfil its role of allocating scarce resources to their optimal use. Inflation, as an ex-post form of adjustment, will not be able to be tolerated by a European Central Bank. None of the national trade unions can therefore expect to have sufficient influence in decentralised negotiations within a larger European economic area to be able to draw a European Central Bank in their wake with such ex-post adjustments. As a consequence, none of the national trade unions can hope to pass on the consequences of pay increases above productivity growth to their neighbours; neither the European Central Bank nor the instrument of exchange rate fluctuations will be available. The European Central Bank will be too far removed from the process to allow itself to be forced into the position of whipping boy for the public.

Under these circumstances, the role of pay setting and collective bargaining within Europe will undergo a major change within the wider panoply of economic policy. This has been viewed as so critical that a currency area is defined as optimal if it 'is substantially larger, and if possible several timers larger, than the area for which a functioning wage cartel can be established' (Horst Sievert, *Frankfurter Allgemeine Zeitung,* 26 September 1992).

This, together with the avoidance of growing distributional conflicts between differently developed regions, between the centre and a periphery which has lost the ability to use the exchange rate as a trimming mechanism, is the reason why the European Union requires negotiating arrangements and structures which link the national and European levels and complement national collective bargaining with a European level. It is improbable that Europeanising all spheres of policy will exclude a European harmonisation of collective bargaining—that is, it will involve more than mere transnational and international cooperation but rather a convergence of bargaining forms, claims, and the establishment of forms for the European regulation of

labour costs, even if regional and sectoral pay differentials must become the central regulative of the process of integration in order to even out differences in real productivity.

Under monetary union, non-inflationary behaviour on the part of the trade unions—that is, pay settlements which can be sustained at a macro level—should be ensured through social dialogue between the social partners. The interest of governments and central banks in the outcome of negotiations would almost certainly grow and their efforts to influence the behaviour of the negotiating parties would undoubtedly intensify.

It is therefore regrettable that efforts to supplement the Maastricht decisions on EMU with regulations to protect free collective bargaining remained fruitless; the Community has not, as yet, given explicit acknowledgement to the principle of free collective bargaining. The social partners are, however, insisting that their autonomy should be respected. Whether this can be accomplished with the instruments which the Maastricht Treaty has made available to the social partners must be doubted. In particular, it seems questionable whether social dialogue is entirely consistent with the German conception of free collective bargaining. For example, a member state can impose the responsibility for implementing an EU Directive on the social partners. And conversely, the transnational binding force of European collective agreements is dependent on transposition through European institutions. This raises a number of questions which can only be touched on here:

1 Can the Council reject the presentation of a proposal with the argument that what has been agreed is not, in its view, consistent with the objectives of the Treaty?
2 What is the legal status of a decision made by the Council on the basis of an agreement between the social partners?
3 What courts would decide in the event of a legal dispute on the interpretation of the legal instruments on the basis of the agreement of the eleven (fourteen) member states, excluding the UK?
4 What is the legal character of the obligations of the social partners should the implementation of an agreement in the member states take place according to the 'procedures and practices specific to management and labour'?
5 Can the Commission take legal initiatives in a field in which an agreement is made on the basis of the Social Protocol and implemented by the social partners in accordance with national 'procedures and practices'?
6 Do agreements need the agreement of the member states?
7 Is the Council obliged to transpose an agreement by the social partners on application in the precise form adopted by the social partners?

The emergence of a form of cross-border collective bargaining will crucially depend on whether the trade unions at European level can develop sufficient

'muscle' to induce the employers to conclude agreements on controversial issues. As yet, there is no law on industrial action at the level of the European Union, and the Social Protocol attached to the Maastricht Treaty excluded freedom of association and the right to take industrial action from the social policy orbit of the Community—despite strengthening the social dialogue. As long as this situation continues, national law in the field of industrial action will be called upon to lend some consideration to the European dimension in this area. Supranationalising employment and economic activity without European-level provisions on industrial action is only permissible if national law in this field acknowledges the changed external framework within which it is located.

NOTES

1 Samuel Freiherr von Pufendorf (1632–94)—jurist, historian and constitutionalist.

2 Article 102a states: 'member states shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community…, and in the context of the broad guidelines referred to in Article 103(2). The member states and the Community shall act in accordance with the principle of an open-market economy with free competition, favouring the efficient allocation of resources, and in compliance with Article 3(a)'.

Article 103 provides for economic monitoring and assessment of individual member states by the Commission in order 'to ensure closer coordination of economic policies and sustained convergence of the economic performance of the member states'. The Council may issue recommendations to member states if policies or developments 'risk jeopardizing the proper functioning of economic and monetary union'.

Article 3(a) sets out the principle of the 'close coordination' of economies policies, amongst other things.

4

THE PERSISTENCE OF DIFFERENCES BETWEEN NATIONAL INDUSTRIAL RELATIONS SYSTEMS IN EUROPE

Klaus Armingeon

INTRODUCTION

This contribution sets out on the proposition that the probability of collective bargaining at the level of the European Union increases with the degree of structural uniformity between national industrial relations systems (Schmidt 1992). If the regulation and organisation of national systems are rooted in highly divergent principles, then the tasks and costs of European-level coordination will be so great as to diminish the likelihood of any focused supranational approach on the part of the individual national actors (trade unions, employers, governments). However, if national systems are broadly uniform the costs of coordination at Community-level will be both low and sustainable. An extensive degree of uniformity between national systems does not mean, however, that European-level collective bargaining will necessarily come about: it is simply, and merely, one important precondition. Moreover, this is a condition which does not apply only to the process of formulating and negotiating a claim but also, and in particular, to the process of 'implementing the contract' (i.e. collective agreements). If European collective agreements are to achieve their aim, they must be implemented throughout the EU (cf. Chapter 2). This will be easier where the differences between the implementing institutions are small.

The question raised here relates to the likelihood of this necessary, but not sufficient, precondition for a European approach to interest representation being met via the convergence of national systems of industrial relations. We begin by outlining two common perceptions which suggest that such a convergence might be expected between the member states of the European Union. Following this, we set out the theoretical and empirical basis of our own central proposition—namely, that institutional inertia is likely to obstruct any rapid transformation in this direction.

The empirical material set out below is the product of a comparative study of the reforms of procedural rules governing systems of collective industrial relations in twenty-one countries covering the period from the

date at which freedom of association was introduced up to 1990 (Armingeon 1994). Our hypothesis is tested only against those central regulations which govern the conduct of those actors within the collective industrial relations system—trade unions, companies and official bodies—and which in addition constitute the institutional core of the industrial relations system. As a consequence, and with appropriate circumspection, it should be possible to use these findings to formulate some generalisations about the system of collective industrial relations as a whole.

SHIFTS IN POLITICAL POWER AND FUNCTIONAL NECESSITIES

The transformation of organisations and procedures which might lead to more uniformity between national systems is often held to be possible on the basis of two considerations. The first sees institutional reforms as the result of changed political power relations (Korpi 1983). Convergence between national systems of industrial relations in Europe would then be expected given a sufficient ubiquity of political actors willing and able to push through reforms in a particular direction. At the moment these preconditions are not met. For example, the suggested general decline in social democracy and broad deregulation in all western countries has not proved to be the case: as a result, there is no positive precondition for a universal deregulation of industrial relations (Merkel 1993; Armingeon 1989). At the same time, there is even less evidence of any Europe-wide strengthening of left—that is, socialist or social democratic—parties willing and able to push through reforms favouring the trade unions.

According to the second view, power relations are less important. What is crucial are the exigencies to which national systems have to adjust. Should they fail, they risk a whole series of disadvantages, possibly culminating in a threat to the existence of the system as a whole. The Single Market, and the associated expansion of trade between EU member states, could generate functional necessities of a kind which would force national trade unions, employers and governments to reform their various systems in the direction of a uniform model. Indeed, the optimism of many politicians and organisational representatives as to the attainability of a distinctly European industrial relations is rooted in a confidence in the 'silent compulsion of [economic] relations' to achieve what has so far evaded conscious political strategy.

INSTITUTIONAL INERTIA

Such belief in convergence through functional necessity, however, overlooks the power of persistence which characterises national institutions (that is, their rules and organisation). There are strong grounds for arguing, on both theoretical and empirical grounds, that national systems of industrial

relations can resist pressures to adjust for a long time, even where these are growing stronger. It could well be that a European system of industrial relations might fail to emerge even though all the national actors involved regarded such a development as desirable. Before citing theoretical and empirical evidence to support this hypothesis, two issues need to be clarified. The first concerns the fundamental structure of systems of organisation and procedures within national systems of industrial relations. Such underlying structures correspond to the political and social power relations and patterns of conflict which characterised the period in which they arose (Armingeon 1994; Ebbinghaus 1992). Because these framework conditions, contrary to much supposition, have not changed to any great degree (Bartolini and Mair 1990), the institutional inertia discussed below finds support from a constancy within the political and social environment, and may even be facilitated by it. The second clarification refers to the degree of institutional stability. We do not argue that the institutions of industrial relations can remove themselves from efforts at political change. Rather, our argument is that institutional inertia makes such reforms very difficult to achieve. Moreover, there are varying constellations and coalitions of actors, which, even with the same distribution of power—for example between social democratic and bourgeois parties—can lead to highly divergent prospects for reform. (This is, however, a problem which cannot be pursued further here.)

Theoretical proof for a high degree of institutional inertia can be derived from recent Anglo-American organisational studies (Hannan and Freeman 1984, 1989), as well from approaches within political science which adopt an institutional approach (March and Olsen 1989; Krasner 1988). Not all of the six theoretical arguments set out below need apply in each case. Moreover, not all the individual arguments are necessarily consistent with each other. However, taken as a whole they suggest that the institutions of industrial relations have a great degree of persistence over time:

I The first argument for inertia emerges out of the definition of how we should understand what an institution is. Institutions lend stability to social behaviour. They have an in-built, if limited, resistance to changes in their environment. If systems of rules and organisations were to react to every external change they could not fulfil this stabilising role and would no longer count as institutions. Given such resistance, powerful and sustained changes in the environment are needed to bring about institutional transformation. In other words, it would be very surprising if the adaptation of systems of industrial relations to strengthening economic cooperation in Europe were to take place without a time lag.

II There are also good reasons why organisations should not adapt to changes in their environment. In the case under discussion here, this would mean that trade unions, companies and official bureaucracies

would not adapt to those exigencies momentarily or prospectively associated with the Single Market. The reason lies in uncertainty about the direction of change in the external environment and the certainties associated with existing institutions. Any organisation seeking to adapt its institutional structure or bargaining procedures to new modes of production or new political circumstances does not know whether the exigencies bearing down on it at one time will continue once the reform has been accomplished. Change within the EU might be happening at such a pace that a reform which seemed entirely appropriate at the point at which it was formulated would no longer appear so a few years after its implementation.

> Indeed the worst of all possible worlds is to change structure continually only to find each time upon reorganisation that the environment has already shifted to some new configuration that demands yet a different structure.
>
> (Hannen and Freeman 1984:115)

One does not have to accept the radical implication of this hypothesis—never change!—in order to view slow, partial and delayed adjustments by institutions as having a powerful rationale rather than merely expressing institutional indolence.

III Old organisations are poorer at adjusting to new environments than new organisations. In order to function internally and interact with their environment, organisations need members who have acquired knowledge, often through protracted, difficult and expensive processes. The older an organisation is, the more members it will have with such expensive qualifications—qualifications which could be devalued, entirely or in part, by changes in the rules or structures of the organisation. As a consequence, young organisations—compared with older organisations—are more willing to support reforms which affect them. Trade unions are a prime exemplar of old organisations. A good example is the long-standing problem which trade unions within the German Trade Union Confederation (DGB) have had in implementing those aspects of the 1972 Works Constitution Act which were actually of benefit to them. This was not so much a question of resistance on the part of companies, but rather of trade unions coping with the problems and costs of the switch to a new statutory environment, and especially the 'relearning' involved for the elected members of works councils (Knuth 1982).

IV Structural inertia grows with the size of organisation or of organisational network. The larger organisations are, the more internally differentiated they will usually be. Any change in rules or procedures will affect parts of this differentiated organisation, leaving other parts entirely untouched. This can lead to considerable conflicts if the new rules are also associated with an internal transformation and redistribution of resources and power—which is often the case. (For example a change in the Works

Constitution Act can lead to a shift in resources to the internal department within a trade union dealing with works council matters at the expense, perhaps, of the department dealing with social policy.) For this reason strong coalitions against reform can easily be put together in large organisations despite the fact that the overall objective might be regarded as essentially positive by all those involved.

V This argument can also be applied not only to parts of organisations but also to organisations within a network. Any change in their position in the network has effects on all the other elements in the network. Almost any reform of industrial relations will throw up one organisational segment which will oppose reform because the disadvantages to it as an organisation—despite positive overall effects—are simply regarded as too great. Where several organisations want to advance a reform together there is a very good chance that one element in the network will seek to put a brake on developments.

VI The procedural rules of industrial relations, the core issue here, directly affect those actors wanting either to implement or to obstruct reform. Experience teaches that the involvement and concern of organisations are especially high when their own status is at issue. There are perfectly rational reasons for this related to the very existence of those employed by such organisations. Innovation and imagination are not fostered in situations where self-abolition is the price of achieving some grand objective.

These arguments rest on a number of assumptions as to the interests and policies of organisations and their workers. It is easy to find a number of illustrations of what has been asserted. One good example is the vigour with which the German trade unions now support a pattern of workplace representation whose structures they roundly condemned at its inception in the 1950s. A second example is offered by the problems of implementation which British trade union legislation encountered in the 1980s: British companies by no means sought to gain all the benefits available to them through the laws made possible by the Conservative majority in parliament (Marsh 1992:82–109).

However, these assertions would look more secure if they were backed up by systematic observations which at least did not contradict them. This would constitute an indirect and summary test of the hypotheses, given the difficulty in testing each of the individual causal chains in isolation.

The first systematic proof is the vintage of the basic regulatory arrangement of industrial relations in the economically developed (OECD) countries; that is, those regulations which have marked the basic structures of national systems of industrial relations. Table 4.1 sets out these historic turning points, and when they took place. Note that these fundamental decisions often entailed major reforms; however, the basic forms of current national

systems of industrial relations can be traced to these rules. The table shows how old, on average, these fundamental turning points are. Only Great Britain and New Zealand have seen recent attempts to undertake a major transformation, and as yet it is not certain whether the new regulatory framework will actually be successfully implemented.

Table 4.1 Key regulatory provisions in industrial relations in the post-war period

Country	*Date of origin*	*Regulation(s)*
Australia	1904	Conciliation and Arbitration Act
Belgium	1945 (Implemented from Social Pact)	
Denmark	1899	'September Compromise'
	1936	Standard Rules for Handling Disputes
Germany	1949	Collective Bargaining Act
	1951	Act on Codetermination in the Coal, Iron and Steel Industries
	1952	Works Constitution Act
Finland	1940/44	'January Betrothal' with subsequent agreement
France	after 1945	Link with regulations of III. Republic constitution
	after 1950	Restoration of rules of III. Republic
UK	1871/75	Trade Union/Conspirations and Protection of Property Act
Irish Rep.	1941/42	Trade Union Acts
Italy	1947	Constitution
Japan	from 1945	Transposition of US National Labor Relations Act as Labour Relations Adjustment Law
Canada	from 1944	Enactment of provisions paralleling US National Labor Relations Act, initially at federal level subsequently at provincial level after expiry of federal powers
New Zealand	1894	Conciliation Act
N'lands	from 1945	Labour Foundation (Stichting van der Arbeid); Social and Economic Council (SER)
Norway	1935	Basic Agreement
Austria	from 1945	Works Councils Act/Collective Bargaining Act/Economic Commission/Parity Commission
Sweden	1938	Saltsjöbaden Agreement
Switzerland	1937	Peace Accord/Solidarity contributions
USA	1935/1947	National Labor Relations Act (=Wagner Act)/Labor-Management Relations Act

Source: Armingeon 1994: ch. 5 and Appendix

Whether the hypothesis of institutional inertia is valid can also be tested empirically in another way. This consists of asking when, in the view of experts, there has been scope for major reforms of the system of industrial relations and how often these opportunities have been used. If this has frequently happened the inertia hypothesis would scarcely be tenable.

Alongside national catastrophes, which often allow a complete restructuring, literature cites four types of circumstance under which reforms are probable and feasible:

1 A major change in government. The assumption of state power by a former opposition party creates a situation in which changes can be especially easily implemented. In the case of left-wing governments in particular one may suppose that they would want to make rapid changes to favour their supporting trade union movement as soon as possible after assuming power.
2 A long period of government by left parties. Reform needs time and, as a result, long periods of left government might be assumed to be accompanied by intervention to favour trade unions. In contrast, right-wing governing parties will be less inclined to intervene in the system of regulation; governments under the leadership of centre parties (and especially Christian democratic parties) might seek to curb the power of both trade unions and companies (Korpi 1983; Schmidt 1982; Castles 1982; Powell 1982).
3 A high level of industrial action. Major strikes could be interpreted from a functionalist standpoint as an indicator of the necessity for reform. A strike shows that the system of regulation no longer functions effectively and that government must attempt to remedy this deficit through appropriate policies. Seen from the perspective of class theory, strikes indicate a shift in power relationships between classes. These changes will be expressed subsequently in reforms in industrial relations (Goldfield 1989).
4 A major economic crises. As with large-scale strikes, serious economic crises, especially the economic crisis of the inter-war period and the period following the post-oil crisis period from 1973, can be seen as periods in which regulation deficits have emerged or in which fundamental transformations in social and political power relations have come about. As a consequence, reforms are undertaken (Gourevitch 1986).

We now look at how often such opportunities for reform have arisen in the countries and periods under consideration, and how often these opportunities were used to introduce a new form of regulation. The result can also be summarised in four points.

1 Most major changes of government were not accompanied by reforms in industrial relations procedures. However, there were a few instances

in which there was a clear connection between a change in government and reform.

2 In most cases, long periods of socialist government passed without fundamental reforms favouring trade unions. In a few cases, however, there was a causal link between left-wing participation in government and such policies.

3 Most major strikes have not led to reforms, although this was clearly the case in a few instances.

4 In most countries the two great global economic crises had no consequences for the system of regulation of industrial relations. However, again in a few countries, the crisis undoubtedly triggered industrial relations reform.

This suggests that the opportunities for reform are used only in exceptional circumstances and *can* only be used in exceptional circumstances. This would support the inertia hypothesis.

CONCLUSION

The institutions of national systems of industrial relations are highly resistant to the forces which affect national systems of industrial relations and which might lead to their structural convergence. This is rooted, first, in the fact that the distribution of political and social power at national level exhibits great constancy, as do the structures of conflict and coalition which have characterised and stabilised the unique features of national systems. Second, and this is the core argument of this contribution, institutions have a great ability to resist change. This is especially true in the case of industrial relations with its long-established and large organisations.

As far as the probability of a functioning European system of industrial relations and collective bargaining is concerned, the present author would draw the same conclusion to that advanced by Berndt Keller (see Chapter 2) and highlighted in the contributions on the United Kingdom—though with other arguments. Based on previous experience, it is highly improbable that national systems of industrial relations will converge so much in the next one or two decades that a European-level system of employee interest representation will become possible.

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5

INDUSTRIAL RELATIONS AND EUROPEAN INTEGRATION

Patterns, dynamics and limits of transnationalisation

Hans-Wolfgang Platzer

INTRODUCTION

The effects of advancing European integration on national systems of industrial relations, and the associated need for a systematic analysis of the conditions, forms, and direction of the Europeanisation and 'supranationalisation' of industrial relations, have only recently attracted the attention of researchers. Although a number of valuable comparative studies have appeared in the past few years (Ferner and Hyman 1992; Hyman and Ferner 1994; Bispinck and Lecher 1993), by and large these have not concerned themselves with the specific context of the European Union and the transnational dimension of industrial relations. In particular, there has been almost no systematic consideration of the interaction between and consequences of the co-existence and superimposition of supranational and national relations between state actors and the parties to collective bargaining, both for systems of industrial relations and for broader areas of policy at the various levels of the European Union's multi-tiered system of governance. Similarly, there has been little research into the effects of the horizontal interaction between differing national systems of industrial relations and approaches to social and economic organisation which are embedded in the same Single Market and, as a result, are subject to the pressures of mutual regime competition.

Industrial relations have traditionally belonged to, and continue to number among, those areas of policy 'which have, as yet, been least caught up in the wake of European integration' (Traxler and Schmitter 1995). Collective bargaining in Europe

> forms a multi-form mosaic reflecting the different social, economic and political conditions existing in each country…. At the European level there has been a reluctance to match the process of collective bargaining to the forces at play in the broader economy, and the Europeanization of the economy has not yet been accompanied by the Europeanization of the process of collective bargaining.
>
> (Bridgford and Stirling 1994:161)

A number of studies have deployed arguments rooted in economic, institutional or regulative theory to establish the necessity of a 'European industrial relations area' which would be an 'important institutional component of a new productive system' (Teague and Grahl 1992:77) and 'would act to check those developments which block the emergence of arrangements intrinsic to a new growth model' (ibid.: 78). At the same time, it is soberly acknowledged that 'although the rationale for a European industrial relations area is coherent, actually establishing such an arrangement is far from straightforward' (ibid.: 78).

At the time the Single Market was completed, in the early 1990s, this author considered that, given the development of the 'social dialogue' in its then prevailing form and the existence of the first voluntarily agreed European works councils, European industrial relations was at 'an embryonic stage'. These initiatives at workplace and pan-sectoral European level were judged to have the potential both for shaping emerging pan-European structures and for further development (Platzer 1991). This view stood in contrast to more sceptical assessments:

> European-level relations between capital and labour, instead of constituting the core of the European political economy, will for the foreseeable future remain compartmentalized in the private sphere of large multinational enterprises and will thus be essentially non-political and voluntaristic in character. Where labour—capital relations enter the political area, they will mainly take the form of a set of discrete 'labour' and 'social policy issues'. As such, they will lend themselves to being dealt with by bureaucrats, experts, and intergovernmental committees in the same way as are, for example, labelling rules regarding the cholesterol content of palm oil or regulations for the recycling of mineral water containers.
>
> (Streeck and Schmitter 1991:158f)

Given that 'the future of the "Social Dimension" remains uncertain, and Euro-liberalism and Euro-corporatism will continue to contest the regulatory terrain, at both Member State and Community levels' (Rhodes 1992:47), substantial steps towards political integration—that is, the institutional and substantive reform of the EU Treaties and the extension of supranational powers—were seen as a precondition which had to be met 'before anything other than a minimal—and possibly ineffectual—system of EC labour market regulations can be produced' (ibid.). Despite the coming into force of the Maastricht Treaty, its phased project for economic and monetary union, and the broadening of the scope for action in the social policy field together with a strengthened 'social dialogue', academic research continues to be dominated by scepticism as far as the emergence of supranational structures of industrial relations are concerned. De jure, reference is made to the absence of the substantive and legal preconditions for transnational

industrial relations and collective bargaining because of the omission or express exclusion from the EU Treaty of any provisions on freedom of association, industrial action and the establishment of a legal framework for bargaining. De facto, reference is made to the absence of European collective bargaining institutions capable of aggregating interests at supranational level and the lack of a '(quasi-)official supranational actor' which could structure and politically shape transnational industrial relations. On this view, three mutually reinforcing factors serve to obstruct any far-reaching Europeanisation of industrial relations:

- the 'European and transnational weakness' of the trade unions, rooted in heterogeneity of material and ideological interests;
- the 'transnational organisational weakness' of the employers, their strategic lack of interest in a supra-state organisation for collective bargaining and interaction;
- the 'supranational weakness of the state', that is, of the EU (Ebbinghaus and Visser 1994:223ff).

Predictions are notoriously difficult, especially—as George Bernard Shaw noted—where they involve the future. And indeed, a number of developments have taken place since the Maastricht Treaty came into force which were not anticipated by the sceptical mainstream.

Between 'Maastricht I' and 'Maastricht II': a new dynamic in the Europeanisation of industrial relations?

Competing diagnoses and prognoses

In December 1994 the Directive on the Establishment of European Works Councils was adopted by the Council of Ministers on the basis of the 'Social Protocol'—that is, without the participation of the UK and with Portugal voting against. The Directive, which is expected to cover some 1,500 undertakings in Europe, was to have been simultaneously transposed into national law by 22 September 1996, although the process of transposition in fact dragged on, on a country-by-country basis, into 1997.

The possibilities for the development of the 'social dialogue' beyond agreement on joint non-binding declarations were also viewed with great scepticism by the majority of observers. However, in December 1995 UNICE, CEEP and the ETUC concluded a framework agreement on parental leave. For the first time, the procedure for concluding a 'Directive-displacing' social partners' agreement at European-level, as provided for under the Maastricht Treaty, was triggered and brought to a successful conclusion: this followed the failure of a draft Directive to make headway because of the British veto, and the abandonment of that legislative route in September 1994 after 12 years of discussion in the Council of Ministers. Even though

the agreement contains only minimum provisions, these go beyond the previous, final, draft submitted by the Commission. Following a decision of the Council of Ministers, the agreement will acquire universal applicability *(erga omnes)* in all fourteen countries concerned, with the main responsibility for implementing the agreement left to the member states, either by law or through collective bargaining.

The ETUC regards the outcome as very significant

> because it consolidates the legal force of the social agreement attached to the Treaty and gives more weight to the call to anchor this in the treaty following the Intergovernmental Conference. In addition, there is hope that the success of the agreement will create an impetus for the development of genuine industrial relations at European level.
> (ETUC 1995:3)

The ETUC and UNICE also decided to proceed with regulation of a further issue by means of a social partners' agreement. In the spring of 1996 both organisations were granted a mandate by their members to negotiate on the issue of part-time work and a provision was agreed in June 1997.

Should these developments be seen as structuring elements of a flexible but dynamically developing system of European industrial relations? Does the European Centre for Industrial Relations, established in 1995 in Florence through cooperation between the social partners with EU financial support, symbolise the beginning of a voyage to new transnational shores? Or are these developments simply the exceptions that prove the rule—that is, are national systems of industrial relations resistant to Europeanisation, and will they remain so, at least for the medium term?

The range of competing, and in some cases diametrically opposed, diagnoses and prognoses on the genesis, current state and prospect of European industrial relations is very wide. However, the positions can be assigned to the broad—albeit somewhat oversimplified—camps of 'Euro-optimists' and 'Euro-pessimists'.

The Euro-optimists

This view sets out from the position that the developments referred to above constitute structuring elements in a future system of European industrial relations, organised around two dynamic poles—the company-centred transnational level (see Chapter 2) and an overarching macro level, with its institutional focus in the 'social dialogue'.

It expects the guaranteed rights to information and consultation which will result from the across-the-board establishment of European works councils (EWCs) in the wake of the Directive to create the foundations for the possibility of company-based collective bargaining on issues such as training and working time. Moreover, EWCs would promote the convergence of

workplace employee representation across Europe and act as a catalyst for the harmonisation of trade union policies on employment issues and collective bargaining. This optimistic standpoint sees a positive link between trade union demands for participation, on the one hand, and the establishment of new post-Fordist systems of production and employment combined with the trend for many companies to move from nationally focused to pan-European organisations, on the other. On this view, EWCs would be a component and agent of a 'New Deal' in European industrial relations and, by forging new links and networks, would form the foundation for the subsequent emergence of collective bargaining at sectoral or supra-sectoral European-level, at least as far as the setting of framework conditions is concerned.

At the same time, the possibility of 'compensatory social dialogue' facilitated by the Social Protocol could be expected to yield further agreements, such as on training, etc., with an increase in the importance and role of tripartite concertation on employment matters. The arguments adduced to support this are:

1 A changed institutional framework; that is, the development of the social dialogue, originally established in the mid-1980s, from a 'round table' to the 'privileged forum for consultation and negotiation' of the European social partners following Maastricht, with a growing 'proto-corporatist' quality.
2 The changed political constellation within the Council of Ministers as a result of the accession of Austria, Sweden and Finland; that is, the extension of the EU to embrace countries which, as a result of their own national employment structures and traditions and their comparatively high level of social regulation, take a positive view of European social regulation—not least on grounds of the threat of regime competition.
3 The 'strategic exigencies' confronting the employers' side as a result of this political constellation; that is, the option of an 'autonomous' social partners' agreement as a 'second best' solution instead of an 'authoritative' statutory provision.
4 The assumption that under some circumstances negotiations as an alternative to legislation constitute non-zero sum games for the European social partners involved (Bookmann 1995:197ff).

Even if the mode of regulation provided for in the Social Protocol cannot currently be interpreted as offering a path towards European collective bargaining in its classical sense (amongst other things, because there is no appropriate European law laying down a corresponding autonomous norm-setting power), these processes of interaction and decision-making may be regarded as a 'practice ground' (Lecher 1996:36ff) for further social and economic concertation and—in the longer term—for framework collective agreements. The interaction of these two poles is seen as fostering

a development in which future European industrial relations will be structured as follows:

> Framework agreements concluded at the topmost level will set standards which will have a direct impact on the workplace level in decentralised systems of industrial relations such as [those in] France and Great Britain. In contrast, in more centralised systems, such as the German, they will be passed down to companies modified by regulations at sectoral level. In either case, national provisions will be subject to a 'top down' influence through European framework agreements, subject to the principle of subsidiarity. On the other hand, the conclusion of 'multinational company/workplace agreements' between managements and EWCs will introduce elements which will have a 'bottom up' impact on the shape of national collective agreements.
>
> (Bobke and Müller 1995:661)

The efforts to link national collective bargaining through greater information exchange and mutual consultation undertaken, for example, by the European trade union federations, such as the European Metalworkers' Federation, would serve as a vital link and support in such a process.

The Euro-pessimists

The Euro-pessimist view—which exists to varying degrees and is coloured by diverse organisational and theoretical concerns—proceeds from the argument that any extensive Europeanisation of systems of industrial relations is tightly circumscribed and the establishment of a genuine supranational system is improbable for the following main reasons:

- differences in the organisation, ideology and interests of Europe's national trade unions;
- trade union organisational and political weakness either in establishing an 'autonomous' transnational system of industrial relations or in impelling the EU legislature to create corresponding regulations (Ebbinghaus and Visser 1994);
- the absence of any corresponding economic and political-strategic interest on the part of companies and their representative associations and, to some degree, a lack of organisational capacity to create the preconditions for European industrial relations, combined with their possession of sufficient veto powers within European decision-making processes;
- the weight of national or sectoral coalitions of trade unions, employers and—in many instances—official institutions and the institutional inertia of these established national structures (see Chapter 4);
- the risks and costs of transformation expected by the actors in the creation of new (European) regulations.

The empirical argument notes that it has been possible, and will continue to be possible, to achieve regulation at European level on 'substantive' social policy issues such as free movement, equality, health and safety. In contrast, the creation of 'procedural' regulations, necessary for any system of European industrial relations, is seen as improbable as the 'follow-on costs'—at least for those countries which would have to adopt procedures alien to their political context—are largely unknown (Windolf 1992).

Recent developments are not seen as establishing adequate preconditions for a more far-reaching process of Europeanisation. Instead, the potential supply of themes which can be negotiated between the social partners at supranational level is seen as extremely limited.

EWCs' rights to information and consultation, which remain below that of 'genuine' codetermination, are seen as neither a sufficient counterweight to transnational corporate strategies nor an adequate basis for decentralised collective bargaining. Rather, they are viewed as dependent on management goodwill and, in many cases, as vehicles for engendering workforce acceptance of restructuring measures (Schulten 1995).

EWC representatives can be expected to regress to 'individual rational strategies'—despite more transnational cooperation—should corporate restructuring, prompted either by structural factors or a business downturn, mean that the burden of the crisis will be have to be divided up among a number of European locations.

A further argument contends that the establishment of EWCs will not represent 'any "neutral" extension or supplement' to codetermination already established at the level of national industrial relations systems. 'On the contrary, there is a risk that comparatively harmonious cooperative relationships in individual countries could be put under strain and that previously adversarial industrial relations in other countries will be exacerbated' (Seitel 1995).

Finally, it is held that any extensive networking of EWCs and European trade union structures (for example, between trade unions and workplace employee representatives in Germany) will prove unlikely.

> As long as the powers, resources and sanctions of trade unions in Europe are nationally anchored, EWCs will be less a sub-structure of European trade union organisations and more a reflex of workplace representatives to the internationalisation of structures of production in the European Community.
>
> (Mertens 1994:383)

In examining these competing hypotheses, this chapter sets out to pursue three objectives:

1 The main theoretical desiderata and problematic are outlined within the context of the relevant approaches—comparative industrial relations and integration studies.

2 The results of this analysis are presented, highlighting those conceptual aspects which contribute to a developmentally based and differentiated description and explanation of the transnationalisation of industrial relations, as appropriate to the specific system features of the EU.
3 The final section sets out to present, on a systematic and empirical basis, the key levels, forms and direction of the process of transnationalisation and to explore the potential and limits of future developments.

THEORETICAL DEFICITS AND CHALLENGES

Comparative industrial relations research and integration studies continue to exist alongside but largely unrelated to one another. The central questions, knowledge and methods of each approach have not as yet—and when measured against growing socio-economic interdependence and the institutional dynamics of the process of European integration—been sufficiently systematically brought together or even, at the least, served to mutually enrich each other.

The systematic application or transfer of the various industrial relations approaches—including rational choice theory (Wiesenthal 1986), the strategic choice approach (Campelli 1985), regulation theory (Jessop 1990:63ff; Boyer 1988), or the industrial relations system approach (Wood *et al.* 1975)—to the 'EU system' and their operationalisation for the analysis of transnational industrial relations have yet to take place. There are only a few empirically based analyses, including works rooted in a political-economy approach (Deppe and Weiner 1991).

Where industrial relations analyses do incorporate the EU context, they all too frequently take insufficient account of the specific nature of the links and interactions between national states, national economies and societies in the 'single integrated space'—that is, the contingency, singularity and dynamics of the process of European integration. It is assumed, in fact usually implied, that there is an equivalence between the 'state' and the 'EU system'. As a consequence, the structural characteristics of national systems of industrial relations—'corporatism', 'voluntarism', 'free collective bargaining'—are taken as the benchmarks for transnational industrial relations. The empirical diversity of national systems then becomes a structural barrier to any form of transnationalisation. An equally one-dimensional reduction of the prevailing complexity is exhibited by those approaches within integration studies which, in the tradition of 'classical' integration theory (and principally neo-functionalism), overemphasise the intrinsic dynamics of transnational and supranational processes and view their national structural preconditions highly selectively and from a 'top-down' perspective.

This explains why the comparative and integration approaches, when applied on their own, draw either too flat or a too contoured a picture

> of the many-layered terrain, like a map which only indicates either distance or relief. They often lead to inadequate hypotheses, either by seeking to predict too much (as with neo-functionalism) or too little (as with the neo-realist assumption of crude conflicts of national interests).
>
> (Ebbinghaus and Visser 1994)

Most research on European integration concurs with the view that:

> the study of the EU can no longer be restricted or contained within disciplinary boundaries, policy areas or institutional levels. To understand what is happening in the evolution of European domestic and international politics we must adopt multidisciplinary, multilevel, comparative and longitudinal approaches.
>
> (Leonardi 1995:279)

Such a research programme is certainly more easily formulated than delivered. As Streeck and Schmitter have observed:

> The possible dynamics of this unique and uniquely complex system of governance are as yet only poorly understood, and there is very little theory, if any at all, to guide such understanding. This applies not least to the literature on *state formation* and the *role of class conflict* in it.
>
> (Streeck and Schmitter 1991:151)

Long-term transformations in the relationship between the economy and labour are also confronting comparative industrial relations research with qualitatively new empirical and theoretical questions—at the micro level of employees and companies, at the meso level of trade unions, employers' organisations and other intermediate actors, and at the macro level of state and society. Far-reaching processes of change are emerging in diverse but interdependent dimensions.

> The long-established centres of gravity for work organisation and regulation, such as the workplace and enterprise, industry and nation-state, will be greatly diminished as a result of the simultaneous development towards globalisation and decentralisation of economic and work relations. As a result, on the one hand, of the building of inter-firm networks, and the setting up of intra-firm economic units (such as cost and profit centres, subcontracting etc.) on the other, firms are becoming more decentralised. With the redrawing of boundaries between industries, long-established industry wage agreements and organisation are breaking down. The nation-state is losing its position as a focus of regulation activities and interaction among the key players on the one hand to the regions, and on the other to transnational relations. [A further trend is] the secular decline in the ability of

> interest organisations, trade unions and employer organisations to integrate and bind their members. They are facing increasing difficulties in combining and unifying the individual interests of their members, with the possible result that in the future each association will have to take account of the organisational problem of its counterpart, or even take an active part in solving them.
>
> (*Industrielle Beziehungen* 1994:10f)

The underlying research problem thrown up by this far-reaching process of change has been succinctly expressed by Colin Crouch as follows: 'It is difficult to adopt a perspective during a period of major but uncompleted change' (Crouch 1995:311).

Given this situation in each 'discipline', which we can only outline here in the most general terms, no 'integrated theory' for the central object under scrutiny is in prospect. Any possible—partial—theoretical integration would presuppose, principally as far as the dimension of transnational industrial relations is concerned, both a better empirical basis and more developed perspectives within integration theory. The decisive parameters for the development of national and the emergence of transnational industrial relations are the specific dynamics, relations and interactions between the process of economic integration and the political and institutional development of the EU system. These processes are judged very differently by the various approaches to the question of integration. Approaches rooted in political-economy see a fundamental, and growing, asymmetry between advancing economic integration and lagging political and social integration. The Single Market programme and, in particular, the project for Economic and Monetary Union have pushed the EU towards a 'market society without a state'. Although competition between locations, and hence between different systems of political regulation, applies to all modern economies exposed to the world market, nowhere has the turnabout been as radical as in the EU, 'where the actual trend towards the internationalisation of capital and goods markets coincides with the legal implementation of a European single market freed from all national barriers to access' (Scharpf 1995:88).

On this view, the expectation—dialectical or functionalist—that the Single Market programme 'by driving market integration to the limit would also generate sufficient political pressure' (Scharpf 1995:88) to push forward political and institutional integration ('spill-over logic') has not been fulfilled, either on the basis of the Single European Act or the Maastricht Treaty. Moreover, given the fundamental conflicts of aims and interest amongst the EU's member states it is unlikely to be fulfilled in the future. None of the necessary institutional prerequisites, or corresponding reallocation of political authority, exists to compensate for the drive towards deregulation at national level through an extension of regulatory capacities at supranational level. The possibilities of achieving progress in the social field within

existing treaties are, at best, open only in 'product-related' regulation, but not in 'process-related' spheres (such as working time and codetermination) as it is in these areas that the major—structurally rooted—economic and social differences between the individual EU member states also give rise to divergent interests in the sphere of regulation. The erosion of the capacity for social regulation, already initiated by the Single Market, would—on a second line of argument—be reinforced by the Maastricht Treaty, and in particular by the project for Economic and Monetary Union (EMU). EMU would legally enshrine the dictates of the money economy and the absolute primacy of monetary stability. The future process of integration would, as a result, lead to 'monetary equalisation and social and economic differentiation' (Altvater and Mahnkopf 1993:97).

The path to monetary union and compliance with the convergence criteria have already become associated with serious social burdens of adjustment in most EU member states. The allocation of competences within a future monetary union—on the one hand a centralised and common monetary policy and, on the other, national and internationally coordinated economic, budgetary and fiscal policy—will create major macro-economic regulatory deficits, and hence additional social risks. Finally, the removal of interest and exchange rate flexibility will be expressed in the field of pay and pay setting through pressures for 'downward pay differentiation'. The erosion of the normal contract of employment, secured on the basis of (extensive national or industrial) collective agreements, would accelerate the 'deformalisation' of industrial relations (Altvater and Mahnkopf 1993; Narr and Schubert 1994).

European integration is both a reaction to economic internationalisation and a prime source of it. Moreover, since the mid-1980s this process has been characterised by a neo-liberal, monetarist paradigm. As a consequence both the 'political economy' approach and regulation theory offer important insights which are helpful in generating hypotheses on the development of (trans-)national industrial relations. However, on their own they cannot explain or adequately differentiate the complex developmental logic of integration—that is, the treaty bases of the Community, from Rome to Maastricht, as well as community policy outcomes in the spheres of 'market making', 'market breaking' and 'market correcting' policy. The latter requires a broader method, using approaches which take greater account of the political-institutional dynamics of the EU system.

The EU is more than an intergovernmental multilateral instrument,

> limited in scope and under the control of individual member states. Instead, the EU possesses characteristics of a supranational entity, including extensive bureaucratic competencies, unified judicial control, and significant capacities to develop and modify policies.
>
> (Leibfried and Pierson 1995:2)

Within the EU a wide and growing range of politics and policies classically considered domestic, such as industrial relations and social policy, cannot be understood 'without acknowledging the role of the EU within an increasingly integrated but still fragmented polity' (Leibfried and Pierson 1994:2). A new political science approach, which conceptualises the EU as a 'dynamic multi-tiered system of governance' would appear to be more theoretically promising (Jachtenfuchs and Kohler-Kuch 1996:15ff; König *et al.* 1996; Wallace and Wallace 1995). Following this comprehensive approach, the 'European industrial relations area' could be conceptualised as a dynamic and multi-tiered network of conflictual and cooperative relationships between corporatist and state actors at the various decentralised, national, trans- and supranational levels. In this context, the development of the 'Social Dimension', as with the restructuring of (trans-)national industrial relations, 'follows a twofold, crosscutting logic of diversity, by nation and by class' (Streeck 1995:416.).

> In pursuit of their interests, capital and labour have a choice in principle between building cross-national alliances within classes or national alliances between classes. How group interests align themselves with each other and with national states is affected by the constraints and opportunities offered by national and international institutions. In the process, political resources are generated and distributed in a way that favours some interests over others, thereby conditioning the outcome of multi-level policymaking.
>
> (Streeck 1995:416)

Such a comprehensive and ambitious research programme must still be delivered. The following sets out to explore some of the central analytical issues within this framework and offer some empirical illustration.

The central problem is the lack, first, of a differentiated account of the prerequisites for and prior process of the transnationalisation of industrial relations and, second, a precise specification of the economic-functional, material and institutional framework conditions for the development of cross-border industrial relations which takes proper account of the character of the 'EU system'. We have therefore proposed an operational definition (see the Introduction), according to which the transnationalisation of industrial relations should not be regarded as confined to—and in the current stage of economic-political integration is not primarily—'classic' collective bargaining, in which the social partners autonomously set terms and conditions of employment, primarily pay, at supranational level as well as national level. The process of development can only be approached in a differentiated way if the analysis is widened to include all types of cross-border or supra-state relationship between the social partners at a variety of levels, as well as the interplay of national and EU institutions with the social partners in the formulation, concertation and implementation of employment and social policies.

INDUSTRIAL RELATIONS IN EUROPE—EUROPEAN INDUSTRIAL RELATIONS?

The comparative perspective

The prospects for trans- or supranational collective bargaining increase with the degree of structural uniformity of national systems of industrial relations. If this assumption is accepted, then the question arises, and has to be answered both diachronically and synchronically, as to the main trends which characterise the development of national systems of industrial relations in Europe—a complex discussion which can only be outlined here under the rubric of 'transnationalisation'.

Following Traxler, three different hypotheses can be pursued (Traxler 1995:161ff):

1 Convergence of industrial relations systems in all industrialised societies (including those outside Europe) as a result of advancing market internationalisation. The common trend (convergence) consists in disorganisation (decline in the significance of collective negotiating institutions) and decentralisation (shift in industrial relations to the micro level).
2 Persistence of the divergence of national systems of industrial relations in the states of (Western) Europe. Economic internationalisation and the process of European integration will be dealt with in line with national priorities and procedural principles. Change will proceed in a 'path dependent' way—that is, in line with the preceding course of development—and structural diversity will continue to prevail.
3 Europeanisation of industrial relations as a consequence of EU integration—that is, following the logic of neo-functionalism, according to which the development of common community standards and institutions in some areas (principally economic) will impel harmonisation in others, and will be promoted by the supranational institutions. Europeanisation would imply a convergence within the EU and divergence from developments elsewhere in Europe.

These hypotheses have been tested by analysing the changes in the institutional matrix of industrial relations in Western Europe in the 1980s: the actors and their organisations, collective bargaining systems (levels, mode of regulation), and their integration with macro-economic regulation (interaction between the state and representative industrial relations organisations). Despite comparable challenges—internationalisation, socio-economic differentiation, etc.—and a convergence of problems, the findings are as follows (Traxler 1995:203):

1 In international comparison, the reactive adjustments of industrial relations systems are extraordinarily diverse. Whereas some countries exhibit a

growing fragmentation amongst representative bargaining institutions, in other countries there is growing concentration. Trends towards decentralisation or the complete erosion of collective bargaining can be contrasted with instances of centralisation, but also highly complex processes in which decentralisation and centralisation are combined. At the level of macro-economic regulation, there is co-existence between neo-liberal, corporatist and interventionist approaches…

2 That [development] cannot be explained by any of the relevant criteria of European integration. The given differences in the development of industrial relations cannot be fitted into the difference between the EU and the European Free Trade Association (EFTA), nor between small developed EU member states and EFTA, nor between countries with strong and those with weak currencies. Accordingly, any assumption that convergence is leading to a growing uniformity of industrial relations systems in the EU ('Europeanisation') must be rejected.

3 The most appropriate is the theorem of divergence in the narrow sense, that the institutions of industrial relations develop a specific selectivity based on their national characteristics.

Given this basic finding of a persistence of 'structural diversity', any analysis of the prospects for transnationalisation and the options for European collective bargaining must be more specific:

1 The previous development of limited supranational harmonisation in the field of social and employment policy can only be expected in 'segmentary' forms of community convergence (Platzer 1996a). What will be decisive here is not just the convergence of systems of collective bargaining but also their compatibility. (This is illustrated below in the case of the 'convergences' of political and programmatic interests within the European trade union camp.)

2 Precisely because the 'Europeanisation hypothesis', in the sense defined above, cannot be sustained, a differentiated empirical analysis must examine, first, whether and how the interests, behavioural preferences and the 'logic of collective action' of the actors will be changed by the economic and political-institutional dynamics of integration. Second, we must examine to what extent—despite divergent national industrial relations developments—new transnational alliances and selective forms of cooperation and regulation will develop within specific spheres of action.

3 Finally, assuming a process of advancing globalisation, or more precisely trilateralisation/continentalisation, of the world economy, will trilateral competition lead to a 'Europeanisation' of important interests and strategic preferences on the part of the actors and hence favour new transnational patterns of 'antagonistic cooperation' between the European social partners? Examples of relevant policy and problems areas might

be industrial and technology policy, as well as social and employment policy.

The normative and empirical discussion of the future of the 'European social model' in the broader context of globalisation now in train is an integral part of this problematic.

The supra- and transnational perspective

Following on from the explanatory approaches offered by integration theory (outlined above), and in a process of critical engagement with the 'Euro-optimistic' and 'Euro-pessimistic' positions also already set out above, we now turn to three more detailed questions as to the preconditions and frameworks for the development of transnational industrial relations:

1 Will a trans- or supranational need for regulation arise to complement, harmonise or, in some fields in the longer term, replace national industrial relations regulatory mechanisms? If so, at what stage of integration of factor markets and at what degree of macro-economic and monetary interdependence?
2 Do the actors have an interest in establishing such regulation? If so, are they are organisationally and politically able to agree corresponding substantive regulations at supra- or inter-state level or, in a more difficult process, establish procedural rules?
3 Must a certain degree of 'political integration', a 'positive merging of sovereignty', exist in the EU, and how must 'functional scope' and 'institutional capacities' be shaped and developed in order to structure and foster the development of transnational industrial relations, be this via push or pull effects?

Socio-economic integration and transnational interest in regulation

The interest of the actors in forms of regulation is primarily a function of their respective power on the labour market, but is also influenced by the competitive environment of product markets. The material advantages and superior resources of employers, the possibilities for substituting capital for labour and the greater mobility of capital all combine to create an asymmetry of power in the labour market. As a consequence, whilst it is in the interest of employers to regulate the employment relationship on an individual basis, employee interests favour collective regulation (Platzer 1992a: 779ff).

Furthermore, it is vital that the trade unions can respond to the growing mobility of capital by extending their own organisational scope, as strategic advantage is enjoyed by whichever party can succeed in extending its activities to cover a larger part of the labour market than its counterpart.

Nonetheless, in certain specific competitive circumstances and conditions in product markets, employers may have a preference for collective regulation. At workplace or company level, employers may also be willing to agree upon collective regulations with the aim of establishing 'productivity coalitions' with their employees and hence obtain competitive advantages vis-à-vis competing companies.

As a result, approaches towards a Europe-wide system of industrial relations are most advanced at this level, with the prime example being (voluntary) information committees in transnational companies. At branch level, the attractions of collective regulation for employers may be grounded in a desire to restrict pay competition and cut transaction costs.

As a consequence, employers will, at most, have an interest in Europe-wide collective regulations at the micro level and, in some circumstances, at the meso level, but not at the macro level (Traxler 1995). As will be shown in the case of the 'social dialogue', this will require certain political-institutional prerequisites and decision-making arrangements.

The numerical preponderance of employers' associations compared with trade unions at national level can be explained by the multiplicity of functionally differentiated trade organisations which represent their members in *product markets*. This pattern is repeated at European-level, where around 200 European trade and sectoral employers' associations are matched by sixteen European industry federations. Employees also have product market interests: however, these closely correspond to those of their employing enterprise or sector. This allows the trade unions to externalise employee product market interests to some degree. However, in the sphere of *labour market interests* companies have historically come together only for the purpose of regulating employment issues when placed under pressure by collective employee action. This inverse constitutive and developmental logic is reflected to some degree, as will be shown, in the pattern of development and the 'quality of the actors' of European-level trade union, industry and employers' organisations.

Using this 'logic of collective action' pursued by trade unions and employers, it is now possible to determine—and more precisely than is usually the case—those needs for transnational regulation which are generated by the process of economic and political integration.

Up until the mid-1980s, European integration was characterised by a progressive extension of product markets in parallel with largely national labour markets. The pressure for adjustment on historically evolved national systems of industrial relations prompted by integration was, as a consequence, fairly slight. Although modulated in accordance with national differences, trade unions retained a sufficient protective and institutionally shaping role to ensure that the threats to the national 'level of reproduction' posed by European integration could be warded off. It was only with the new strategy and 'criteria of rationality' of the Single Market process that labour markets, as well as product markets and to some degree national

systems of collective bargaining and social regulation, became subject to a changed 'dynamic of competition'. Although the initiation of the Single Market through the 1987 Single European Act left employment law, collective bargaining and most fields of social policy tied and accommodated to national circumstances, the subsequent dynamics of the integration of the Single Market touched on established national fields of interest resolution between the social partners.

These new complex configurations in the substantive interests and strategic approaches which characterise the European trade unions and employers, as well as the relations between them, need to be broken down and treated distinctly.

As numerous studies have shown, the—widely forecast—phenomena of 'social dumping', 'vertical regime breaking' or 'horizontal regime shopping' triggered by the Single Market process have not materialised in the field of social and employment policy (Atnet 1995:1ff).

The current crisis of the system of employment in Europe and the growing pressure for the reconstruction or dismantling of national systems of social security have a more diverse set of origins.

Two—over the long term antithetical—processes are relevant for the prospects for the development of transnational industrial relations:

1 In the sphere of product market interests, the competitive dynamics of the Single Market (and globalisation) can promote coincidences of interests between 'capital' and 'labour'—that is, 'productivity coalitions' in a variety of workplace, regional, sectoral or national formats.
2 In the sphere of social and employment policy interests, there will be a trend towards a common set of trade union problems, within which it is necessary to differentiate between 'identical' and 'common' problems.

Identical tasks require cross-border synchronisation of aims and interests for which national and decentralised strategies will serve for implementation. *Common* problems suggest supranational solutions which require transnational strategies using European levels of organisation.

Depending on product-market interests, the former could lead to a differentiated, transnational type of 'pattern bargaining', of which there are already some signs. The latter—and only the latter—will require genuinely supranational structures of industrial relations as well as supranational trade union interests and strategic options. In developmental terms, therefore, the overall referential framework for an empirical analysis of the need for a transnationalisation of industrial relations was set by the qualitative shift in the process of integration entailed by the Single Market. The period of observation is at most ten years, beginning with the moves towards the Single European Market (SEM) in the mid-1980s; if the formal commencement of the SEM is taken, it only runs from 1 January 1993.

And on the premise that a set of specific political and legal preconditions for the development of supranational industrial relations must be present, the date shifts even further forwards to the entry into force of the Maastricht Treaty (1 November 1993) with its—albeit only initial—moves in this direction (widening of Community social policy competence, extension of majority voting, and upgrading of the social dialogue). Furthermore, some studies have argued that the trade unions will only undertake a comprehensive strategic reorientation towards an authentic transnational approach to employment policy and collective bargaining once the qualitative shift from Single Market to Economic and Monetary Union has taken place (Busch 1994). On this reading, the necessity for transnationalisation still lies in the future. Nonetheless, if we mark off the concrete steps towards transnational cooperation between the European social partners, and its substantive results, over this relatively short period, then the first—limited but dynamic—movement towards transnational industrial relations can already be discerned. And although, in contrast to some 'Euro-optimist' scenarios, these processes cannot simply be linearly extrapolated, they have already advanced beyond the descriptions of current reality offered by the 'Euro-sceptics'.

The role of (supra-)state actors

The question as to whether, in creating procedural rules for industrial relations, the state is an original actor or simply 'ratifies' what the principals—'capital' and 'labour'—have already created has been answered in a variety of ways by historical and comparative research into the development of national systems of industrial relations. For example, Klaus Armingeon's (1994) study emphasises the central role of rule-setting by the state, and highlights the prefigurative effect of regulations established by the state for the development and reform of national industrial relations systems, especially in periods of crisis (wars, world economic crises). This approach contrasts with analyses which, as in the case of studies of British and German developments in the nineteenth century, show that in a number of European countries collective industrial relations were developed between trade unions and employers prior to the state's creation of corresponding legal frameworks.

Given the differing developmental logic of the 'national state' and the 'EU system', these explanatory approaches have only a limited applicability to the development of transnational industrial relations and are, at best, of heuristic value. If, given this qualification, European developments so far are viewed in the light of national historical experience, and its corresponding explanations, then the following emerges:

1 Those European works councils 'voluntarily agreed' since the mid-1980s, which reached around 100 at the point the EWC Directive was adopted and embraced a broad range of industrial and service companies,

would represent examples of transnational industrial relations developed independently of state regulation. This approach had a substantial impact on the legislative process and form of the subsequent Directive. It is also likely to exert a major influence on the various stages through which the Directive will be implemented.

2 The 'social dialogue', first legally enshrined in the 1987 Single European Act, was developed through the Val Duchesse talks, at which a major initiating and chairing role was played by the 'supranational instance' of the EU Commission, and in particular by Jacques Delors. In turn, following several years of experience, the European social partners agreed a number of further 'autonomous' decision-making rules in the early 1990s. This 'agreement' was taken up by a majority of governments during the Maastricht negotiations and was incorporated in the final treaty.

Developments so far at European-level have clearly, therefore, been shaped by a set of specific interactions between 'autonomous' transnational-societal, intergovernmental and supranational factors. Consequently, the view that the absence of a 'supranational state actor' rules out the emergence and development of structures of transnational industrial relations requires some qualification.

However, within the EU the (supra-)state factor does exercise a specific role in shaping the form of transnational industrial relations. Firstly, the Commission—both as 'activist bureaucracy' and 'process manager', and as 'financier' (for example, through the funds allotted to facilitate transnational contacts between the parties to collective bargaining)—plays an important role.

Second, finally, changes in the EC treaties were needed which, reflecting the outcome of a complex process of inter-state interest resolution, have created the political prerequisites (such as majority voting on the EWC Directive) or institutional framework (upgrading of the 'social dialogue') able to set in train the prerequisites for dynamic process of transnationalisation.

The European system of interest intermediation and the role of transnational societal actors

Transnational industrial relations at sectoral and supra-sectoral level require capable European transnational actors on both sides of industry.

The question as to whether such 'Euro-actors' already exist—or, as a minimum, whether developments point in this direction—has been answered in variety of ways in the literature, although the predominant feeling is negative. According to Kohler-Koch, research on the European system of interest intermediation and transnational societal actors has yielded at best 'a kaleidoscope of still images from varying theoretical perspectives'

(1992:81). The following observations are directed at two aspects on which research has been less concentrated:

- the lack of historical differentiation in observing developmental processes of transnationalisation;
- an inadequate systematic-comparative perspective on the development of European trade union and employers' organisations.

The author's findings, based on empirical and historical studies of European employers' organisations and trade unions, are as follows (Platzer 1981, 1984, 1991). A basic correspondence can be discerned between the emergence and development of transnational organisations and the broader political and economic process of integration. This, in turn, allows some conclusions to be drawn as to the prospects for the development of the transnational actors in the field of industrial relations:

1 The emergence and development of transnational organisations—and this applies with equal force to employers' associations, trade unions and other organised group interests—primarily follow in the wake of political projects for integration. This political determination can be read off at a number of turning points in European politics: the Marshall Plan (1949), the foundation of the European Iron and Steel Community (1951) and the EEC (1957), the various enlargements of the EC up until the 1987 Single European Act, and the Maastricht Treaty. That is, organisations adapt their European structures to match the competences and decision-making methods which prevail at the supra-state level.
2 The internationalisation of markets and the relative density of economic and technological links occasioned by European market integration play a not inconsiderable—but secondary—role compared with the institutional determinants. The enormous growth and transformational dynamic in European interest intermediation triggered by the completion of the Single Market shows that the actors both anticipate and react to advancing market integration and changed competitive conditions. However, what is decisive are the altered powers and decision-making procedures of the Community which followed the treaty amendment brought about by the Single European Act: that is, the increase in majority-voting on the Council of Ministers, the cooperation procedures between the Council and the European Parliament, and the 'politicisation' of the organisation of the Single Market (re-regulation) in the fields of social, regional, environmental and consumer-interest policy.
3 In contrast, a specifically transnational dynamic through which European employer and trade union organisations give a direction and structure to the political-institutional process of integration can only be discerned, at best, in embryonic form and in highly localised instances—some of which have already been noted above. One noteworthy strategic

potential for the exertion of influence during the preparatory phases and initial implementation of the Single Market has been most readily identified in the literature as emanating from transnational companies: for example, they banded together to establish the 'Round Table of Industrialists' in 1983.

In order to analyse the emergence and formation of European employers' associations and trade unions in both a developmental and comparative way, we make use of an 'typological sketch' to differentiate four stages (organisational types) of transnational organisation in terms of the 'quality of the actor' (Platzer 1992b):

1 The 'round table', primarily characterised by multilateral contacts and cross-border exchange of information.
2 The 'platform for transnational coordination' (alliance) which takes on tasks of coordination and cooperation.
3 The 'transnational pressure group', which also represents selected common interests at European-level (and through parallel activities by members vis-à-vis national governments).
4 Finally, as a possible but as yet unrealised scenario, the 'transnational intermediate organisation'. In the form, for example, of a European collective bargaining party, this would be a largely autonomous transnational actor able to exercise leadership and control over its national members.

Using this analytical schema developments can be—briefly—classified as follows.

The transnational organisation of the peak-level organisations of trade unions and employers, which began with the Marshall Plan (1947) and the foundation of the Organisation for European Economic Cooperation (1948), took place in distinct stages and in a broadly comparable pattern. In the 1950s and 1960s they operated in accordance with a type of organisation of the first category, category 1 above. But whereas UNICE moved towards an organisation of type 2 in the late 1960s, European trade union cooperation remained fragmented both regionally (separate EEC and EFTA organisations) and ideologically (competing communist, Christian and free international trade union confederations). It was the impulse lent by British, Danish and Irish membership of the EEC which prompted a process of reintegration culminating in the unification of these competing organisations within the ETUC in 1973 (albeit with the exclusion of a number of communist federations, some of which were progressively admitted in the 1970s and 1980s, but still excluding the French CGT—Confédération Générale du Travail). Only after this step did the long process of organisational and programmatic consolidation begin towards a type-2 organisation.

At the time of the negotiations for the Single European Act and the first stage of the Single Market, both the ETUC and UNICE began to

exhibit some of the features of a type-3 organisation (although UNICE possessed greater resources and freedom of action). Since the late 1980s, both organisations have begun to reorganise their transnational cooperation and acquire greater resources as far as their decision-making processes are concerned (Falkner 1996; Platzer 1996b).

During the 1960s and 1970s numerous European industrial trade and sectoral associations were established. The 'quality' of these *c.*200 organisations varies considerably. Judged by their capacity for the transnational intermediation of product-market interests, a large number of organisations now correspond to a type-3 organisation. Some, including those in chemicals (CEFIC) and pharmaceuticals (EFPIA), have even begun to develop the first elements of a type-4 organisation, for example through the transnational development of self-regulation ('private government'). In other cases, intersectoral competition and divergent national policy differences on trade and industrial issues mean that other branch organisations, as in the automotive industry or textiles, operate at the level of a type-2 organisation. As far as the European intermediation of social and labour-market interests by sectoral business organisations is concerned, the very recent past has seen the beginnings of information exchange and an intensification of coordination corresponding to organisations of type 1 and in some respects type 2. The few genuine sectoral employers' organisations, such as the West European Metal Trade Employers' Federation (WEM), correspond to a type-2 organisation. The organisational development of the trade unions at sectoral level led, by the mid-1960s, to the European reorganisation of pre-existing international structures of cooperation and the establishment of nine industry committees, rising to thirteen by the late 1970s. The sixteen industry committees (now 'industry federations') affiliated to the ETUC only acquired their current shape since 1992. In most cases, these sectoral organisations remained type-1 organisations for some time. It was not until the 1980s, in a reaction to the Single Market project and the expansion of sectoral and 'horizontal' community activities, that organisational developments were set in train which led to an organisational quality corresponding to a type-2 model. Only a few European branch trade unions, such as the European Metalworkers' Federation, exhibit the characteristics of a type-3 organisation.

Since the mid-1990s, the European employers have pursued a dual networking strategy in response to the Maastricht Treaty and its social agreement, both of which can be interpreted as a strategy of 'defensive coordination'. At *national* level, for example, the German Confederation of Employers' Associations (BDA) has established a coordinating group with its industry affiliates, which, for their part, are members of a European branch association. At *European* level, UNICE has been instrumental in establishing a European Employers' Network (EEN) to which around sixty branch organisations currently belong. The EEN is envisaged as a standing, but 'informal', information and coordination body. It is not intended to have any decision-

making powers, and cannot therefore be a potential target for discussion and negotiation for 'third parties'.

As far as current and prospective trade union cooperation is concerned, the following recent developments are relevant. Studies on the national preconditions for European trade union cooperation initially confirm the persistence of structural heterogeneity. And although all national trade unions have changed in the post-war period, and in particular in more recent decades, these changes have not had a marked impact on the variations between trade unions on dimensions such as membership density and organisational form and strategy. Trade union diversity, with its roots in national differences, current membership and financial crises, but principally differences of interest on approaches to Europe, serves as an endogenous barrier to the establishment of 'borderless solidarity' (Ebbinghaus and Visser 1994) and, at the same time, sets the limits for any deeper supranational trade union integration. The lack of transnational 'push effects' is the product, amongst other things, of the fact that those trade unions which have most to gain from transnational cooperation 'are least able to promote it.... On the other hand, those trade unions which can exert the most pressure on Brussels are less willing to give up the national political arena' (Ebbinghaus and Visser 1994:230). The high formal representativeness of the ETUC, which embraces 80 per cent of all union members in Europe, co-exists with a 'peak-level organisation dilemma': that is, mediating the interests of fifty-eight national central organisations from twenty-eight countries, organised along different lines with varying resources and political styles, as well as the sixteen affiliated industry federations.

Since the late 1980s, this continuing structural heterogeneity has been paralleled by a growing convergence in both the ideological and policy fields. The overarching trend towards greater similarity in the problems and threats confronted by national unions as a product of the industrial transformations and restructuring of the 1980s has prompted the majority of those—now weakened—trade unions with a traditional 'conflictual' ideology and practice to adopt a more cooperative approach.

Moreover, a number of union centres with previously anti-European positions have now abandoned this stance: this has been most marked in the case of the British Trades Union Congress (TUC), which has expressly set out to reconquer ground lost nationally by combining its forces with those of continental trade unions and has established its own Brussels office (see Chapter 7). International developments, such as the end of the East-West conflict and pressures towards cooperation domestically under the pressure of crisis (as in Spain), have diminished the role of ideology in conflicts between political trade union movements. One expression of this is the admission of the communist-oriented Spanish Comisiones Obreras (CC.OO) to the ETUC in 1991. Finally, national organisational competition for European recognition has diminished. One expression

of this development is the admission of the German Salaried Employees' Union (DAG) into the ETUC, despite its previous rivalry with the industry-union-based national confederation DGB. Compared with the 1970s and 1980s, there is a progressive convergence in trade union programmes, ideologies and strategies (Platzer 1991), without which the developments in the field of European works councils and the 'social dialogue', which are driven by a 'social partnership' approach, would not be possible.

To summarise, in contrast to the 'Euro-sceptical' 'freeze-frame' view, a discrete but nonetheless dynamic process of transnationalisation can be observed in the sphere of European-level organisations. However, the 'co-evolution' of political-administrative and organisational structures at European level observed in the case of some European fields of regulation (Eichner and Voelskow 1994) does not, in general, apply to labour-market organisations—a hypothesis confirmed by the course of development: the European organisation of interest groups grows in response to and not in advance of integrative steps (Kohler-Koch 1994:166ff).

TRANSNATIONAL INDUSTRIAL RELATIONS IN THE SINGLE INTEGRATED SPACE: LEVELS AND FORMS OF INTERACTION, MATERIAL RESULTS AND PERSPECTIVES

The European 'single integrated space' is characterised by four levels of organisation and action which potentially lend themselves to supranational negotiations (Platzer 1992a):

- multi-industry European confederations—that is, the ETUC, UNICE (private employers) and CEEP (public employers);
- European branch and sectoral organisations—that is, the European trade union federations and sectoral trade and employer associations;
- interregional level, especially in border regions;
- transnational companies and groups in Europe.

The interregional level

The most unclear and, regarded from the current standpoint, most improbable development is that of transnational collective bargaining at an interregional level, despite the fact that border regions have often been categorised as a 'laboratory for a social Europe' (ETUC 1995:3). Ever since the early 1970s, experience of a common set of socio-economic problems has encouraged trade unions in border regions to maintain informal contacts. The establishment of the ETUC in 1973 created an organisational framework which facilitated an institutional consolidation of this network. This took place subsequently through the 'interregional trade union councils'. Currently, there are—both

within and outside the EU—twenty-nine such bodies established under the aegis of the ETUC. In theory, transnational collective agreements are conceivable between border regions. The number of cross-border workers in the EU is put at some 500,000. Although their social concerns have been regulated in a number of EC instruments since the mid-1960s, numerous barriers to mobility persist. In addition, there are a number of problems related to both the physical infrastructure and the operation of labour markets which both employers and unions might have an interest in resolving. Up to now, however, the trade unions have lacked any effective institutional meshing between these levels and their national and European trade union structures at sectoral and central level. On the employers' side, there are no comparable institutional structures which might serve as the basis and focus for the pursuit of transnational collective bargaining in an interregional context.

At best, what might be expected is an intensification of transnational connections and improved coordination. These will be substantially 'pre-structured' by EU structural and regional policy and support programmes. Since the early 1990s they have also been singled out for support by the EU Commission. This includes the incorporation of the regional social partners into the 1993 EURES programme (European Employment Services) and the provision, since 1994, of ECU 300,000 for the work and development of trade union interregional councils.

The branch level

Despite the trend towards the decentralisation of collective bargaining and erosion of multi-employer bargaining evident in a number of countries, the branch level remains the most important level of industrial relations and collective bargaining in the majority of EU member states. In an analogous strategic projection on to the EU level, the ETUC and its industry affiliates have formulated the following objectives for European industrial relations. The configuring of the social architecture of the EU requires 'the qualitative extension of the social dialogue with the aim of creating solid employer—employee relations at European level and framework agreements at inter-sectoral and sectoral level' (Gabaglio 1994:130). This requires, first and foremost, a strengthening of the transnational capability of the European industry federations (previously, 'European industry committees') as, in the long term, 'collective bargaining in Europe too must be anchored in the sectors and branches' (ibid.).

What is the relationship between the origin and status quo of sectoral European trade union and employer structures, their interests and interactions, and this ambitious perspective?

The sectoral prerequisites for branch-level industrial relations vary considerably. Potential issues for regulation range from health and safety policy in the application of genetic engineering and biotechnology in the

food industry to provisions on bad weather payments in construction and the introduction of new forms of work organisation in the automotive industry. Relations between employers and trade unions at sectoral level—whether institutionalised contacts within the framework of the Commission's advisory bodies or more informal forms of cooperation—have, as yet, primarily been concerned with industrial, business and technical issues. There are, in theory, a number of common sectoral interests—such as competition or trade conflicts with US or Japanese competitors—where both sides might find virtue in developing cooperative strategies. In turn, these could be used by the trade unions in 'political exchange' for the regulation of employment matters. As yet, however, wherever social dialogue has culminated in joint opinions, their 'material substance' has, in general, not reached the status of binding agreements; in many cases, they have been no more than political symbolism. Examples include the memorandum on vocational training in the retail sector concluded between Euro-Fiet and Euro-Commerce in 1988; the 1993 joint trade union/employer (FIEC/EFBH—European Construction Industry Employers' Federation/European Federation of Building and Woodworkers) position on posted workers in the construction industry; and the recommendation on the implementation of health and safety Directives in the cleaning industry, agreed in 1993 between Euro-Fiet and the industry association FENI.

As far as the private-sector trade union federations are concerned, their readiness and capacity to engage in European collective bargaining is limited by both organisational factors and the differing interests of their respective affiliates. With a few exceptions, European industry sectoral associations are, as noted above, purely trade organisations. Any extension of their powers into the social, bargaining and employment fields, even if practicable and desirable on pragmatic grounds, would prompt major problems of reorganisation given underlying national differences and the division between trade and employers' associations. The oldest genuine European employers' association at branch level, the West European Metal Trades Employers' Federation (WEM) is currently opposed to any further institutionalisation of sectoral social dialogue (Platzer 1992a:787).

As far as the European trade union federations are concerned, the organisational and strategic preconditions for an effective transnational approach are—as already noted above—very divergent, but in most cases largely unmet.

The prerequisites and options for sectoral industrial relations have, as yet, hardly been subject to systematic study. In particular, there is a lack of comparative inter-sectoral studies. One of the few qualitative studies, dealing with the public sector, concludes that although the transnational organisation of employee interests is more developed than that of the employers', and pragmatic considerations have led to a narrowing of differences between employee organisations which would have been regarded as unbridgeable

at national level, none of the actors seriously contemplates ceding powers and rights to transnational organisations. Different strategies for asserting interests and pursuing trade union—employer relationships entail differing time perspectives. In the short term, lobbying will remain the most effective form of exerting influence. In the medium term, a largely decentralised social dialogue in those areas of the public sector which exercise cross-border tasks could gain in importance. Collective bargaining, initially on qualitative issues, is conceivable at best only in the long term (Keller and Henneberger 1995:128–55).

One of the first comprehensive quantitative surveys on developments in all the sectoral social dialogues, published by the ETUC in March 1996, offered the following results:

> The history of social dialogue at sectorial level shows that not everyone starts at the same time or out of the same starting blocks. For example, social dialogue in the agriculture, mining and transport sectors dates back several decades. On the other hand, social dialogue has only recently (1995) emerged in the graphical sector. Between these two extremes, social dialogue in the services, textiles and foodstuffs sectors has been prevalent generally for no more than 10 years. Since around 1990 an acceleration and significant development of sectorial social dialogue in the various sectors took place.
>
> (ETUC 1996:2)

The report noted two principal problems:

> The first concerns the identification of the employers concerned: e.g. the trade union federation may be faced with a very large number of employers (as is the case for ECF—IFC which has to deal with 70 organizations) or the federation encounters very few employers (e.g. EFBWW [construction], EMF [metalworking] and ETUC-TCL [textiles]); or deals with just one single organization (as is the case for EFA) or the federation finds it very hard to identify an employer's organization (which is the situation of EPSC).
>
> The second problem concerns the lack of political will on the part of the employers to negotiate binding agreements.
>
> (ETUC 1996:6)

Nevertheless, developments so far and future prospects are judged from a 'Euro-optimist' standpoint:

> Given the limited resources at their disposal, the federations have managed to trigger social dialogue in a number of different branches of activity…[and regarding] the highly complex nature of the European level, the trade union federations have shown a very imaginative approach

> so as not to extrapolate the existing collective national systems to the Community level.
>
> (ETUC 1996:10)

One fairly realistic scenario for the development of short- and medium-term steps for the establishment of sectoral-level industrial relations, as well for longer-term perspectives, can be seen in the approach of the European Metalworkers' Federation (EMF). For the long term, the EMF is committed to the goal of negotiating European collective agreements (see Chapter 12). To this end, it recently reaffirmed its call for a cross-border right of association, a right to take industrial action and a legal foundation for collective agreements concluded at EU level: this would ensure the direct Community-wide force of agreements between the social partners. As an immediate aim, the EMF is pursuing European coordination of activity. In 1993 it envisaged a three-stage programme which has since been further elaborated and, in part, set in train. The first stage provided for the systematic collection of macro-economic data and information on collective agreements, organised into a data bank. The second stage of closer consultation was intended to provide for the presence of observers from sister trade unions at important national, regional or workplace negotiations. Only after the completion of this process of mutual information and consultation was it proposed to proceed to a European-wide coordination of bargaining objectives, tactics and strategy. The main areas for consultation and coordination include organisation of working time, remuneration and distributional issues, forms of work organisation and production systems, skill definitions and grading (Bobke and Müller 1995). The aim of this level of coordination is not, therefore, to displace national bargaining strategies, but rather to support them through more intensive transnational communication and cooperation.

Company level

The workplace level, discussed elsewhere in this volume, has a central role in the overall context of the theoretical and empirical dimensions of transnational industrial relations raised here. There is a strong argument that the transnational level of the company will also develop as a dynamic pole of a differentiated system of European industrial relations.

According to the European Trade Union Institute (ETUI), some 1,150 transnational undertakings employing around 15 million people will be covered by the EWC Directive. When fully functional, EWCs are likely to engage the activity of some 50,000 employee representatives—as noted elsewhere, this is far from a mere 'playground' of industrial relations.

In contrast to the Euro-sceptic view, the EWC process highlights the following facts:

1 The Directive has created, if with a lag and only post-Maastricht, a counterweight to the greater corporate integration at transnational level triggered by the Single Market and evident in the rapid growth in cross-border acquisitions of minority stakes, mergers and joint ventures. The number of such processes in the immediate wake of the Single Market process is set out in Table 5.1.

Table 5.1 Mergers, minority stakes and joint ventures in the EC

	1985/6	*1989/90*	*1991/2*
Mergers	300	830	520
Minority stakes	180	310	220
Joint ventures	150	200	170

Source: Platzer 1996b: 126

2 In marked contrast to the neo-liberal approaches prevalent, for example, in the USA, the Directive establishes information and consultation as positive contributions to corporate decision-making. And it is innovative in that it creates, for the first time, an authentically European institution in the social field. In contrast to previous Directives, it therefore takes one important step beyond merely the national implementation of a common European set of framework conditions. As well as legally established (minimum) standards, it also includes steps towards 'transnational procedural rules'.
3 Despite trade union criticism of the detail, the Directive is also an example of a well-balanced mixture of subsidiarity (national adaptation through implementation), proportionality (cooperation between governments and the social partners in drafting and implementation) and flexibility (the Directive offers a number of options for practical implementation). As such it is an 'EU-typical' response to the fundamental problem of the 'management of diversity' which characterises the process of integration.
4 Within the EU the fact of transnational interdependence and 'policy diffusion' can be seen in the fact that the UK government's opt-out from the Agreement on Social Policy, and hence the attempt to thwart the introduction of EWCs into the UK, has failed. As yet, no UK company covered by the Directive has sought to exclude its UK workforce, a substantial number of voluntary agreements were negotiated prior to the transposition date in September 1996, and a number of large British companies have established a working group independent of the Confederation of British Industry (CBI) to support and coordinate the establishment of EWCs in companies which have their headquarters in the UK.

Whether EWC structures can become the seed of a more complex system of European industrial relations which may eventually have its core in

sectoral collective bargaining cannot yet be ascertained. However, one essential foundation has been created (Lecher and Platzer 1996).

'Peak' organisations and the 'social dialogue'

Looked at in terms of the history of European integration, the 'social dialogue' provided for in the Maastricht Treaty marks the creation of a qualitatively new framework of activity which has already visibly restructured and intensified the interactions within and between the European social partners and their cooperation with EU institutions.

During the negotiations over the Maastricht Treaty, differences as to the 'vertical' assignment of powers between the national and European levels played a central role. They were expressed in the 'principle of subsidiarity', set out in Article 3 of the Treaty. The reformulation of the 'social dialogue' added an additional component—a 'principle of horizontal subsidiarity'.

In comparison to the weaker 'European tripartism' of the 1970s and 1980s consisting of tripartite conferences and the Standing Committee on Employment (Kohler-Koch and Platzer 1986) there are now new options, both institutional and substantive, for transnational industrial relations. Paragraphs 1 and 2 of Article 4 of the Agreement on Social Policy in the Maastricht Treaty provided two paths through which the employers and trade unions at European level can implement agreements concluded between them. Under Paragraph 1, agreements can be concluded between the European social partners (which could, in theory, include pay agreements with Europe-wide validity). Implementation would take place 'in accordance with the procedures and practices specific to management and labour and the member states'. This approach is not wholly new, inasmuch as Article 118b of the 1987 Single European Act already incorporated the principle in the EC Treaties. However, it is unlikely to be used to any great extent in the medium-term. In contrast, the procedure under Paragraph 2 has an entirely novel character. This allows for the possibility, on a defined set of issues, for agreements between the two sides to pass into social legislation. The prerequisite is a decision within the Council of Ministers which then leads to the agreement becoming binding *erga omnes*—that is, on third parties who are not members of signatory organisations. However, this procedure cannot be used to conclude agreements which could enter into European legislation on pay, rights of association, the right to strike or the right to lock out.

Whilst the European-level organisations of the social partners were more 'agents of influence' in the 1970s and 1980s, operating within tripartite forums through informal and formal lobbying and only in an advisory capacity, there are now two treaty-based options which go a good deal further:

1 The actors can conclude collective agreements as 'autonomous decision-takers' under procedure 1.
2 Under procedure (2) they can function in a mixed role as both agents of influence and decision-makers and consequently exercise powers to shape regulations. Under procedure 2 three issues have already been dealt with in the relatively short period of time for which the new treaty framework has been available, although the outcome was different in each case: European works councils, parental leave and part-time work. As yet no comparative empirical study has been made of the processes which led to these decisions.

Any analysis of the options and possible dynamics of transnational industrial relations in the context of the 'social dialogue' must take into account its complex institutional framework conditions and specific constellations of interests and processes of exchange. These can be outlined using a variety of theoretical approaches (Bookmann 1995).

Interests and options for European-level organisations

Negotiations via the 'social dialogue' procedures could offer lower costs for those organisations involved than 'rent seeking' via customary lobbying strategies, as no services have to be delivered to influence the counter-party, but rather concessions have to be made over the object of negotiation itself. Moreover, negotiation can minimise risks compared with legislation. Such considerations have played, and play, a major role for the employers. Their main motivation in the installation of the new 'social dialogue' was, according to General Secretary of UNICE, 'anticipating the legislator… placing [oneself] in their place' because in the past 'they have adopted overdetailed regulations' (UNICE 1992).

Participation can also facilitate greater attention to the preferences of those organisations involved—one reason for the ambivalence of British employers about the UK government's social policy opt-out.

In contrast to a rent-seeking process, in which ultimately the principle of 'free market access' rules, the 'negotiating privilege' of the social dialogue in theory allows the social partners involved to resolve their differences at the expense of third parties—unless organisations which currently compete with these insiders can subsequently exert a matching influence over the decisions of the Council of Ministers. This in turn explains why a large number of Euro-organisations—such as that in commerce (Euro-Commerce)—are insistent on their right to be included in the procedure. The Commission (and indirectly the Council), which controls these rights, has identified twelve 'representative' organisations (see Chapter 1). Any extension of this circle under procedure 2 could lead to a variety of consequences:

- the broadening of the basis of the legitimacy of decisions made, greater national acceptance and improved decentralised impleme.ntation;
- a reduction in the efficiency of decision-making because of the larger numbers and greater heterogeneity of the parties;
- changed strategic calculation on the part of UNICE, CEEP and the ETUC which would lose their 'exclusivity' and possibly choose procedure 1 under certain circumstances.

Negotiations would be costly and in some circumstances impossible if organisations had to accommodate major differences of interest. These could be of a substantive character (differential impact of European regulations); they could also reflect fundamentally different conceptions of social and economic organisation (such as having to accept alien 'regulations'); and they could also lie in the relations within and between the organisations themselves. For instance, such problems have arisen between the branch- and central-level trade union organisations within the ETUC over who has a negotiating mandate, as well as differences of regulatory approach between national trade union organisations, such as 'free collective bargaining' v. 'statute'.

This again raises the question, already touched on above, as to the 'quality of the actors' of the European social partners. Looked at over the longer term, although there has been a steady trend towards Europeanisation and transnationalisation—albeit lagging behind the actual level of economic and political integration—the current level of integration lies below that of the transnational 'intermediary' organisational characteristics required for more extensive use of the possibilities offered by the 'social dialogue'. Such a degree of transnational coordination may have been evident in the negotiations on parental leave: however, since there was an 'institutional' convergence of interest on both sides—namely, establishing the very viability of the decision-making procedure itself—generalisations based on this case need to be treated with caution.

Interests and options for the Commission and Council of Ministers

Under the agreement the Commission and Council of Ministers continue to exercise considerable powers and options. The interests of governments and the Council of Ministers in the 'social dialogue' procedure might, in theory, consist in the fact that its results and effects relieve the state of the necessity to make regulatory provisions, comparable to the role of national 'free collective bargaining'. On the other hand, procedure 2 can lead to an increase in political pressure to adopt Directives in a way which runs counter to the interests of some national governments. This ambivalence became apparent in the negotiations for the Maastricht Treaty itself: the passage from the joint submission of the social partners which provided

for agreements between them to be accepted without amendment by the Council was struck out.

The position of the Commission could in theory be weakened by the 'autonomous policy of [concluding] agreements' and the transfer of regulatory rights on social minimum legislation within the 'social dialogue'. However, as the Commission continues to have the monopoly on initiating proposals within the sphere of compensatory social dialogue, it can—despite its task of promoting 'social dialogue'—remove from further consideration projects raised by the social partners which it does not like, or not submit to the procedure at all. This new procedure offers the Commission a number of benefits. It takes the steam out of the objection that the Commission is pursuing 'over-regulation' and 'centralisation', and is seeking to interfere in national collective bargaining and social cultures through Community social legislation. Proposals based on the outcomes of negotiations between the social partners have a greater political weight, and hence a greater prospect of adoption, within the Council of Ministers. That is, they correspond to the Commission's interest in raising the cost of exercising a national veto. Finally, the Commission has long had an interest in engaging in political exchange with the European-level organisations. Their consolidation and 'corporatist' integration boost its own institutional role. The more that European-level organisations—encouraged by the new procedures and supranational dynamics—are able to aggregate divergent national interests transnationally, the more they are also able to cooperate with the Commission in areas other than those designated by the Social Protocol, such as the far-reaching ideas for making labour markets more flexible, and European infrastructure and growth policy as envisaged in the 1993 'Delors White Paper'.

Whether the social dialogue and the interaction of the European-level organisations of the social partners will develop into a dynamic force in the shaping of European social and employment policies depends, as indicated, on complex patterns connected with the interests and organisations involved. What will be decisive in the first instance is how the 'EU social policy regime' will develop as a whole. Streeck's 'Euro-sceptical' analysis, for example, notes developmental tendencies which he dubs 'neo-voluntarism':

> With respect to the European Union's domestic political economy, neo-voluntarism stands for a type of social policy that tries to [make] do with a minimum of compulsory modification of both market outcomes and national policy choices, presenting itself as an alternative to hard regulation as well as to no regulation at all. In particular, neo-voluntarism allows countries to exit from common standards if their polity or economy will not sustain them *(cohesion by exemption);* gives precedence to established national customs and practices, and encourages contractual agreements between market participants *(unity by subsidiarity);*

> tries to enlist for purposes of governance the subtle, cajoling effects of public recommendations, expert consensus on 'best practice', explication of the common elements of national regimes, and mutual information and consultation *(governance by recommendation, expertise, explication, and consultation);* offers public and private actors menus of alternatives from which to choose *(governance by choice);* and hopes to increase homogeneity among national regimes through mutual education and comparisons made by electorates of their situation and that of citizens in other countries *(governance by diffusion).*
>
> (Streeck 1995:424f)

However, the EWC process, like the development of the social dialogue since Maastricht, exhibits a tendency to go beyond this in a process which might be characterised as a 'legally and politically enforced voluntarism'. On the other hand, the new treaty-based decision-making arrangements of the social dialogue—at least in the sphere of EU social legislation—have created the bases for the interaction of the social partners and EU bodies which already display 'proto-corporatist' features.

New impetus might be given to the social dialogue under the following conditions. The British 'opt in' to the Agreement on Social Policy following the election of a Labour government will bring to an end 'cohesion by exemption'. If this were to provide the EU Commission with the opportunity to abandon its tentativeness on social policy since Maastricht (reflected in its recent Social Policy Action Programme), a new pattern of voting might emerge on the Council of Ministers—at least in those areas open to qualified-majority voting—sufficient to induce the employers' side to prefer the path of 'compensatory social dialogue'.

The Amsterdam Treaty, agreed in June 1997, which revised the Maastricht Treaty did not lead to any substantial changes in the structures of decision-making in the social area: the main step, vital from the standpoint of ending the UK's opt-in, was to incorporate the provisions of the Agreement on Social Policy into the main body of the new Treaty. Although new emphasis was given to the issue of employment in the treaty, these mostly involved developing mechanisms for co-ordinating employment strategies, with machinery for disseminating best practice between member states. Additional social partner involvement is provided for through the creation of an Employment Committee: this body would have advisory status on employment policies, and would be required to consult the social partners—adding to the scope of social partner participation and interaction at European-level.

Overall, the development of industrial relations at European level during the 1990s—primarily at enterprise level and within the framework of the social dialogue, and to a much more limited degree at sectoral level—has been marked by a new dynamic. This is demonstrated both in an

intensification of transnational networks and interactions and in some initial substantive outcomes. When set against the trends which have characterised the broader economic process and the relative stagnation of EU development in other fields and 'pillars' of the Maastricht Treaty, this development is certainly worthy of note. It constitutes a refutation of a number of the Euro-sceptic prognoses derived from the developments of the 1980s.

However, we should guard against any overly Euro-optimistic extrapolation of current trends. In addition to the imponderables of how the EU will continue to develop and the substantial risks and uncertainties associated with EMU, especially in the field of collective bargaining, industrial relations in the 1990s has been characterised by a number of developments which could weaken European-level institutionalisation: these include the bipolar trend towards the simultaneous globalisation and decentralisation of economic and employment processes, the erosion or partial supplanting of the traditional domains of collective bargaining and its associated organisations, including the growing problems of industry-level bargaining in some countries, and the diminishing cohesive force of and exodus from collective organisations.

The complexity, dynamics and contradictoriness of these developments are opening up new, wide-ranging fields of research which await, and command, our attention.

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Part II

TRANSNATIONAL INDUSTRIAL RELATIONS AND EUROPEAN COLLECTIVE BARGAINING

Views of the actors, preconditions and structures

6

COLLECTIVE BARGAINING AT EUROPEAN LEVEL

A sectoral employer's viewpoint

Peter Reid

This chapter is in two parts. Part A was a presentation from the standpoint of the UK Engineering Employer's Federation (EEF) given to a conference organised by the Friedrich-Ebert-Stiftung in May 1993. The paper, as originally published in German, was left in the first person to reflect its polemic nature.

Part B concerns the experience to date of the social dialogue aspects of the Social Protocol of the Maastricht Treaty and the attempts by the European social partners to reach 'agreements' via social dialogue. In addition, it considers whether the social dialogue, coupled with the process involved in establishing a European works council imposed by the September 1994 Directive on transnational information and consultation, is a further move towards some form of European collective bargaining or merely another piece of European-level legislation that the proponents of European-level collective bargaining claim in support of their case.

PART A: EC COLLECTIVE BARGAINING—WISHFUL THINKING OR DANGEROUS FRAUD?

There has been much recent talk of the feasibility of EC-level negotiations. This has not been limited to pay but extended through the ETUC/UNICE agreement of October 1991, enshrined in the separate Social Protocol attached to the Maastricht agreement, as the possibility of concluding agreements on employment, labour and social matters. I would like to address two issues: first, whether the concept of EC-level bargaining, either at confederal or sectoral level and regardless of subject, is a worthwhile and beneficial goal; and, second, its practicability.

Every time I read or hear about the need for a minimum base for social and employment conditions—far less pay—across the Community, I am reminded of the conclusions reached in 1956 in the report by an International Labour Organisation (ILO) group of experts entitled *Social Aspects of European Economic Co-operation*. The issue of whether Europe needed a social dimension

was hotly debated during the early 1950s. That debate included all the thorny rhetoric that is used today. 'Social dumping' was a concern then. Would closer economic integration between a number of countries lead to 'unfair competition' from countries with lower labour standards?

The answer of the ILO group of experts known as the Ohlin Committee was extremely clear. They concluded that differences in the general level of labour costs between countries do not create lasting disparities. Indeed they went further: they stated that there was no need for activist interventionist policies to encourage broad equivalents of such overheads in the pan-European economic area.

The Ohlin report was produced not by a group of free-market economists—on the contrary it reflected the broad consensus of economic thinking across the member states of Europe at that time. The committee also concluded that it would be neither desirable nor feasible to undertake the harmonising of social security schemes and they rejected the idea that hours of work and overtime rates should be standardised. They went further, and clearly stated that the length of the working week and related topics should be determined by each country or industry.

In essence, the conclusion of the Ohlin report was simple. An active interventionist social policy was not a necessary part of a new economic dimension to Europe.

Of real interest is that the one area where they did believe standardisation could occur was proper 'health and safety at the workplace'. That is not the same as the European Commission's wider interpretation of Article 118A of the Treaty of Rome, where 'health and safety' has been used as a Trojan horse for legislative measures primarily concerned with working conditions, such as the Directive on the organisation of working time.

What does this have to do with EC-level collective bargaining? I would suggest a lot. There has never been in the past, nor is there now, a coherent and sustainable economic argument for standardisation. Standardisation is an inevitable effect of EC collective bargaining. I use the term 'standardisation' deliberately, and not 'harmonisation', as the inherent nature of the collective bargaining process is to produce a standardised result.

What is therefore the point of EC-level collective bargaining? Who will it benefit? Not, I believe, employees. Ultimately it will institutionalise trade union and employer power at an EC level. Are we really that blinkered that we imagine the rapid growth in decentralisation can be stopped? The proponents of European-level collective bargaining would wish the Single Market and the consequences of that development to go away. The success of the Single Market and ultimately the success of Europe in meeting the challenges that face it in the latter part of the twentieth century and into the twenty-first century depend upon European companies maintaining and increasing their share of the world market. We need to be looking outwards, not inwards. Engineering employers in the United Kingdom

are resolutely opposed to all such negotiation at EC level, regardless of subject.

Let us look at practicalities.

The Engineering Employers' Federation (EEF) used to bargain collectively at national level the pay and conditions of engineering and metal trades employees in over 5,000 engineering companies. At the height of its power during the 1960s and early 1970s the agreements it reached determined the pay and conditions of over 3 million employees. That ended in 1989, because employers believed, and employee representatives implicitly acknowledged, that they were in a better position to negotiate these matters at a domestic or company level.

It should be noted that this was not an overnight event. From the early 1970s onwards, increasing concern had been expressed by companies at the very concept of national and sectoral bargaining, which inhibited companies' abilities to respond to the market. That led in the case of the UK engineering industry to large companies, particularly in the automobile sector, moving away from national collective bargaining to determine pay and conditions at company or domestic level. While such a move was inevitable, in the context of a 'voluntary' industrial relations system such as that in the United Kingdom, we are now seeing similar moves in countries with more regulated industrial relations systems, such as Sweden and several others. If employers do not believe that a national sectoral body such as EEF, to which they voluntarily belong, is the appropriate forum for determining matters such as pay and conditions, how much less would companies believe an EC-wide sectoral body could determine such matters.

The move to local bargaining has not just been to company level. It has been devolved right down to plant, and sometimes shop, level within the company. It has led to large multinational corporations having a diversity of practice and myriad systems which reflect the business circumstances of the individual operating company. Many companies in the UK have dispensed with collective agreements altogether and are rewarding employees individually. It is important to note that this practice has happened not because employers wish to deny employees rights but simply as a reflection of companies' responses to increasing globalisation and the reality of a world market.

An examination of the range of pay settlements reached since EEF ceased national bargaining shows clearly that where a business's profits are increasing, then employees benefit, whilst those businesses with problems, where the market is tight, either forego increases in pay or agree wage cuts. We believe at EEF that there is a simple truth: a workforce which understands the nature of the business and is involved in the manufacturing process is better able to accept difficult decisions.

As was stated earlier, the effect of collective bargaining is to create standardisation. At the national level, that imposes a norm on business, a norm that would little reflect the individual economic situation of the

company. EC-level collective bargaining would impose a norm so remote from the individual company as to be meaningless. In any situation, if a norm cannot be afforded there will be an adverse effect—to the ultimate detriment of employees. To misquote Samuelson, the American economist and Nobel prizewinner: what good is it to the employee to know that he should be entitled to a 5 per cent pay increase if it is that very fact which is leading him to lose his job?

EC-level collective bargaining would have a centralising as well as standardising effect, giving employers and trade unions an institutional significance which mirrors the EC institutions in Brussels. Such centralisation sits very uneasily with the developing decentralised reality of corporate organisation and bargaining structures. Shop stewards and works convenors who now bargain at plant level in the engineering industry in the United Kingdom are unlikely to happily give up the power and the closeness to the decision-making process that the abandonment of national bargaining has provided.

I have difficulty in comprehending a situation where local union officials will accept an EC-wide norm when they know their particular business is operating extremely profitably. Rightfully, they will want their members, i.e. employees, to benefit. The local management is likely to wish the employees to benefit too. They will not be amused by central dictat, requiring local management to limit increases because plant A or country A is making a loss even though they are making a healthy profit.

If EC-level collective bargaining concerning pay is both unrealistic and a retrograde step, then this will apply all the more to the conclusion of collective agreements on social and labour matters. Each member state within the current European Community, as well as in the wider European economic area, has developed a unique industrial relations response to what are in effect similar situations. The responses have been diverse and reflect cultural and legal developments. The divide is not, as some present it, between the United Kingdom and the rest of Europe—as if somehow the United Kingdom's geographical insularity singles it out. In fact there is a significant difference between labour law and practice in Belgium, Luxembourg, Germany and France, even though these countries touch upon one another. The effective standardisation and centralisation of EC collective bargaining would stifle the natural differences within democratic systems that have provided the very benefits that employees receive today. Such a process would be fundamentally contrary to the principle of 'subsidiarity' enshrined in the Maastricht Treaty.

I would like to turn very briefly to what the European Parliament termed the 'democratic deficit' in relation to Maastricht. What right do unions have to negotiate these matters at EC level? This is not intended to be provocative. For any collective bargaining to be legitimate requires the parties to be truly representative. In several member states union membership is below 20 per cent and falling. What kind of legitimacy is there in empowering

trade unions to negotiate at a pan-European level? I believe it is totally illegitimate. Likewise, as an employers' organisation, we have already been disenfranchised at national level and I believe it would be totally illegitimate for an employers' organisation such as ourselves to seek such negotiating powers at a European level.

In the long term, employees will not benefit from rigid solutions. The livelihood of people in the European Community depends upon flexible solutions to ensure that our businesses remain competitive. Practical issues of bargaining focus on the immediate concerns of employees. Those concerns vary considerably. For example, a primary concern of employees at the present time in the USA centres on issues such as medical insurance, whilst there are equally differing negotiating imperatives in each member state of the EC.

Seeing EC-level collective bargaining which will ultimately lead to common conditions throughout the EC as a goal is a dangerous illusion. It will hamper decision-making, remove competition, introduce rigidities and ultimately destroy jobs. It is the success of the market, or rather our success in competing in it, that has provided the living standards we now have in the EC. That has been achieved because of, not despite, diversity.

To improve those living standards in the long term we should be focusing on making businesses more competitive—competitive externally beyond the frontiers of the European Community, recognising that we compete in a world market. Businesses will need to improve the provision of information to employees.

Employees will need to feel that they are a real part of the business and that the business's success is their success too. If we do not have that as our goal, then the EC will not be the economic powerhouse that it has the opportunity of becoming.

PART B: SOCIAL DIALOGUE, EUROPEAN WORKS COUNCILS AND THE EMPEROR'S NEW CLOTHES

The driving forces behind the October 1991 agreement between the ETUC and UNICE, which gave significant powers to the employers and trade unions during the legislative process and were later enshrined in the Maastricht Treaty, culminated in agreement for vastly differing reasons. Whilst for employer and trade union confederations in certain member states, such as Denmark, the October 1991 agreement and the role of the social partners contained within the Social Protocol—including the ability to conclude collective agreements—is a natural extension of existing national competences, the same cannot be said for every member state. The underlying assertion in Part A that the social partners awarded themselves powers they did not have the authority to hold, far less exercise effectively, has been evidenced by the social dialogue experience to date and will be confirmed in the

future as the European Union expands. Several of the countries lining up for membership of the European Union do not have well-developed employer and trade union confederations with the ability to reach *erga omnes* agreements, thus further questioning the inclusion in the EU legislative process of arrangements whose continuation is dubious in the context of democratic development.

The first proposal to be considered under the social dialogue arrangements concerned transnational information and consultation or European works councils (EWCs). The pressure for this legislation was the sustained trade union campaign over decades to have greater rights of access to management within multinational corporations than those afforded by national law. Skirmishes between employers and trade unions on this issue have been a feature not just of the European Union but of international organisations such as the ILO and the Organisation for Economic Cooperation and Development (OECD). The attraction for either employers or trade unions of negotiating and reaching an agreement on EWCs was and is extremely limited. Of all the proposals being considered at that time by the Social Affairs Council, that of European works councils was possibly the most emotive for both employers and trade unions, and as a result the least suitable to be considered under a new legislative process. That unsuitability was further underlined by the extent to which both employers and trade unions were relying upon political pressure—at national level through the positions taken by individual member states within the Social Affairs Council and at European level by the European Parliament—to represent their respective positions.

It is difficult to see how any employers' confederation would have been given the power to negotiate on EWCs given that the proposal had—and has—such a direct and significant effect upon individual multinational companies, conceivably at the expense of other multinationals.

Following the failure to negotiate over EWCs, considerable pressure was brought to bear upon the European social partners. The second proposal to be considered under the Social Protocol concerned parental leave. The question needs to be answered as to whether the negotiation and then agreement of the social partners have anything to do with collective bargaining. By the time the social partners, the ETUC and UNICE, agreed to negotiate on parental or family leave there had been lengthy discussions within the Council of Ministers, and an absolute majority save for the UK in favour of the then Belgian Presidency's compromise text.

Faced with the certainty of legislation in a given form, the negotiating process—while clearly being more than simply a 'rubber-stamping exercise'—did not produce an agreed text significantly different from that which would have been forthcoming had the Commission simply brought forward a text arising out of the pre-existing discussions that took place within the Council of Ministers. Can this in any way be said to be collective

bargaining? The words used by the UNICE Social Affairs Director at the time, Nils Trampe, are illuminating. In public and private statements, Trampe referred to the agreement on parental leave as 'negotiated legislation'. Not only does that fall a long way short of any definition of collective bargaining, but it is actually difficult to conceive of any bargaining system where the negotiating bodies would seek to negotiate when in real terms there was already a pre-existing solution—further, a solution known to the parties in advance, and a solution which absolutely dictated the parameters of the bargaining process.

The decision by the social partners to have the agreement formally adopted by the Council of Ministers, rather than exercising the option open to them of implementing the agreement themselves at national level, reinforces Trampe's description of the process and the subordination of social dialogue within normal governmental decision-making. This then raises the question as to why the social partners were prepared to go through a process where there was a predetermined outcome. The only explanation must centre upon the original thinking behind the October 1991 agreement.

In essence, for many parties the October 1991 agreement was about extending the influence employers and trade unions exercise in the EU legislative process rather than any desire to seek to negotiate or conclude collective agreements at a European level. Taken in this context Trampe's phrase 'negotiated legislation' is a byword for the further institutionalisation of certain employers' and trade union organisations within the EU legislative process. In effect the agreement and process institutionalise the social partner organisations at the expense of wider and more democratic consultation.

In any collective bargaining process the parties themselves dictate the terms and conditions under which negotiations take place. The specification of the timescale under which the first two consultation stages of social dialogue under the Social Protocol operate actively discourages any rational collective bargaining process. The timeframe allowed for consultation under the social dialogue's first and second stages is eight weeks in each case. A mandate-granting process downwards from European confederal level through national confederal level, national sectoral level and to individual companies, and then upwards along the same channels, with discussion and agreement at each stage, is an impossibility given the timeframe allowed. Indeed, it is almost impossible to imagine the social partners being able to negotiate on any proposal unless it has already been the subject of extensive consultation, debate and unless there is significant agreement on an actual text at a political level across the majority of member states.

The third proposal submitted for consideration under the social dialogue concerned the burden of proof in sex discrimination cases. As a draft Directive concerned primarily with member states' legal systems, the issue was one on which social partners chose not to seek to negotiate an agreement.

Whilst the decision was not unexpected, more difficult questions should be asked as to why negotiations did not take place. Whilst the proposal itself may well involve changes to member states' legal systems, the effect of the proposal has a direct bearing upon the employees and undertakings that the social partners represent. If adopted during 1997, the Directive on burden of proof in sex discrimination cases would lead to changes in member states' legal systems. That in turn will impose duties and obligations on employers and employees, duties and obligations that will require changed procedures and practices. It would have been in the direct interest of both employers and trade unions to seek to negotiate some form of agreement in this area reflecting very directly the need for a balance to be achieved. If the social partners are competent to 'negotiate' agreements, the fact that the subject matter is a legal issue does not remove the possibility of the social partners having the expertise to undertake such negotiation.

The fourth proposal to be considered under the Social Protocol, which is now the subject of negotiation between the social partners, concerns part-time work. At this stage (December 1996), it is uncertain whether the social partners will reach agreement. If agreement is reached it is likely to reflect very closely the already well-developed text which has been considered by the Council of Ministers. The pressure to reach an agreement has inevitably been increased by the simultaneous discussions leading to the Intergovernmental Conference in June 1997, as well as the Commission's consultation document on the future role of both social and sectoral dialogue.

If, as I have suggested, the social dialogue process needs to be considered as a form of institutionalisation of consultation within the European legislative process, then the secondary question arises as to what is the effect of the election of a Labour government and consequent signing of the Social Protocol by the UK. What will be the effect of the UK participating in a social dialogue process that can, and may in the future, involve negotiating legislation? There are at present no structures whereby the CBI (the UK confederation of employers) could be said to act for or on behalf of UK business interests in respect of determining European legislation that would become applicable within the UK (see Chapter 8). Neither is there a national process which reflects social dialogue at a European level. The moves to decentralisation of collective bargaining in the UK within the last fifteen years have increasingly seen sectors such as engineering abandon national-level bargaining, and it is difficult, if not impossible, to imagine companies voluntarily returning such powers to sectoral, far less confederal, levels. The inclusion within the UNICE social dialogue process of the CBI—whose voice, whilst mute at present as a result of the non-applicability of any legislation adopted via this route, would automatically change were the UK to be part of and bound by the Social Protocol—would raise real difficulties for the UK.

The most likely consequence would not be that it would automatically lead to the introduction of social dialogue or the institutionalisation of employers and trade unions at national level within the UK, but that it would expose the social dialogue process within the EU to closer scrutiny. The realisation that social dialogue at the EU level is no more than the institutionalisation of employer and trade union power, and is at best 'negotiated legislation' within the EU legislative process, would constitute an honest assessment and conclusion. The notion that somehow social dialogue is part of a general Europeanisation of collective bargaining, and ultimately European-level collective bargaining, could then firmly be dismissed. Social dialogue, including the current 'negotiating process', would then have its rightful place, and importantly the debate on collective bargaining would recognise that the processes both of globalisation and of Europeanisation as a result of the Single Market and Economic and Monetary Union (EMU) will continue to ensure that collective bargaining takes place at the most viable point. That point will not move further to the centre, as some commentators have suggested it will as a result of EMU, but will in fact be marked by further decentralisation as the responses to EMU impose tighter disciplines at individual company and plant level. Inevitably national-level and sectoral-level collective agreements will become looser frameworks with the consequences of EMU imposing discipline on both employers and trade unions to achieve sustainable agreements. Fragmentation rather than harmonisation will increase as both global competitive pressures, as well as fiscal discipline, will reduce national social-partner actors' ability to control the parameters of negotiations.

EWCs have been heralded by some commentators as a renewal of or another step towards European-level collective bargaining. Experience to date, which has comprised primarily pre-Directive agreements, has not suggested that negotiations to achieve such agreements reflect any of the characteristics associated with collective bargaining. The experience of the author, who has been involved in several negotiations concerning the establishment of voluntary pre-Directive agreements, is that the negotiations to establish an EWC are unlike any normal collective bargaining process.

First, there is a complexity of structure on both management and employee representative sides that does not reflect the essentially political framework within which the EWC Directive was introduced. For many multinationals, the concept of Europe does not necessarily include the same countries as those signatory to the Directive. A company's geographical structure reflects its markets, and those markets may well create strange hybrids. For example, in answer to a question posed at the ETUC conference in October 1996 in Brussels, as to why Phillip Morris had excluded Swiss employees from their EWC, the Director of Public Affairs at Phillip Morris replied that it was simply because Switzerland was the responsibility of another geographical sector and therefore outside the scope of any European

information and consultation structure as far as Phillip Morris were concerned. The same question, asked of other multinationals in respect of other member states of the EU and EEA, could easily have provided similar answers.

Second, the organisational structure of many multinationals does not sit easily with the concept of a single overarching European representative structure. A devolved multinational with dozens of product lines in several different sectors will have different reporting systems, structures and procedures, often within the same EU member state. Often there is no similarity between the businesses—or, more importantly, between the direct concerns of employees within the businesses. Loyalty is vertical within the business rather than horizontal across individual member states.

Third, many multinational corporations within the scope of the EWC Directive are complex amalgams of businesses covering a number of different sectors. In several multinationals different businesses can be in competition with one another, creating a bizarre contradiction in relation to transnational information and consultation. More importantly, multinationals which have devolved responsibility down to business lines and operating units manage their businesses at arm's length. Internal issues such as information and consultation practices and procedures are not dictated by central management and in many cases an individual business's identity is retained when it is acquired. Employees' perceptions of loyalties lie with the individual business rather than the overall multinational. For multinationals in this situation it does not matter that company *B* is a wholly owned subsidiary of multinational *A* as far as employee loyalty and interest is concerned; and company C, which also belongs to multinational A, despite the fact that it is in the same member state as company B, may well be in a different sector or in any event producing a different product, where there is no relationship between companies *B* and C. In this situation information sharing and consultation between companies *B* and *C* may in a real sense be, at best, worthless to the individual businesses.

Inevitably, the process of reaching agreement on a pre-Directive agreement in multinationals reflected the need to identify an information and consultation structure and procedure which both met the aspirations of employee representatives and did not cause conflict with existing information and consultation procedures, and, perhaps more importantly, did not cause conflict with internal company organisational issues. The success of the European Metalworkers' Federation (EMF) in brokering so many (approximately 125) pre-Directive agreements in the engineering and metal industry reflected their understanding of the complex issues facing multinationals (and employee representative sides). Pre-Directive agreements are in the main 'aspirational' rather than 'hard' legalistic documents. Both employer and employee representative sides are 'committing' to a process intended to provide for transnational information and consultation. That process, it is recognised, will have to deal with issues where there will be real obligations, both

national and transnational. The management of those issues will be critical, as it is at company or individual plant level that the direct interest of employees and the direct concerns of employers will apply in respect of transnational issues. If a transnational takes a decision to relocate production from member state *A* to *B*, then there will be obligations in both the individual member states and at transnational level. The experience to date is that the transnational level has at best an overview, whilst the detail is determined at individual company level in both member states. This reinforces the importance of local-level processes. The creation of an EWC is the creation of a body for information and consultation. EWCs are not bodies and will not become bodies for negotiation or collective bargaining. It is almost impossible to imagine a situation where a committee at transnational level comprising thirty representatives can legitimately act for several thousand employees whose main focus will be the decision-making level which directly affects their day-to-day interests. At best, employee pre-meetings to EWC annual meetings will become a forum for the exchange of information and views, information that may well affect what occurs at local level within a member state.

Complex cultural forces are at play within EWCs and it is difficult to imagine decision-making automatically being given up at local or national level in favour of a new European level. In simplistic terms the bargaining process that has led to the establishment of EWCs reflects a similar process to that which occurs in negotiations under the social dialogue. In each case there is a 'given': either political agreement on a well-developed legislative text, as in the social dialogue, or the minimum fallback requirements in the event that employer and employee representative sides fail to reach agreement in respect of EWCs. Trampe's phrase of 'negotiated legislation' could just as easily be said to apply to the EWC process as to the social dialogue process.

By way of conclusion, it is fair to consider what has been the driving force for employers' preparedness both to participate in the social dialogue aspects of the Social Protocol and to negotiate, voluntarily or otherwise, EWC agreements, rather than simply waiting for the minimum requirements of the annex to come into force. The answer to this question lies in employers' need, and it is a real need, to influence the legislative process, when a traditional 'empty-chair' policy would not suffice. The decision by UNICE to participate in negotiations on legislative measures both ensures that pre-existing texts are not further extended by the European Parliament or other actors within the legislative process, and reinforces UNICE's position as an institution within the legislative procedures, whilst a company's decision to negotiate a pre-Directive agreement occurs as a result of an examination of transnational information and consultation structures, and the identification of a process that is more favourable than that which would be applicable from the minimum requirements under the EWC law.

These situations are about 'exercising power', not about collective bargaining, even though in one case, EWCs, it is seen as a cipher by the trade unions for the establishment of European-level collective bargaining. The express exclusion of collective bargaining from EWC agreements, an exclusion that in many cases is proposed by trade union and employee representatives, not employers, reinforces the position that EWCs cannot and will not become structures for collective bargaining.

As the European Union develops, the proponents of EC-level collective bargaining continue to see developments such as 'social dialogue' and 'European works councils' as but small steps towards the effective standardisation and centralisation of EU-level collective bargaining reflecting an EU-wide set of minimum social policies. Employers will continue to exercise their rights, whether in social dialogue procedures or in maximising the opportunities provided in legislation, such as EWCs, as long as there are advantages for exercising such rights.

The message is clear: it is companies' differences, not similarities, which create profitability and increase market share. Similarly, the natural differences based on well-developed employment and social systems within EU member states should be a strength enabling the EU to compete in the global economy.

The advocates of EC-level collective bargaining wish to create a standardised and centralised EU model which ignores and rides roughshod over existing differences. This will be little short of the Emperor's new clothes as European business faces the challenges of global competition.

7

EUROPEAN SOCIAL DIALOGUE AND INDUSTRIAL RELATIONS

The view of the TUC

David Lea

After the decisive 2:1 referendum result on continuing British membership of the European Community held in 1974 by the Labour government, British trade unions began to reappraise their policy on Europe. Throughout the late 1970s and early 1980s, a vigorous debate continued each year at the TUC Congress. A serious assessment of the impact of the Single Market on social policy began in 1987 and at the TUC Congress in Bournemouth in 1988 we embraced the European Social Model. Jacques Delors, who gave the keynote address, received a rousing reception. Describing the movement towards the completion of the Single Market by the end of 1992 as 'irreversible', he stressed the core elements of the European Social Model: a model based on a skilful balance between society and individual, a model based on social solidarity, protection of the weakest, and on collective bargaining. To all intents and purposes, in 1988 the TUC embraced a European social market economy.

The defining principles, as the TUC sees them, are:

- a commitment to a strong welfare state, with a determination not to let the unemployed, underprivileged and plain unlucky suffer real poverty;
- a commitment to partnership and dialogue between governments, employers and workers;
- a strong role for trade unions and employment protection law in ensuring minimum standards under which no employer dare go.

Welfare, partnership and minimum standards are the foundations of modern Europe—Social Europe—and are generally set out in the 1989 EU Social Charter.

THE NEED FOR A STAGED SOCIAL UNION

As we anticipate the completion of the process of Economic and Monetary Union (EMU), we see this process as crucially contingent upon an aligned process of completing the Social Union and of fighting mass unemployment.

The simultaneous completion of these processes is an essential prerequisite for the enlargement of the EU to the east. Both the two main political groups in the European Parliament (the PPE—European People's Party (Christian Democrats); and PSE—Party of European Socialists (Social Democrats, including the UK Labour Party)) acknowledge this. The question is, how do we do it?

STAGE 1: THE SOCIAL CHARTER

The success of the move towards the Single Market was contingent on the success of the Social Charter of the Fundamental Rights of Workers (altered from 'the fundamental rights of citizens' to openly acknowledge the fears that many workers had at that time). Jacques Delors realised this better than anyone else. The Social Charter, transformed into the Social Action Programme, has proved to be extremely successful. The Commission's *White Paper on Social Policy* showed that EU member states had transposed the majority of Directives applicable to employment and social policy by the end of 1993. Two years later the transposition of health and safety Directives had reached an average of 73.5 per cent for the fifteen member states, although problems of enforcement at national level remain.

The TUC played an active role in the consultation process on this legislation at Community level and took part in further discussions in the European Parliament through the Trade Union Intergroup and the European Parliamentary Labour Party (EPLP) Liaison Committee. The Trade Union Intergroup, as a cross-party forum within the ETUC, is a crucial mechanism for communicating facts about national situations. Because of the negative attitude of the British Conservative government on social and employment policy, the TUC has played a more active role than most national centres in the Intergroup, explaining to Members of the European Parliament (MEPs) of all parties the significance of Commission proposals for British workers.

Within its own structure, the TUC examined each proposal in the Network Europe Contact Points meetings on a monthly basis and in the Committee on European Strategy. The largest single grouping of Directives within the overall total of thirty-eight dealt with health and safety. These came into effect through the mechanism of the procedures for qualified-majority voting under Article 118a of the Single European Act. While the then UK government could not block these Directives for this reason, it did try to force amendments to the texts in Council. The TUC was actively involved in counter-lobbying moves, an activity made more effective with the establishment of the TUC's Brussels office in September 1993.

STAGE 2: THE MAASTRICHT SOCIAL PROTOCOL

The move by stages towards EMU was contingent upon, among other things, the Social Protocol, just as progress towards the Single Market had been contingent upon the Social Charter. The Social Protocol/Social Agreement created a dynamic legal procedure for the implementation of social rights. Although it is not a list of social rights, it has provided, crucially, a way of involving the social partners more completely in the creation of the European project.

In the negotiations leading up to the Maastricht Treaty, European trade unions had three priority objectives:

1 To deepen the competence of the European Community in the area of social policy; that is, to broaden the range of social issues about which instruments could be proposed.
2 To facilitate the adoption of such instruments by the Council by widening the scope for qualified-majority voting and thus reducing the areas where any one state could veto a decision. With the continuing expansion of the EU, it became increasingly apparent that no one state should block progress.
3 To give institutional force to the role of the social partners in the development, drafting and implementation of social policy.

Of these, the third was the most innovative.

Negotiations between the ETUC, UNICE and the public-sector employers CEEP, encouraged by the Commission, led to an agreement in October 1991, just before the Maastricht Conference. Under the agreement, the social partners acquired a major role in the formulation and implementation of Community policy in those areas subsequently covered by the Agreement on Social Policy.

The Maastricht Treaty, as well as seeing an extension of Community competence on the basis of unanimity in such areas as social security, protection in the event of dismissal, and codetermination, also excluded a number of areas from EU social policy: these included pay, the right of association, the right to strike or impose lock-outs. The TUC is not happy with these exemptions. Originally, the whole package—consisting of the social partners' agreement, the new competences for social policy, and the areas where qualified majority would apply—was due to replace the existing Social Chapter of the EC Treaty.

However, following UK objections at Maastricht, a Protocol on social policy was agreed by the other eleven member states. The three new member states—Austria, Finland and Sweden—have also subscribed to it. The Protocol stated that all states other than the United Kingdom wish to continue along the road of the Social Charter. It empowered them to use the institutions of the Community to introduce measures in the areas set out in the attached

Agreement on Social Policy: both the Protocol and the Agreement have customarily been referred to as the 'Social Chapter' in the UK. The result of this was that, during discussions in the Social Affairs Council about subjects introduced under the Social Chapter, the British minister sat silent—without a vote—while others negotiated.

At the same time, British MEPs remained at the sharp end, with the Social Affairs Committee chaired by a British MEP, Stephen Hughes. British members of the Economic and Social Committee also play a full part. The TUC has been fully integrated into the ETUC delegation during negotiations and participates actively in them. The first measure to be adopted under the Social Chapter was the European Works Council Directive. Proposals for structures to inform and consult workers had been around for many years: since 1979 the UK government did all it could to sabotage progress, and relied on its veto to do so—all the time issuing dire warnings about importing alien forms of relationships into British industrial relations. With the use of the Social Chapter, UK obstruction was circumvented.

The attempt to negotiate a framework agreement on this issue collapsed after serious and prolonged discussions. The matter then returned to the legislative procedures, and a Directive was agreed. The Directive, in force since September 1996, will cover well over 100 British companies by virtue of their workforces in subsidiaries located in other member states. A number of voluntary agreements with multinationals with their headquarters in the UK had been concluded by the time the Directive was transposed, with TUC involvement: by the time the Directive was transposed thirty-six agreements had been concluded with non-UK parents which included seats for British trade union representatives. The Directive on European Works Councils represents the future—improved communication via mechanisms agreed with trade unions, open discussion of plans and strategies with the representatives of the people most affected by those decisions, the workforce.

The British opt-out on this subject had all but collapsed by 1997—at least in part thanks to the appreciation of a growing number of British trans-European companies that to exclude their British workforces would be a nonsense. The TUC regretted the failure to reach a framework agreement on EWCs under the social dialogue procedure provided for in the Social Chapter. Since then, as part of the ETUC team, we have negotiated an agreement on parental leave with the European employers' organisations UNICE and CEEP, now embodied in a Directive adopted by the Parliament and Council of Ministers.

The TUC also worked closely with the European Parliament to negotiate the addition of a number of elements to the Commission's 1995 Social Action Programme. These included the right to continued vocational training; equal treatment for third-country workers; the inclusion of a labour clause in public works contracts; measures to strengthen legal guarantees for

trade union freedom and collective bargaining; the right to a minimum income; legislation on poverty, social exclusion and housing; and measures to combat racism and xenophobia.

In welcoming this extension of the Social Action Programme, the TUC said it also wanted to see the following:

- completion of the previous Social Action Programme;
- full implementation by governments of existing legislation;
- social policy based on a single legal framework which all member states sign.

STAGE 3: THE SOCIAL DIMENSION OF CONVERGENCE AND FULL EMU

The question therefore arises, especially in view of the 1996/7 Intergovernmental Conference, as to what should be done to complete the social union. Apart from procedural and treaty-related issues, there is also the stark fact of mass unemployment which has increased steadily through each business cycle since the late 1960s. There is an obvious link between the approach involving the social partners in employment creation through the Confidence Pact for Employment, proposed by Commission President Jacques Santer in January 1996, and the incorporation of the Social Protocol into the Treaty. The election of a Labour government in May 1997 ensured that this will now take place as part of the revisions to the EC treaty undertaken at Amsterdam.

There is a good chance that the British economy will meet, or nearly meet, the convergence conditions for EMU set out in the treaty in the next few years. Any decision to join—debate around which has dominated political discussion between and within British political parties—would lead to prices, wages and collective bargaining becoming transparent across the Euro area. The need for cross-border collective bargaining would become apparent. The TUC has decided that it must be at the centre of discussions leading up to EMU.

Britain needs to be in a position to ensure that there is a strong social dimension in Europe as a leading world model, competing not only with North America and Japan but also with the emerging strong economies in other parts of Asia and elsewhere. The EU is already the world's largest economy, if it acts as an economy: it is 20 per cent bigger than the USA, 30 per cent bigger than China and 40 per cent bigger than Japan, for example. This successful model of world development is the key to the future of the trade union movement not only in Britain but around the world. It is with these very strong considerations in mind that the TUC has taken the initiative in the trade union movement and in the wider public debate over EMU. On balance, the TUC believes that Britain should join, if possible in the first wave.

However, it does require a strong policy priority towards the following:

- economic growth;
- employment generation;
- a fully fledged European social dimension, including the provision of universal high-quality public services;
- improving openness and accountability in EU procedures.

The British economy needs to be geared up to meet these objectives and to catch up with the stronger European economies. The General Council of the TUC will be campaigning for action to eliminate the structural weaknesses through improved training and higher investment, including a strengthening of the European social, regional development and structural programmes and of trans-European transport and communications networks, as part of the wide-ranging public debate over EMU and the future of the European Union.

In an integrated European market, with the growth of transnational capital and a convergence of attitudes between most national governments, social protection will increasingly be advanced through action at European level. Indeed, given the pressures generated by the globalisation of the world economy, it is more vital than ever that the European project succeeds.

The British government's opt-out from the Social Chapter, while demonstrably untenable, has served as an irritant—or worse—in the relationship between the UK and its partners. Its removal will enable Britain to become a full-time player. The TUC, by participating fully in the European trade union movement and Economic and Social Committee, through its positive work with the European Parliament—with a good success rate in having legislation amended—and its close contacts in the Commission and with friendly governments, is at the centre of the debate and will continue to use that position to prioritise the social dimension. The next phase, before enlargement, would therefore have to involve completion of the social union.

8

EUROPE AND THE CBI

Pete Burgess

UK employers are characterised by a number of special features. These British peculiarities provide some explanation for the public positions adopted by UK employer representatives on European social policy and economic issues, which have often been at variance with the—public—positions of employers' organisations from other leading EU member states, and have been heavily tinted by prevailing British Euro-scepticism. At the same time, the policy stance adopted by the Conservative government since 1979 also certainly made it easier for the national employers' organisation, the CBI, to be less embarrassed by its advocacy of deregulation and voluntarism within European institutions than some other national employer representative bodies, adding to the impression of a distinctively British employer position. These special features include the following:

1 Compared with other EU countries, British companies—if not plants—are relatively large. This is partly a product of British 'exceptionalism' (early globalisation, especially in primary industries) and partly the end-result of a long series of mergers and formation of conglomerates (which began to be accompanied by and give ground to a phase of demergers in the early and mid-1990s). In comparison with Germany, the British *Mittelstand* remains very underdeveloped. The size of British companies was one factor in their reluctance to subject their own personnel and bargaining approaches—in many cases fashioned in the 1930s as companies expanded—to the disciplines of an employers' organisation: many large British companies have never been members of an industry association, or only on the basis that they did not comply with its collective agreements.
2 Conglomerates assumed major proportions from the 1960s onwards, and many leading British companies are part of broader groupings, such as BAT, BTR and Hanson. In addition to the aspects of size and a desire to develop their own personnel policies, such groupings are difficult to fit into customary branch definitions. British conglomerates

have preferred to mix decentralisation over pay setting with rigorous central cost management. Although certainly, and probably primarily, nourished by broader policy objections to statutory European works councils, objections to compulsory group-level consultation also had some pragmatic origins in the organisation and structuring of conglomerates (Gospel and Palmer 1993:67ff and 198ff).

3 A long tradition of globalisation of business activities, both as exporters and producers has weakened the link to national sites (and the corresponding institutions, such as employers' associations), as well as fostering the notion that, in contrast to Mainland European employers, UK companies are uniquely 'global traders' whose perspectives and interests cannot be subsumed within a 'Continental approach'. This view is also consolidated by the role of the City of London and the nexus between the corporate sector and finance established through the highly developed system of funded pensions. This sense of difference has been further encouraged by the past failure of sterling to stay within the Exchange Rate Mechanism (ERM) in 1992, and the apparent benefits gained by the subsequent devaluation—leading to the conclusion that a vital quick fix for UK competitiveness, much of which has been built up on low wage costs, would be jettisoned forever if the UK signed up to EMU.

4 The personnel policies of foreign companies (in the 1950s US; and in the 1980s Japanese) have had a major direct influence on UK employment culture through those companies' investment and employment and an indirect influence through supply chains and emulation. Foreign companies have a lower propensity to join employers' associations than indigenous firms. By the mid-1990s, some 25 per cent of manufacturing output and 35 per cent of manufacturing exports were accounted for by foreign companies.

In 1992, a total of 128 employers' associations were officially registered, encompassing some 295,000 firms—of which around a half are small traders in agriculture, retail and construction. The largest associations by income are the Engineering Employers' Federation (EEF), which has on occasions been involved in merger discussions with the CBI (see the next section), the Building Employers' Federation, the Freight Transport Association, the British Printing Industries Federation and the Chemical Industries Association.

THE CBI

The central national organisation for British employers—covering both social and industrial issues—is the Confederation of British Industry (CBI), which is the UK representative on the European private-sector employers' association UNICE. The CBI's members include both other employers' associations and, unusually for an umbrella organisation, individual companies—

reflecting the unwillingness of some employers to join industry-level associations. The 200 trade associations and *c.*250,000 companies embraced by the CBI are estimated to cover some 10 million workers, or 40 per cent of the total labour force of the UK. The CBI was established in 1965 out of a merger of three previously existing organisations: the British Employers' Federation, the Federation of British Industries, and the National Association of British Manufacturers. In the past, the CBI was strongly imprinted with this predominantly industrial legacy, with its roots in highly unionised manufacturing industry. During the 1960s and 1970s the CBI had a predisposition, or at least openness, to 'corporatist' solutions to national economic problems (inflation, lack of competitiveness, etc.) and became involved in tripartite pay accords during the 1974–9 Labour government. However, like the German BDA, the CBI does not negotiate directly with trade unions over pay and conditions.

During the 1980s, with the decline in UK manufacturing, the CBI sought to widen its membership and also adopted a more 'devolutionist' approach to bargaining. From being a negotiator of incomes policies in the 1970s, the CBI began to emphasise a micro approach of 'pay for performance', decentralisation of pay setting, profit and gain sharing, and strategies for employee involvement. As the CBI's Director-General stated in 1992, it was to be regarded as a success that companies in Great Britain 'enjoy a high degree of diversity and flexibility in their approaches to pay' (CBI 1992). Nevertheless, the industrial and corporatist roots of the CBI also made it less in tune with some of the policies of the Conservative government after 1979. There was a major and public difference of opinion over the government's high interest rate policy in 1980–2, and concern about the continuing strategy on Europe in general and the single currency in particular, although the CBI's own position on the latter has been the subject of continuing controversy within the organisation itself.

The influence of the CBI on Conservative government policy was probably less than in the 1970s under a Labour administration, when it was brought into a tripartite accord. During the 1980s, the Institute of Directors (IoD) acquired a high profile and growing influence, having never shared the corporatism of the CBI and being inclined to the neo-liberal agenda closer to the government's heart. However, the IoD never entirely successfully positioned itself in the role of lobbyist, and took risks with its own internal organisation in pursuing this strategy. There is now more of an underlying division of labour between the two organisations, with the CBI functioning as the general representative of business, bolstered by its role within UNICE, and the IoD seeking to concentrate on the professional development of senior managers.

When considering the standing of the CBI compared with other EU national employers' organisations, three particular features need to be borne in mind.

1 The CBI—as noted above—covers both industrial and social/employment issues: there is no duality, as in the German separation between the BDA and its affiliates and the BDI.
2 In the past, industry employers' associations have been weakened by the absence of many large companies. In the engineering industry, for example, major employers such as Vauxhall (General Motors), Ford and GEC are not members of their industry association. The chemical company ICI left the chemical industry association in the 1930s in order to pursue its own policies.
3 Tripartism in the UK has generally been pursued as a crisis-management strategy rather than as a sustained attempt to fashion new institutions and alter the behaviour of the main actors. Resistance to national frameworks and to earlier attempts to move away from voluntarism and free collective bargaining has come as much from British trade unions as from the employers.

THE EVOLUTION OF COLLECTIVE BARGAINING AND THE ROLE OF ORGANISATIONS

In the period following the Second World War a two-tier pattern of collective bargaining emerged. Industry-level agreements set minimum pay rates, working time provisions, and conciliation and arbitration procedures; these were complemented by agreements at company or workplace level. During the 1960s, more and more powers were shifted to workplace level—in part as a result of the growing power of shop stewards, and in part as a reflection of employer efforts to exert control over all the subjects of collective bargaining. The dissolution of industry-level bargaining accelerated during the 1980s. Following the breakdown of industry-level bargaining in engineering in 1989, the privatisation and splitting up of the public utilities, and the encroachment on national agreements in wide areas of the public sector, industry-level bargaining now plays a much reduced role—confined to areas of the chemical industry, printing and construction. Although some trade organisations occasionally seek to regulate employment conditions as a means of stopping undercutting, this remains a marginal activity—and, moreover, one not conducted in collaboration with trade unions.

The relinquishment of industry-level bargaining has further weakened the already often fragile solidarity of employers. During boom periods and tight labour markets, this is evidenced by mutual poaching of scarce skills; during recessions it offers scope for local pay freezes, without any need to take account of industry-level provisions.

The withdrawal of employers' associations from direct participation in industry bargaining has led to a change not only in their objective role in negotiations but also in their view of themselves: many now see themselves primarily as a resource for their members, a service organisation and lobbyist for member companies' interests—not as a 'social partner' (a concept still with only shallow roots in the UK's employment culture). At one extreme, they see themselves as occupying the same ground as the management consultants with whom they compete rather than as institutions exercising a social function.

The weak legal and institutional framework for concertation at national level has not meant that the UK has not experienced phases of tripartism in the past. A number of tripartite institutions were created in the 1960s and 1970s, such as the national Advisory Conciliation and Arbitration Service (ACAS), the National Economic Development Office (NEDO), the Health & Safety Executive, and the Manpower Services Commission. Many of these organisations were abolished by the post-1979 Conservative government as part of its rejection of 'the corporate state' and in order to trim the institutionalised power of the trade unions.

Formal tripartism is unlikely to be revived, with both the TUC—although not all of its affiliated unions—and the Labour government eager to represent themselves as autonomous actors with distinct interests and constituencies.

The post-war period also saw numerous attempts at incomes policies—sometimes statutory and theoretically backed by sanctions, and sometimes voluntary. There were, for example, thirteen phases of incomes policies between 1961 and 1979. Although it was ostensibly problems with trade union compliance which tended to terminate incomes policies, the most notable shift in attitudes towards national coordination on pay issues took place amongst the employers and the Conservative Party. Belief in corporatist arrangements began to erode during the late 1970s, and was deprived of formal political support with the election of the Thatcher-led administration in May 1979. Free collective bargaining has prevailed in the private sector since 1979. In the public sector, a number of official bodies were created whose task was to set pay increases for employee groups such as doctors, nurses, firefighters and teachers, in place of collective bargaining. Since 1992 the public sector has been subjected to a virtual pay policy.

DIFFICULTIES IN TRANSPOSING EUROPEAN AGREEMENTS

In contrast to those member states which have mechanisms for concluding binding multi-industry agreements at national level, the UK has never pursued this type of framework of regulation. Even collective agreements at company level are not enforceable. Only by being 'incorporated' into individual contracts of employment can collective agreements become enforceable through the normal law of contract. There are no mechanisms

for extension or for establishing minimum pay rates at sectoral level (as distinct from the scope of legislated minimum rights).

A proposal in the draft of the Trade Union and Labour Relations Act 1993 toyed with the idea of introducing enforceability into collective agreements, unless the signatories wished otherwise. However, the main concern of the government was not so much a rationalisation of the UK's system of collective bargaining as a desire to render the complex landscape of bargaining more transparent for foreign investors. The proposal was removed from the legislation after virtually all potentially affected parties rejected the step. As a consequence, there would be major—possibly insuperable—problems in directly transposing agreements at European level between the social partners into an enforceable provision with wide coverage in the UK via a national agreement as opposed to legislation.

Formal legal enforceability itself is not necessarily the issue. Albeit in a different context, the European Court of Justice has adopted the view, with regard to British collective agreements, that the '*de facto* consequences for the employment relationships to which they refer' is of greater importance for assessing their status than whether they are formally binding or not (quoted in Bercusson 1996:122). This might mean, in theory, that a national non-binding accord could be viewed as a transposition mechanism were either of the parties involved—the TUC and CBI—politically capable of adding their signatures to such a document, an improbable eventuality; and that a high degree of compliance was assured, also highly improbable. Even in Denmark, where national collective bargaining has a strong and institutionalised role, doubts have been raised as to the efficacy of agreements as a means of transposing EC legislation.

Although individual employers' associations might conclude agreements with national trade unions in the wake of a European-level agreement, the obligation to comply with it on the part of an employer would have no more force than that applying to any other membership requirement. However, it is highly unlikely that any British employers' association would risk such a step: most associations are not in position to maintain or enforce industry-level bargaining in the UK.

This does not mean that there are not informal discussions at national level between employers and unions. And there are certainly some forces amongst UK employers who might be open to some forms of national cooperation, or even welcome it. In October 1996, for example, the CBI acknowledged a number of common areas of 'policy ground' between itself and the TUC, following an address by the TUC's general secretary to the CBI annual conference, and both TUC and CBI economists also counselled against tax cuts in the autumn of 1996.

THE CBI AND EUROPE

The policy of the UK Conservative government on the 1989 Community Charter of Fundamental Social Rights (the 'Social Charter') and its negotiated opt-out from the Agreement on Social Policy attached to the Maastricht Treaty (the 'Social Chapter') placed the CBI in a unique position amongst Europe's employers' associations. It was the only member association of UNICE for which there was no direct political representation on the Council of Social Affairs Ministers. This meant on the one hand, that British employers had no effective political voice in the shaping or decision-making on social measures under the new Maastricht procedures.[1] At the same time, on the other hand, the CBI was obliged to represent the interests and views of UK employers through the machinery set out in the Social Protocol, which offered an alternative mechanism for the creation of binding EU provisions.

This potentially uncomfortable institutional position co-existed with internal problems in formulating a clear policy line on Europe able to command support throughout the organisation, especially on the acceptability or otherwise of the Social Chapter and, critically, whether and when the UK should join EMU. The Director-General of the CBI was quoted as saying that 'Europe…causes [him] more sleepless nights than the prospect of a Labour government' (*The Observer,* 5 January 1997).

The CBI broadly supported the UK government's position on Maastricht, but was pragmatic about the future.[2] It saw the Social Chapter as likely to worsen European competitiveness, 'adding to costs without any compensating competitive benefits' (CBI 1992:5). It considered that improvements in working conditions and employee relations 'would be put at risk by a straitjacket of redundant but costly rules and regulations' (ibid.). In a membership survey carried out in 1995 72 per cent of businesses agreed that the UK should retain its opt-out; 21 per cent disagreed. However, the CBI has distanced itself somewhat from the chauvinism and contrived insularity which has sometimes characterised the 'Euro-sceptical' position.[3]

Nevertheless, UK companies were aware of the disadvantages of being outside the Social Protocol process, as evidenced by the experience with the Directive on European Works Councils. First, such Directives would affect UK companies operating at present in other EC member states. One route for influence—via the Council of Ministers—has been removed. (This does not, of course, mean that the UK's influence would not be felt: as a less regulated economy, its very presence might serve to limit legislative efforts for the other members.) Second, combined with withdrawal from the Exchange Rate Mechanism, there have been concerns that the UK's attractions as a target for foreign direct investment might be diminished if it were seen to be outside the central orbit of European social, political and economic development. And third, any proposals adopted under the

new procedure would form part of the framework of law and practice in the bulk of the EC—creating pressures for longer-term convergence, possibly driven on by trade union demands and campaigns under different political circumstances and enforceable in the UK should the opt-out be removed.

On EMU the CBI has remained divided, and more of its membership appears to feel that the UK economy would be damaged than that their own businesses would. According to the 1995 survey, around one-fifth of respondents advocated the UK joining the leading group of countries into EMU, with around one-fifth opposed to the project. The largest single group, 36 per cent, was in favour of keeping the option of joining the first wave open. Only half the respondents considered that membership of a single currency would be of benefit to UK businesses, with 30 per cent feeling that EMU would be damaging.

Despite support for the social policy opt-out, the CBI has remained committed to involvement in discussions within the framework set for employer—union dialogue and negotiation in the Maastricht Treaty. Indeed, this is seen as an important arena precisely because of the opt-out. Although excluded from the Council of Ministers, the UK remained present, as it were, through the CBI's (and TUC's) participation in European-level dialogue via UNICE and the ETUC. The CBI (with UNICE) supported the provisions for improved consultation (Article 3) as a means of remedying previous shortcomings in consultative arrangements over new EC legislation. However, the CBI's strong view is that the possibilities for Community-level agreements offered by Article 4 of the Agreement on Social Policy do not constitute a free-standing bargaining arena for responding to European-level trade union concerns: the procedure can be triggered only by legislative proposals and a referral from the European Commission to examine whether an agreement might constitute an alternative to an EC legislative instrument.

However, as noted above, it is difficult to imagine any currently existing mechanism by which such an agreement could be implemented in any binding way in the UK, other than through recommendations or codes of practice issued independently by the UK social partners. There is nothing in the CBI's constitution, history and current commitment to devolution on bargaining matters which would lead it to seek to bind its members. It has committed itself to doing no more than looking at any agreements on a case-by-case basis and deciding then how to communicate their substance to its membership. Nevertheless, the CBI is aware that implementation is an issue which it must deal with, and on which it must be able to explain itself in the UNICE-ETUC context.

NOTES

1 The difficulties with this position were immediately highlighted by the adoption of the Directive on information and consultation in Community-scale enterprises

(European works councils). In the absence of the UK government's veto, the other member states plus the EEA states could press ahead with a proposal which will affect many British companies—estimates vary but the figure could be up to 300—with operations extending throughout Europe, even with their UK workforces excluded. This has led to disquiet amongst some employer groupings. One group of large companies has established its own ad-hoc organisation to advise on EWC issues. Many UK companies have decided to include their UK workforces anyway, and would be covered by the Directive were a new UK government to decide to opt back in.

2 'The UK opt-out has been a useful tool for encouraging EU social policy to move within sensible boundaries…. If a future UK government contemplated bringing the UK within the scope of the Social Protocol this would have to be on terms which take business needs fully into account' (CBI 1995:22).

3 'The UK Government has been one of the first to recognise the competitiveness challenge and should be in a good position to influence the shape of a more competitive Europe…. But to be effective it needs to work from within and participate in full in the EU's political and economic decision-making, creating a positive agenda and support for it…. This will only be possible if the UK re-establishes its credibility as a constructive force committed to the European Union' (CBI 1995:5).

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9

EUROPEAN INDUSTRIAL RELATIONS: AN EMPLOYER'S VIEWPOINT

Alexander Klak

INTRODUCTION

'Restoring confidence, strengthening the foundations for economic growth, and promoting the creation of new jobs': thus ran the concluding declaration to the meeting of the European Council held in December 1992—without telling the social partners precisely how they should respond and what measures were needed.

Decentralisation and subsidiarity, local responsibility, flexibility and mobility on the labour market—that is, a sound approach to employment policy—together with a constructive relationship between employers, workplace representatives and trade unions, are all factors which merit proper consideration in social policy, and would serve as a concrete illustration of the propounded unity and harmony of the Community on the key questions of European industrial and social policy. A crucial role can be played here by the social dialogue between the social partners both at European and national level.

The European social dimension cuts across and can collide with established national structures of interest representation. One of the most immediate and paramount problems to be resolved is that of aligning national peculiarities, including the rigidities and idiosyncracies of national company law and workplace representation, with the emerging supranational European level.

DEVELOPING INFORMATION NETWORKS

Information bolsters confidence, fosters motivation and consolidates industrial peace. Employees want to know what is happening in their companies. And, in particular, they want a better understanding of the link between developments at corporate level and events in the immediate workplace which have a direct or indirect effect on their conditions of employment and social benefits.

'Working together in confidence', to quote the German Works Constitution Act, is therefore a central building block of European social policy. Improving information for employees as an expression of the social dimension of the Single Market is a positive objective about which there is no disagreement between the social partners. However, there are differences and divergence about the most appropriate way in which to develop an information network and with it foster dialogue. One issue at stake—now resolved—was the appropriate means: Directive or recommendation. In the end, the balance tipped towards the Directive approach—a political decision whose value and correctness may still be questioned. Since there is little scope for flexibility on the legal form, developments and discussion have now turned to its specific shape: rigid and pre-given rules versus autonomy and independence through self-determined and agreed information models on the part of the social partners.

HISTORICAL BACKGROUND

Efforts by the European Commission to elaborate European-level regulations on employee representation at corporate and workplace level extend back over twenty years. The draft Directive for the establishment of European works councils, for information and consultation of employees in community-scale undertakings and groups of undertakings, first proposed in 1990, marked a new stage in the Commission's aspiration of establishing minimal framework conditions in this field.

For its part, the debate on codes of conduct for multinational undertakings, which reached its height in the 1960s and 1970s, can be seen as an important stage in the development of the trade union approach to employee participation at transnational level.

One further important stage was the International Labour Office's 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. This set out a programme according to which regular discussions on matters of common concern should be held in multinational and national undertakings by mutual agreement between employers and employees and their representatives, in accordance with national legislation and practice. Although Article 56 of the declaration—as indeed the declaration as a whole—was not binding on the ILO's member states, the fundamental consensus on the issue certainly exercised some influence both on national legislation and on relationships between the social partners.

The Vredeling Directive, which failed to be adopted by the Council in the early 1980s, has also had a substantial impact on the Commission's more recent initiatives. Without considering its content any more closely here, let me say that its proposed obligation to disclose information and consult was concerned with economic matters—on which it paralleled

the rights of Economic Committees *(Wirtschaftsausschuß)* under the German Works Constitution Act—and alterations to the organisation and running of establishments. The flow of information required by Vredeling did not, however, incorporate a number of principles intended to secure industrial peace which are central to the operation of German works councils and remain the cornerstone of codetermination: for example, the requirement to work in partnership—which obliges the employer and the works council to work together in good faith—the obligation to neutrality and the ban on industrial action.

The more recent initiatives of the Commission have also had to take these elements into account. Many of the difficulties in accepting the proposals rest on the continuing enormous diversity in forms of employee participation within Europe, with fundamental differences at the most basic level of their legal foundation—law or agreement.

The fundamental differences in the organising principles and practices of Europe's societies and political systems, together with very varying scope for national trade union movements to exert influence, suggest that neither the legal nor the political approach embodied in any one national system of employee participation and codetermination would fit all member states. Germany's dual system, with its clear and strict demarcation between free collective bargaining via trade unions and workplace employee participation via works councils and elected board representatives, is virtually unique in Europe. Although this system is tried and tested in Germany, it is questionable whether it would prove equally successful elsewhere in Europe. Nonetheless, the Directive now adopted seeks to transpose some aspects of the German works constitution system at European level.

THE SUCCESSFUL GERMAN CHEMICAL INDUSTRY MODEL

In 1989, well in advance of most other initiatives in the field, the social partners in the German chemical industry set about dealing with the issue of improving employee information and consultation at European level. With the recommendations on establishing works council contacts at European level issued in 1990,[1] the two sides gave a major impetus to initiatives in this area, and also created a framework within which to configure the necessary infrastructure for such contacts, both formally and materially, in a fashion which could be tailored to the circumstances of individual companies. Importantly, the accord, which was not a binding collective agreement, allowed companies and their employee representatives scope to shape their own approaches and solutions: codetermination through co-design.

The basic 'rule of the game' of the recommendation was that the company was free to decide whether it would establish contacts between employee

representatives at European-level. Where such contacts were established, they had to make provision in five areas: the participants; whether contacts would be bilateral or multilateral; subjects for discussion; cooperation with management; size and frequency of meetings.

This 1990 accord demonstrated a high degree of responsibility in the field of social policy. It showed that creative cooperation between the employers and the trade union in the German chemical industry could open up ways to allow companies and employee representatives to develop models in accordance with their own preferences: made to measure rather than ready to wear.

EUROPEAN-LEVEL EMPLOYEE CONTACTS IN THE GERMAN CHEMICAL INDUSTRY

A number of diverse networks of European contacts between employee representatives have emerged within the German chemical industry, although all share the property of having the potential for further development. Whereas some models rest on a written agreement, others rely on a verbal commitment. All translate the principles established in the recommendations. Table 9.1 gives an—incomplete—overview of developments up to 1995.

Table 9.1 Employee contacts at European level in the German chemical industry

The recommendations issued by the two sides in the German chemical industry, and especially their status as a progressive social policy initiative, have met with broad agreement not only in Germany but also more widely in Europe, in particular beyond the boundaries of the chemical industry. The approach adopted by the German chemical industry has often been designated as a 'third way' of achieving autonomous industry-specific solutions to the problem of how to establish European-level arrangements for employee information. The models established exhibit varying degrees of formality. What is common to all is that they illustrate the diversity of possibilities and, in particular, the principle of subsidiarity. Voluntary agreements on employee information and consultation at European level have offered many benefits, including the following:

- a tailor-made solution at company-level;
- no need to apply the terms of the Directive;
- familiar structures;
- the primacy of social partnership;
- confidence-building;
- image;
- motivation.

THE HOECHST EUROPEAN INFORMATION MEETING: THE FIRST STAGE AND THE ROAD TO THE COMMITTEE FOR EUROPEAN DIALOGUE (CED)

The basis for the Hoechst European Information Meeting (HEIM) was the agreement on information and consultation in the German chemical industry referred to above. HEIM was also anchored in the fundamental personnel and social policy principles espoused by the Hoechst group, and took into account the diverse structures and circumstances of employee representation within the Hoechst group in Europe. The body was discussed and agreed with the managements of European subsidiaries of Hoechst and in consultation with the central works council *(Gesamtbetriebsrat)* of Hoechst AG.

The Hoechst European Information Meeting was an autonomous annual European information and discussion circle made up of one representative of the company and usually two representatives of the workforces of each of Hoechst's foreign subsidiaries. Non-employees could be invited to meetings subject to agreement between management and the central works council. The decision as to who should represent the employees of foreign subsidiaries was a matter for local regulation. Corporate management exercised no influence on the delegation process. This procedure accorded with the fundamental tenets of Hoechst's approach to its European personnel and social policy, under which the elaboration of policy is primarily the responsibility of local management. The European Information Meeting did not entail negotiations and imposed no obligations on the participating subsidiaries. Rather, its sole purpose was to facilitate dialogue and the disclosure of information. 'Information' in this context meant information on the economic situation of the Hoechst group worldwide and in Europe, the financial and organisational structure of the company, its investment and research activities, and any personnel and social questions not rooted in specific national circumstances but related to the Hoechst group's operations in Europe as a whole. Other topics included environmental protection and health and safety.

The aim of the meetings was to give information to the people to whom it was most relevanmt—that is, the company's employees. Any information provided was not intended to replace existing information networks established

by local companies, which remained unaffected and retained their independent significance within the group's overall social policy. Participants included employee representatives from Portugal, Spain, France, Italy, the Netherlands and Germany. The total number of participants was around twenty-eight, including the representatives of management.

REFLECTIONS ON THE WORKS COUNCILS DIRECTIVE

As I have already noted, there is no fundamental disagreement on the objective of improving employee consultation and employees' access to information in community-scale undertakings. In this respect both the ETUC and UNICE are of one mind. However, and this can be seen in the statute, the drafters of the EWC Directive proceeded on the misunderstanding that the employers' aim is to pursue a personnel and social policy based on a strategy of divide and rule. This meant that excessive emphasis was placed on a centralist approach and the notion that corporate headquarters would constantly interfere in the operations of foreign subsidiaries. In the press this was often designated the 'Dallas Syndrome'. Because of this, some critical observations are still in order. The Directive regulates a complex procedure for the establishment of a 'special negotiating body' and sets out in an appendix a number of minimum provisions which could well lead to considerable difficulties in practice and which run contrary to the desire to allow the social partners to pursue their own independent solutions.

Some of the inconsistencies and absurdities in the regulations on the special negotiating body are a product of, amongst other things, the diversity of forms of employee participation in Europe. The juxtaposition of trade union representatives and employee representatives does not pay sufficient regard to the need for the structures to appear legitimate. The general constitutional principle that all power proceeds from the people should mean that the legitimacy of representatives must ultimately rest on their election by the workforce. This also applies to the make-up of the special negotiating body. National procedural rules on the Directive may allow some scope for local determination by the parties themselves. What would be the objection, for example, to the special negotiating body being appointed by employee representatives at group or enterprise level if this accorded with the interests of the workforce? For Germany this would mean giving the negotiating powers to the group or central works council. The employees of foreign subsidiaries could be represented through a so-called 'delegate'.

The scope for voluntary models under the Directive was a positive step. Moreover, existing procedures for information disclosure were not put in question. It is important that the need for representatives to be close to the matter at hand is accepted and priority given to the powers

and responsibilities of those directly concerned. Finally, it is still reasonable to ask whether the minimum provisions are necessary.

THE COMMITTEE FOR EUROPEAN DIALOGUE (CED)

The Hoechst European Information Meeting was the forerunner of the newly created European body within the Hoechst group in Europe—the Committee for European Dialogue (CED). In February 1995 an agreement on the establishment of a structure for employee representation at European level was concluded and signed with employee representatives from Hoechst subsidiaries in Italy, France, Spain, Portugal, the Netherlands and Germany.

The organisation of CED lies in the hands of the chair, the deputy and a clerk to the committee. All three are elected by employee representatives, independent of any influence by the company. At the constituent meeting of the committee, the chair of the group works council *(Konzernbetriebsrat)* of the Hoechst group in Germany was elected as president: the deputy is from the Netherlands.

The CED provides Hoechst with a joint body with a sufficiently flexible structure to respond to innovation. It also illustrates the principle that *Gestalten ist besser als Verwalten* ('To shape is better than to administer').

The new body leads on from the communication and information-sharing process between management and employee representatives at European level begun in 1991. Regular opportunities for information-sharing and consultation are seen by the participants as making an important contribution towards a broader approach to the promotion of growth, employment and competitiveness on the part of the Hoechst group in the European Union.

From the standpoint of employee representatives at Hoechst, the Committee for European Dialogue is the result of an innovative and practical European social policy within the Hoechst group. Employee representatives and management are at the start of a new process for pursuing their interests at European level—a process, moreover, which will call for continuous creative development. CED is already highlighting social and personnel management issues of a broader employment policy, including the quality of Hoechst's production sites and the company's competitiveness in the European market. The employee representatives on CED also view the European dimension of their general representative activity as being very important and consider that this element will characterise the future of employee representation.

Both employee representatives and management are aware that CED is not a perfect instrument—although its structure allows scope for mutual learning and benefit. The defining feature of CED is dialogue. The committee itself is a joint body. However, employee representatives have an opportunity to meet amongst themselves in a pre-meeting.

CED comprises nineteen employee representatives and ten employer representatives. Each member country appoints one employer representative and two employee representatives. Because of their size and the number of their employees France and Germany are dealt with differently. France has four seats on the employee side and two on the employer side. Germany has seven employee representatives, who are members of works councils at Hoechst AG, and four management representatives, including the Labour Director.[2] Mutual understanding and a corporate culture characterised by cooperation between employee representatives and management presuppose not only the encouragement of an entrepreneurial approach on the part of employee representatives but also a willingness on the part of the management to enter into constructive discussions with employee representatives. For both sides, the first priority is to work towards creating that basis of confidence which has been the hallmark of social partnership in the German chemical industry for the past several decades—namely cooperation instead of confrontation.

SOCIAL DIALOGUE: REPRESENTING INTERESTS SUPRANATIONALLY

Whenever tasks are tackled which call for cooperative effort—and the commitment of substantial resources—the question of organisation takes on paramount significance. However, there is no such thing as the ideal organisation. People must work out new answers to the political, economic, social and personnel problems of their age and create an appropriate organisational form. This also applies to the relationships between companies and employers' associations at European level, of which the current main ones are:

- UNICE, the Union of Industrial and Employers' Confederations of Europe, representing interests across all branches;
- CEFIC, Conseil Européen des Fédérations de l'Industrie Chimique, comprising approximately fifteen chemical associations and forty-four individual corporate members;
- ERT, the European Round Table of Industrialists, which discusses industrial and social policy themes;
- CEELG, the Chemical Employers' European Liaison Group, made up of twelve European chemical employers' associations;
- EEN, the European Employers' Network, an information body of employers' associations and companies.

As is the case with the trade unions, companies and employers' associations must have a clear conception of their function and role in Europe, and specifically within the social dialogue—and learn to set priorities. Meeting the aspirations of the Social Protocol to the Maastricht Treaty calls for

European social partners who are both able and willing to act in this field. In addition, social techniques are also required which allow appropriate and socially balanced responses to be made to structural changes.

CONCLUSION

European-level dialogue between employers and employees, with its requirement for a formalised international system of employee information-sharing and consultation, is a worthwhile and positive development. However, constructive cooperation between the social partners cannot flourish without the mutual acceptance of voluntarism as the basis for developing solutions and procedures appropriate to the complexities and specifics of each company. Mandatory and non-negotiable minimum regulations are inimical to creating a climate of cooperation which will benefit all those working in our corporate communities.

The European legislature would be well advised to include in its future activities the scope for more voluntarism through the introduction of 'enabling provisions' to allow the social partners greater freedom of manoeuvre. Article 13 of the Directive on EWCs could prove to be a pioneering element in this respect, allowing a positive relationship between the need for harmonisation and the freedom to pursue diversity. For example, the approach embodied in Article 13 could serve to unblock the discussion on the consultation provisions attached to the blocked draft Directive for a European Company Statute.

NOTES

1 Bundesarbeitgeberverband Chemie *Außertarifliche Sozialpartner-Vereinbarungen,* Wiesbaden, 1994.

2 Under the 1976 Codetermination Act, companies with more than 2,000 employees have to comply with a structure of board-level employee representation: employee representatives sit on a company's supervisory board *(Aufsichtsrat)*. This body appoints the management board *(Vorstand)* which is responsible for day-to-day management. One member of the management board, the Labour Director *(Arbeitsdirektor)* is responsible for personnel issues and cannot be appointed against the wishes of employee members of the supervisory board.

10

COLLECTIVE BARGAINING IN THE EUROPEAN UNION

The standpoint of IG Metall

Michael Blank

The question posed at the beginning of this volume—whether European collective bargaining is possible—can only be answered in one way from a trade union standpoint: yes. Any other response would be tantamount to a declaration of political bankruptcy on Europe. However, there also appears to be a broader political consensus which extends beyond trade union circles, according to which collective bargaining is a fundamental component of industrial relations in the European Union, and agreement that this should remain so in the future. This was affirmed, for example, in the Community Charter of Fundamental Social Rights of Workers (the 'Social Charter'). This view is not wholly surprising given the fact that industrial relations is regulated for the most part by collective agreement in all member states. In contrast, there are highly divergent and diverse views about the future of collective bargaining in the European Union. Whereas the European Commission, in its 1989 Action Programme on the Social Charter, adheres to the view that the Community has no role to play in this area as all member states recognise the principle of free collective bargaining, the trade unions have called for the principle of collective bargaining to be anchored in Community law with the status of a fundamental right. The European Parliament also views the Commission's reserve with some scepticism. In an opinion on human rights and basic freedoms published in 1993, the Parliament raises a number of complaints about infringements of trade union rights in several member states.[1] However, there is little likelihood that the Community will take up this subject. The Social Protocol of the Maastricht Treaty expressly renounces Community competence in this field.[2]

In spring 1993 the ETUC and the European Metalworkers' Federation (EMF) sought to bring together their views and demands in two resolutions—with differing emphases.[3] A comparison of the two reveals that the notion of 'European collective bargaining' is far from unambiguous. Whereas the ETUC regards transnational collective bargaining with the aim of achieving transnational collective agreements as a wholly realistic perspective, the

EMF adopts a cooler view and gives priority to the coordination of national collective bargaining and settlements. Ultimately, however, there is a consensus that in the final analysis both elements are necessary.

The current statements of national trade union confederations and political bodies reveal a picture that is far from clear. Although the trade unions regard the subject as important, it does not count amongst their most pressing daily tasks. All trade unions focus on collective bargaining—but on national collective bargaining. There are only the most scattered attempts at Europeanisation, be this through greater coordination or the conclusion of transnational collective agreements. The difficulties which the trade unions are confronted with in formulating a common perspective for European collective bargaining are immense. Trade unions are, by nature, conservative institutions. Their views on the shape of industrial relations in Europe do not differ markedly from their own domestic experience—in systems which they are familiar with and which may have stood them in good stead. However, systems of collective bargaining in Europe are enormously diverse. The spectrum ranges from law-like collective agreements at branch, company or workplace level, to national framework agreements concluded between national employer and trade union bodies, sometimes with the involvement of the state, to non-enforceable workplace accords (Blanpain 1992; European Commission 1993). The law on industrial action is also subject to widely varying regulation. In Germany, for example, only strikes called by trade unions in pursuit of an objective which can be incorporated in a collective agreement are lawful; in other countries, political strikes against government economic and social policy are common and legally unobjectionable (Lecher 1994). Even where there is agreement that the principle of collective bargaining in the EU must be secured and developed at Community level, there are few well-advanced ideas as to how this should be accomplished.

In order to set out the views of IG Metall on this subject I initially want to turn to the overall position in Germany. I will then look at existing agreements concluded on European works councils, and after this turn to the mechanisms for social dialogue enshrined in the Maastricht Treaty. Finally, I venture some general observations on the future of European collective bargaining.

CORE ELEMENTS OF THE GERMAN SYSTEM OF COLLECTIVE BARGAINING

The German system of collective bargaining rests on three pillars—the system of works councils, regulated by statute law; codetermination at corporate level; and collective agreements.

Works councils are the elected representative bodies for the entire workforce of an establishment. In law, they are independent of the trade unions,

and conclude works agreements—a particular type of collective accord—within the scope allotted them by the 1972 Works Constitution Act *(Betriebsverfassungsgesetz)*. Their bargaining power rests in large measure on the fact that the Works Constitution Act provides them with a form of compulsory arbitration on some issues through resort to conciliation committees, established under the Act. However, works councils may not make use of forms of industrial action: works councils and management are required by statute to maintain industrial peace at the workplace.

Strictly speaking, codetermination at the level of the company, also regulated by statute law, does not belong directly to the system of collective bargaining. Rather, it provides employee representatives, who may include trade union representatives who are not part of the company's workforce, with a degree of influence over corporate policy through their membership of company supervisory boards, and indirectly raises the efficiency of workplace collective bargaining by making a further level of influence available to employee representatives.

Compared with the regulation of workplace industrial relations and employee representation, the regulation of the legal framework for collective bargaining is much less stringent. The Collective Agreements Act *(Tarifvertragsgesetz)* simply regulates the manner in which collective agreements become effective, not how they are concluded. For the employees' side, collective agreements can only be concluded by trade unions. Inasmuch as they regulate terms and conditions of employment, they have the force of law. Trade union members are entitled directly to any rights arising out of a collective agreement. In practice, the provisions of a collective agreement apply to all employees within its scope: employers are careful to ensure that trade unions do not acquire attractiveness by offering a gateway to better pay and conditions.

There is a clear hierarchy between works agreements and collective agreements. The Works Constitution Act denies the parties at workplace level the right to conclude provisions which deviate from collective agreements to the detriment of employees or which regulate matters which are customarily regulated by collective agreement. Recently, political debate on this issue has seen a number of attacks on the statutorily guaranteed primacy of collective agreements. Some critics of the status quo argue for 'enabling clauses' *(Öffnungsklauseln)* which would give the parties at workplace level scope to come to agreements which deviate from collective agreements and which might lead to a worsening of provisions for employees. This would represent a fundamental breach of the present system, as the compromise arrived at as a result of the political play of forces between the negotiating sides would be exposed to the completely differently structured mechanism of conflict resolution offered by the Works Constitution Act. In the final analysis a conciliation committee would have to decide whether a collective agreement should be upheld, without employees being able to resort to

industrial action to defend their interests in the event of a negative decision (Zachert 1993). Although this is too broad an issue to tackle here, hopefully these few remarks will serve to illustrate the importance of the delicate balance of relationships between workplace and trade union collective bargaining in Germany.

Any attempt to transpose this system to the level of the European Union would be condemned to failure. The interplay between works councils and trade unions functions only against the background of relatively strong non-political trade unions. Although works councils are formally independent of trade unions, a large majority—over 70 per cent—of works council members are members and lay officials of one of the DGB-affiliated trade unions. This draws both levels closely together, and grants the trade unions influence over workplace bargaining, an activity in which they are not formally involved.

In addition, the dualism of employee representation via works councils and via trade unions does not exist in many EU member states, where representation is solely through trade unions—although these may be in competition with each other. As a consequence, German trade unions swiftly abandoned the notion that European collective bargaining could follow the German model. The perspective which follows from this is that the issue for Europe cannot be more, but should certainly be no less, than that of securing those core elements which are indispensable for the existence of free and autonomous collective bargaining. These include representative institutions for articulating the interests of employees at company or group level, together with the possibility of autonomous collective bargaining conducted by trade unions which enjoy legal protection guaranteeing freedom of association and the right to strike.

EUROPEAN WORKS COUNCILS

There are a number of compelling reasons why European works councils have become such a focus of discussion. Workplace employee representatives are confronted with the consequences of the Single European Market in a particularly direct and acute fashion. Whereas companies plan and organise themselves at a European and global level, employee representatives—irrespective of the particular model of industrial relations—are confined within national borders, making cross-border activity difficult, if not impossible. This strategic advantage is used by companies to play employee workplace representatives at different national sites off against each other. The pressure to cooperate within companies and groups operating across Europe has grown enormously (Klebe and Roth 1987).

Political efforts to extend the principle of workplace employee representation in the EC through its missing European component are now some thirty years old (Lutter 1990; Blank 1993; Klebe 1992). The concept of the 'European

company'—the SE *(società europaea)*—originally proposed in 1970, also marked the first occasion on which the idea of European works councils was mooted. In 1980–3 this was followed by the so-called Vredeling Directive proposal, which would have provided for a standard model of rights for employee information and consultation in European-scale undertakings. Following the adoption of the 1989 Social Charter, the European Commission submitted a new draft Directive on European Works Councils which failed to make progress because of the requirement for unanimity in the Council of Ministers. Only with the incorporation of the principle of qualified-majority voting on matters related to employee information and consultation under the Social Protocol did it become possible for the Directive to be adopted in 1994. As was expected, the controversial character of the proposal meant that agreement on a model was not possible between the social partners. The Directive was finally adopted by the EU Eleven—excluding the UK—under the Maastricht procedures, with Portugal abstaining.

The period set for transposition into national law was two years—that is, by 22 September 1996. However, the scope for concluding 'voluntary agreements' under the Directive (Article 13), which was allowed to continue in force after the deadline for transposition, has meant that many companies—some 140 by September 1996—took the initiative to negotiate agreements on European works councils soon after the Directive was adopted. The advantage of this approach was that such agreements could be more flexible than the provisions of the Directive and allow companies to avoid complex negotiations and elections for employee representatives, which would become mandatory once the Directive was transposed into national law.

Put very simply, the main provisions of the Directive are as follows. It covers all undertakings and groups of undertakings with at least 1,000 employees, with at least 150 each in at least two EU member states. EWCs apply in principle at the level of the group. However, the agreement can specify another arrangement. The definition of group goes beyond the existing German concept of the 'concern' *(Konzern);* for example, a 'potential group' would suffice, irrespective of the legal form of the undertaking involved. Under the original Directive, if the central management is in the United Kingdom or outside the European Union (or EEA states), it must appoint a representative in a member state, who is then responsible for establishing a EWC. If it fails to do so, the management of the company with the greatest number of employees is responsible.

Either side can set in train negotiations for the establishment of a EWC. On the employee side that can be 100 employees or employee representatives from at least two enterprises in different member states. The Directive provides for a 'special negotiating body' (SNB) which consists of at least three and at most seventeen members. The SNB consists of delegates elected in all member states in which the undertaking or group

is represented. The electoral procedure is to be determined by the member states. Costs are borne by central management.

The Directive makes few further specifications as to the material organisation of the EWC or other procedures. As such it constitutes a prime case of 'soft law'. The parties can agree to establish an EWC or other procedure for information and consultation: however, the special negotiating body can set this aside by a majority vote. The Directive merely provides for the issues which have to be subject to a written agreement. This includes the companies and establishments affected by the agreement, the composition of the EWC, the number of members, the distribution of places and length of office, financial and other resources to be provided by the management, and the duration of the agreement.

The Directive has an Annex containing a number of 'subsidiary requirements': these apply in two instances—if management and employee representatives agree, or if negotiations do not take place within six months of a request, or yield no result within two years. According to the subsidiary requirements, the members of the EWC must be employees of the undertaking or group. They are to be elected or appointed in accordance with the laws, customs and practices of each member state. In these provisions the EWC must consist of at least three and at most thirty members. It drafts its own standing orders and can set up subcommittees. Within three years consultation must take place as to whether a new regulation should be created, irrespective of the subsidiary requirements.

The information and consultation rights provided for under the Directive's subsidiary requirements correspond very closely to those afforded to the institution of the Economic Committee *(Wirtschaftsausschuß)* established as a component of the German works council system under the 1972 Works Constitution Act.[4] Meetings should be held at least once annually. In exceptional circumstances, where there are likely to be serious consequences for the interests of employees—and especially in the event of relocation or closure of undertakings or establishments, or in the event of collective dismissals—the subsidiary requirements provide for additional information and consultation meetings.

The EWC is, therefore, far from being a works council in the sense understood in Germany. Its relatively weak legal position has led to a degree of scepticism on the part of German works council members. However, the process set in train by the Directive has far-reaching significance for the European trade union movement. The Directive is expected to encompass a total of 1,144 undertakings, of which 274 are in Germany, 125 in France, and 106 in the United Kingdom under the opt-out. A total of 186 undertakings have their headquarters in the USA. By branch, the main sectors covered are engineering and metalworking (358), chemicals (138) and food, drink and tobacco (104).

Should it prove possible to establish EWCs in these establishments over the next decade or so, this will mark a massive step forwards compared with the current situation. In the German metalworking industry, for example, there were just five agreements in 1994 on European works councils prior to the Directive, out of the total of 120 which will ultimately be embraced. This figure certainly grew daily up to the deadline for transposition as many companies made use of the opportunity for voluntary agreements afforded by the Directive. In many cases, this also entailed efforts to circumvent the provisions of the Directive or conclude an agreement at the lowest level. For example, GM submitted a proposal for an 'Employees Forum' which did not even remotely meet the requirements of the Directive's subsidiary provisions. At Digital Equipment, the EWC is to be replaced by a computerised information system: twice a year the management proposes to submit a report to employee representatives via e-mail. There are no provisions for regular meetings. The Japanese concern Matsushita has even proposed having management representatives as permanent members of the EWC. There are also, of course, companies who are waiting for national legislation to be passed and are blocking all efforts at negotiation beforehand.

Where EWCs have existed for some time (such as at VW, Grundig, Usinor-Sacilor), experience is generally positive. More important than formal rights is the fact that EWCs have allowed employee representatives to meet, exchange information and discuss common strategies. This has meant a new and massive learning process. Since 1991 IG Metall has conducted 230 meetings with employee representatives from an enormous variety of undertakings. Language has emerged as one of the most serious obstacles. Foreign-language skills—especially in English—are emerging as an increasingly important prerequisite for EWC's activities.

In order for employee representatives to benefit from EWCs, it will be necessary to organise a constant exchange of information via networks between regular meetings. This will pose a major challenge for the trade unions. The fact that the Directive requires European-scale undertakings to establish EWCs at the latest by 1999 is of immense positive symbolic importance, and will create a firm basis on which Europe's trade unions can enter the twenty-first century. By enabling them to draw together the interests of employees across Europe, EWCs will help the trade unions thwart employer strategies of divide and rule.

The Directive on European Works Councils is, however, only one step on the long road to a social Europe. The next major challenge for the trade unions will be the defence of national systems of collective bargaining under the conditions posed by Economic and Monetary Union. This situation—should it come about—will raise the issue of fundamental social rights in Europe in a much more dramatic way than in the past.

PERSPECTIVES AND LIMITS OF SOCIAL DIALOGUE

As part of efforts to give a sharper edge to the Social Dimension of the European Community, in 1987 social dialogue was granted a place within the EEC Treaty through the Single European Act. Article 118b allows the social partners to conclude 'relations based on agreement' within the context of dialogue between management and labour at European level, although the SEA does not specify what form of 'agreement' this might be. This clause has been read as having created the basis in Community law for European collective agreements. In practice, however, this question has played no role. As yet, the social dialogue initiated and promoted by the European Commission has simply led to a number of rather general joint opinions on the issues of education and training and the European labour market. (Issues covered have included the introduction of new technology, labour market adaptability and access to training.)

No system of European collective bargaining has, as yet, been able to develop on this basis, as neither side is represented by a negotiating party which has been given legitimacy and an appropriate mandate by its respective membership. Neither UNICE, the ETUC, nor any industry-level association for each side is therefore in a position to conduct collective bargaining.

The new provisions for social dialogue under the Maastricht Treaty envisage an extension of its functions and the institutional framework. The aim of 'contractual relations' was confirmed by adding the phrase 'including agreements'. Two routes are envisaged through which agreements can be implemented. The first refers to the customs and procedures of the social partners in the member states. The second provides for a decision by the Council on the implementation of an agreement struck between the social partners—that is, their transformation into Community law. However, this second procedure is only possible on issues which fall under the legislative competence of the Community in the sphere of social policy: it excludes pay, the right of association and industrial action. Within the framework of the social dialogue, the social partners can also intervene in the social policy legislative process of the Community and resolve to regulate an issue independently through an agreement between themselves. There are good reasons to doubt the practicability of this procedure as it can only succeed when both sides wish an agreement to be made.

Whether the social dialogue, as upgraded through the Maastricht Treaty, represents a suitable legal basis at Community level for European collective agreements is questionable—and ultimately has to be answered in the negative. This is also the view of UNICE and the European Metalworkers' Federation (EMF) (Hornung-Draus 1993; Bobke 1993). At best, the social dialogue can contribute to enlivening and supporting the Community's social policy. The fact that it relies on the consensus of the parties means that expectations should be muted. Experience so far has not been encouraging. The theoretical

possibility that employers and trade unions might use the instrument of the social dialogue to work up the missing legal framework for European collective bargaining could founder on insuperable political and practical obstacles. Experience, not only in Germany but in all member states, shows that no consensus is possible over such potentially conflictual material. However, social dialogue functions, when at all, by virtue of the fact that consensus is striven for through dialogue and not through conflict. In contrast, collective bargaining can always culminate in an open conflict. In the final analysis, these are questions of power.

It is important for the trade unions to be clear about the possibility and limits of social dialogue. Its configuration in the Social Protocol of the Maastricht Treaty rests on an approach worked out jointly by UNICE, CEEP and the ETUC whose acceptance by the Council of Ministers represented a considerable success. It is therefore understandable that the ETUC should invest considerable hopes in it. The sceptical position taken by IG Metall does not represent a rejection of social dialogue. Rather, IG Metall's concern is to avoid losing sight of long-standing aims by being dazzled by the shiny new instrument. The trade unions cannot abandon the principle that Community law should be complemented by the legal foundations for European collective bargaining. Beyond this, however, there is a danger that the increased integration of the social partners into the Community might provide a pretext for inactivity in the social policy field because the onus now falls on them to arrive at a consensus within the formal framework of the social dialogue.

PERSPECTIVES FOR COLLECTIVE BARGAINING IN EUROPE

Instead of European collective bargaining we turn now, more precisely, to collective bargaining in Europe. This is meant to show clearly that collective bargaining initially—and for the foreseeable future—will remain a national matter. Cross-border collective bargaining and collective agreements remain hopes or dreams for the future—aside from the few exceptions already referred to. In Germany, collective bargaining is overwhelmingly a matter for those industrial unions affiliated to the German Trade Union Confederation (*Deutscher Gewerkschaftsbund*—DGB). The same applies in most other countries. As in the UK, the national confederation in Germany has no mandate to bargain. In a few states, such as France, Italy or Belgium, national confederations may negotiate various types of national framework agreement. Because of the paramount significance of collective bargaining for national trade unions, it would be difficult for them to transfer their bargaining powers to the European-level confederations. What is realistically imaginable are specific mandates on limited issues which are best resolved at European level.

The structural problems would appear to be very similar on the employers' side. The ETUC and EMF have on several occasions asked the employers' central associations to indicate their willingness to negotiate on specific issues. The response has always been negative. Possibly, the readiness to give European-level associations a negotiating mandate is even less in the case of the employers than of the trade unions.

At its collective bargaining conference in early 1993, the EMF decided to put its emphasis on coordinating national collective bargaining approaches (see Chapter 12). Given the institutional position, this seemed to be the most realistic strategy. The substantive ideas which were expressed in the paper agreed on by the EMF might appear somewhat utopian. However, that such coordination is possible has already been demonstrated on the issue of cuts in working hours: the aim of the 35-hour week is now shared by the EMF's member trade unions, and substantial progress has already been achieved on the issue of reducing working hours.

However, even the coordination of national negotiating approaches is confronted with the problem of the disparities between the legal frameworks for collective bargaining in different member states. The lawfulness of strike action, for example, varies considerably from country to country. Lock-outs are forbidden in some countries, are never practised in others, but play a key role in Germany. Issues which are of particular relevance in Germany, and in some cases have a massive impact on the finances and through this the very existence of trade unions—such as the relationship between regional bargaining and lay-offs by employers in other regions as a result of industrial action elsewhere (dubbed 'cold lock-outs')—may play no role, or only a minimal one, in other countries. There are also important differences on union and employer obligations to maintain industrial peace during the lifetime of collective agreements, or the obligation to refrain from industrial action which applies to works councils in some countries. As a consequence the trade unions are confronted by a complex legal situation which in practice means that they cannot employ industrial action in different countries when pursuing an identical claim at the same time with a single employer. This situation constitutes a major handicap to the synchronisation and coordination of collective bargaining.

For the trade unions there is an indissoluble link between collective bargaining and the right to strike. To use the phrase famously coined by the German Federal Labour Court, collective bargaining without the possibility of a resort to the instrument of the strike would be no more than 'collective begging'. If one looks at the more long-term prospect of cross-border European collective bargaining with the aim of cross-border agreements, it is evident that one indispensable precondition is the anchoring of collective rights at European level. This includes freedom of association, the right to collective bargaining and the right to strike, along with a legal framework—comparable with the German Collective

Agreements Act *(Tarifvertragsgesetz)* —to establish the ways in which collective agreements are to be implemented. It is, for example, questionable whether collective agreements concluded at European level would fall under the Collective Agreements Act and acquire legal enforceability. In countries such as Great Britain, such agreements would be virtually without effect, and would have to be renegotiated by national trade unions (see Chapters 6 and 8). As a consequence, EMF and the ETUC have called for European collective agreements to be directly binding in the member states (Coen 1992:256; Däubler 1992:329).

The Social Protocol of the Maastricht Treaty expressly excludes Community intervention in the fields of freedom of association, the right to strike and employers' right to lock out. Moreover, instruments of Community legislation would offer an unreliable foundation as they could be retracted or changed by the Community's legislature. The trade unions have therefore called for these rights to take the form of fundamental social rights within Community law. The political difficulties which stand in the way of such an approach could prove insurmountable for some time. Thirty years elapsed, for example, before agreement could be reached on the matter of European works councils: given this history, the immediate prospects for achieving the incomparably more difficult task of creating a framework for European collective bargaining and collective agreements are hardly encouraging. However, this is a crucial question for the future of industrial relations in the European Union. The more integration forges ahead, the closer the point at which a 'Europeanisation' of collective bargaining might become necessary for the trade unions as national collective bargaining loses its significance within a currency union. In order for the principle of collective bargaining to retain its significance as the key regulative of industrial relations, and ultimately of the EU's social market economy, at some point the preconditions for such a Europeanisation have to be created. Initially, this is a political task for the Community, which must make the appropriate legal framework available; but it is also a task for the trade unions, who are called on to adapt their structures to the requirements of the internal market and the Community to a greater degree than hitherto.

NOTES

1 European Parliament, Resolution of 11 March 1993.
2 'The provisions of the Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs' (Agreement on Social Policy, Article 2:6).
3 ETUC Executive Committee, 4 March 1993; EMF, Collective bargaining conference, 11/12 March 1993 (see Chapter 12).
4 Such a committee must be set under German law as a subcommittee of the works council in all companies with more than 100 permanent employees to deal specifically with information to be disclosed by the employer on the state

of the business: this includes the broad economic and financial position of the company; product and marketing; investment, production and rationalisation plans; reductions in activity, closures or transfers of operations. Information must be thorough, presented in good time, and with an assessment of the impact of the company's personnel planning.

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11

THE EUROPEAN TRADES UNION CONFEDERATION

Willi Buschak and Volker Kallenbach

EUROPEAN COLLECTIVE BARGAINING—NOTHING NEW?

> It is the task of the international trade union confederation and its affiliated organisations to convey to the workers of all countries that the contemporary trade union movement must pursue the same strategy internationally which it followed at national level some 20–25 years ago. At that time, we learned that a local struggle to improve working conditions not only had a very minor significance for, but often even a disadvantageous effect on, the struggles of workers in a given occupation in the same country. Workers have learned to put their own particular interests in the background—to the benefit of the general interests of all their colleagues in the same industry in their own country, and if necessary, of the entire workforce. It is now necessary to understand that, where necessary, the workers of one country must put their own interests—whether of a specific occupation or the workforce as a whole—behind those of the interests and struggles of all their fellow-workers in a given occupation or the working class as a whole, and develop corresponding trade union strategies.

This is not Emilio Gabaglio (ETUC General Secretary) or any other member of the ETUC's current secretariat addressing the issue of European collective bargaining, nor a General Secretary of a European Industry Federation. The search for the author of the above quote would need to probe much further back in trade union history. Continuing our concealment for just a little longer, we might consider a further quotation from the same source. The old tactic, he complains, of independent action by workers in one country without preceding discussion and coordination with the colleagues from the same industry in surrounding countries not only represents a waste of effort but plays into the hand of the employers. Just as, earlier, the working conditions of engineering workers in Essen, Bochum and Dortmund were indissolubly linked, the same now applies to 'the working conditions of workers belonging to two different countries and speaking two different languages' (Fimmen 1925:109, 114).

The case of Hoover in 1993 and similar relocations in which employees are played off against each other seem to have been a familiar phenomenon to our author. The first quote was originally part of a speech to the Congress of the International Trade Union Confederation in 1920 in London; the other from a brochure written in 1925, *Vereinigte Staaten Europas oder Europa AG* (A United States of Europe or Europe PLC). The author, Edo Fimmen, a Dutchman, was the General Secretary of the International Transport Workers' Federation—and a trade union thinker considerably ahead of his time. International coordination and consultation, and an international strategy for collective bargaining not only were viewed as avant-garde pipe-dreams by his contemporaries but, much more seriously, were seen as simply irreconcilable with the tasks of an international trade union organisation. He was supported only by the International Union of Foodworkers (IUF). Not surprisingly, the IUF was one of the few International Trade Secretariats which collected specific experiences of disputes with transnational concerns in the inter-war period.

Only at the end of the 1950s and in the early 1960s was Fimmen's idea taken up again—or reborn, as Fimmen had long since been largely forgotten. As early as 1960, the tobacco section of the International Union of Food and Tobacco Workers had considered the possibility of an international collective agreement to standardise the working week and holidays. One of the advanced guard of this group, Günter Döding, developed a proposal for a collective agreement in 1963 which was to be put before BAT. Nothing happened, however. No one at BAT had the slightest interest in concluding such an international collective agreement (Rütters 1989:217ff).

Collective agreements across national borders migrated from there into other regions—books, congress resolutions, essays in yearbooks and other non-binding formats. In 1973 Ludwig Rosenberg wrote that collective bargaining had to be organised on a European basis within the European Confederation of Free Trade Unions (the ETUCs predecessor) if employees wanted to defend their interests (Rosenberg 1973). Heinz Oskar Vetter, former head of the German DGB, regarded a 'common negotiating strategy' in Europe as a central task of trade union policy during the 1980s (Vetter 1980:181ff). However, it was not until the 1990s that the first tentative steps were taken. The differences between the member organisations of the ETUC, which was founded in 1973, were still too big to allow serious consideration to be given to embarking on the adventure of European collective bargaining. And on the other hand, the readiness to move away from formulaic compromises and find genuine joint political positions was minimal. European trade union strategy was more an afterthought of national policy, the foreign policy of individual organisations, but not moved by any desire to inject real life into the ETUC. The national framework appeared to be sufficient to defend employee interests and, moreover, had the advantage of familiarity. Finally, there was no legal framework for European collective bargaining. The first

stone in this mosaic was laid with the 1986 Single European Act. Article 118b of the Act set down the will of the member states 'to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement'.

Jacques Delors's announcement that 80 per cent of decisions of significance for the economic and social life of Europe's citizens would be taken in Brussels may have been exaggerated but its shock value was nonetheless of great importance. It led the member organisations of the ETUC to look for common positions and definitions for what had been a rather vague and nebulously defined 'social Europe'.

The European employer associations for a long time spurned the idea of cross-border contacts, let alone negotiations. And the encounters between the central organisations—the ETUC, UNICE and CEEP—within the framework of the 'social dialogue' did little to change this. Although a number of joint opinions were adopted—on information and consultation in the event of the introduction of new technology, employment strategies and mobility—the employers refused to go beyond declarations of intent and non-binding pronouncements.

THE 1991 SOCIAL PARTNERS AGREEMENT

This background meant that the agreement between the three central organisations, concluded on 31 October 1991, was all the more surprising. As late as the morning of the 31 October, the trade union side would not have believed that the day would have closed with the conclusion of a document which provided for the possibility of European framework agreements. The employers' sudden change of mind has to be seen against the background of the debate on the reform of the European Community treaties. The 'agreement' between the social partners was nothing more than a proposal to reformulate the Treaty's Article 118. This concerned the elaboration and transposition of social policy measures. The European Commission was to have been required to consult the social partners before developing social policy initiatives. If, following this preliminary consultation on the broad direction of a proposal, the Commission wanted to present a concrete proposition, it would have to have consulted the social partners. Up to this point, the 'agreement' contained little that was new and simply consisted of the demand for increased, and critically early, consultation on the Commission's plans. What was new was the idea of giving the social partners a type of right of initiative. They were to be able to communicate to the Commission during the developmental phase of a proposal that this was an issue which could be regulated via negotiation, and would be given nine months to come up with a proposal, which would then be declared generally binding. In addition, the national transposition of regulations agreed at European level could be undertaken by the social partners (*Official Journal,* C. 191, 29 July 1992). There has been

much speculation as to why the employers changed their mind. Motives which may have played a role include the decision to take the bull by horns and mount an assertive 'retreat forwards', the desire to influence the debate on the reform of the EC treaties, recognition that collective agreements would inevitably take on a European dimension, that one could no longer escape from the process set in train by the Single European Act, organisational considerations and, finally, the realisation that negotiated solutions might be more favourable for the employers than statutory ones.

The agreement on the Social Protocol attached to the Maastricht Treaty and accepted by eleven member states, with the UK opting out, incorporated the social partners agreement virtually unchanged. This gave the social partners a new role in the implementation and elaboration of directives. The member states (excluding the UK) can entrust the implementation of directives to the social partners: instead of national legislation, an agreement between the social partners will serve to transpose measures agreed at European level. However, the member states may 'ensure that, no later than the date on which a directive must be transposed in accordance with Article 189, management and labour have introduced the necessary measures by agreement'.

The Commission is obliged to consult management and labour before submitting proposals in the social policy field 'on the possible direction of Community action' (Article 3:2). The social partners may inform the Commission that they wish to proceed via an agreement between them, and have nine months in which to come up with a measure. Finally, the social partners can conclude agreements on their own initiative, without any involvement by the Commission. Transposition can then taken place 'in accordance with the procedures and practices specific to management and labour and the Member States' or 'at the joint request of the signatory parties, by a Council decision on a proposal from the Commission' (Article 4:2).

The latter procedure is restricted. It does not apply to the broad span of all possible social policy issues, but 'only' to improvements in the working environment to protect workers' health and safety, working conditions, employee information and consultation, sex equality and equal opportunities, and the integration into the workforce of those excluded from the labour market. Both the original agreement and the Maastricht Treaty's provisions have met with a broad positive response. They have been celebrated as a breakthrough to European collective bargaining, as the final chance to breathe life into European negotiations, and as a possibility for the social partners to be more broadly and more intensively integrated into the elaboration of social policy proposals than previously. However, UNICE's response served to dampen enthusiasm for this development:

> The negotiations envisaged in the agreement have been interpreted as the beginning of European collective bargaining. In UNICE's view,

> this interpretation is not correct. The meaning and aim of the agreement is to improve the opportunities for participation by the European social partners in the shaping of European social policy.
>
> (Hornung-Draus 1993:7)

Although UNICE is relaxed about the possibility of such negotiations, it will only be prepared to enter into them if they 'are warranted both by observance of the principle of subsidiarity and by their content' (ibid.). The many question marks which still need to be clarified should not be overlooked. They begin with the question as to who should lead negotiations: the ETUC or the European trade union federations? And what about the readiness of the affiliated trade unions to agree to European framework agreements? At what level? And how might the linkage between these fields appear? How can it be ensured that the right to free collective bargaining of the ETUC's affiliated unions be maintained, that collective bargaining at European level complements, accompanies and supports national negotiations—rather than replaces them? What procedures should be followed? Should this be analogous to the procedure of setting minimum standards, as with European legislation, which can be improved on at every different level of bargaining? Who issues a mandate to negotiate? How are claims to be established, and who will confirm the outcome?

EUROPEAN COLLECTIVE BARGAINING: LEVEL OF NEGOTIATIONS AND BARGAINING MANDATE

The Maastricht Treaty offered the social partners the possibility of negotiating at four different levels:

- multi-industry at European level;
- industry or branch level;
- interregional level;
- the level Community-scale companies or groups.

The associations recognised by the Commission at European level for the Maastricht-based process are the ETUC, UNICE and CEEP. Agreements spanning all or several sectors can be agreed between these organisations: this would involve framework agreements whose substance would have to be the object of further negotiation and formulation at national and sectoral level. Such agreements could only define minimum provisions and contain general principles and guidelines.

Branch-level negotiations have a particular significance within European collective bargaining—mainly because, along with transnational companies, this level offers the greatest possibility for arriving at European agreements. At this level, framework agreements can be concluded between the, at

present, sixteen European industry federations and their counterpart employers' associations. Further negotiations would also be required at national level.

Interregional agreements have a specific relevance for issues which effect border regions. Here agreements could be concluded in close cooperation with national trade unions.

Prospects are undoubtedly most promising at the level of transnational companies and groups. It is at this level that the first European agreements have been concluded, with the inclusion of the European industry federations, despite the lack of any legal framework. The establishment of European works councils in accordance with the Directive will create a favourable environment for the conclusion of further agreements. Both the European trade union federations and national trade unions could be included in cross-border negotiations.

Choosing the right level of negotiation should not present an insuperable problem. In the final analysis, it is not a question of principle but of political opportunity and trade union effectiveness.

The question of the negotiating mandate is certainly the most difficult problem to resolve. This is primarily a question of the will to joint action. The October 1991 agreement between the ETUC, UNICE and CEEP and Article 4 of the Social Protocol expressly provide for the possibility of concluding agreements at European level.

It is now up to the trade unions to make use of these opportunities. It ought to be evident that the ETUC's powers and those of its sectoral membership organisations are solely and wholly derived from a mandate from their memberships. Equally, this mandate must be restricted to each separate set of negotiations—that is, there can be no general negotiating mandate, and any devolved powers must be subject to constant control. This applies first and foremost at the multi-industry level. Different structures exist in each country; for example, only individual unions have the power to conclude agreements in Germany and Great Britain, but national union confederations have this power in other countries. Despite these differences, it is entirely possible that national negotiating institutions could participate in European collective negotiations directly or indirectly through a precise allocation of a bargaining mandate. What must be established in every case is that there is sufficient feedback with the ETUC's national and industry-level organisations.

The best prospects exist at the level of Community-scale companies and groups. In these cases, it is entirely a question of the company's or group's central management deciding to initiate negotiations with representative trade union organisations and ultimately concluding agreements which would apply to the whole company or group.

CRITERIA FOR EUROPEAN NEGOTIATIONS

The Social Protocol offered a number of subjects for implementation. However, it is important to establish the criteria for deciding on whether negotiations would be appropriate:

1 Claims must be realistic—that is, attainable.
2 The level of negotiations plays a special role in the choice of issue. At multi-industry level, only those issues should be considered which require pan-European regulation, such as minimum wages, sex equality, further training and education and some fields of health and safety at work.
3 At branch level, possible subjects for negotiation might include the introduction of new forms of work organisation, temporary work, lay-off pay (for example, in the construction industry for stoppages caused by bad weather) and rest periods. Finally, the issues and perspectives would need to be established by those bodies endowed with a negotiating mandate.
4 The aim of European collective bargaining should not be to standardise all employment or social provisions in Europe. The issue is not one of a crude levelling, as is sometimes claimed polemically by the employers, and neither is it a matter of centralising negotiations at European level. And finally, it is not an objective of the ETUC to standardise wages from Palermo to Copenhagen. The aim must be to set about a harmonisation of living and working conditions throughout Europe. This will involve more rapid progress for those countries where standards are presently lower, without obstructing social advance in countries with higher standards. This is the only method for achieving a step-by-step narrowing of the gulf between Portugal and Denmark—and between Greece and Portugal.

DISCUSSION GETS UNDERWAY

The October 1991 agreement has, at least, enjoyed one success inasmuch as it has stimulated discussion about European collective bargaining within the European trade union movement. What was once an issue for a small circle, the collective bargaining committees of the European industry federations, was placed before a much larger trade union public. In June 1992 the ETUC organised a major conference on the European dimension of collective bargaining; the EMF followed in March 1993 with a meeting, and national trade union conferences, such as the Leisure and Food Section of the General Municipal and Boilermakers' Union (GMBU) in 1993, focused attention on the subject of European collective bargaining. The German Mining and Quarrying Union has indicated that it wants to draw up a

collective agreement for the dredging industry. In March 1993 the Executive Committee of the ETUC issued a declaration on collective bargaining identifying European negotiations as one means for defending workers' interests, alongside its calls for change in the spheres of economic, financial, social and labour market policy. In the ETUC's view, the scope for collective bargaining in the member states had become heavily circumscribed, and the maintenance of free collective bargaining—that is, the ability of the unions to act—required the coordination of national and branch negotiations at European level. In most of the European industry federations, the appropriate body was identified as the existing collective bargaining departments.

As the Executive Committee has emphasised, European collective bargaining also has a national dimension:

> National collective agreements must take account of the European dimension raised by the completion of the Single Market. It is therefore essential to increase the coordination of the aims and strategies of national trade unions within the European Industry Committees in order to protect the interests of workers and their unions in this process. To meet this objective, the sectoral and national member organisations should set common aims for collective bargaining within the framework of the ETUC.
>
> (ETUC 1993)

The function of European collective bargaining, on this approach, is to strengthen the position of the trade unions in national negotiations through information and coordination at European level: European bargaining is not an aim in itself, but simply a means to 'overcome problems which cannot be solved at national level' (ibid.).

Social dialogue, the regular meetings between the social partners at European level under the chair of the European Commission, is as yet not a forum able to conduct collective bargaining. According to the ETUC's Executive Committee, social dialogue is a 'discussion forum for the social partners'—and nothing more than this. It is a body on which preparatory discussions can be held, views exchanged, and efforts made to foster mutual understanding and a narrowing of differences between positions, and on which possible topics for European collective bargaining can be raised but not negotiated. Within the social dialogue, the ETUC will seek to come to concrete accords with the employers on important social policy objectives—such as access to vocational training, parental leave, macro-economic policies to achieve long-term qualitative growth, and minimum employment standards. In order to move away from the generally non-binding declarations which the social dialogue has led to so far, the ETUC will argue for both sides regarding these declarations as binding obligations, as something which they in turn should argue for both at Community level and in the member states. Admittedly, even the finest declaration will extend only as far as the negotiating power and implementing capacity of the negotiating partner. The

will of the employers' associations to implement matters set out in agreements will only be prevented from fading if it is confronted with an ETUC which itself is capable of taking action.

Without the possibility of cross-border action, including cross-border strikes, European collective bargaining will remain only a vague possibility. However, the Maastricht Treaty stepped back from offering any regulation of the right to strike and rights of association. And even if such a regulation had been forthcoming, we know—and have known at least since Ferdinand Lassalle—that effective power has a legal and practical side. Given a level of trade union membership in some countries of below 10 per cent, having the formal right to take cross-border action leaves open the question of what real force such a provision might have.

NEITHER PANACEA NOR MIRACLE DRUG

European collective bargaining will certainly not be a panacea or miracle drug. It will not be a magic broomstick which can be used to browbeat the employers into conceding positions which have been lost nationally. European collective bargaining is one part of the broader process of trade union reform, an element in a necessary change which trade unions must pass through if they want to survive—but only an *element*. And moreover, it is an element which must be handled carefully in order to avoid trade union participants in a process of collective bargaining looking like duped sorcerers' apprentices—but no longer able to call on the sorcerer to save them. European collective bargaining strategy should not forget that one purpose of collective negotiation is to establish solidarity. Any strategy which seeks to focus on the European belt of prosperity from London to Milan would be a fatal mistake as it would contribute towards making employment conditions even more divergent—at least if the link with national industry-level agreements were severed.

In Italy, national collective bargaining embraces some 80 per cent of the workforce, and subsequent workplace-level bargaining only 50 per cent. One can imagine how this might look if negotiations began at European level. How can small and medium-sized enterprises, with their employees, be prevented from being marginalised? The completion of the Single Market does not mean that in a few years everything will be decided by collective bargaining in Brussels. There will not be a European centralism: rather the European level will be one among several, if not many. Trade unions in the future must become more differentiated institutions for representing interests. Employees have long been a highly heterogeneous group; their needs and the demands they place on trade unions will become more diverse and only encompassable through an approach to collective bargaining which maintains a careful balance between the workplace, regional, national and European levels. Improved coordination of bargaining strategies in Europe

does not mean that one of these levels will disappear. The debate on collective bargaining in Europe might seem to lack substance, but in fact cross-border negotiations have been taking place. Since 1985, for example, negotiations, culminating in agreements, between European industry federations and managements have underpinned the establishment of European works councils.

Trade unions in Europe have been engaged in collective bargaining to secure rights to cross-border information and consultation since the early 1980s. Other issues are still awaiting a start to negotiations, such as health and safety at work. For example, an agreement in the printing industry might provide for the replacement of toxic cleaning materials by plant-based oils. The Danish printworkers' union has accumulated some experience with the substitution, and the issue has been taken up in Germany and Spain. Why shouldn't such a process be pursued through a framework agreement at European level? Why not agree framework provisions on new forms of work organisation, such as team working? Or framework provisions which establish some basic provisions for plant relocations? Or, again, framework agreements in which the parties commit themselves to pressing for the abolition of genetic aptitude tests? There is no shortage of subjects for European-level collective negotiation. And, as far as the ETUC and UNICE are concerned, such negotiations can only sensibly yield framework provisions through broad agreements, which should not be seen as an alternative to legislation.

In order to develop successful negotiations, the ETUC would have to provide a much clearer demonstration of its capacity for mobilisation—illustrated for example by the demonstrations organised across Europe on 2 April 1993. Without the capacity to exert any meaningful influence on political debate in Europe, to propose and seize the agenda on issues, negotiations will get stuck halfway. Trade unions cannot evade the need to strengthen their European structures.

Once an agreement is reached, how should it be applied and monitored? This raises the question once again of the mandate to bargain and the internal processes by which aims are set. Only broad and democratic internal procedure and discussion among trade union members can guarantee compliance with European collective agreements. The answer is not the establishment of a European control authority, possibly tripartite, which has sometimes been raised as one option. The only answer lies in strong European trade unions, in a Europeanisation of trade union strategies.

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12

EUROPEAN COLLECTIVE BARGAINING AT SECTORAL LEVEL

Perspectives from the European Metalworkers' Federation

Barbara Gerstenberger-Sztana and Bert Thierron

Although the dependence of national collective bargaining on factors lying outside individual economies may have attained a new dimension with the completion of the Single European Market, the effects of growing economic linkage between the industrial nations of Europe on national collective bargaining have been discernible for decades.

As a consequence, the European Metalworkers' Federation (EMF) has made the European dimension of collective bargaining a focus both of analysis and concern since the organisation's foundation in 1971. In fact, the origins of international efforts at coordination lie even further back. The precursor organisation of the EMF, the European Committee of Metalworking Trades Unions, set up a collective bargaining committee in 1968, and in late 1969 published an initial study on the structure and development of collective bargaining in the metalworking industries of the EEC. This committee served to facilitate the regular exchange of information between member organisations on settlements and current negotiations. Comparison of the bargaining objectives pursued in each country and the problems in attaining them soon led to the realisation that a large number of claims could be jointly pursued. Written compilation of transnational trends represented the first step in efforts to achieve some coordination of negotiating aims to be pursued at national level.

Little has changed in the structure described above over the past twenty-five years. The number of members of the collective bargaining committee has grown with the affiliation of more unions to the EMF, which now has fifty-five affiliates in twenty-five countries. Its function as a body for the exchange of information about and coordination of collective bargaining objectives has remained constant. The committee consists of collective bargaining specialists from the member organisations and usually meets twice a year. An overview of the most recent trends in collective agreements covering

the European metalworking industry is updated annually. At regular intervals the committee also prepares statements on collective bargaining strategies with a common platform of claims. Since 1980 it has no longer been necessary for all members to agree all these positions unanimously. The EMF secretariat can also take an initiative if it is supported by a majority.

The implementation of these claims, which have to be pursued at national level, is a difficult and protracted process which moves forward at differing speeds within individual countries. For example, jointly agreed objectives, such as the 35-hour week, working time reductions for shift workers or compensation for overtime with time off have so far been met to very varying degrees. However, there is a discernible trend throughout Europe that these objectives are being pursued and achieved.

THE IMPACT OF THE SINGLE MARKET AND EMU ON COLLECTIVE BARGAINING

Long before the recent acceleration in the pace of European integration, employers and employers' organisations often rejected trade union claims for better pay and conditions by reference to the need to maintain international competitiveness. However, the realisation of the Single European Market (SEM), and the proposed introduced of monetary union from 1999, have introduced a new quality to the competition between national locations, which has the potential to pose an unprecedented threat to existing social achievements and the prospects of further improvement for the working people of Europe.

The mobility of capital within Europe is prompting rapid relocations of production from one EU country to another. The competition between national sites triggered by this mobility has often centred on issues of pay and non-wage labour costs (such as social insurance contributions). If the present wide disparities in pay, social contributions and working time between the EU member states continue to prevail into the long term, this could lead to large-scale relocation in many industries.[1] The significance of pay and non-wage labour costs will increase if the introduction of a common currency eliminates the scope for adjustment present in the Exchange Rate Mechanism (ERM) of the European Monetary System (EMS): existing productivity differences within the EU will have to be wholly balanced out by differences in pay. There will be a dramatic increase in the pressure on trade unions to concede greater pay flexibility and deregulation in industrial relations in order to safeguard employment in their own national locations. The danger of a downward spiral of pay, social standards, and the entrenchment of social and economic inequality in Europe is only too evident. This could put the entire project of European unity at risk: a Europe of gross economic and social disparities and cut-throat competition between its regions cannot be stable.

CONSEQUENCES: THE EUROPEANISATION OF COLLECTIVE BARGAINING

If the completion of the Single Market and the anticipated introduction of monetary union will bring about a new quality of economic integration in Europe, then the trade unions must also take a qualitative step forward in their efforts at cooperation. We can distinguish three levels of trade union activity. The first is the process of coordination within trade unions to ascertain and rectify weaknesses. The second is the examination of possibilities for collective bargaining at European level. And the third is the sounding out of the 'social dialogue' between employers' associations and trade unions initiated by the European Commission as a further possibility for agreement.

Intra-trade union level

There has been institutionalised scope for an exchange of information on the results of collective bargaining between metalworkers' trade unions since 1968. This yielded a coordination of central claims. The EMF decided to intensify and improve the efficiency of this system of twice-yearly exchanges of information and views in its strategy document on collective bargaining, adopted in March 1993. The content of this declaration was confirmed in the EMF's '1995–1999 Action Programme' at the EMF's 8th Congress on 29 June 1995.

Instead of the previous consultation following the successful conclusion of negotiations, in future an exchange of views should take place on objectives prior to negotiations. Observers from EMF-affiliated unions should be invited to attend important negotiations. Preparatory seminars could also serve to raise understanding for national structures and traditions and offer scope for the discussion on the purpose and substance of particular claims.

Moreover, a 'small working party' of the EMF has also begun to prepare for the creation of a data bank in which information on basic economic data, developments in the metal working sector and its individual branches, and collective agreements in force in twenty-five countries will be stored. The electronic processing of these data and the linking of information systems would offer a substantial gain in efficiency and make information available to a much greater circle of potential users.

As far as the coordination of objectives and concerted action to realise them is concerned, an intensification of cooperation in this field is supported by all member organisations. The collective bargaining section of the current Action Programme cited several new specific objectives to be pursued in all countries. For example, settlements should as a minimum equalise consumer price inflation in order to maintain employees' real incomes and maintain the viability of social security systems. Qualitative demands,

such as health and safety, should be included in all negotiations. New forms of work organisation should be introduced only after being agreed with employee representatives. Moreover, the Action Programme called for a collective bargaining conference, held in October 1996, which was to be preceded by a comprehensive study on the collective bargaining situation in Europe. The EMF has also committed itself to promoting solidarity actions for and between its member organisations and to supporting its member unions in Central and Eastern Europe in the creation of effective negotiating machinery. The pressure to turn these declarations of intent into deeds is growing, given the increasing integration of Europe's national economies.

Collective bargaining at European level

If the increasing economic integration of Europe is confronting employees across Europe with similar problems, then it is only consistent to look for solutions to these problems at European level. Negotiations between the European trade union federations and employers' associations can lead to (formal) agreements regulating issues which transcend national borders.

The ETUC has set itself the objective of reaching cross-border European negotiations with the employers, alongside its efforts to coordinate trade unions' positions in Europe. The position underlying this view is not shared by the EMF. As far as the EMF and its member unions are concerned, the negotiation of European collective agreements is not an immediate, or even a medium-term, objective: the issue is beset by too many unanswered questions.

In the first place, the question of negotiating competence would have to be resolved. Who would have the power to bargain at European level? It is clear that the European industry federations, either at branch or at confederation level, would only be granted a mandate to bargain by their members on clearly specified issues. Clarification would have to be reached as to what could be negotiated. As yet, the circumlocutions used by the EMF, such as 'regulating qualitative issues which are important for the entire European industrial culture' (EMF press release, 10 March 1993) are scarcely well suited to change the scepticism of national organisations towards any transfer of powers to the European level.

Several crucial framework conditions for the successful negotiation of collective agreements also still have to be created. Neither the right of association nor industrial action is regulated at European level. According to the Social Protocol, this situation will continue to prevail in the future—and has not been changed by the 1996/97 Intergovernmental Conference. The rights of association and industrial action are expressly identified as fields which are not amenable to Community regulation. However, collective bargaining without the possibility of supporting employee claims with

(cross-border) strikes would more closely resemble collective begging than collective bargaining. For this reason, both the ETUC and EMF called for an amendment to the Maastricht Treaty at the IGC. Moreover, the issue of the validity of collective agreements negotiated at European level also needs to be resolved. A legal framework which would guarantee the enforceability of such agreements does not yet exist.

The number of problems needing resolution, the lack of a legal framework, and the question of who to negotiate with—of particular relevance at branch level—should not hide the fact that within the trade unions, and especially in the larger ones, there is a deep scepticism about European collective bargaining. To cede bargaining powers in this core area of trade union activity is understandably no simple matter. Postponing concrete decisions as to the issues and procedures for European collective bargaining is tempting, given the large number of problems which it lies beyond the scope of trade unions to solve.

However, European collective bargaining is recognised by all the EMF's affiliates as one possibility for achieving framework agreements setting minimum standards. These minimum standards are initially sought in the fields of information, codetermination and workplace employee representation; also sought is the right to training and further training, and to social communication at work.

Multinational companies and European works councils

The difficulties in arriving at valid agreements between the two sides of industry at sectoral level or the level of the confederations are evident. However, collective agreements which bind the two sides in more than one country are already a reality at workplace level. At the time of writing, EMF affiliates have concluded agreements on the establishment of European works councils (EWCs) with the corporate managements of multinational companies in twenty-one instances.[2] The number of companies in the European metalworking industry in which an EWC must be set up in accordance with the EU Directive has been put at around 350, according to a study by the ETUI (ETUI 1995). As yet these bodies have served solely as a means for information exchange and employee consultation by corporate managements before decisions are taken which affect the group as a whole. However, it is conceivable that the EWC in a Community-scale group could arrive at agreements with the central management on clearly delineated issues such as plant operating times or rights to further training, which would then apply throughout the firm in all those countries covered. This form of 'multinational works agreement' should not become a substitute for full regional/national industry agreements, which the EMF continues to view as the most suitable form of collective agreement. However, where such an agreement would prevent employees in different European countries

from being played off against each other, if only within a single company, then the opportunities on offer should be taken.

Social dialogue

Social dialogue was already provided for in Article 118b of the Single European Act. This article was incorporated into the Maastricht Treaty as Article 4 of the Agreement on Social Policy, which also sets out the procedures which can ultimately lead to the conclusion of agreements between the social partners.

The EMF is involved in the social dialogue in the framework of the negotiations between the ETUC, UNICE and the public employers' federation CEEP. These discussions provide an opportunity for an exchange of views and clarification of differing standpoints. A number of joint opinions have been produced. The first opportunity for an agreement on the part of the social partners under Article 4 of the Agreement on Social Policy, in connection with the Directive on European Works Councils in early 1994, could not be used. Although the positions of the ETUC and UNICE on the preconditions for negotiations had got closer, the Confederation of British Industry (CBI) made it clear in the press a few days before expiry of the notice for the commencement of negotiations that it could not accept the conditions for negotiations stated by the ETUC and accepted by UNICE. In view of this disunity on the part of the employers, the ETUC rejected the option of a negotiated solution (EIRR 1993). The procedure set out in Article 4 was therefore first used in connection with the draft Directive on Reconciling Work and Family for an agreement, embodied in a Directive in June 1996, on parental leave.

At sectoral level, social dialogue in the engineering industry has so far been blocked by the refusal of the Western European Metaltrades Employers' Association (WEM) to sit down officially at a table with the EMF. The EMF's most recent initiative was made in April 1993. In a letter, the General Secretary of WEM was invited to meet for 'An exchange of information and experience on issues and problems of mutual interest, such as employment, further training, new occupations'. It was expressly emphasised that this did not entail or imply 'an institutionalisation of sectoral social dialogue'. In its reply, the WEM affirmed that it saw 'no need' for an exchange of views and referred to the position paper of June 1992 in which social dialogue was in principle rejected at sectoral level.

WEM's refusal to talk with the EMF is not typical of the position of all employers' associations in the engineering industry. For example, within some sub-branches of engineering there are talks with manufacturers, as with the associations of mechanical engineering companies and shipbuilders, as well as the car manufacturers. However, these organisations have no formal authority to deal with social policy issues. They are willing to discuss

technical issues, such as standards. However, it is WEM's role to speak for all on social matters. Because WEM refuses to do this with the EMF, Europe's engineering trade unions do not have a counterpart for discussions or negotiation for social dialogue at sectoral level.

The current refusal of the engineering employers does not alter the basic willingness of the EMF to use social dialogue at sectoral level and at peak organisation level as an opportunity to come to cross-border agreements with the employers. One should not, however, ignore one danger intrinsic to social dialogue. The current procedures could soon prove themselves to be a 'Directive blocking mechanism'. If the social partners take up an issue in negotiations, then the Commission cannot initially become active itself. These 'pseudo-negotiations', which can continue for months before ending without result, could set back the solution to pressing problems. It is necessary to be vigilant here and, as far as the trade unions are concerned, to clearly define which issues should be dealt with by regulations and Directives and which by negotiation with the employers.

CONCLUDING REMARKS

The need to Europeanise collective bargaining has been acknowledged by all the member organisations of the EMF against the background of the rapid economic integration of Europe. This was also made clear in the most recent statement on collective bargaining strategy, which is part of the EMF 1995–1999 Action Programme. There is agreement that coordination and cooperation in the formulation and implementation of collective bargaining goals must be strengthened. Concretising this basic demand, translating it into individual and clear steps, is by no means easy, however. One reason for this is the differing national negotiating arrangements. Since collective bargaining is such a central sphere of trade union activity, whose outcomes are a crucial determinant of trade unions' self-confidence and self-perception, overcoming national modes of thinking is especially difficult. This work is therefore being driven in particular by those organisations which for some time have not been able to pursue a fully autonomous bargaining approach as their economies are so closely integrated with their larger neighbours. This applies first and foremost to the EMF's affiliates in the Benelux countries and their orientation to the settlements reached in Germany. Within the EMF, these unions are taking important initiatives, together with the Scandinavian unions, aimed at specific improvements in coordinating collective bargaining objectives. The collective bargaining conference, planned for 1996, was intended to mark a qualitative step forward in this process.

To conclude, the attainment of European collective agreements remains a very long-term objective for the EMF. Before negotiations can begin, the appropriate framework conditions must be created at European level;

these include right of association, industrial action, power to set enforceable agreements. The trade unions must decide for themselves which organisations should have a bargaining mandate on which subjects.

The EMF also continues to seek discussions with the engineering employers at European level. Since there are undoubtedly issues of mutual interest, WEM's current refusal can only be seen as destructive and incomprehensible. Examples from other sectors show that dialogue between trade unions and employers' associations at this level can offer benefits to both sides, even if negotiations and concrete agreements, at least for the time being, are still a remote prospect.

NOTES

1 For example, annual working time in the UK car industry in 1993 stood at 1,830 hours, with average hourly wages of DM 19, compared with 1,483 hours in Germany at an average hourly wage of DM 28. Including social insurance contributions and other non-wage costs, UK labour costs were DM 28 an hour, compared with DM 47 in Germany (*Financial Times,* 10 June 1993:2).

2 Namely, Thomson CE, Bull, Volkswagen AG, Europipe, Smalbach Lubeca/CCE, Airbus Industrie, Eurocopter, Kone, Pechiney, Renault, Thomson—CSF, Nokia-NCM, Volvo, SKF, Norsk Hydro, Groupe Schneider, Usinor Sacilor, Grundig, Merloni, Elettrodomestici, Electrolux, Preussag AG. EWCs financed by managements existed in five other companies without any formal agreement.

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13

THE EUROPEAN CENTRE OF PUBLIC ENTERPRISES (CEEP)

Werner Ellerkmann[1]

During the first decade of the European Community employers' associations and trade unions were established at European level, without any permanent contact being established between them. As was the case with the numerous lobby organisations in Brussels, they pursued their own interests within the EC's institutions. Since 1971, the Standing Committee on Employment has provided a forum in which labour and social ministers, the Commission, trade unions and employers' associations can meet twice a year. In 1985 Commission President Delors invited UNICE, CEEP and the ETUC to participate in round-table discussions at Val Duchesse in Brussels, establishing a forum of social dialogue with the European Commission. The three participating organisations had already been identified as the social partners by the Commission in the early years of the Community.

In 1989 the heads of government of the member states, but excluding the United Kingdom, agreed the Charter of the Fundamental Social Rights of Workers ('the Social Charter'). Since that time, no one has questioned the concept of a 'social Europe'. The European Union must be built on, and developed from, the existing national diversity of social cultures in the member states. This is a task which falls not only to the national governments and institutions of the European Union but also to the social partners. They can achieve a good deal at European level, as experience within the member states has shown; governments often follow the views put forward jointly by employers' and employee organisations, which reflect the preferences of a substantial proportion of their populations. There is a harmony of interests. The EU's movement towards political union necessitates as broad as possible an identification with as many social groups as possible at European level.

The social dialogue is an important political forum for preparing employers and employees for the Single Market, and for winning their support for it. They have broad scope, and through the application of the principle of subsidiarity, the possibility of attaining a high degree of autonomy on issues which directly affect them. They will achieve this only if they

are successful in the search for as many areas of common agreement as possible, so that they can act together on key issues. To this end, basic agreements between the social partners on joint objectives and the means to realise them would seem to be indispensable in the long term.

The social partners must also exercise solidarity in economically difficult times—something demonstrated in the past. Further tests can be expected on the road to Economic and Monetary Union (EMU), during which both sides may have to demonstrate their commitment to social and industrial peace.

The joint opinions agreed by the social partners have so far covered issues such as employee information and consultation, vocational training and mobility. These represent considerable achievements, given the degree of diversity between national social cultures. The joint opinions of the Macroeconomic Working Group also confirmed that economic growth could also be promoted by 'moderate growth of real per capita wage costs below productivity gains' provided employers undertook the investments needed to create jobs.[1] This European growth strategy did yield its expected effects in some EU countries, with assistance from the various EU funds for economic promotion. With the disappearance of economic borders and the creation of a currency union, the member states will be relinquishing the instrument of exchange rate flexibility as a means to correct economic weaknesses. This will pose a further challenge to the solidarity of the member states and the social partners, who may, on occasions, have to lend additional support to weaker regions and member states.

In addition to the non-binding joint opinions, the social partners will also have scope to negotiate and conclude agreements which create further rights and obligations for employers and employees in the EU. There is agreement between the social partners that the Community should create as few laws as possible in the social sphere, as the diversity in industrial relations arrangements in the member states should not be detrimentally affected. The EU legislative process is also protracted and complex, and cannot entirely secure a standardised application of EU legal provisions within an ever-growing Community. The use of the possibilities offered by the 1991 agreement and the Maastricht Treaty is a better basis for ensuring a unitary application throughout the EU, as the parties to the agreement have a direct interest in ensuring that the rights and duties arising out of such agreements are strictly complied with in order to avoid arbitrary action at national level. This will help promote self-discipline on the part of the social partners.

All the actors representing the social partners within the social dialogue occupy positions of responsibility in national employers' and employee organisations. This offers a guarantee that national industrial relations diversity will not be unnecessarily impinged on by agreements struck at EU level.

Future European labour law must be developed primarily on this basis—and then only when there is an evident need which benefits the Community.

These preconditions should also be made clear, and understandable, to Europe's citizens. Where these conditions are not met, it would be preferable to dispense with any EU-level provision.

As yet, no national party to collective bargaining has called for such negotiations. The national level must, one might assume, still be sufficient to deal with the consequences of the Single Market. This will probably change with growing economic integration. The social partners at EU level should therefore ensure that they are adequately prepared for such an eventuality by accumulating experience with agreements at EU level. It would be risky to wait until an urgent call came from the national level. The social partners might then have to act very quickly—an ability which they have, as yet, not always convincingly demonstrated. Should they fail to act with the required speed, the EU legislature might have to act and make use of its powers to create European law. In order to establish some control over this possibility in advance, the European social partners should not delay negotiations, and should concentrate on those areas where they have already reached joint opinions and where, as a consequence, they already share a large measure of agreement.

Employee mobility would be an initial case in point. Existing obstacles to mobility should be removed as swiftly as possible—a prospect which both social partners could regard as opportune. The Community will fulfil its aims more quickly, the more it succeeds in creating paths for people—especially young people—with ideas and enterprise to gain experience in other countries, participate in formal education and, in particular, become acquainted with other cultures and learn other languages. Language skills are an indispensable precondition for the success of the Single Market—an observation embodied in the maxim stemming from the Middle Ages that 'the best language is the language of the customer'.

Initially, it would be advisable not to negotiate on issues which could impose financial burdens. This would create additional problems. Moreover, if an agreed provision is both reasonable and useful for both sides, the financial aspect will regulate itself through the innate dynamic of the necessities of the situation.

Since the social partners at EU level and some of their members at national level are not empowered to conduct negotiations which might bind their national affiliates, only framework agreements will be possible in the immediate future: these will require a further specific regulation for transposition into effect at national level. Framework agreements can only be fully effective if those actors who are directly responsible at national level can adopt the substance of the agreement and implement it. This may cause difficulties in some instances, but without the active participation of the grass roots Europe will remain a incomplete.

There is a good deal of work to do here, including in as far as the application of the Social Protocol is concerned. There is a risk, if the

social partners wait too long, that the European Parliament could become more active and seek to introduce legislation which falls within the remit of the social partners. Experience shows that powers which are not used can become defunct.

The entry into force of the Maastricht Treaty has given the Commission important new powers in the construction of economic, monetary and political union. It is highly probable that the Council of Ministers will not sanction the additional posts needed for this. In order to free up posts, the Commission might then need to delegate some of its existing powers, and in particular those which do not have a sovereign character. This includes activities in the social sector, where there are numerous programmes—for example on vocational training and mobility. This often involves simply an element of start-up financing, which means that, should the programme succeed, continuing financing would have to be taken over by those directly benefiting, such as employers' associations and unions. These programmes would offer an immediate opportunity for the Commission to entrust management and administration to the social partners, so that EU officials could be released for other tasks, such as the financing and implementation of social projects with a sovereign character but which fall within the scope of the Commission.

As a result, the social partners could, with the authority of the Commission, create a sphere of self-administration *(Selbstverwaltung),* such as is already found in many systems of social provision in continental Europe. This would also represent an application of the principle of subsidiarity. The social partners certainly possess as much expertise in this field as the Commission.

The assumption of such tasks, and the consequent closer integration of the social partners into the structure of the EU, will lend greater weight to the authority of the EU. It should not be forgotten that these organisations have an impact on individual plants and enterprises, on both management and employee sides, through their affiliated national member organisations.

In the Nordic countries, in particular, employers' and employee organisations, separately or together, seem to play a role in difficult periods which is of national significance. This would be worthy of emulation in the EU, especially as the Maastricht Treaty envisages important roles for the social partners—for example that the Commission must consult them before taking action in the social field. If the social partners want to play this role, they should take joint concrete initiatives—not wait for initiatives from the European Commission.

During its early years the social dialogue has not captured the attention of either the public or many organisations operating in Brussels. The development of the Single Market—together with the economic difficulties evident in Europe since its formal completion—has heightened the status of social problems. Many European organisations operating in Brussels

would like to be included in this dialogue and are supported by the European Parliament. If this involved a non-binding dialogue, then the circle of participants should not be too restricted.

However, the three current participants overwhelmingly represent organisations which are characterised at national level by their representation of either employers or employees and which conduct collective bargaining—that is, they are the bearers of the rights and duties of each side. They are closely involved with the development of labour law. From them extends a direct line to the EU level, at which European organisational law can be created. If necessary, national rights ought to pass into European employment and organisational law in accordance with the bottom-up principle. That is, law should be created at European level which has it roots at national level. The law created by the EU social partners must be seamlessly connected to national law. The representativeness of these organisations with a negotiating mandate should therefore not be placed in question if future legal uncertainty is to be avoided.

Other organisations in Brussels which would like to be included in the social dialogue, but which cannot acquire the authority to bargain because there is no party at national level to confer it, ought to be directed to the Economic and Social Committee, which embraces all relevant groups and offers a forum within which they can raise their concerns. It may be that the Economic and Social Committee is well suited to the task of maintaining a closer link between the social partners, in particular when, as agreed in the Maastricht Treaty, the Council of the Regions also functions alongside it.

This is a personal observation rooted in the wish to place social Europe on as broad a basis as possible but also to emphasise its legal character. Social Europe cannot be an edifice composed of non-binding opinions. It must have a solid social structure, rooted in and developed on the basis of its foundations in existing national law, wherever possible by those responsible at national level for the pursuit of the good of the community. Should the social partners negotiate with each other, there will invariably be situations the solution to which would require resort to the services of an independent arbitrator. One candidate might be the Economic and Social Committee. The EU Commission, which is first and foremost an institution concerned with the preparation of legislation, would be less suitable. A shift of the social dialogue towards the Economic and Social Committee would mean that meetings and negotiations would no longer be chaired by a representative of the Commission. The chair would rotate between the ETUC, UNICE and CEEP—a format which has already proved successful, when CEEP and the ETUC negotiated their framework agreement.

If future negotiations were to be conducted within the ambit of the Economic and Social Committee, the interests of other social groups who are represented on it but who lack negotiating powers could be given

closer attention so that the problem of representativeness would be less prominent. All socially relevant European organisations could be reflected within the social dialogue, and like the Council of the Regions would gain in status and significance. The EU would take a substantial step forward in bringing itself closer to Europe's citizens, and reduce the scope for the type of negative development seen in the process of ratifying the Maastricht Treaty. The principle of subsidiary would also work to the benefit of the EU.

NOTES

1 This contribution represents the personal view of the author.
2 *Joint UNICE/CEEP/ETUC opinion on the Cooperative Strategy for Growth and Employment,* 6 November 1986.

14

THE UNION OF INDUSTRY AND EMPLOYERS' ASSOCIATIONS IN EUROPE—UNICE

Renate Hornung-Draus

Both academic discussion and political debate all too frequently reduce the issue of 'European industrial relations' to the conclusion of European collective agreements. The fact that no such agreements in the classical sense exist is then used to infer that European industrial relations remain underdeveloped and that, as a consequence, the social dimension of the Single Market has been only very inadequately realised.

This contribution takes a different approach. It views industrial relations as a broader pattern of relationships between the social partners at various levels, embracing not merely the 'classical' instrument of the collective agreement through which the social partners autonomously regulate terms and conditions of employment, but also the wider interplay of the state and the social partners in the formulation and implementation of employment and social legislation.

Any examination of the prospects for the development of industrial relations at European level must begin with the background constituted by existing national systems. European industrial relations rest on a large number of highly diverse and heterogeneous national systems and traditions and cannot therefore be understood using the categories and concepts peculiar to any one national system.

THE HETEROGENEITY OF INDUSTRIAL RELATIONS IN EUROPE

Europe does not constitute an industrial relations *tabula rasa* on which any desired text can be inscribed: the conduct of industrial relations as European level takes place on the basis of diverse national systems deeply rooted in specific social traditions and with distinct variations in each of their constituent elements.

Collective agreements

In most continental European countries, the dominant form of autonomous employment regulation by the social partners is the collective agreement with extensive multi-employer coverage, either at sectoral or regional level. In contrast, the collective regulation of terms and conditions of employment in the United Kingdom and Irish Republic is most commonly undertaken by single-employer agreements; multi-employer agreements play a relatively minor role.

In countries where multi-employer agreements predominate, there are, however, important differences as regards levels of negotiation. Whereas collective agreements in Germany, for example, are confined to sectoral and usually regional level, in France, Spain, Portugal and Italy there are also important national multi-industry agreements. Again in contrast to Germany, where the national organisations for the trade unions and employers—the DGB and BDA (see Chapter 2)—coordinate the bargaining approaches of their affiliated organisations without being directly involved in negotiations, the 'peak' organisations of trade unions and employers in the latter group have the power to conclude binding agreements.

The enforceability of collective agreements is also very differently regulated. In Germany, agreements are essentially only binding on members of signatory organisations (aside from those 'extended' by administrative regulation—a fairly restricted phenomenon) and each side is bound by a peace obligation during the lifetime of the agreement. In contrast, in France and Spain, for example, collective agreements can have an *erga omnes* effect; that is, they may apply automatically to all employers and employees irrespective of their membership of a signatory organisation. At the same time, in France there is no peace obligation: the constitutionally guaranteed individual right to strike cannot be removed by collective agreement. The United Kingdom offers a very different picture: unless agreed otherwise by the parties, collective agreements are 'binding in honour only' at the collective level and cannot be enforced in the courts.

The relationship between statutory and agreed employment regulation

There are important differences between the various European systems as regards the relationship between statutory and agreed employment regulation. In Denmark, for example, a national Main Agreement between the employers (DA) and trade unions (LO), initially concluded in 1899, has meant that there is very little statutory employment regulation. The social partners regulate virtually the entire gamut of employment and industrial relations issues autonomously on the basis of collective agreements—matters customarily regulated by law elsewhere.

The unique feature of the Danish system also led to the insertion of the so-called 'Christophersen clause' into EU social policy Directives: this allows member states to leave the implementation ('transposition') of Directives to the social partners at national level, provided this can guarantee an extensive national application of the provisions. The clause, already in effect before the Maastricht Treaty, was incorporated as Article 2:4 of the Social Chapter agreed by the Eleven in the Social Protocol of the Treaty. It has been widely applied in Denmark, most recently over the transposition of the Directive on European Works Councils.

In contrast, in a number of other countries it is customary for the substance of social policy legislation to be first negotiated between the social partners. For example, in Belgium the content of legislation on health and safety at work is negotiated by the social partners and then converted into statute law by Royal Decree.

That both these traditions stand in stark contrast to the strict separation between law and agreed provisions seen in Germany and the UK, for example, needs no further elaboration.

Free collective bargaining

The constitutionally guaranteed right of the social partners in Germany to engage in the autonomous regulation of employment conditions free of direct state control and influence contrasts with traditions of state influence on relations between the social partners in other EU member states. For example, in Belgium and France only organisations recognised by the state as 'representative' may engage in collective bargaining.

The Latin countries, in particular, are characterised by a practice under which the state calls on the social partners to negotiate on particular subjects and then issues statutory regulations should negotiations fail. In 1993 in Belgium, for example, the Dehaene government called on the social partners to negotiate a social pact on pay moderation and cuts in the budget deficit. When negotiations failed, the government imposed a statutory pay freeze and substantial cuts in social spending. In accordance with this tradition, the Belgian Employment Minister Miet Smet called on the European social partners at the summit social dialogue meeting of 28 September 1993 to negotiate a European framework agreement on employee rights in the field of further vocational training. Irrespective of any judgement as to the substance of the proposal, this procedure was seen by many delegations as violating the principle of the autonomy of the social partners at European level.

Moreover, national multi-industry collective negotiations in many countries often take place on a tripartite basis with the involvement of government; examples include Portugal, Italy and the Irish Republic.

Organisational structures

Finally, differences in the organisational structure of employers' associations and trade unions also have a significant impact on the institutional arrangements for industrial relations at European level.

On the trade union side the spectrum ranges from the principle of industrial unions, with a pragmatic and essentially cooperative approach, as in Scandinavia and Germany, to ideologically and party-based, and often highly fragmented, union movements—as in France and Italy. On the employer side, there are also clear differences in organisational structure. Traditions in which employers' associations are separate from trade and industry associations, and those in which the employers' associations of all branches are brought together in a single national organisation, contrast with those in which the representation of economic and social policy interests is undertaken by one and the same organisation but where there is no national association dealing with social policy across all branches.

The emergence of industrial relations at European level

Two factors played a decisive role in the emergence of industrial relations at European-level. First, ever since the European Commission issued its first Social Policy Action Programme in 1973, the Community has adopted an increasing number of social policy Directives. This trend was bolstered by the 1987 Single European Act, which allowed the Council to depart from the requirement of unanimity on the Council of Ministers and adopt social policy Directives intended to promote the establishment and functioning of the Single Market (Article 100a) and on grounds of health and safety at work (Article 118a) by qualified-majority vote. Exceptions were made merely for the rights and interests of employees (Article 100a:2), for which unanimous support was still required. The extension of the powers of the EU in the social policy field, and in particular the scope for qualified-majority voting, led to a strengthening of European-level organisations in the social policy sphere, for both the trade unions and employers, and to the development of a European approach to the representation of their respective interests. National strategies were no longer sufficient or effective under the new arrangements through which a Directive could be adopted by the Council on the basis of a qualified majority.

Second, European Commission President Jacques Delors invited the European social partners to the first summit meeting of the social dialogue at Val Duchesse in Brussels in 1985, and with this set in train the first contacts between the European-level organisations of the social partners (UNICE/CEEP for the employers and the ETUC for the trade unions). The emergence of regular contacts between the social partners at European level, as currently practised, was, however, only possible against the background

of a long-term trend away from conflict and towards a more cooperative pattern in the national systems of industrial relations in the member states during the 1980s and early 1990s. The Europe-wide trend towards a reduction in the number of days lost through industrial action is one yardstick for this, as is the fact that in countries such as Portugal and Italy trade unions formerly oriented towards conflict increasingly acknowledged the principles of the market economy and cooperation with employers, and enshrined this in the form of collective agreements.

EUROPEAN SOCIAL DIALOGUE

The Val Duchesse talks

The social dialogue—embracing UNICE, CEEP and the ETUC—which began with the Val Duchesse summit in 1985, consists of two elements. On the one hand, it involves the process established after the Val Duchesse summit under which the Commission regularly consults with the three social partner organisations prior to passing proposals for Directives in the social field. In 1985 the Commission committed itself for the first time—informally—to consulting twice with the social partners before proposing a social policy Directive. This consultation gave the European social partners scope to debate the substance of any proposed Directive before it was formally accepted by the Commission and submitted to the Council. Since the delegations of the social partners involved in this consultation consisted of representatives from national organisations, Commission proposals could be directly checked for their compatibility with national practices, allowing coherent European positions supported by representatives of all the member states to be elaborated.

Second, social dialogue involved the establishment of working parties in which the social partners could discuss themes of European relevance, to be decided on mutually, and issue joint opinions in which they could set out their areas of agreement. This activity was undertaken without any input from the Commission, which simply provided technical support and could take over chairing the sessions if the social partners wished.

Joint opinions so far issued include tricky subjects such as information and consultation of employees during the introduction of new technology, pay moderation to promote economic growth and employment, the adaptability of labour markets and access to further training. These joint opinions have been criticised for being too general and for not going beyond non-binding declarations. Against this, it should be said that the main value of the opinions lies in the process by which they come about. Working on joint opinions offers the representatives of the national social partners an opportunity to look beyond their own national borders and develop an understanding of other systems of industrial relations, and furthermore

to enter into an exchange of ideas on possible European-level common positions compatible with national systems. Such dialogue is the only route through which a system of distinctly European industrial relations accepted as legitimate by the citizens of Europe can develop, precisely because it respects the principle of subsidiarity and the diversity of national traditions.

Overall, the social dialogue in this form has proved to be a positive factor for integration within the EU. As a consequence, UNICE advocates a continuation of this 'traditional' social dialogue in parallel with the 'new' social dialogue based on the Maastricht Treaty.

Social dialogue under the Maastricht Treaty

The Agreement on Social Policy ('the Social Chapter') attached to the Maastricht Treaty and agreed by eleven member states (with the UK opting out) considerably strengthened the role of the social partners in the European legislative process. It was negotiated between UNICE/CEEP and the ETUC within the framework of the social dialogue and proposed to the Intergovernmental Conference, which adopted it virtually unchanged. Because of the extension of the EU's social powers planned by the governments and concluded in the Agreement, some of which encroached on areas which at national level fell within the sphere customarily dealt with by the national partners via collective bargaining (such as the provisions on 'Working conditions' under Article 2:2 of the Agreement), UNICE considered it vital that the social partners should have better scope for influencing the shape of European social policy. The Agreement contained three key provisions: consultation, negotiation and implementation.

Consultation

For the first time, the Commission was officially given the task of 'promoting the consultation of management and labour at Community level' (Article 3:1). Whilst under the Val Duchesse procedure consultation with the social partners on the part of the Commission prior to adopting social policy measures constituted an act of generosity, albeit one generally extended, under Article 3:2/3 of the Agreement the social partners have the established right to be consulted twice by the Commission before it submits proposals in the social policy field.

The first consultation concerns the questions of whether and how an instrument should be shaped at Community level (Article 3:2). That is, it involves the issue of the appropriate level of regulation and, where this is to be the European level, the issue of the appropriate legal character of the instrument: a recommendation (non-binding) or a Directive (binding).

The second consultation relates to the 'content of the envisaged proposal' (Article 3:3). For UNICE it is essential for this consultation that the social

partners receive a sufficiently specified draft of the instrument and sufficiently lengthy notice of consultation to allow them to consult their own national affiliates and elaborate a European position which can be fully supported by their respective 'grass roots'. This is especially important as this position is decisive in determining whether negotiations will be taken up.

Negotiations

Following the second consultation, the social partners—and this is the crucial innovation introduced by the Maastricht Treaty—may take the initiative out of the Commission's hands, as it were, and negotiate over the substance of the proposed instrument. The decision by the social partners to begin negotiations (under Article 3:4 in connection with Article 4) means that the Commission has to suspend the legislative process during negotiations, for up to nine months (a period which may extended by a joint decision of management, labour and the Commission).

Implementation of the agreement

If the social partners agree, the Agreement allows this to be implemented via two paths (Article 4:2). The first possibility consists in the agreement being implemented through the diverse 'procedures and practices' of the member states. Concretely, this would mean that the European social partners recommend that their national affiliates implement the agreement: they cannot enforce it legally. The second path consists in the social partners returning the agreement to the Commission, which in turn forwards it to the Council of Ministers as a proposal for a Community instrument. However, the role of the Commission is not merely that of a messenger or notary. The Commission cannot be obliged to adopt an agreement concluded by the social partners as a proposal. Rather it has to make a political decision as to whether the agreement can be legitimately submitted as a Community instrument. The agreement of the social partners is therefore merely a proposal for the substance of a Community instrument, the adoption of which remains the task of the Community's political institutions *(législation négociée)*. In this connection, the representativeness of the social partners engaged in negotiations is of critical importance.

With the Maastricht Agreement on Social Policy, European industrial relations have ventured into entirely new territory, in the process raising a host of new questions. Of central importance is how the concept of 'social partnership at Community level' enshrined in the Agreement is to be defined. At any event, what must be ensured is that agreements which are concluded within the new framework acquire sufficient legitimacy to be implemented across the board by the social partners at national level or that it be converted into Community law by the Council of Ministers. At the same time, scope

must be allowed for sufficient openness for future developments in the sphere of the social partners' organisations. An official codification of certain organisations as recognised social partners, as is the case in France or Belgium, cannot—in this author's opinion—exist at European level. Rather, the legitimacy of the claim to be a European social partner must be a product of the organisation's own membership. UNICE, CEEP and the ETUC have developed criteria on this issue in a joint opinion. The most important of these would probably be the following:

- the representativeness of the European organisations in the individual member states and the representativeness of their members within their respective countries;
- recognition of the national members as social partners—that is, the direct or indirect involvement in collective bargaining.

For subjects which cross sectoral boundaries, only those European organisations of multi-industry peak associations could be recognised. For matters related to a specific industry, the European industry associations with a mandate in the social policy field would be the relevant bodies. On the employers' side, where for reasons of historical development the European industry associations are not members of UNICE—although they largely represent the same national specialist associations which are organised within UNICE—some systematic coordination of social policy positions would be necessary in order forestall any inconsistency in employer policy. With the establishment of the European Employers' Network UNICE has created the preconditions for such coordination and already put it successfully into practice.

As far as negotiations within the framework of the Agreement are concerned, organisations must, accordingly, freely recognise each other as negotiating partners. The influence of political institutions—be it the Commission, the Council or the European Parliament—on the composition of negotiating bodies is not consistent with the principle of the free development of European industrial relations.

Overall, the Maastricht Agreement is well suited to offer a solid basis for the future development of European industrial relations. The precondition for this is, however, that the division of the EU into two Communities—one of fourteen and one of fifteen states—achieved with the passing of the Agreement on Social Policy should be overcome as soon as possible.

THE FUTURE DEVELOPMENT OF EUROPEAN INDUSTRIAL RELATIONS

The 'contractual relations, including agreements' envisaged in the Agreement on Social Policy (Article 4:1) have been read as marking the beginning of an era of European collective agreements. How erroneous such an approach is is evident from the quite different ideas that different nations

associate with the notion of collective bargaining outlined above. The Agreement does not create the legal basis for 'classic' collective agreements in the sense of the autonomous regulation of employment by the social partners. The negotiations envisaged by the Agreement are normally triggered by an initiative on the part of the Commission and the activation of the associated consultation procedures (Article 3:4). They concern subjects for which the Community has legislative competence and as such are not concerned with the regulation of terms and conditions of employment within a framework of free collective bargaining. Nevertheless, this form of contractual relationship between the European social partners should not too hastily be dismissed as inadequate. On the contrary, the heterogeneity of national systems of industrial relations in Europe means that this form of relationship and its interaction with the European legislature could prove an authentic innovation in that it is the only form compatible with all national systems.

In contrast, there is little likelihood in the foreseeable future of the emergence of 'classic' contractual relations between the social partners as embodied in the form of collective agreements at European level. Such a development would presuppose the existence of a Europe-wide and homogeneous law on collective agreements and industrial action—precisely the two spheres in which such great diversity has developed within the member states that harmonisation at European level, called for by the trade unions, is difficult to imagine. In the view of the author, such demands often rest on an impermissible extrapolation of national procedures and practices into the sphere of European industrial relations.

Above and beyond that, the question arises as to whether such a fixation on 'classic' collective agreements at European level does not simply miss the spirit of the time. At national level, technological and social change and economic globalisation—not simply Europeanisation—have already triggered profound processes of reform in systems of industrial relations, weakening central regulation and leading to greater complexity and differentiation. Only through such a shift will it be possible to safeguard the survival and competitiveness of companies under transformed social and economic conditions, and take due account of the growing differentiation amongst employees, who have long since ceased to represent a single homogeneous group.

The advance of European integration, and in particular European Monetary Union, will undoubtedly lead to an intensification of social dialogue at European level. Both the traditions of social dialogue developed through Val Duchesse and the new provisions in the Maastricht Agreement on Social Policy provide good foundations, and both should be used. Contractual relations at European level must be able to withstand the test of the principle of subsidiarity. This may be the case if they relate to framework agreements on minimum standards intended to address problems which extend across

national borders and which can be implemented by the social partners in accordance with diverse national traditions. Above and beyond this, the social partners at European level could be more actively involved in the shaping of the Community's labour-market and vocational training programmes. Initiatives in this area have already been taken through their participation in the tripartite advisory committees on the European Social Fund and vocational training.

European social dialogue can make an important contribution to European integration if it succeeds in shaping it in a fashion that can be perceived, taken seriously and accepted by companies and employees in the European Union. Such a development presupposes that the European level of industrial relations is able to accommodate itself to the increasingly complex and differentiated structures of the member states, and that it is able to support rather than hamper structural transformation by being a source of innovation.

NOTES

1 UNICE is the official voice of European business and industry vis-à-vis the EU institutions; it was established in 1958 and is composed of thirty-four central industry and employers' federations from twenty-five European countries, with a permanent secretariat in Brussels.

UNICE's purpose is:

- to keep abreast of issues that interest its members by maintaining permanent contacts with all the European institutions;
- to provide a framework which enables industry and employers to examine European policies and proposed legislation and to prepare joint positions;
- to promote its policies and positions at Community and national level, and persuade the European legislators to take them into account;
- to represent its members in the dialogue between social partners provided for in the Treaty on European Union.

UNICE's priorities are:

- improvement of European competitiveness leading to growth and to the creation of lasting jobs;
- completion of all aspects of the Single Market;
- progress towards Economic and Monetary Union with a European System of Central Banks and a single currency;
- pursuit of economic and social cohesion in the EU;
- development of social policies compatible with the need for competitiveness and economic growth;
- support for the restructuring and economic development of Central and Eastern European countries;
- liberalisation of world trade on the principles of the General Agreement on Tariffs and Trade (GATT) Uruguay Round agreement;
- promotion of European technology, research and development;
- protection of the environment based on sustainable development.

Part III

EUROPEAN WORKS COUNCILS

European industrial relations at company level

15

EUROPEAN WORKS COUNCILS—AN ASSESSMENT OF FRENCH INITIATIVES

Udo Rehfeldt

On 7 October 1985 the first European group council[1] was inaugurated at the French undertaking Thomson Grand Public. Further similar bodies followed in other groups. Up until the formal establishment of a European group works council at Volkswagen in February 1992, all the earliest initiatives in this field were taken by French companies.[2]

All these initiatives were taken in connection with the efforts of the European Commission to create a uniform structure of employee representation in transnational undertakings within the European Community. In part, these efforts represented a response to long-standing trade union demands; and, in part, they marked an attempt to come to terms with the failure of earlier independent trade union efforts to establish 'world group councils' at the level of multinational groups. These efforts dated back to the late 1960s, when the accelerating process of internationalisation within Europe became evident in the expansion of foreign direct investment. As a response to the 'challenge' of the multinationals, the international trade secretariats began to develop a trade union counter-strategy which sought to build up trade union 'countervailing power' to the influence of multinational companies. With hindsight, we can now say that this strategy in essence failed, not least because of a degree of overambitiousness in its aims—as advocated and exemplified by Charles Levinson.[3]

Logistical support for information exchange and coordination between trade unions was provided by the international trade secretariats in the form of 'world company councils'. The first were established in 1966 at Ford, General Motors, Chrysler, Volkswagen and Daimler-Benz, soon to be followed by some fifty more in other multinationals.

The rapid growth of these councils seemed to confirm the correctness of Levinson's analysis and strategy. However, in reality most proved to be ephemeral and shallow structures. In contrast to their designations, only a few consisted of elected employee representatives from national subsidiaries. In not one case did they exercise the function envisaged by Levinson of coordinating multinational collective bargaining.[4] Lack of

recognition by employers meant that they remained purely trade union institutions and led a purely formal existence, with rare meetings (in most cases every three years to coincide with international sectoral union conferences).

DEVELOPMENTS SINCE 1985

At the point when the dynamic of world company councils began to become exhausted, the European trade union movement took on the idea of establishing company-level multinational industrial relations, initially at a regional level and in a pragmatic form. The European Metalworkers' Federation (EMF), initially constituted as the regional body of the International Metalworkers' Federation, took over from its parent organisation the task of coordinating trade union activities in multinational concerns at European level and set up a number of 'working parties' for individual companies which provided a forum for trade union representatives from the European subsidiaries of these companies to meet regularly.

Thomson Consumer Electronics

One of these working parties, at Thomson Grand Public,[5] sought to enter into discussions with the company's senior management on the employment problems which had arisen as a result of the international concentration and restructuring in this sector. The prospects for such a meeting seemed good. First, the new top management of the company, which had been installed following nationalisation in 1982, was more open to social dialogue than its predecessors. And second, the company had run into unexpectedly stiff trade union opposition to the closure of one of its plants in Germany and was therefore eager to improve its somewhat dented international reputation. After an initial meeting between top management and the EMF in 1985, rapid progress was made in the establishment of a formal structure of employee representation at group level.

Two agreements, signed on 7 October 1985, between the company, the EMF and the trade unions represented in the company in France and four other countries set up a dual structure of information and consultation: the Thomson Grand Public—EMF Liaison Committee and the Thomson Grand Public European Committee. The second structure was established in order to allow participation by those trade unions which were at that time not yet members of the EMF or ETUC.[6] After a number of modifications, principally necessitated by the conversion of Thomson Grand Public into Thomson Consumer Electronics following the hiving off of the group's white goods division, the two bodies were merged into a single 'European Committee' in 1992.[7] The 1993 agreement provided for a committee of twenty employee representatives, distributed proportionally between the group's workforces in five countries and with a minimum of one representative

per country. Seven representatives were from France, six from Germany, four from Italy, two from Spain and one from the UK. Within each country, representatives are appointed by the relevant trade union organisations from among elected employee representatives; however, in Germany national representatives are appointed directly by the central works councils. In addition, the EMF has three permanent representatives who sit as 'advisers'. The Committee meets once annually in plenary session with top management. Management must also inform the Committee before implementing any 'significant structural, industrial and commercial modifications' or changes to the legal or economic organisation of the group. The Committee has an opportunity to express a view and, should the need arise and with the agreement of management, to establish an ad-hoc commission to investigate specific problems. A seven-person 'preparatory commission', consisting of one representative from each country plus two EMF 'advisers' who are entrusted with organising a preparatory meeting, exists to prepare for each annual meeting.

BSN

During the period in which the ETUC and Thomson were negotiating the first agreement, similar transnational discussions were taking place between the French concern BSN[8] and the international trade secretariat for the industry, the International Union of Foodworkers (IUF) in Geneva. Following an invitation from the General Secretary of the IUF, the Chief Executive of BSN, Antoine Riboud, met with a group of trade unionists in Geneva in April 1986 to discuss the commercial and social strategy of BSN. Agreement was reached on holding regular meetings, to which the European Industry Committee of the IUF within the ETUC, the European Committee of Food Catering and Allied Workers (ECF-IUF), was also invited.[9]

Bull

Chronologically, the third European consultation body to be established was the European Information Committee at the nationalised computer company Bull,[10] which was brought into being following an agreement with the majority union at the parent company, the Confederation Française Démocratique du Travail (CFDT), on 22 March 1988. The agreement was initially signed by the CFDT and Force Ouvrière (FO), and later by all the trade unions represented at the company—with the exception of the Confédération Générale du Travail (CGT).[11]

In accordance with the new agreement concluded in September 1992, the 'Bull European Committee' consists of twenty-nine employee representatives from fifteen countries, with ten from France, three from Italy, two each from Germany and the UK, and one representative from other countries in which the company has operations, together with a representative from

Zenith Data Systems Europe—in proportion to the workforces involved. Procedures for appointing representatives are regulated by agreement on a country-by-country basis, usually with local trade unions but in the case of Germany with works councils.[12]

The committee meets three times a year for a two-day meeting. On the first day, workforce representatives meet alone; they are joined on the second day by representatives of management. There is a permanent secretariat ('the Committee bureau'), which prepares meetings and which consists of a secretary, a deputy and several national representatives. In order to understand exactly how the Bull committee works, it is important to recall that the agreement establishing it also abolished the previous national Bull group committee, whose powers were transferred to the Bull statutory central works committee.[13]

OFFICIAL EXHORTATION

There was a substantial increase in initiatives—both formal and informal—in the field of European information bodies in French companies after 1989, albeit dominated by the public sector and backed up by the clear encouragement of the (then) Socialist government. In July 1989 Prime Minister Rocard wrote to the presidents of public enterprises calling on them to behave in an 'exemplary' way on the issue of social dialogue and to set up European group committees.

Saint-Gobain

Since 1989 the management of Saint-Gobain has invited trade union representatives to annual meetings at its corporate headquarters. These meetings followed two meetings with European union representatives in its glass business in 1983 and 1985, although only unions affiliated to the international chemical workers' federation (ICEF) were invited. In May 1992 the annual meetings were formalised as a Convention for European Dialogue between the social partners through an agreement between the trade unions and the group's French management.[14]

Pechiney

At Pechiney, also on the initiative of top management, a European Information Commission was established in June 1990, and it has since met every year. Proceedings were formalised in an agreement in December 1992. Of the thirty-two workforce representatives, fourteen are from France and eighteen from the company's other European subsidiaries. The secretary of the French group committee has a seat on the body *ex officio*.

Rhône-Poulenc

A similar initiative at Rhône-Poulenc led to a meeting between top management and the trade unions in November 1990, which the management side hoped to continue on an annual basis under the title European Dialogue Forum. However, the proposed second meeting in 1991 had to be postponed as the European Industry Committee European Federation of Chemical and General Workers' Union (EFCGU) had threatened a boycott on the part of some member unions.[15]

Elf-Aquitaine

An agreement was signed on the establishment of a European Information and Consultation Forum at Elf-Aquitaine in July 1989 after a long series of negotiations.[16] This committee was one the largest of its type, with eighty trade union representatives, including five French trade union coordinators (one for each of the unions represented at Elf-Aquitaine) and twenty-five representatives of each of the main business areas (each of which had ten French and fifteen foreign representatives). Half of the ten French seats were reserved for a representative of each of the five trade unions, with the rest divided up in accordance with the results of the most recent elections for workforce representatives to Elf's supervisory board. All members must be employees of the company, but can be assisted by outside experts; this introduces the possibility that a representative of EFCGU could also take part in meetings.[17]

AGF

In late 1991, a European group committee was established, initially for two years, at the insurance group AGF (Assurances Générales de France). It consisted of nineteen workforce representatives from France and seven European countries (the UK, the Irish Republic, Germany, Belgium, Spain, Greece and Portugal) and was to meet once a year.

Airbus Industrie

Agreement was reached in January 1992 at Airbus Industrie on the establishment of a European Airbus Industrie Staff Council (AISC).[18] Airbus Industrie is a European Economic Grouping (GIE) with its registered office in Toulouse and made up of four constituent European aerospace companies: Aérospatiale, Deutsche Airbus, British Aerospace and Casa. Its task is the sale and maintenance of the aircraft built by the Airbus partners. Accordingly, around half of its 1,559 employees (1992) are managers and 150 are technical specialists: no production workers are represented. Some 1,000 employees are directly

employed on French contracts of employment, with the rest on secondment from the four constituent companies (250 from Deutscher Airbus, 150 from Aérospatiale, 100 from British Aerospace and eleven from Casa). From the very outset, the question of whether seconded personnel could participate in works committee elections was a source of legal problems. The first court ruling, which supported their right, was overruled by the French Court of Appeal following proceedings brought by the trade union FO in July 1989. However, in order to allow those concerned some form of representation, the AISC was established by collective agreement. For those directly employed by Airbus it exercises the statutory function of a French works committee. At the same time, the representatives of those seconded by the other European aircraft manufacturers have the possibility of attending to their economic and social interests within the framework of a consultation procedure. Decisions on the AISC on economic matters require a qualified majority, which ensures some protection for the minority foreign workforce. Elections for workforce representatives take place on the same day; those of directly employed staff follow the usual procedures for French works committees, with trade unions represented in the establishment having the right to propose candidates. For staff seconded from non-French companies, candidates may be proposed by a French trade union acting on behalf of a 'recognised representative trade union' in the company from which staff have been seconded or by means of a collection of the signatures of at least 10 per cent of the relevant employees.[19]

Renault

In April 1993 agreement was reached on the establishment of a European works council at Renault. The agreement was signed by the management and eight trade unions: a 'negotiating commission' of the ETUC, which embraced the CFDT, FO, Confédération Française des Travailleurs Chrétiens (CFTC), the two Belgian unions Confédération des Syndicats Chrétiens de Belgique (CSC) and Fédération Générale du Travail de Belgique (FGTB), and the Spanish *Commissiones Obreras* and Union General de Trabajadores (UGT). The CGC signed in the name of FIEM (the European association for managers in the engineering industry).[20] The agreement made explicit reference to the draft for a Directive on European works councils. The European group committee consists of thirty workforce representatives from nine countries, sixteen from France,[21] four from Spain, and two each from Belgium, Portugal and the UK. Two seats were for a while reserved for Volvo employees—pending the (failed) merger—as observers. A permanent seven-person secretariat consists of four French and three non-French delegates.

Thomson-CSF

In the summer of 1993 a European Committee was also established at Thomson-CSF, the defence subsidiary of the Thomson Group. In contrast to the committee at Thomson Consumer Electronics, this body has no special connection with the European Metalworkers' Federation. It consists of one representative of each of the French unions at the parent company and thirty workforce representatives, of which twenty are from France and ten from Thomson subsidiaries in six other European countries. A permanent Liaison Committee maintains links between the various national representatives in between the annual plenary meetings. It consists of a secretariat elected by the Committee, five French trade union representatives and one representative from each of the other six countries.

Générale des Eaux

On 21 September 1993 a European Dialogue Body was established at the group Générale des Eaux, based on an agreement between the company, the ETUC and the European Federation of Managers.[22] The originality of these arrangements lay in the fact that they involved an extension of the French group works committee. At the time of writing, the body consisted of twenty elected workforce representatives, of which nine were CGT trade unionists, five were from the FO, four from the CFDT and three were non-union representatives. In addition, there is a maximum of fifteen further representatives from the company's non-French subsidiaries (at most three per country). At the time of writing, there were thirteen non-French representatives from seven countries (the UK, Germany, Spain, Belgium, the Netherlands, Portugal and Italy). Moreover, the ETUC and the European Federation of Managers also each send one delegate. Meetings are annual, each with a pre-meeting on the preceding day. A permanent secretariat is also elected.

Schneider

A similar arrangement was chosen for the Group Works Council of the electrical concern Schneider.[23] The Council consists of thirty workforce representatives from the French group committee and ten 'guests' as representatives of the other European subsidiaries.

Other initiatives

The other main initiatives I wish to mention here are those at Europipe and Eurocopter—both Franco-German joint ventures. In the case of Europipe there is a Franco-German supervisory board with workforce representatives from each country (although the impetus here came from the German

side). In the case of Eurocopter, an agreement was struck between the French management and FO, CFDT, CFTC and CGC to establish a European Information and Consultation Committee.

Mention should also be made of the numerous initiatives which at the time of writing had not been formally recognised by managements. In some of these cases, European coordination committees were established despite considerable management opposition: for example, at Michelin, Peugeot, Hersant and Gillette. The latter case is noteworthy as it involved spontaneous cooperation on the part of workforce representatives at grassroots level, which first had to win recognition and support from the national and European trade union organisations.[24]

COMMON FEATURES AND PROBLEMS

In contrast to the world group councils, European group councils do not have the immediate aim of conducting multinational collective bargaining at group level. Rather, their activities are restricted to establishing a number of rights to information and consultation. Paradoxically, multinational negotiations take place at the outset of this process—not at its culmination. The following comparative overview sets out to look at the various phases in the establishment of the committees, before we turn to an analysis of how they have operated.

Despite announcements to the contrary from the trade unions, most European group committees established before 1994 were set up on the initiative of French management. In many cases, the bodies continued to have an experimental and informal character for some time, although most were formalised after a probationary period. During the pioneer phase, managements negotiated with trade union representatives at a high level—including from the outset at the level of European Trade Union Industry Committees. With the passage of time, negotiations took place at a more decentralised level. In some cases, negotiations to update agreements have taken place directly with the representatives of the respective European group committees recognised by management.

Manner of operation

The modes of operation of the committees have been just as diverse as the preceding pattern of negotiations. Most apparent is the diversity of names chosen: European group committee (often officially translated as 'European works council'), European information committee, European committee, European dialogue body, etc. Behind this diversity is, in most cases, the desire of management to emphasise the experimental and informal character of these bodies. Despite this diversity there is, nonetheless, a clear analogy to the statutory French group committees *(comités de groupe)*.

Comités de groupe

Group committees were established in the 1980s in large groups on the basis of the 1982 Auroux Laws. Like French works committees (*comités d'entreprise* or *comités d'établissement*) they consist of both workforce representatives and representatives of management. The head of the parent company is also the chair of the committee (with workforce representatives electing a secretary). The composition of the employee side is determined by means of negotiations between trade unions and management, with a maximum of thirty employee representatives.[25] Legally, the group committee is not an emanation of the works committee but exists on the basis of trade union rights. It is the trade unions which appoint representatives for two years from the individual works committees in proportion to the results of works committees elections.[26] The committee meets at least once a year to consult on information on the economic and social development of the group submitted by the management. Since 1989 management has also had to submit the group's consolidated balance sheet. The group committee can draw on the advice of external experts.

Weak institutionalisation

Since the European group committees set up in French parent companies are the product of management initiatives, they were mostly informal and weakly institutionalised at the outset. However, in the early 1990s, the degree of institutionalisation rose somewhat. As might be expected, the legal construction of the European committees was strongly coloured by that of the French *comités de groupe*. Like them, most meet annually and are chaired by the top management of the group, which also sets the agenda—although de facto usually in agreement with workforce representatives. The institution of a permanent secretariat, which coordinates and represents the interests of the various workforce representatives between meetings, has become increasingly common. Where such a body exists, it usually participates with management in the preparation of the annual meeting.

Diversity of composition

Managements took one of two basic approaches on the composition of European committees. One of these envisaged periodic meetings with senior trade union officials at European level; the other preferred to confine social dialogue to immediate workforce representatives. In the early 1990s there was a discernible trend towards the latter approach, which borrowed heavily from the structure of the French *comité de groupe*.[27] One long-lived example of a combination of the two structures was at Thomson Consumer Electronics, but Thomson has now abandoned this approach in favour

of a single structure based on the second model. However, substantial differences in the form of workforce representation continue to characterise the workforce-based approach. What all forms share is the fact that both management and employee representatives sit on the committee—as in French works committees. As far as the French contingent of employee representatives is concerned, emphasis tends to be placed on the fact that all the trade unions represented in the group should have a seat on the committee.[28] The appointment of workforce representatives from foreign subsidiaries usually follows the diverse law and practices applicable in each country. In most cases, the form of delegation is negotiated through a subsidiary set of negotiations with trade union representatives at national level. In the case of German subsidiaries, the works council—not trade unions—is the negotiating partner. Even where the choice is left to local managements, these generally opt for general criteria such as proportionality to workforce size and representativeness.

In all cases, whether the subject of unilateral management decision or negotiations, only the number and type of workforce representatives is firmly laid down. The choice of individual remains a matter for the relevant trade union or works council. However, there are instances in which the proportionality criterion (such as size of workforce) clashes with that of representativeness. This happens in particular in countries in which the group does not have a very large workforce and/or is characterised by a high degree of trade union pluralism. The UK is the classic case in point for French companies. In order to ensure that the body can function effectively, the total number of representatives is generally fixed at a maximum of thirty.[29] As a result of this restriction, the number of seats allocated to British workforce representatives is often substantially fewer than the number of trade unions represented in the local subsidiary—even though all might be TUC affiliates. This has generated repeated conflicts between individual unions, nourishing an atmosphere of mistrust which can all too easily spread to other European workforce representatives.[30] And the European industry federation is not always able or willing to take on the task of resolving such difficulties.

Procedure—restriction of information disclosure

Despite the fact that many committees have the words 'information and consultation' in their title, all the French committees established on a voluntary basis were restricted to information disclosure. More extensive rights would require corresponding procedures to be established which would have to be respected by managements—possibly including mechanisms for resolving conflicts. None of the agreed arrangements provides for any such mechanisms. Neither the scope nor the timing of information disclosure is regulated in any mandatory way, and no time limits are set

by which the committee has to express a view; there are certainly no procedures for a temporary veto on management initiatives. The subjects on which information is to be disclosed are generally defined in only the broadest terms and usually embrace the commercial situation of the group, business prospects and business strategy at European level. In many cases there is explicit reference to the possible effects of strategic decisions and international restructuring on employment as an object of 'prior' information and consultation—but again without any binding regulation as to the timing and scope of the information.

This essentially allows scope for a 'discussion' within the European committee on information provided by management. This often requires an immediate response to an oral presentation by management, which makes a coordinated response by workforce representatives difficult to achieve. However, most managements have come to understand the need for some prior agreement on the part of employee representatives, and both provide written information ahead of the scheduled meeting and allow for a preparatory meeting of workforce representatives without management in attendance. Together with the institution of a permanent secretariat, this allows for an effective prior discussion and agreement between national representatives, who, without this, would not be able to have a transnational discussion at this level.

Two additional elements could make it easier for a common view to be reached amongst national employee representatives: the use of external advisers and participation by external trade union officials. However, most managements have been somewhat reluctant to take either of these up. At Elf-Aquitaine there is a right to bring in external advisers. At Thomson Consumer Electronics officials of the EMF exercise the role of 'advisers' and also take on the task of coordinating both between national delegations and with management.

TRADE UNION MOTIVATION

With hindsight, the interest of the French trade unions in setting up European group committees is fairly easily understood. In view of employer resistance to European-level legislation on cross-border information rights, it seemed a good idea to negotiate agreements with 'dissidents' within the employer camp and prove that rights to information disclosure would not have the catastrophic effect which its opponents had claimed. Moreover, the creation of such committees also facilitates the realisation of a number of purely trade union objectives, such as direct contact between trade unions in different countries, the promotion of awareness of the European dimension to employment problems, the creation of an additional European level of discussion 'at the grass roots' and finally the formation of a common European trade union identity.

This at least applied to those unions who were members of the ETUC. Their enthusiasm mirrored a sceptical position by those trade unions who had not been admitted to the ETUC—first and foremost, the CGT. The CGT's first priority is to secure existing national trade union and employee representative rights. It fears that the creation of European group committees could be associated with hopes of marginalising the CGT by diluting its nationally strong representative position in a European ensemble where the CGT would stand isolated amongst a mass of ETUC trade unions. This fear of isolation is not only expressed towards initiatives which the CGT consciously excludes, as in those cases where participation is reserved for ETUC member unions or industry committees only, but can also be discerned where the mechanisms seek to achieve complete representativeness. In practice, the differences between these two models are slight—at least as far as the representation of workforces in other European countries is concerned, which, for the most part, are organised in ETUC-affiliated trade unions. Nonetheless, the CGT generally respects the rules set up by others for European committees and does not refuse to take up any seats allotted to it.

The main reason for the CGT's participation in European consultative structures is similar to that of other trade unions. The possibility of direct contact with foreign colleagues is viewed in very positive terms. As far as the official aim of such meetings is concerned—obtaining information and discussion about corporate strategy at European level—the CGT has no illusions about its ability to influence management decisions. CGT members, however, want to use the opportunity to represent their standpoint both to management and to their foreign trade union colleagues.

Even the most pro-European trade unions regret some of the limitations on European committees. All would like to see more frequent plenary meetings, greater institutional stability—above all—permanent structures between meetings, greater scope for influencing issues on the agenda, the possibility of written opinions, and resort where necessary to external experts, as well as more formalised consultation procedures.

EMPLOYER MOTIVATION

The specific motivations of French companies as regards the establishment of European consultative arrangements have already been noted above. They are rooted in particular in the nationalisation in the early 1980s of many of the undertakings involved. However, nationalisation is not the only factor involved. There are also other reasons why these initiatives should have first taken root in France, where up until the adoption of the Directive they continued to dominate the number of voluntarily agreed mechanisms.

In fact, a number of private companies with European representative structures were also to be found. Also, the existing arrangements have

not appeared to be put in jeopardy by reprivatisation. Whether the companies are nationalised or not, the initiatives have involved managements concerned to fashion long-term strategies—whether in the commercial or social field. In creating European information mechanisms, such managements are not merely setting out to offer the trade unions 'a gift'. Rather, such initiatives are part of a broader approach to technical and industrial change which anticipates such change and seeks to prepare the necessary adaptations to it over the long term. This approach seeks to involve the trade unions in corporate decisions by informing them of the economic environment and discussing management's strategic intentions. The transnational and specifically European dimension plays a central role here. It is the declared aim of managements to use European agreements and dialogue arrangements to promote a common awareness of the problems and a European 'corporate identity' amongst employees and their trade union representatives. Indirectly, European consultative committees should also contribute to the harmonisation of management practices within the group and, especially, help to shape a common 'style' for dealing with industrial relations; this should create a framework for the continuing strong differences between personnel management in the individual European subsidiaries.

Those responsible for personnel management within the group are, however, also questioning whether the European level is really the appropriate level for dealing with these issues. Undoubtedly, the commercial strategies of multinational companies are organised on a global basis and not confined to Europe. Does this mean, however, that consultative arrangements should also be pitched at this level? Most personnel managers doubt that this is the case. National cultures and local practices are still too diverse—and in comparison, at least, the 'European model' seems relatively homogeneous.

PERSPECTIVE

The creation of European consultative bodies at group level does not create a unitary system of industrial relations in Europe. Crucially, what is missing is the element of collective bargaining, which is still located firmly at national level. Negotiations between employers and trade unions are more a by-product than the aim in the formation of European group councils. However, these have a major significance in that they allow the various national realms of industrial relations to come into contact with each other. In addition to their official function of information exchange between management and employee representatives negotiations also have the important, and possibly much more decisive, side-effect of presenting a forum for information exchange and discussion between workforce representatives through which they can better learn about and understand trade union strategies and practices in other European countries.

NOTES

1 The usual French term is *comité de groupe européen*—European group committee; however, this expression is by no means invariable. We use the term 'European works council' here, as initially adopted by the European Commission in its first draft of the Directive on European Works Councils in 1990. In its German version, the draft used the term *Betriebsrat* (works council), and in its French version, *comité d'entreprise* (enterprise committee/council), borrowing in both cases from the terms used in domestic legislation on workplace employee representation—despite the substantial differences between the role and composition of these bodies in their respective countries. To take one notable instance, the French *comité d'entreprise* is chaired by the employer, and it also lacks genuine codetermination rights. The usual term, *comité de groupe européen,* borrows from the *comités de groupe* introduced in domestic French legislation in 1982.

2 At least within the European Community. During the same period, a number of similar initiatives were introduced in the Nordic countries.

3 On Levinson's view, trade unions were to have immediately set about developing countervailing strategies at international level which would replace the strategies, structures and practices which had become obsolete at national level. To this end, Levinson devised a programme under which multinational trade union activity was to be organised in three stages. In the first, the main issue was to win international support for a trade union which had initiated a local conflict with the subsidiary of a multinational; in the second phase, coordination was to take the place of simultaneous national collective bargaining in subsidiaries in several countries; and in the third and final phase, integrated collective bargaining was to take place with the central management of the multinational itself.

4 There are many reasons for their failure. In formal terms, international coordination of negotiations via the international trade secretariats and their world company councils was difficult because not all important national trade unions were represented on them: the Communist trade unions and confessional unions were excluded.

5 Now Thomson Consumer Electronics, a subsidiary of the French electronics concern Thomson.

6 In France, the main union in this category was the CGT. The agreement on creating the European Branch Commission is one of the few agreements of this type signed by the CGT.

7 In contrast to its predecessor this was not signed by the CGT.

8 BSN was not a nationalised company. However, the Chief Executive of BSN, Antoine Riboud, was well known for his support of the Socialist Party and openness towards the trade unions—especially the CFDT.

9 There are differing accounts of the degree of formalisation of this dialogue. According to the ECF—IUF, the top management of BSN signed an agreement on 29 October 1986 in Brussels on setting up a 'BSN European Consultative Committee'. The company's version states that the regular meetings were formalised by an exchange of letters between the BSN Director of Human Resources and the General Secretary of the IUF. Be that as it may, the relationship between BSN and the IUF has long since passed beyond the informal stage. On 23 August 1986 BSN and IUF signed a 'Joint Opinion' in Geneva; this was followed by a series of further agreements, in some cases at a decentralised level. In all probability, the initial reservations of the BSN management towards any premature formalisation and institutionalisation of their 'European dialogue' can be explained by the fact that they did not want to come into further

conflict with the French employers' association, in whose eyes they had already been marked down as too union-friendly. A further explanation for this reserve may have been concern not to appear inhospitable to the CGT, which is not a member of the IUF but the largest union—by number of elected employee representatives—within the company. In order to compensate the CGT for being excluded from the BSN—IUF dialogue, BSN's management agreed to a CGT proposal for a European Economic Committee in the glass sector within BSN, on which non-IUF unions were represented.

10 Since 1992 known simply as the European Committee.

11 The EMF, which supported the CFDT during negotiations, is not a signatory and does not have a seat on the committee.

12 The agreement for France provides for the five trade unions represented at Bull—CFDT, FO, CGC, CFTC and CGT—each to send one delegate, with the remaining five seats allocated in accordance with the results of works committee elections: initially, this gave three additional seats to the CFDT and one each to the CGC and FO. The CGT initially rejected this arrangement, but could not find support in the courts and subsequently took up the place allotted to it.

13 As the national structure of Bull is fairly simple, the powers of the group committee and central works committee virtually coincided: no employee representative rights were lost in the transfer.

14 On the French side, the agreement was signed by all five unions represented within the company—that is, including the CGT, which has a relative majority based on elections for workforce representatives. The CFDT had the mandate to sign from the EFCGU—the European Industry Committee affiliated to the ETUC—although the EFCGU is not itself represented on the committee.

15 The problem illustrates a characteristic difficulty. Although the EFCGU was not itself a member of the body, it was brought in by management to assist in preparations. The threatened boycott had its origins in the complaint from a British union that it had not been included in the selection of representatives for the British subsidiary. The problem arose because, in order not to exceed thirty-six representatives in all, the group's top management had limited the French delegation to fifteen, with four for each of the five countries. However, in the UK the number of unions at Rhône-Poulenc's plants was considerably higher than the number of representatives allotted to them. Since the French management did not have any reliable information as to the representativeness of the unions in their companies they left the choice of union to local management—albeit with the condition that the unions selected had to be indisputably 'legitimate'. In order to avoid charges of arbitrariness and partisanship in any disputes between unions, the French management set the criteria down in writing and made them available to the trade unions. They also accepted a preparatory meeting of trade union representatives, but rejected any formalisation of the arrangements. These concessions were sufficient to dispel the EFCGU's reservations and it was possible to hold a meeting at the end of 1992.

16 The signatories were the EFCGU and its national affiliates, and a number of trade unions which, although not members of the EFCGU, did belong to the ETUC (such as the CTC or the Spanish *Commissiones Obreras),* as well as some unions which were not in either body, including the CGC—but not the CGT.

17 However, this is unproblematic only for the preparatory meetings. Management permission is required for them to attend the main meetings.

18 The agreement was signed by three trade unions: FO, CGC and CFTC. The CGT is not represented at Airbus Industrie. The CFDT refused to sign and began legal action over one clause in the agreement.

19 This clause was the reason for the refusal of the CFDT, which was acting for IG Metall, to sign the agreement. For the first elections in October 1992, the foreign representatives were elected on the basis of the 10 per cent rule.
20 The CGT, which represented the majority of delegates to the French central works committee at the time, did not sign.
21 According to the agreement, any of the trade unions represented at the parent company may send a delegate for France. The number of remaining delegates depends on workplace elections to works committees. At the time of writing, there were six representatives from the CGT, four from the CFDT, three from FO, two from the CGC, and one from the CFTC. In order to regulate the selection of representatives of the workforce outside France, the management of the parent company appoints the management of one of the national subsidiaries in each country to 'coordinate' this issue.
22 A first agreement on an experimental basis (for two years) had been signed in October 1992, but only by the French managers' union CGC.
23 The agreement was signed by the FO, CFTC, CGC and an 'autonomous' union. The CFDT regretted that the agreement did not create a truly European group committee and only signed those parts of the agreement which defined the limits of the group.
24 The reasons for these difficulties lie primarily in the pluralistic composition of the European coordination committee established by workforce representatives, 'GISEL', which embraces anarcho-syndicalist and pro-communist unions from Spain, management union representatives from France—none of which were members of the ETUC when the committee was formed.
25 According to the Labour Ministry, around 100 such committees had been established by 1989 through such negotiations—covering one-third of all large groups with 2,000 or more employees in which this would have been possible. According to other sources, there are 170 such committees; this number includes those which were established without any formal agreement.
26 Non-unionised employees are therefore not represented on group committees. If the so-called 'representative' trade unions have a majority in works committee elections (as usually happens in large companies), autonomous unions cannot send delegates to the group committee.
27 In some instances there was even a formal link to the *comité de groupe,* through the European committee either functioning essentially as an extension of the former or, possibly, replacing it entirely. According to the EMF's recommendations, the European group committee should complement national rights—not replace them.
28 Despite possible differences of opinion between trade unions on the form and functioning of group committees, as a rule all trade unions take up their allotted seats, irrespective of whether they have signed an existing agreement with management.
29 Elf-Aquitaine, with its eighty representatives, is an exception. However, the management sets great store on equal representation for the three major business areas.
30 The situation in Italy is also characterised by a high degree of trade union pluralism, bolstered by a history of political divisions between the main movements. Despite the formal breakdown of union cooperation in the Unified Confederation it is, however, entirely normal for the representative of the largest union in a plant to represent the smaller confederations at European meetings—or for systems of rotation to be adopted.

16

EUROPEAN WORKS COUNCILS: THE ROLE OF THE NEGOTIATED OPTION

Paul Marginson

Transnational companies are one of the key forces driving forward the process of European economic integration, in which the creation of the Single European Market was a significant step. In the sphere of industrial relations, considerable debate and speculation has surrounded the framework of European industrial relations that might accompany economic integration. Will it be a framework characterised by competition for investment and jobs in which the winners are those nations and regions with the lowest levels of labour protection and costs? Or will it be a framework characterised by the building of new institutions at European level, of which the European works councils (EWCs) established in transnational companies, both prior to and in response to the EWC Directive, are a harbinger? Here too the decisions and actions of transnational companies will be important.

This chapter is concerned with potentially the most far reaching development in European industrial relations yet: the establishment by transnationals of European works councils, providing a representative structure for informing and consulting employees at European level. The significance of the relatively small number of voluntary agreements for employee information and consultation at European level which has emerged since the mid-1980s has been greatly enhanced by the adoption by the European Union of the Directive on EWCs in September 1994, using the provisions of the Social Protocol. In June 1995 the EWC Directive was adopted by the joint committee of the European Economic Area (EEA)—extending its coverage beyond the EU (excepting the UK) to Iceland, Liechtenstein and Norway.

The Directive is unusual in the extent to which it provides for negotiated outcomes to take precedence over the subsidiary requirements, or 'default option', specified in the text itself. This offers management and employee representatives a considerable degree of scope to negotiate enterprise-specific information and consultation arrangements which meet the Directive's minimum requirements. Moreover, in the period prior to the deadline for transposition in September 1996, the parties were granted considerable procedural flexibility in the negotiating process: agreements reached before

this date are exempt from the terms of the Directive so long as they meet certain minimum requirements (Hall *et al.* 1995).

The scope provided for negotiated arrangements has been of particular significance in the UK, which because of its 'opt-out' from the Social Protocol was not covered by the Directive. Although due to the size and scale of their operations elsewhere in the EEA upwards of 100 UK-owned companies will be required to comply with the requirements of the Directive, pending any 'opt-in' whether or not their UK operations are included within an EWC will be decided solely by negotiation between management and employee representatives. Similarly, whether transnational companies based elsewhere in Europe, or in North America and Japan, include their UK operations within an EWC will be left to the parties to determine.

Accordingly, the purpose of this chapter is to examine the incentives for management and employee representatives to reach a negotiated arrangement for information and consultation at European level and to review some of the more prominent issues for negotiation. This is prefaced by a brief survey of the recent development of transnational capital within the European Union, highlighting some of the wider implications for industrial relations.

TRANSNATIONAL COMPANIES WITHIN EUROPE

In 1991 there were about 1,000 transnational companies within the EU which employed 1,000 or more people across the Union and which had substantial operations in two or more member states (Sisson *et al.* 1992). These companies included 880 headquartered within the EU and more than fifty headquartered elsewhere in the world (including the then EFTA countries). In total, they accounted for more than 10 per cent of the EU's workforce. Amongst those headquartered within the EU, some member states were more prevalent than others. The largest group, 332, were headquartered in the UK, followed by 257 in Germany and 117 in France. Eighty-nine companies were based in the Netherlands, whilst there were just thirty-two based in Italy. To these figures for large employers should be added the growing number of medium-sized companies that are becoming transnational in the scope of their operations within Europe, and the growing extent to which companies exercise control over operations in other countries through indirect forms of ownership, such as licensing, franchising and subcontracting.

The period leading up to and following the creation of the Single European Market has seen considerable growth in the numbers and reach of transnational companies within the EU. This reflects an acceleration in the incidence of cross-border mergers and acquisitions and the formation of joint ventures and strategic alliance (Buiges *et al.* 1990), as companies seek to reposition themselves on a Europe-wide footing so as to be able to produce for,

and service, markets across the Union. Examples are Asea's merger with Brown-Boveri to form ABB, Nestlé's acquisition of Rowntree and, in alliance with BSN, of Perrier; and Siemens's joint venture with GEC. Not all corporate realignments have come to fruition; Pirelli's unsuccessful bid to acquire Continental and the failure of the Renault—Volvo strategic alliance are cases in point.

This process of repositioning has been accompanied by widespread rationalisation and restructuring of production and service capacity aimed at reaping economies of scale. In some cases this has been the subject of sustained public controversy as with Hoover's decision to centralise production of one product line at a Scottish, rather than a French, plant having secured a series of concessions from the local workforce (EIRR 1993). The traffic has not, however, all been one way: at almost the same time Nestlé was transferring production of one product line from Scotland to France.

Internally, management structures and organisation have been restructured too. Transnationals have created unified management structures at European level, superimposed on pre-existing national-level management structures. There has been a related shift in the primary axis of internal management organisation away from national subsidiaries responsible for all operations within a particular country and towards international business divisions responsible for particular products or services across countries. Ford of Europe made such a transition some years ago, integrating the production of cars across European borders under a single management structure. More recently, reorganisations at Shell and Unilever have elevated the importance of international business divisions and downplayed that of national subsidiaries.

At the same time, processes of decentralisation in the management organisation of transnational have been evident too. Increasingly, transnational companies have been devolving responsibility for business operations to business units which are accountable to the parent in profit and loss terms. This organisational disaggregration has been carried ever further, with companies separating themselves into an ever larger number of business units. Within a framework of devolved financial responsibility, however, business units tend to be subject to strict budgetary control from the centre (Marginson *et al.* 1993). More generally, developments in communications and information technology, together with management restructuring, have enhanced the ability of corporate offices in transnational companies to collect and process information on business unit performance.

The significance of these developments for industrial relations is three-fold:

1 The increasingly international nature of corporate activity within Europe suggests that no one country can isolate itself from social policy developments elsewhere in the EU. Specifically, the number of UK-based transnational will be affected by measures introduced by the other fourteen member

states despite the intentions of the UK government when opting out of the Maastricht Treaty's Social Policy Protocol. As we noted earlier, upwards of 100 UK-based transnational will be required to comply with the Directive on EWCs introduced under the Protocol because of the scale of their other EEA operations (ETUI 1995; Hall *et al.* 1995).

2 As a result of the development of unified European management structures, a growing number of transnational companies now have the management capability to develop a pan-European approach to industrial relations. Whilst this may be reflected in the adoption of common policy approaches across countries, it will not necessarily lead to the creation of new European-level industrial relations structures within companies. This is because operational and financial devolution creates pressures for devolved management responsibility for industrial relations matters too. The pressures of competition are acting in a similar direction, driving companies to develop organisation-specific employment policies which reflect business requirements. Implementation of a common policy approach on a decentralised basis is a distinct possibility. Moreover, the enhanced ability of corporate offices to collect and process information extends beyond financial indicators to measures of industrial relations performance as well.

3 Hence transnational companies increasingly have the ability to compare the performance of different plants across European borders on industrial relations matters, such as labour costs, productivity, absenteeism and levels of disputation (Marginson *et al.* 1995). Evidence indicates that they are deploying this ability to 'reward' or 'punish' sites in terms of decisions on the location of capital investment programmes (Mueller and Purcell 1992). The pressure on workers in car manufacture in Germany to accept Saturday and Sunday working, as is the case in Spain and Great Britain, is one example. In this way, concessions can be secured from workforces across the EU from the implementation of a pan-European approach on a decentralised basis.

Implementation of the EWC Directive will therefore be taking place in a context where many transnational companies are pursuing an approach to industrial relations across Europe which combines decentralised implementation of policy objectives with an increasingly transnational framework for diffusing policy initiatives and monitoring performance outcomes. How far a common policy approach across Europe is being adopted, and the degree to which it is expressed explicitly at European level, will vary between transnational according to the nature of the business activities they are engaged in and their own internal structure (Marginson 1992). The scope provided under the Directive for negotiated outcomes offers transnational companies the opportunity to try and reach agreement

on arrangements for information and consultation at European level which are tailored to their own circumstances.

INCENTIVES FOR NEGOTIATING AN EWC

In implementing the Directive, three basic options were made available to management and employee representatives:

- to conclude a 'pre-emptive' agreement prior to the implementation of the Directive in September 1996, which provided it meets certain minimum criteria can remain in force, at the wish of the parties, indefinitely;
- to conclude an agreement through the 'special negotiating body' (SNB) procedure specified in the Directive for the period after the deadline for transposition;
- to apply the Directive's subsidiary requirements (Hall *et al.* 1995).

In practice, any negotiations over an agreement under the first two options will be influenced directly or indirectly by the subsidiary requirements. These will form a benchmark against which either side will assess the acceptability of alternative, negotiated, arrangements.

In some circumstances, the parties will opt for the subsidiary requirements. It may be that neither side feels that it can accept anything 'less' (in the case of the employee side) or 'more' (in the case of management) than the subsidiary requirements. Managements may also take the view that they wish to minimise the impact of EWCs on their domestic industrial relations, and that minimum compliance with the subsidiary requirements is the best way to achieve this. Nonetheless, in many situations there have been considerable incentives for either side to negotiate. Not only have negotiations offered management the prospect of an arrangement tailored to suit the circumstances of the company, but as we shall see, on the employee side they also held out to trade unions the prospect of a role precluded by the subsidiary requirements.

A pre-emptive agreement?

Of the two negotiated options, the benefits of concluding a 'pre-emptive' agreement were primarily procedural. Negotiations could be conducted outside of the special negotiating body envisaged by the Directive, providing company managements, and the employee side, with maximum procedural flexibility. Such flexibility potentially offered two distinct advantages. First, for companies headquartered outside of the seventeen EEA member states covered by the Directive it gave central management the opportunity to conduct negotiations directly. Under the SNB procedure, companies headquartered in the UK, as well as beyond Europe in North America and East Asia, would have to designate the management in one of the seventeen countries as their negotiating agent. In practice, central managements may be reluctant

to delegate responsibility for negotiations over a transnational structure to the management one of its subsidiaries.

Second, flexibility was available in determining a negotiating partner on the employee side, and in particular the possibility of entering into negotiations with trade unions representing the workforce. The SNB procedure requires that any agreement is negotiated with a body of employee representatives, whose composition and method of election or appointment will be specified in the relevant national legislation giving effect to the Directive, and in which trade unions may play no formal role beyond that of expert adviser. In contrast, many of the 100 or so existing pre-emptive agreements (as of May 1996) have variously been negotiated with national trade unions (frequently acting on behalf of their counterparts in other European countries), European trade union industry federations (for example the metalworkers and foodworkers) or employee-only group works councils (in some German-based companies) (Carley and Hall 1995). A further consideration for companies headquartered, or with major operations in, the UK is the scope offered by a pre-emptive agreement to involve employee representatives from the UK in its negotiation, as has been the case in the agreements reached at Coats Viyella, United Biscuits and Electrolux.

From a substantive point of view, companies with well-established arrangements for information and consultation at national level may wish to demonstrate to employees their commitment to involving employees at a European level. Or they may wish to signal to customers as well as to employees that meeting the requirements of the Directive will not be the subject of protracted uncertainty. Either motive could prompt the conclusion of a pre-emptive agreement.

Alternatively, companies may be reluctant to become pace-setters: both the management and the employee side may prefer to wait and see how other companies are meeting the Directive's requirements. Resources and the absence of a ready negotiating partner on the employee side may well have led the parties to defer negotiations until after the SNB procedure came into force in September 1996. For those companies headquartered outside the seventeen EEA states to which the Directive applies, waiting for its implementation may open up the potential to 'shop' between the varying national legislation which gives effect to the Directive. Such companies may, for example, wish to compare French with German legislation before deciding with which to comply; UK-owned companies may be particularly interested in examining the Irish legislation because of similarities in the two countries' industrial relations systems.

A negotiated agreement?

Having considered the particular issues surrounding the conclusion of a pre-emptive agreement, we now turn to examine the broader incentives for company managements and employee representatives to pursue a negotiated

arrangement either pre-emptively, before September 1996, or thereafter under the Directive's SNB procedure. Two main kinds of incentive to conclude a negotiated arrangement can be identified:

- securing an arrangement which fits with companies' internal structure and management organisation;
- securing an arrangement which conforms with established approaches to industrial relations within the company.

Whilst it may be management that is primarily motivated by the first kind of incentive, both parties may see benefits in the second. The ensuing discussion focuses on three key issues: the *form* and *level* of a European-level information and consultation arrangement, the composition of any EWC and the role of trade unions. These are by no means exhaustive of the issues which the parties will need to address: other important matters on the negotiating agenda will include the range of issues about which the employee side should be informed and those on which they will be consulted over; the procedure for information and consultation; confidentiality; resources and operating matters. Consideration is given to all of these by Hall *et al.* (1995).

In considering the form of a European-level information and consultation arrangement, one outcome of negotiations can be the introduction of an agreed procedure for information and consultation. Potentially this could take the shape of a decentralised system for informing and consulting with existing employee representatives, using local structures of employee representation. Such a procedure must provide for an exchange of views with central management, or any more appropriate level of management, and stipulate the method by which employee representatives shall have the right to meet to discuss the information conveyed to them. In principle, given the decentralised management structures adopted by many transnational companies, this outcome may well have attractions. Indeed, it was one of the variants canvassed by employers in the campaign surrounding the adoption of the Directive (Multinational Business Forum 1993). In practice, because such a decentralised procedure has to be an agreed outcome, it is only likely to be feasible where there is little or no trade union presence within a company. Where trade unions are strongly represented and organised, they are likely to push forcefully for a standing EWC at central level. The decentralised arrangement concluded by Marks & Spencer (IRS 1995) is, for example, being contested by European trade unions.

A second consideration in terms of the form of a European-level information and consultation arrangement is the level at which it will be situated. The presumption of the Directive is of a single, group-wide standing EWC. But some transnationals may feel that a set of arrangements at divisional level is more appropriate. This is particularly likely to be the case in those companies which are now primarily organised around international product or service divisions, rather than national subsidiaries. In such

companies, management may consider that a set of divisional EWCs fits better with management structures, and both parties may concur that it accords with the reality of where key management business decisions affecting employees in different European countries are effectively taken. In contrast, where companies are engaged in a single integrated business operation, as in banking, retailing or catering, or where national subsidiaries continue to form the major line of internal demarcation for management purposes, managements are likely to prefer a single, group-wide arrangement. Of existing EWC arrangements, divisional-level structures exist in BSN, BP, Coats Viyella, Norsk Hydro and Thomson (Carley and Hall 1995).

The *composition* of the information and consultation arrangement raises considerations which have a bearing on both main kinds of incentive identified above. A first issue is whether the EWC is a joint management—employee or an employee-only body. The Directive's subsidiary requirements specify the latter, which accords with works council practice in Germany. This is the model adopted in some existing arrangements, primarily among those in German- and Swedish-based transnational. The majority of current arrangements provide, however, for a joint management—employee forum (Carley and Hall 1995), which reflects French national practice in *comités d'entreprise* and *comités de groupe*. Lying behind the choice made is the question of how any arrangement for information and consultation at European level should be linked to existing structures for information and consultation at national level. This will influence the effectiveness of an EWC in securing the kinds of benefit identified by management and employee representatives in an early study of existing arrangements (Gold and Hall 1992).

A second issue concerns the basis of employee representation. In most cases the parties will probably share the presumption of the Directive towards a body of manageable size: the subsidiary requirements specify a maximum of thirty employee representatives. Seven of the current arrangements do substantially exceed this in terms of their size (Carley and Hall 1995). In many cases the practice of one representative per country, as specified in the subsidiary requirements, will also be adhered to. Beyond this, choices remain to be made about the various employee constituencies to be represented. The subsidiary requirements provide for additional representation proportional to the employment size of operations in each country. But reflecting concerns to tailor any EWC arrangement to both the management structure of the company and established industrial relations approaches, the parties may wish to ensure that employees from the different businesses within the company are each represented; different trade unions, or confederations, organising within the company are each represented; or the composition of the employee side reflects the gender composition of the workforce. Existing arrangements show substantial variation in the basis of employee representation adopted, save that there is little evidence of attention being paid to the gender composition of the employee side of EWCs.

Whether employee representatives from European countries outside the EEA are included within an EWC arrangement is a further issue open to negotiation. Companies' management organisation within Europe frequently extends beyond the seventeen EEA states covered by the Directive to include the UK, Switzerland and in many instances Central Europe as well. In some cases management structures at divisional level are effectively global in scope. Thus there appears to be no overriding structural logic to excluding, say, employee representatives from the UK. Most current arrangements include employee representatives from the UK where relevant, seven include representatives from Switzerland and nine include representatives from Central Europe (Carley and Hall 1995).

As we noted earlier, the Directive's subsidiary requirements do not foresee a role for trade unions, except that they may act as expert advisers. Yet management, as well as the employee side, may see advantages in according a role to trade unions in EWCs. The extent, if any, of the trade union role is likely to be shaped by the capability of unions to organise at company level on a European basis, the role unions play in existing arrangements at national level within companies, and how far management wish to build on existing arrangements with trade unions in establishing an EWC. In terms of their organisational capacity, where unions are well organised at national level, especially in the country where parent companies are headquartered, they appear to be able to bring together union and employee representatives from the different European countries in which companies' main operations are located. Since 1990 international meetings of representatives have been convened in upwards of 300 transnational companies likely to be covered by the Directive (LRD/TUC 1994). Across Europe, however, the nature of the role played by trade unions in arrangements for information and consultation varies considerably between the seventeen EEA states. There are important differences too between companies headquartered in the same member state in the extent and form of any trade union involvement.

These differences are reflected in the diversity among existing EWC arrangements (Carley and Hall 1995). Several companies have provided for an intersection of trade union and employee representation. In some instances there is provision for appropriate trade union officers to be represented on an EWC along with elected employee representatives; in others they may attend as observers. In a larger group of companies, representatives on the EWC have to be employees of the enterprise, but they are nominated by trade unions organising within the enterprise (reflecting French national practice) or by works councils within the enterprise (reflecting national practice in Germany). A few companies have arrangements which are entirely trade union based, whilst in some others trade unions play no role in the nomination or appointment of representatives to the EWC. Reflecting the variation in national structures, some agreements have made

provision for employee representatives on the EWC to be elected or appointed according to national legislation or practice in the different countries covered.

Summary

There are substantial incentives for both management and employee representatives to negotiate a tailor-made, enterprise-specific arrangement for European-level information and consultation. In the case of a 'pre-emptive' agreement these additionally arose from the procedural flexibility offered by negotiating outside the Directive's SNB procedure. The scope for negotiation over three main issues has been demonstrated: the form and level of any EWC arrangement; the composition of the employee side; and the role, if any, accorded to trade unions. Although these form a central component of the negotiating agenda, the scope for negotiation extends to a range of other matters as well (Hall *et al.* 1995).

ASSESSMENT AND PROSPECTS

The European Works Council Directive represents an unprecedented institutional development shaping the framework for European industrial relations which is emerging as a response to economic integration across the continent. Its effect, however, will in large part depend on choices made by managements of transnational companies and employee and trade union representatives on the form, level, composition and substantive content of EWCs. This chapter has examined the scope in the Directive for management and employee representatives to conclude arrangements for employee information and consultation at European level which are tailored to the circumstances of the enterprise. It has shown that there are considerable incentives for either side to negotiate an enterprise-specific arrangement rather than opt for the subsidiary requirements laid down in the Directive. These incentives stem from the opportunity to take account both of the management structures of companies and of existing approaches to, and structures of, industrial relations within companies.

The growth in the number of transnational companies within Europe, and the increasing proportion of these whose production operations and market servicing are organised on an international, Europe-wide basis is creating the potential for the emergence of company-specific policies in the sphere of industrial relations which transcend national borders. One expression of this potential is the creation of new European-level structures of industrial relations, of which European works councils represent the most significant development to date. But given competitive and organisational pressures towards decentralisation, the pursuit by transnationals of centrally determined policy objectives on a decentralised basis, in which coercive pressure is brought to bear for concessions from workforces and

governments at national and local levels, constitutes a very real parallel, if not alternative, possibility. The wider significance of the requirement on transnational companies to establish EWCs may lie in the opportunity it gives employee representatives to meet and exchange information at European level. Potentially, this will lead to the greater use of international comparisons in collective bargaining at national and local levels as employees and their representatives begin to exercise countervailing pressure to that coming from transnational management.

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17

EUROPEAN WORKS COUNCILS

Experiences and perspectives

Wolfgang Lecher

THE CURRENT POSITION

In September 1996 the transposition of the Directive on the Establishment of European Works Councils (EWCs) took place—in theory simultaneously—in all seventeen countries subject to its requirements. In addition to the fourteen EU member states, with the UK excluded under its opt-out from the Agreement on Social Policy, the Directive also embraces the three states which make up the European Economic Area (EEA; Iceland, Liechtenstein and Norway). At the time at which the Directive was transposed into national law, around 420 agreements had been concluded on a voluntary basis between managements and employee representatives, including trade unions.

The Directive stands in the tradition of the social Directives, such as that on collective redundancies (1975) or the various Directives on health and safety at work (in the years after 1989). Information and consultation are seen as a positive contribution to decision-making processes in companies. This marks an important distinction, for example, to the neo-liberal conception of industrial relations which has come to characterise policies in the UK and USA.

The Directive is innovative in that, for the first time, it creates a primary European institution in the social sphere. In contrast to previous Directives this marks an important step beyond the mere national implementation of a common European set of framework conditions. This was prepared for and facilitated by the establishment of the social dialogue under the Social Protocol of the Maastricht Treaty. The significance of this provision can be gauged by the fact that the discussion and debate on employee participation in the EC, and later the EU, dragged on without any concrete outcome for over three decades, culminating in the abandonment of the Vredeling Directive. In contrast, the breakthrough to the adoption of the Directive on European Works Councils occurred within six months, interestingly in a climate otherwise characterised by a strong emphasis on deregulation. Finally, the Directive is also an example of a balanced mixture of subsidiarity (national adaptation of the Directive through implementation), proportionality

(cooperation of governments and industrial organisations in the preparation and transposition of the Directive) and flexibility (the Directive allows a number of options for transposition) (Blanpain and Hanami 1995:16).

Transposition

Four options are offered for practical implementation under the Directive. First, employee representatives may decide not to seek the setting up of a European works council and no procedure for information and consultation will be created. Second, in the period before the date by which the Directive was to be transposed into national law, employees and management had scope for the conclusion of a voluntary agreement (sometimes dubbed 'enforced voluntarism') under Article 13 of the Directive. A number of companies made use of this scope for a tailor-made solution. The third possibility consists in the conclusion of an agreement after national transposition of the Directive, subject to a number of pre-set time limits. These would ensure that the vast majority of multinational enterprises covered by the Directive would have a European works council by the end of the century. Fourth, there is the possibility—again following transposition into national law—of establishing an EWC according to the minimum ('subsidiary') requirements of the Annexe attached to the Directive. The issue of arranging EWCs in accordance with national peculiarities to ensure that they do not collide with national law and customs or create international problems of coordination is dealt with below. Finally, instead of establishing the institution of a 'European works council', the parties can also set up other 'procedures for the transnational information and consultation of employees': these might include, for example, the provision of information via e-mail, although there is no example as yet of this. Given the difficulties which such a 'procedure' is likely to create in the context of the requirements for consultation specified in the Directive, such a course could prove hazardous for all concerned.

The extent of European works councils

Some 1,300 undertakings, employing around 15 million people in Europe, are expected to be covered by the Directive. Taking the size of existing voluntary EWCs as a benchmark, a total of 40,000 employee representatives are expected to take up activity as EWC members once the Directive is fully implemented. On average, each EWC will have thirty members. Depending on the frequency of meetings, there will be some 2,500 EWC meetings each year, at an estimated total annual cost of some £80 million for travel, accommodation, translation, expert advice and other associated expenses.[1] These figures alone are sufficient to demonstrate that EWCs cannot be dismissed as a mere 'playground' of industrial relations. Rather, all those

involved share the view that the transposition of the Directive will herald a step towards a structure of decentralised European industrial relations which could become the seed of a complex system of European labour relations rooted, at some point in the future, in collective bargaining. For companies, EWCs are additionally of particular interest as a building block and jumping-off point for a strategy of international human resource management. In addition to the understandable current media focus on European monetary union and, following the Intergovernmental Conference (IGC), the expected expansion of the EU to the east and south, European works councils represent the development of a new primary European institution which will contribute towards developing the previously seriously neglected field of employment policy and industrial relations at European level.

CURRENT AND PROSPECTIVE PROBLEMS IN ESTABLISHING EWCS

Tensions between national systems of industrial relations and new supranational tasks

A number of current and prospective difficulties have emerged with voluntary agreements and the national implementation of the Directive as far as the establishment and operation of EWCs is concerned. One fundamental problem, which certainly arises in every country, is that of the possibility of competition between traditional national institutions for employee representation operating above the level of the immediate workplace and the new EWCs. In particular, countries with a highly developed structure of employee representation at company or undertaking level, such as Germany (with its central and group works councils) and France (with its group committees) could run into problems of representativeness and competence on issues of information and consultation. Since national institutions are older and hence constitute more established instruments for information disclosure, and are also usually stronger because of the national statutory rights, it may well be difficult for the new priorities to assert themselves. There is the additional problem that pre-existing bodies will already have been supplied with international information, as information disclosure within transnational employers is not schematically divided into national and international segments. This might mean that EWCs will take a back seat to traditional national institutions. One of the most important tasks for trade unions in such settings will be to support the international character of the new forum as a forward-looking dimension within the overall operation of employee representation.

The picture looks different in countries with a traditionally weaker pattern of employee representation at corporate—as opposed to workplace—level,

such as the UK, Spain or Portugal. Here EWCs could not only figure as a new body at international level but also establish themselves as an innovative forum for supra-workplace employee representation. At the moment, national works councils have an established legal right to obtain international information from corporate managements only in Belgium. In every other country, this is not legally enforceable—although overlap between national and international information has been customary in practice in a number of internationally operating companies. At the same time, one key task in the national implementation of EWCs is to come to a satisfactory regulation of the relationship between the new body and existing institutions for employee representation. That problems can crop up is shown by the experience of Thomson-CSF in France, where—according to the legal adviser to the Thomson-CSF European works council—one of the two annual meetings of the national group committee *(comité de groupe)* was dropped in favour of an EWC meeting (Blanpain and Hanami 1995:29f).

Critical points in the Directive

One potential issue of conflict might lie in the fact that the Directive leaves entirely open the issue of the extent and timing of information and consultation. One way of going on the offensive on this question could take as its point of departure ILO (International Labour Organisation) Recommendation No. 94, which states that consultation and cooperation should relate directly to the level of the undertaking. The German trade unions, for example, have viewed the Directive as a minimum provision which can, and must, be improved on. This consideration certainly nourished the interest of German and other national union movements in the pursuit of voluntary agreements prior to the adoption of the Directive in 1994. They could be used as positive precedents for later legally 'enforced' implementation, especially as it could be assumed that those companies which waited for legal implementation were not likely to be the most positive about EWCs. Analytically, four phases of potential information disclosure can be distinguished: information before any concrete planning; information during a current planning process; information following planning but prior to implementation; and information after implementation. The problem of choosing a point in time which satisfies both sides is exacerbated by the fact that the preamble and text of the EWC Directive contradict each other to some degree as to the point at which information should be disclosed. Whilst the preamble speaks of information being provided to employee representatives 'as soon as possible', other elements of the Directive imply disclosure after the planning stage. What might prove decisive in practice is whether management's decision can be changed following the disclosure of information—that is, whether information and consultation can be linked in an effective and efficient way. Looking at the definition in real terms,

the genuine aim of consultation should be 'information plus the option for a change in the original planning': however, the Directive merely talks of an 'exchange of views'.

A second problem will also almost certainly arise from the definition of confidential information. It can be expected that divergent—either more open or more restrictive—practices of information disclosure will arise based on differing national patterns and customs of industrial relations. There are two possible solutions to the problem: first, an EU-wide definition could be made of what may be kept confidential and what must not be further disclosed; second—and probably more practicable—would be to determine the confidentiality of information in accordance with the law of the home country of the employing undertaking. In turn, this would mean that different standards would prevail in differing companies, and that the pattern of differing practices of disclosure and confidentiality would continue not only between national jurisdictions but also between undertakings.

Difficulties in implementation

At the time of writing in October 1996, all the draft legislation to transpose the Directive into national law—with one exception—had taken the form of conventional statutes intended to pass through consultative procedures, with scope for changes. The exception is Norway, where the Directive has been implemented via an agreement between the social partners at national level. One cause of concern to the German trade unions has been the absence of any conciliation or arbitration procedure to resolve differences, together with concerns about the lack of provision for training for representatives.[2] Another point of concern is the absence of any specific rights for trade unions, which the German unions regard as incompatible with the German Basic Law and international conventions.

A further issue related to national implementation is the fact that none of the transposing national legislation has taken account of the recommendation of the international transposition working party to incorporate a 'safety clause', despite the difficulties in achieving simultaneous transposition of the Directive in all seventeen countries.[3] Under such a clause, the central management of a Community-scale undertaking would be required to accede to a request to begin negotiations on the establishment of an EWC even if the Directive had not been implemented in every member state. The failure to follow this recommendation throughout Europe may not only lead to delays in the start of operations by EWCs in those countries slow to transpose the Directive, but also contains the risk that EWCs in such countries will comply only with the minimal requirements of the Directive in order to obtain a—real or supposed—competitive advantage.

In contrast, the transposing legislation has universally taken the positive step of including part-time workers in calculating the employee numbers

which determine whether or not an undertaking falls within the scope of the Directive. In the Belgian statute, however, they are only counted as full-time employees if their actual working time is at least three-quarters of the working time of a full-time employee. In the Spanish draft, in contrast, only those with contracts of employment of more than two years are treated as employees with indefinite contracts; where the contract duration is less, the employees concerned must have worked for at least 400 days in the previous two years to be included within the qualifying workforce.

As far as the definition of 'controlling undertaking' is concerned, all the draft statutes followed the recommendations of the transposition working party, according to which the most important criterion was the possibility of appointing 'more than half of the members of the administrative, management or supervisory bodies' of another undertaking. Finally, all the transposing statutes provide for EWCs to have the scope to set up a smaller 'select committee' once it has twelve members, with the exception of the Norwegian agreement, which leaves it to the negotiating parties to determine when such a subcommittee can be established. The Danish legislation provides for a select committee once an EWC has reached fifteen members, and the German, nine members.

Examples of voluntary agreements

We now turn to examples of voluntary agreements in three countries: these both highlight national specificities and illustrate the options for ways of working following the implementation of the Directive.

France: Bull

One of the oldest institutions, with a correspondingly long accumulation of experience (since 1988), is that established at the French computer company Bull.[4] The procedure involves twenty-eight delegates from sixteen countries who meet twice yearly—compared with the annual meeting required by the Directive—to receive information from the group's central management and make recommendations to the company. Although these recommendations have no binding force (which would be tantamount to a veto and hence genuine codetermination), management must respond to them—a practice which corresponds to that required by French statutory *comités d'entreprise*. The meetings last for two days and are held at the group's head office in Paris, where a 'bureau' consisting of seven elected representatives prepares the meetings: the chair and president of the Bull group hosts the meetings. This also corresponds to the customary French practice, according to which the management or a management representative chairs the *comité d'entreprise*. However, there is provision for a pre-meeting of employee representatives on the first day, at which they have an opportunity to discuss the problems and issues which they intend to raise at the plenary with management.

The information disclosure practised by the company has also been extended beyond the six-monthly meetings. Every member of the committee receives a copy of the management's monthly short report. At the same time, it is evident that the management also receives valuable information via the committee about the state of industrial relations and employee motivation. The Euro-Committee therefore provides for direct feedback which serves as an antenna for both sides, allowing them to spot the early symptoms of disgruntlement, endorsement and potential problems.

Up to now there has been little new content to the meetings. One of the principal reasons is the differing industrial relations cultures in different countries. For example, delegates who at national level have been traditionally engaged in serious conflicts with employers are not well placed to discuss problems in a less Manichean and more consensual way. As a result, the Euro-Committee set itself the task of harmonising the status of employee representation at Bull throughout Europe at the highest possible level. An attempt is to be made to place the relationship between personnel management and employee representatives on the same practical and cultural footing. Nevertheless, it is acknowledged that this effort has been seriously prejudiced by the everyday depressing grind experienced by national employee representatives imposed by the worldwide crisis in the computer industry. Job cuts, redundancy plans and cost reductions have made it difficult to build a creative and optimistic atmosphere in the Euro-Committee.

United Kingdom: United Biscuits

The voluntary EWC agreement at United Biscuits, the British food multinational, represents a second interesting example (details from Trades Union Congress 1995). Despite the UK's opt-out from the Agreement on Social Policy of the Maastricht Treaty, in spring 1995 United Biscuits established a so-called European Consultative Council for its *c.*20,000 employees in the UK and 6,000 in other European countries (including Eastern Europe). Based on the traditions of UK industrial relations, where trade unions negotiate directly with the employee at the workplace in contrast to the dual systems characteristic of much of Mainland Europe, four full-time trade union officials engaged in negotiations with the company can also participate in the meetings. Three of these are from the UK, including one from the General Municipal and General Workers' (GMB) union who will also represent the European trade secretariat, the ECF—IUF (European Committee of Food, Catering and Allied Workers' Union in the International Union of Foodworkers). The fourth full-time official will represent a non-UK union, and on a rotating basis.

The meetings are chaired by the group human resources director—a French approach, new for the UK. Meetings last for a morning, with scope for an employee-only pre-meeting the previous day and an informal dinner

between all participants. Excluded from the agenda will be any issues which are the prerogative of national or local negotiating or consultative processes. As a consequence, it will be difficult for employee representatives to make effective use of the scope for discussing jobs and the company's employment policy. United Biscuits, as a UK pioneer in the field, readily concedes that its aim in establishing such a body was to be able to shape its own flexible model of a works council instead of having a uniform model imposed 'by Brussels' at a later date.

Germany: Continental

The third example, from the chemical industry, is the Europe Forum of the German company Continental AG, which was agreed by the company's management board and group works council in April 1992.[5]

The standing orders for the Forum note that the exchange of information between employee representatives of the group's various divisions and sites is to be established with the aim of discussing and progressively harmonising employee relations and working conditions. In addition, the cooperation should take place against a background of close coordination between the trade unions represented in the group, and in particular the European Federation of Chemical and General Workers' Unions (EFCGU). The cooperative aspect of good industrial relations is also expressed through the fact that the agreement is expressly intended 'to promote social dialogue and cooperation based on mutual trust within the Continental group'.

The members of the Forum's employee representations must be democratically elected employee representatives and/or workplace trade union representatives, in accordance with national custom and practice and/or law. In addition, trade union representatives may be called on to participate, and all meetings are attended by a representative of the EFCGU. The agreement provides for an annual meeting: as is customary in Germany, the Forum and its executive committee are employee-only bodies. The executive committee consists of a chair, a deputy and one employee representative from Germany, and the largest subsidiaries in France and Austria. Information exchange is confined to current issues which affect employees in more than two countries or concern pan-European issues. Costs are borne by the group, the meeting point can vary, and the programme is worked out by the Forum's executive committee in conjunction with the group's management board.

This resemblance of the institution to a works council clearly reveals the imprint of the home base of the parent company. Of note is the agreed status of trade unions at both national and supranational level. As a result, the Continental agreement goes some way beyond the provisions of the German transposition of the Directive.

Problems of compatibility between national employee representation and EWCs

One of the crucial, if not *the* crucial, precondition for a successfully functioning EWC is its integration into the various national systems of industrial relations. The following section explores the problems which might crop up in the integration of EWCs into the national systems of four countries: France, the UK, Italy and Germany. This concerns not only regulating the disclosure of information but also the establishing an awareness of this issue on the part of EWCs and the trade unions involved in the process of implementation. These four countries are also those with the vast bulk of EWCs. The UK has been included because it clearly demonstrates how the opt-out negotiated by the British government, in part intended to exclude EWCs from the UK, has broken down in practice. (By the summer of 1996 about fifteen voluntary agreements on EWCS had been established, and an ad-hoc group of around fifty large multinationals had been formed to support companies in the preparation and establishment of EWCs in the UK.)

France

The establishment of EWCs owes as much to the practical experimentation with such bodies in French companies since the mid-1980s as it does to the legislative initiatives of the European Commission. Following the Auroux reforms,[6] from the mid-1980s large, primarily state-owned, undertakings seized the opportunity to acquire a corporate image of international openness, with state assistance, by extending the range of their information disclosure through *comités d'entreprise* to the provision of information on an international basis through corresponding European bodies.

As a rule, these agreements were developed jointly between national trade unions and European trade secretariats of the respective branches, on the one hand, and national group management on the other. In some cases, the agreements were signed only by the European trade secretariat, and on occasions embraced non-EC countries. However, notably, the term 'European works council' was never used; instead, they were dubbed, more neutrally, 'Euro Forums' or 'Euro Committees'.

Employee representatives in these voluntarily agreed committees were partly directly delegated by the trade unions—as happens on the *comités d'entreprise*—and partly appointed from elected bodies. In some cases, some representatives were directly appointed by the European trade secretariats (see the country reports by J.C.Javillier and J.Rojot, in Blanpain and Hanami 1995:129ff, 139ff). In no case was there direct election by employees. One further peculiarity is the fact that, in contrast to later agreed institutions more closely resembling EWCs (such as that established for Volkswagen),

in France no consultation rights were agreed—only rights to information, in almost every case at the discretion of the management. In all cases, the chair of these EWC-like bodies is also the president of the respective group. This accords with the French practice of workplace industrial relations in which the *comité d'entreprise* meets under the chairmanship of the establishment's management. However, as a rule, a secretariat is elected by a simple majority of those involved in the preparation of the meetings. Meetings take place once or twice annually, with additional meetings possible according to specific standing orders (but usually with the agreement of two-thirds of those present). Employee representatives' costs are borne by the employer. The same applies for training costs for representatives. Representatives can attend paid courses on subjects such as employment law, social policy in the European Union and corporate organisation.

The transposition of the Directive in France is by statute: the social partners were invited separately to submit their views on how implementation should take place. Previous French information bodies at European level did not include a right to consultation, as this was felt to be too formalised at workplace level and too restrictive of managerial prerogatives. One of the key issues will be how this procedure is structured in the wake of the Directive's transposition into national law.

However, it should be emphasised that such consultative procedures should not be equated with employee codetermination. Such a concept as codetermination is still inconceivable for the vast majority of employers and employees against the background of traditional French industrial relations. Genuine employee codetermination exists in only a very few areas, such as the introduction of new individual working time arrangements. And, with the exception of workplace capital formation schemes, negotiations may not be conducted with the *comité d'entreprise* which could culminate in a written, and hence binding, agreement. French law reserves this right exclusively for trade unions. However, the weakness of the trade unions at workplace level has meant that, increasingly, informal accords are concluded with *comités d'entreprise* which regulate issues theoretically in law the preserve of the trade unions. Here too, it is wholly undecided which branch of employee representatives—elected or delegated by trades unions—will dominate future EWCs.

In addition to these two parallel branches, consideration must also be given to the fact of trade union pluralism in France. In a French EWC, and also with French representatives in *comités d'entreprise* whose headquarters are located in another European countries, this uncertain basis of multiple criteria for appointment and election will mean that it will always be difficult to arrive at a decision regarded by all as legitimate. One further problem for France may well be the 'spirit of cooperation' required of the protagonists by the Directive. The underlying adversarial orientation of the French system is much less directed towards cooperation than the German system.

The latter's Works Constitution Act, for example, prescribes a consensual approach with its formula of cooperation between the employer and works council 'in a spirit of mutual trust…for the good of the employees and the establishment'. It can, therefore, be expected that the issue of confidentiality could become a major issue for the employers in the implementation of the Directive. In turn, this is especially difficult for trade union delegates to accept, as their ability to act successfully at workplace level has traditionally been anchored in their latent capacity for conflict. In contrast to many other countries, strikes in France are not typically the result of a breakdown in negotiations but represent an attempt to set negotiations in train.

Overall, those French companies and employee representatives which establish EWCs after the transposition of the Directive will experience a 'qualitative leap'. In particular, the problem of consultation and mutual cooperation in those undertakings which did not agree a voluntary European forum, and which will therefore be directly affected by the national law, may, given the traditional conflictual character of industrial relations in France, throw up problems which will not generally surface with the same intensity in systems with a more cooperative character.

The United Kingdom

Three problems are likely to characterise the establishment of EWCs in the UK. First, employee representation is not strongly developed above the level of the individual workplace.[7] With the exception of a few large companies, where shop steward steering committees exist and where convenors and shop stewards have extensive time off, coordination between employee representatives at workplace level is mostly weak. The sort of information typically compiled by the central works council in Germany is not available to shop stewards in Britain. This is likely to create problems of communication for EWCs—as in other countries such as Spain and Portugal. This is not only a question of structure but affects the whole training and approach of shop stewards.

One additional problem will, as a result, emerge from the one-dimensional system of interest representation—that is, solely via trade unions—as the trade unions in the UK can often no longer speak on behalf of the majority of employees.[8] Instances can be expected where workplaces or companies are represented on EWCs through the representational monopoly of the trade unions, but where only a small minority of the workplace are trade union members. In critical cases this could pose a threat to the legitimacy of trade union representation. This problem is also associated with the fact that—in contrast to Germany for example—trade unions in the UK are not organised on an industrial basis and that, despite recent large-scale union mergers, there is still competition between trade unions in a number of industries. For example, there are six trade unions in the engineering industry with, to some degree, overlapping

spheres of interest: this is likely to create problems in achieving an allocation of EWC seats, whether elected or appointed, which is seen as fair by all concerned.

Finally, as in France—although possibly not so acutely—British industrial relations was marked by a fundamental adversarial approach until well into the Thatcher administration. In some branches, such as the public sector, docks or media, this approach still prevails, albeit weakened, and this could make it difficult for trade union representatives to cooperate 'in a spirit of trust' with managements, as is required by the Directive. The background of latent trade union competition, not only in countries with politically and confessionally divided trade union movements but also in countries with—nominally—one trade union centre, including Germany, means that the requirement to work in a 'spirit of trust' is of relevance not only to relations between employee representatives and managers but also to relationships within and between trade unions. Building trust in Europe is not only an international task, but also a reflection of national trade union cohesion.

Italy

The transposition of the EWC Directive is also likely to introduce novel elements into Italian law. Prior to transposition, there was no statutory obligation on managements in Italy to disclose information to employees or their representatives. The Directive will create pressure for changes to national legislation in this field. According to Italian observers (see Biagi, in Blanpain and Hanami 1995) the new obligations to disclose information will be confined to the trade unions, and initially will be restricted to those undertakings and workplaces covered by the Directive.

The new pattern of workplace industrial relations centred on the unitary structure of representation—the RSU *(rappresentanze sindacali unitarie)*—constitutes a mixture of direct election by the whole workforce with a guaranteed minimum representation for the main union confederations (Incomes Data Services/Institute for Personnel and Development 1996). The new workplace structure will undoubtedly raise the legitimacy of EWCs compared with the previous system of delegates and factory councils, especially as elections were often not held for several years in many workplaces and workplace employee representatives did not enjoy a high degree of legitimacy. In contrast to the previous system, the RSU is specified in sectoral collective agreements but could obtain legal status within the next few years.

As distinct from the situation of extreme trade union competition based on political differences, seen most acutely in France, the main confederations in the Italian pluralistic trade union structure have tended to come together in recent years, not least because of the influence of joint positions achieved

in the ETUC combined with a tradition of practical cooperation on collective bargaining and the maintenance of their position vis-à-vis smaller sectional unions. The progressive breakdown of political barriers, and the high degree of cooperation between the three confederations in tackling problems associated with the new EWC-bodies will certainly ease the problem of trade union competition in Italy.

One particular problem is attributable to the provision in the 1970 Workers' Statute which expressly excludes the financing of expert advisers for employee representatives by the employer. Were this provision to be retained after the transposition of the EWC Directive, the availability of expert advice would be made much more difficult. Italian delegates on EWCs in companies with their headquarters outside Italy might also have some initial difficulties coming to terms with experts paid by the employer to advise employee EWC representatives. However, overall, given the withering away of inter-trade-union competition and the emergence of a dualistic pattern of workplace representation, the prospects for the successful operation of EWCs are greater in Italy than in France or the UK, despite the difficulties noted above.

Germany

The problems likely to be encountered in Germany are the converse of those probable in other member states where the 'substructure' for EWCs is either underdeveloped or beset with difficulties in achieving a legitimate and balanced representation. Germany already has a complex and evolved system of codetermination and employee representation with rights extending far beyond those granted by the Directive. The problem is not, therefore, how to configure an existing—albeit far from perfect—system of national industrial relations to accord with EWCs, but rather how to ensure that a well-developed set of arrangements can be protected from being weakened by the less stringent provisions of the Directive, especially in the field of employee codetermination. For example, there is the possibility of a complex overlap of information and consultation procedures and rights between bodies constituted under the Works Constitution Act—economic committees, group works councils and central works councils—plus employee supervisory board members, as provided for under the 1976 Codetermination Act, and future EWCs. As a consequence, one paramount issue for employee representatives on these bodies will be to ensure effective cooperation and plan an overall approach to information disclosure.

One possibly thorny issue in this context is whether members of management who enjoy the confidence of the workforce and who are also often members of the Economic Committee should also be electable to future EWCs. It is also possible that, based on years of practical experience with 'cooperation in a spirit of mutual trust' between central and group works councils

and management, these tried and tested channels will continue to be seen as the more important link in the national chain of information disclosure—and indeed by representatives of both sides. This could lead to an asymmetry in approaches to information disclosure between the national and international levels, in which German EWC members request and receive information about plants and companies in other countries, but where information about developments in Germany itself is less forthcoming because of the availability of national alternatives. Although such a situation could arise in all countries, the particularly well-rehearsed character of industrial relations in Germany could mean that this becomes a special problem there.

One of the central criticisms made by the German trade unions about the transposition of the Directive into national law is the lack of any mechanism for resolving conflicts—in contrast to domestic German legislation regulating works councils. It remains to be seen whether the special negotiating body, which the Directive does not require to be dissolved after the election of an EWC, could provide the basis for such a conciliation committee.[9] Given the numerous problems associated with the creation of a new, primary European institution—illustrated in the case of the four countries briefly dealt with here—such a body could prove useful, especially in view of the uncertain legal status of agreements on EWCs: are they collective agreements between trade unions and companies, workplace agreements between employee representatives and managements, or will they create a new *sui generis* law at European level? All these unresolved questions of law and procedure could create a major role for such conciliation arrangements, especially in countries with highly legalised structures of industrial relations.

CONCLUSIONS

> Everyone is an internationalist, as long as internationalism is in the national interest.
>
> (Rojot, in Blanpain and Hanami 1995)

Having surmounted the first hurdle of being constituted under the various national transposing statutes, EWCs will soon run into the underlying problems of the complexity of their activities and their compatibility with other pre-existing arrangements. The most important and difficult task facing EWCs will be to avoid becoming confined to routine information disclosure and ritualistic consultation. Instead, employee representatives will need to set about establishing a broader and more informal, but well-organised, network of contacts between representatives in the individual countries on all internationally relevant subjects, and not simply those defined as such by managements.

The creation of such a living 'organic' network is the precondition for reducing formal EWC meetings to their properly secondary function compared with the maintenance of permanent information contacts—analogous to the functioning of German central works councils or French works committees. Seen from this perspective, precisely which information is obtained from management and whether managements seek to control annual meetings become less important. EWCs will become a serious partner and potential counterpart to management only once they have established cooperation based on mutual trust between their various national components and have become firmly anchored in national information channels. And only then will it be realistic to entertain the possibility of agreements and—in conjunction with the trade unions—formalised collective bargaining at company and group level for the whole of Europe.

Opportunities, risks and prospects: an initial assessment

It is still far too early to offer any kind of authoritative assessment of the practice of EWCs under the impact of the Directive. Experience at national level after transposition is likely to be very different to that of preceding voluntary agreements, not only because of the existence of a more restrictive legal framework, but also because EWCs will be established in companies which have previously showed little interest in or enthusiasm for such bodies. There is a much greater probability of conflict both in the constitution of the special negotiating body and in the establishment and operation of EWCs. Put somewhat baldly, as yet the trade unions have been able to concentrate on the 'goodies' as agreements have been concluded with employers with a cooperative management or an interest in creating a specifically European corporate culture and identity—and where trade unions have generally been strong enough to push effectively for an EWC.

However, national trade unions are finding it difficult to meet the international and supranational demands raised by the existence of EWCs. Few trade unions—one exception is IG Metall—have been able to bring together their various specialised union departments into the single project-like organisation required. Many unions, especially the smaller ones, are 'muddling through', either dealing with EWCs within the context of their (mostly small) international departments or, at best, in close cooperation with the relevant European trade secretariat. However, these bodies are usually so overstretched that they cannot guarantee the constant support needed at the outset of EWC work. There is, therefore, a risk that work in EWCs will not extend beyond a routine requesting of information, the choice of which is determined by group management. Such an approach will inevitably make it more difficult to develop the constructive relationship with the underlying national structure and workplace organisation so necessary for the legitimacy and efficiency of EWCs.

Some trade unions—especially those in structures characterised by conflict and inter-union competition—may also overestimate the, no doubt always latent, risk of a European company-level syndicalism and approach EWCs with an exaggerated mistrust. This negative view could be exacerbated if employees exposed to the risks of a single currency, but lacking corresponding social protection, adopt a more critical view of Europe. The prospective extension of the EU to Eastern Europe could also raise concerns about employers' commitment to existing sites and facilities in the west. Such a climate would make it difficult to understand and accept EWCs as an opportunity to anchor 'employment' more firmly at the European-level.

In addition to these not inconsiderable risks, there are also opportunities and positive perspectives associated with the spread of EWCs as a result of the Directive. Such a primary European institution offers a basis for international cooperation between the various unions represented at both group and workplace level within transnational companies. The development of the logic of modern production systems, with their simultaneous processes of decentralisation (greater regulation of employment matters at the workplace, direct involvement, participative management) and growing globalisation (Europeanisation, cross-border corporate culture in large undertakings, and the development of a European identity in the US-Japan-Europe 'triad'), together with the pressure of competition between these three poles, all combine to create both the framework within which future EWCs will be structured and greater scope for international trade union cooperation.

For example, the group-based structure of EWCs could facilitate efforts to transcend the ambivalence between direct participation and classical representative participation. One prerequisite would be that EWCs are not simply the product of direct delegation from the corresponding national bodies, such as group works councils or *comités de groupe,* but should also include an element of direct grass-roots involvement through direct elections.[10] This would have the advantage that it would secure that link to employees at the workplace necessary to guarantee the legitimacy and effectiveness of the new institution.

Over the long term, there is also the prospect that EWCs will be able to conclude a type of European group agreement with managements (Lecher 1996). Such agreements would need to be accompanied by parallel supporting measures by trade unions at national level to avert the threat of syndicalist monoliths detaching themselves from national bargaining arrangements: this, in turn, will call for structures of international trade union cooperation. Such a trade union approach to EWCs is also important because the competition between different European locations within the same group is often seen by employees as more worrying than that posed by external competitors. The externalisation of such intra-group conflicts on to the trade unions and group management might, for example, help to facilitate the objectification of conflicts so valued in dual systems of industrial relations. Finally, for

the more distant future it is conceivable that those trade unions active in multinational groups might engage in coordination—rationally, under the direction of the strongest trade union in the group's national headquarters—and use the EWC to obtain information which could serve as the basis for genuine collective negotiations and agreements with group management. Were such an approach to be possible, it would serve as an important trigger for the extension of regional or industry-level collective agreements beyond national borders. Only by linking group-level agreements, supranational industry or regional agreements and, not least, the accords and agreements emerging from European-level social dialogue will it be possible to match the Europeanisation of companies with a Europeanisation of industrial relations.[11]

NOTES

1 Pressedienst des WSI in der HBS, 1/1996, '1996—das Jahr des EBRs'.
2 See *Handelsblatt,* 30 January 1996, 'DGB kritisiert Bonner Entwurf'. *Metall-Pressedienst,* 26 January 1996, 'IG Metall lehnt Gesetzentwurf zu EBR ab'; see also Engelen-Kefer 1996.
3 See the positions of the ETUC on transposition, and in particular *Working Paper No. 14,* 9 January 1996.
4 The following information on Bull is taken from a press release issued by the European Metalworkers' Federation, 18 January 1996.
5 The text of the agreement, together with thirty-four other voluntary EWC agreements, is contained in European Foundation for the Improvement of Living and Working Conditions (ed.) (1994) *Voluntary Agreements on Information and Consultation in European Multinational Undertakings,* Working Paper WP/94/50/DE.
6 Between 1981 and 1984 several pieces of labour legislation, collectively known as the 'Auroux laws' (after the minister responsible) strengthened the position of works councils, designed new procedures to handle complaints and changed collective bargaining procedures.
7 The decentralisation and deregulation of UK industrial relations has further weakened the influence of higher-level organisation (Millward 1992:154f).
8 Trade union density had fallen from 50 per cent to 37 per cent by the early 1990s, some ten years after the advent of the Thatcher government. Cf. Visser 1994:99.
9 See the interesting and important reflections on this issue by Manfred Weiss, in Blanpain and Hanami 1995:155ff.
10 This is the main practical conclusion drawn from a comparative study of French and German experience with works councils at workplace level with newly established EWC structures of communication (Lecher 1994:115f).
11 Cf. the highly Euro-optimistic conclusions in Bobke and Müller 1995:661.

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Part IV

USA-JAPAN-EUROPE

A trilateral comparison

18

US LABOUR RELATIONS AND THE NORTH AMERICAN FREE TRADE AREA

Christoph Scherrer

The ambition to establish a free trade area in North America began to engage the attentions of governments in the region in the late 1980s. The first step was taken in 1989 with the Free Trade Agreement (FTA) between the USA and Canada. The second step, the participation of Mexico, was completed in November 1993 with the establishment of the North American Free Trade Area (NAFTA). As a purely economic arrangement, NAFTA offers only limited points of comparison with the process of European integration. Its main provisions are the elimination of virtually all tariffs, the abolition of national preferences in the issuing of public contracts, and liberalisation of capital movements between the three participating states (Congressional Digest 1992; Dussel-Peters 1993). Whereas Europe's trade unions have broadly supported the process of economic integration in Europe, US trade unions were vehemently opposed to NAFTA, fearing that the existing trend towards shifting production southwards because of lower wages and less stringent environment regulation in Mexico would be further boosted by the opening up of free trade.

This contribution sets out to examine how the political traditions of US trade unionism and the peculiarities of American labour relations have shaped union opposition to NAFTA, and to look at how union fears in the North American context relate to the—primarily German—debate about the impact of deregulation in Europe. We begin with a brief outline of the main features of US labour relations and the specific circumstances of the crisis of US trade unionism and then move on to describe trade union reactions to the creation of the North American Free Trade Area.

US LABOUR RELATIONS

The US trade union movement and the law which has served to shape it have taken a very different path to that seen in Western Europe. The most important features are as follows (Scherrer 1991; Taylor and Witney 1992):

1 In the USA no ideologically based trade unionism has emerged and prevailed; rather, union organisation has been guided by the principle of exclusive jurisdiction. That is, in theory one trade union represents an occupation or branch. No distinct party exists to represent employees' interests.
2 The trade union movement was dominated by craft unions into the 1930s, and these have continued to exercise a predominant influence.
3 The racial, ethnic and religious segmentation of the population has also been mirrored in the labour movement. Minorities have often been marginalised within the trade unions.
4 The low level of state social provision has often been compensated for by collectively agreed provisions.
5 The position of workplace trade union organisations (locals) is fairly strong within the overall union structure. They are frequently involved in collective bargaining, which is mostly enterprise-based, and are entrusted with ensuring compliance with collective agreements.
6 Collective agreements detail terms and conditions of employment and, at least up until the 1980s, have also served to restrict managerial prerogatives on personnel management issues.
7 Trade unions have had to, and continue to have to, mount intense struggles to achieve recognition for collective bargaining. Industrial disputes can be protracted and bitter.

TRADE UNIONS AS VICTIMS OF THE CRISIS OF FORDISM

During the period of Fordism, characterised by mass production for mass consumption—the dominant social model of the post-war period—the central demands of the trade union movement could be accommodated to the accumulation needs of capital with relatively little fundamental conflict.

Amongst the key social institutions which were needed to secure the development of mass consumption were, first and foremost, the link between increases in real wages and the growth in productivity established through collective bargaining and systems of social insurance, the oligopolistic or direct regulation of important markets, a national monetary system, and counter-cyclical macro-economic management. In conjunction, these Fordist institutions were able to exert a formidable socially integrative power. There were three important elements: first, and crucially, the participation of large sections of the population in the growth of productivity; second, the blunting and channelling of previously stark class divisions between capital and labour through the development of individual and collective labour law; and, third, the assumption by the state of employment risks (Aglietta 1979; Hübner 1989).

By the end of the 1970s the Fordist 'project' had run into a generalised crisis. One central factor was the advancing subordination of national economies to world-market competition. In particular, increasing international

competition served to undermine the material core of the Fordist social pact—the link between rising real wages and productivity. From the standpoint of the individual employer, higher wages and rising social spending were less an opportunity for higher sales than simply extra costs which diminished competitiveness.

One further element of the crisis of Fordism was the exhaustion of productivity reserves based on the Fordist—Taylorist model of production: further increases in productivity required ever higher capital investment, which hit profitability. Both processes raised the pressures on trade unions throughout the world. However, US trade unions were doubly afflicted. In the first place, those industries characterised by high trade union membership were also especially susceptible to global competition (as in motor vehicles, where foreign producers captured 30 per cent of the US market). And, second, the system of industrial relations in the US was strongly locked into the Fordist mode of production.

THE DEFENSIVE RESTRICTION OF MANAGERIAL PREROGATIVES

The so-called 'management rights' provision enshrined in most collective agreements, which expressly preserved management prerogatives in the fields of corporate decisions, dismissals and investment, excluded the trade unions and workforce from any form of codetermination over corporate policy and work organisation. Instead, employees were protected from arbitrary management decisions on job-related issues through so-called 'job control unionism'.[1] Trade union protective provisions consisted of three elements:

1 Collective agreements established the typical tasks associated with a type of job.
2 The principle of seniority was introduced.
3 The procedures for resolving conflicts were formalised.

The interplay of these three elements meant that criteria such as skill, performance or conduct were excluded as the basis for making personnel decisions at workplace level. As a result, US managements lacked a number of central options for rewards and sanctions in exercising workplace control.[2] At the same time, job control unionism established the essentials of the Taylorist—Fordist organisation of production—that is, the separation of the activities of planning and control from execution, and a complex decomposition of the labour process.

For the trade unions, this meant that the introduction of new methods of production which went beyond Fordist—Taylorist work organisation put a question mark over the previous rights of the unions and their members.

Conversely, management saw the trade unions and the protective rights afforded employees as a major obstacle in efforts to adjust to new competitive conditions. The upshot was that companies in the USA tried all the more vehemently to ditch the Fordist social pact (Lüthje and Scherrer 1993).

Resistance was made difficult by the success of Fordism in promoting social integration. High growth in real wages, the welfare state and wider access to education allowed large swathes of the employed population to acquire property and pursue individualised lives to an unprecedented degree. As a consequence, the specific milieus from which the labour movement had formerly drawn strength were dissolved. The exodus from cities to suburbs and the deeply entrenched ideology of liberalism may have further contributed to the particular advance of individualism—evident in all Fordist countries—in the USA. The failure to respond to the employers' offensive is also attributable in part to the trade unions themselves, which had often opposed the sporadic grass-roots defensive struggles of their members. They hoped that avoidance of 'provocations' would enable them to rescue the social pact with the employers—which the latter had meanwhile effectively unilaterally abandoned.[3]

Trade union density in the private sector fell from 24 per cent in 1979 to 11.9 per cent by 1991. At the same time, the number of large-scale strikes fell from between 200 and 400 a year in the period preceding 1979 to some fifty a year in the years between 1987 and 1991 (Ruben 1989: Wall Street Journal Europe, 8/9 May 1992). These weaknesses were directly translated into the level of pay settlements. Despite a favourable labour market, settlements lagged behind inflation and increases granted in non-unionised employers during the period 1983–8 (W.M.Davis 1989).

THE MISSING WORKERS' PARTY

The defeat of the US trade unions during the 1980s attained the scale that it did on the one hand because employees as a group had low political coherence and organisational capacity and on the other because their representative institutions were only weakly anchored in the broader political structures of power. The Reagan administration had little difficulty removing the trade union movement from the state apparatus and creating a politically clear road for the employers' offensive.

The separation of US trade unions from the state has a long tradition. Even when it was flourishing the US trade union movement was unable (and to some degree unwilling) to establish a labour or social democratic party.[4] Instead, the Democratic Party became the political home of the labour movement, especially in the wake of the New Deal. However, the Democratic Party was a curious amalgam of heterogeneous social groups, ranging from quasi-feudal Southern elites (who established single-party rule), the outsiders of the North (Irish and Jews), the 'democratic machines' of

the great industrial cities, where the mostly Catholic industrial proletariat entered into an authoritarian structure of patronage with property speculators and the construction industry, and blacks who had previously supported the Republicans (in the North). This cross-class and cross-race coalition was held together through the system of simple-majority voting, which militated against the emergence of a third party (Domhoff 1990:234–45).

The strength of the trade unions within the Democratic Party in the post-war period was not sufficient to prevent the steady erosion of their legal position compared with rights established under the New Deal, let alone to allow any extension of institutionalised forms through which they might exercise influence. They even failed to achieve a reform of labour law during the Carter presidency, despite the fact that the Democrats had a majority in both houses of Congress and that Carter supported reform (Ehrenhalt 1978).

'EXCLUSIVE' TRADE UNIONISM

The political fortunes of the trade union movement are determined, in structural terms, not only by the dynamics of Fordism and the constraints offered by the political system but also by its own political traditions and strategic decisions. Up until the New Deal, the political direction of the trade unions was characterised by a 'voluntarist' approach, and it can currently be categorised as 'business unionism'. That is, the dominant form of trade union is one which confines its representation solely to its members and which pursues a pragmatic and restricted course compared with socialist approaches. The American Federation of Labor (AFL) was rooted solely in the market power of skilled workers whose position was strengthened through control over labour markets—that is, recruitment restrictions to craft jobs. At the same time, the AFL insisted on the right to conclude collective agreements free of all forms of state intervention. It maintained a distance from state institutions and avoided any close ties to a political party (M.Davis 1986).

The breakaway of the Congress of Industrial Organisations (CIO) from the AFL in 1935 marked a first breach in the voluntarist tradition in that the CIO supported the New Deal. Although the CIO organised broader groups within the industrial working class, it never entirely broke with the principle of 'exclusive' trade unionism. For example, under the 1935 National Labor Relations Act unions were required to organise themselves at the workplace rather than on a local geographical basis, as the right to engage in collective bargaining could only be won by a workplace majority in elections for trade union recognition. Moreover, the CIO abandoned its ambition of organising all industrial workers in the early 1950s. 'Operation Dixie', a programme to unionise the South, foundered on conflicts between Communist Party members and racist trade union officials. The trade union

left also shrank back from an uncompromising pursuit of racial equality as this would have entailed a direct clash with one of the main pillars of the New Deal coalition, the racist Southern Dixiecrats. Failure to tackle this group left a bitter legacy and permanently weakened trade union influence within the Democratic Party. After the failure of Operation Dixie the trade unions never again succeeded in organising a new group within the industrial working class, with the exception of workers in the public sector. The weaknesses of trade union organisation in the South made the region into an attractive site for the relocation of activities, of which the shift to Mexico is the most recent example.

TRADE UNION REACTIONS

The trade unions were almost helpless when confronted with the 'Reagan Revolution' of the early 1980s. In most cases they avoided direct confrontation. Protest was confined to a few set-piece demonstrations and attempts to mobilise the electorate for the Democratic Party—an appeal barely even followed by the unions' own memberships: in 1984 46 per cent of all voters from trade union households voted for Reagan (M.Davis 1986).

The lack of integration of US trade unionism into the political system and its internal divisions into a proliferation of small autonomous centres of power previously allowed individual workforces to exploit their market power when economic circumstances were favourable, without any need to have regard for 'the common good', however understood. This strength became a point of great weakness during phases of economic crisis. Trade union efforts to cling on to previous achievements could not reliably count on the support of other social groups. This effect was magnified in the case of the former AFL trade unions, which had isolated themselves from the black civil rights and other social movements (Moody 1988).

First and foremost, however, the trade unions were generally incapable of combating the growing division amongst trade-union-organised employees. The seniority principle meant that women and non-white workers, who as a rule had accumulated fewer years of service, were the hardest hit by job losses during the economic crisis of the 1970s. The crisis prompted a reversal of the hard-won opening up of many industrial unions to new groups of employees in the 1970s. As organisations dominated by white men, US trade unions often proved insensitive to less privileged groups, with catastrophic effects during efforts to organise workers in the service sector or new industries (Eisenscher 1993).

Even mutual trade union solidarity was difficult to achieve. One illustration of this is the destruction of the Professional Air Traffic Controllers' Organization (PATCO) by the Reagan administration in 1981. The trade union movement mostly confined itself to verbal support. Moreover, the restriction of trade union activity to negotiating on pay and conditions—irrespective of how

successful it might have been in periods of prosperity—proved inadequate in a situation characterised by wholesale plant closures. Conflicts over the 'fair share' of surplus value were robbed of their objective basis once no more value was being produced at all.

Few trade union members endeavoured to turn their organisations away from business unionism. Instead, members became disappointed with their unions, were depoliticised and sought to deal with their difficulties on an individual basis. The widespread perception of American workers that they belong to the 'middle class'—one product of the socially integrative effect of Fordism—has led to identification with middle-class values, which in the USA are highly individualistic. The lack of any discussion about trade union culture—a feature of business unionism—also contributed to the fact that union members were relatively directly exposed to conservative propaganda, expressed in the popularity of Ronald Reagan among male trade union members.

Turned in on themselves, most trade unions have pursued a defensive, risk-avoiding strategy aimed at shoring up their organisation. Collective bargaining committees were often prepared to accommodate the demands of ailing companies and, in the event of a crisis affecting a whole branch, make across-the-board concessions on pay and conditions. They also clutched at offers of cooperation from the employers—where these were forthcoming—agreeing with the choir of government, business and many academics that the traditional adversarial system of industrial relations needed to be put on a more cooperative basis. Some joint initiatives did emerge, embracing experiments on improving the quality of working life, the creation of workplace forums for employee participation and joint lobbying for trade restrictions.

Even where corporate managements were willing to consult trade unions over the introduction of 'Japanese' work practices, the flexibility requirements of 'Toyotism' proved to be directly opposed to the American tradition of job control. As a consequence, new approaches to work organisation could often be implemented only following closure threats, and even where workforces were more open to such experiments interest usually flagged after a period (Parker and Slaughter 1988). One exception was GM's new Saturn car assembly plant, where employees were granted participation rights extending far beyond other workplace reforms, and which have not been applied elsewhere (Parker and Slaughter 1993). Even in the US plants of Japanese car producers it proved impossible to establish cooperative, non-adversarial industrial relations. Although these plants achieved great advances in productivity, industrial relations rapidly deteriorated. Reform-oriented workplace trade union leaderships also failed to make effective use of the scope for intervention offered by post-Fordist work organisation. Instead of actively seeking to shape workplace work organisation, reformers fell back on the traditional practice of North American trade unionism of defensively prescribing trade union rights in the smallest detail. The

failure, for the time being, of 'concepts of participation' (Turner 1993) is already implicit in the concept of 'lean production', in the current respective strengths of the two sides, in trade union head offices' lack of strategy, and in the legal framework of US industrial relations. In particular, the lack of any statutory rights comparable with those in Germany means that US trade unions have to rely on the good will of the employers, on the one hand, and their diminished mobilising capacity, on the other, when abandoning traditional practices (Scherrer and Greven 1993).

As a consequence, American trade unionists have displayed considerable interest in German codetermination (Turner 1993). In May 1993 Labour Secretary Robert Reich established the Dunlop Commission to prepare proposals on how labour productivity might be increased through improved cooperation between management and workers and employee participation at the workplace. The Commission's report and recommendations, published in November 1994, did not, however, suggest statutory codetermination rights comparable to those in Germany, and in fact proposed that non-union programmes for employee participation should be allowed to function lawfully even where they involve discussion of terms and conditions, provided such discussion was 'incidental' to their main purpose. 'Company dominated forms of employee representation' should, according to the Commission, continue to be unlawful (Suzanne 1993; Department of Labor 1994).

THE CHALLENGES OF FREE TRADE

The massive annual trade deficits which characterised the USA's external balance from the early 1980s constituted one expression of the pressure which foreign competition put on domestic producers. The main response of the trade unions was to call for protectionist measures. In some industries, such as steel, effective trade barriers could be erected for a time. In most cases, however, there was only partial protection, and in some cases there was none at all. Both Democratic and Republican administrations continued to adhere to the principle of free trade. Trade union demands for an industrial policy which at least did not clash directly with the principle of free trade had no chance of success under the neo-liberal Reagan administration. Moreover, the industrial policy ideas raised during the 1992 Clinton campaign did not envisage any direct union involvement. Rather, Clinton's advisers aimed at closer cooperation between business and government. Reindustrialisation, that is, the maintenance of existing industrial structures, was rejected outright. Democrat policy also fought shy of attempting to 'pick winners' and promote selected industries. Rather, the role of the state was viewed as that of strengthening US competitiveness through the provision of infrastructure and general support for civil research and development (R&D) and workforce skills. In view of the fiscal crisis of the US state, Clinton did not give the implementation of these approaches a high priority once elected.

Some trade unions sought to use collectively agreed provisions to stern import competition given that more than one-third of US imports originated in plants managed by companies with headquarters in the USA.[5] This took the form of efforts to enshrine prohibitions on further shifts in production in collective agreements, or at least to make it more expensive to implement such decisions. However, this option was available only to strong trade unions: the bargaining environment of the 1980s ensured that imposing new limits on managerial prerogatives was impractical in all but rare circumstances. As the agreements reached by the United Automobile Workers (UAW) showed, such provisions can at best only slow down the pace of relocation (Scherrer 1989).

The difficulties already experienced by the trade unions in protecting themselves against imports and relocation of production in the absence of any regional agreement on free trade raised anxieties that the creation of a free trade zone with Mexico and Canada would make US employees even more vulnerable to the 'rational tyranny of the mobility of capital' (Burawoy 1985).

The first step: the Free Trade Agreement with Canada

In contrast to NAFTA, the Free Trade Agreement negotiated between the Reagan Administration and the Conservative government in Canada under Prime Minister Mulroney provoked little protest. The UAW, the main driving force in the subsequent campaign against NAFTA, was largely uninvolved, as a free trade agreement had existed for the automotive sector since 1965 (Beigie 1978).

Good opportunities for US companies, comparable wage levels, a similar system of collective bargaining and a common institutional history meant that neither labour movement saw the FTA as a threat. Labour law in Canada, which adopted the US National Labor Relations Act (NLRA) in 1944, is almost identical to that of the USA. In contrast to the USA, however, union recognition in Canada can be achieved provided that more than half the workforce are trade union members, with no need for a secret ballot—the cause of much antagonism in the USA. Also, the legal position of the trade unions has not been undermined by court rulings, and their bargaining position has been strengthened by a more extensive welfare state. These differences, together with the close cooperation between the unions and the New Democratic Party (NDP), are generally viewed as the reasons why the Canadian labour movement continued to gain in strength at the same time as the US movement suffered a decline. Whereas both countries had an almost identical level of trade union membership in 1957 (in Canada 32.4 per cent of the labour force; in the USA 32.8 per cent), by 1990 the Canadian level was almost twice that of the USA's (36.2 per cent against 18.4 per cent) (Statistical Abstract of the United States, various years; Canada Yearbook, various years).

The institutional ties between the two movements go back to the nineteenth century. Indeed, the Labor Congress of Canada (LCC) became virtually a branch of the AFL through a resolution passed in 1902 which proposed to exclude all unions not affiliated to one of the AFL unions. Since then most US trade unions have used the word 'International' to reflect the inclusion of Canadian members. Although this resolution gave Canadian unions access to the strike funds of their much larger US counterparts, it also led to the import of the business unionism of the US craft unions. Unique Canadian features, especially in French-speaking Quebec, and later the more extensive Canadian welfare state were ignored and the craft union principle rode roughshod over efforts to establish industrial unions and develop a socialist trade union politics (Babcock 1974). In the 1930s, the period in which industrial unionism emerged in the USA, the scope for trade union activity in Canada expanded. However, the opportunity was subsequently lost following the rapprochement between the CIO trade unions and the AFL, which culminated in a merger of the two federations in 1955.

Although the proportion of Canadian trade union members who belonged to US-affiliated trade unions fell from 72.8 per cent in 1921 to 55.3 per cent in 1973 (Scott 1978), and further to 44.2 per cent by 1982 (Meltz 1985:316), this was mainly attributable to the strong growth of public-sector trade unions and unions in Quebec. The influence of US union federations in the manufacturing industry was only decisively reduced after 1984, when the Canadian branch of the UAW established itself as an independent union—the Canadian Autoworkers' Union (CAW)—under the leadership of Robert White. The immediate cause lay in differences over collective bargaining strategies towards the three big US car producers, which had a number of plants in Canada. The more favourable labour market encouraged White to pursue a tougher line, which was not supported by the UAW headquarters in Detroit. At a deeper level, the move reflected the fact that the political cultures of the two countries were drifting apart (Rose and Chaison 1985).

This split highlighted the fact that a free trade agreement would not automatically lead to closer cooperation between the trade unions affected. The establishment of the CAW was not the only Canadian breakaway from an International (Moody and McGinn 1992:54). However, the Canadians have also been faced with massive de-industrialisation and deregulation during the 1990s. How much these processes will lead to a rebuilding of the institutional links between the two trade union movements and a 'harmonisation' of their systems of collective bargaining remains uncertain.

NAFTA—focus/target of trade union agitation

One cause promoting unity between Canadian and US trade unions was their shared opposition to NAFTA. Both feared an exodus of jobs to

Mexico, associated pressures on wage levels and the possible 'import' of strike breakers from Mexico (Faux and Spriggs 1991).[6] They also based their rejection on reference to European experience. The process of EU integration was accomplished over a much longer period and was accompanied by some measures for social protection—and yet it still threw up numerous problems which were not solved to the satisfaction of all those concerned. Moreover, the welfare gap within the EU was not as great as that between the USA and Mexico (UAW 1993:15). The trade unions called instead for the following measures (ibid.: 14–15):

- debt forgiveness for Mexico;
- a substantial fund to finance the elimination of environmental damage on the US—Mexican border;
- a commitment by US firms to abide by a code of conduct for their plants in Mexico;
- the raising of the Mexican minimum wage.

The anxieties associated with NAFTA were rooted in the experience of the Maquiladora Programme, which allowed the duty-free export of semi-manufactures to Mexico and the reimportation of manufactured goods subject only to value added tax. Under this programme the number of maquila plants on Mexico's northern border rose from some 300 in 1982 to 1,900 by 1991, employing a total of 460,000 workers. Wages were only a fraction of those paid in the USA (*c.*6–10 per cent) and were also usually below agreed wage rates for central Mexico, as the *maquila* plants were only rarely subject to collective agreements. Almost 90 per cent of the plants were owned by US firms. In many cases, existing facilities in the USA were closed when production was started in Mexico, or efforts were made to impose pay cuts and remove trade union rights by reference to the conditions prevailing in the *maquila* plants (McGaughey 1992:59–61; Williams 1991).

The Canadian and US trade union campaign against NAFTA received no support from the Mexican trade unions, the majority of which supported the agreement. Although Mexican workers in theory possessed extensive and constitutionally guaranteed rights, in practice the trade unions were subject to authoritarian and bureaucratic state control—and their leaderships toed the official line of support for NAFTA. Some small independent Mexican trade unions did reject NAFTA but, following the adoption of neo-liberal policies by the Mexican government, these became the object of severe state repression (McGaughey 1992:56–9). Nonetheless, US trade union activists made repeated efforts to support local Mexican trade union initiatives. One example is the MEXUSCAN Solidarity Task Force of UAW Local 879, which, amongst other issues, challenged the President of Ford over the death of a Mexican trade unionist (Moody and McGinn 1992:44). The Coalition for Justice in the Maquiladoras, based in the USA, elaborated

a code of conduct for the operators of *maquilas* and sought to have it implemented through a coordinated campaign run locally and at the HQs of US firms (Brecher and Costello 1992:122). In 1991 the Amsterdam-based Transnationals Information Exchange (TIE) organised a conference in Oaxtepec (Mexico) with trade unionists from all three NAFTA countries. This led to the creation of the North American Auto Workers' Network, whose practical activities include disseminating information about chemicals which may no longer be used in the USA (Moody and McGinn 1992:51).

Trade union central offices concentrated their efforts on preventing the ratification of NAFTA in Congress. To the surprise of the advocates of NAFTA they succeeded, together with the environmental organisations, in obliging the newly elected Bill Clinton to embark on fresh negotiations with Mexico on the issues of environmental protection and the maintenance of minimum employment standards. The 'side agreements' on environmental protection persuaded some of the large environmental protection organisations to support NAFTA (Stokes 1993:1163). However, in contrast, the trade unions were disappointed with the result of the subsequent negotiations. Their main criticism was that the following demands were not taken into consideration:

1 Protective mechanisms against the danger that import volumes of individual groups of products might surge within a short period.[7]
2 Enshrinement of minimum standards for individual and collective employment, pay and working conditions in all the countries concerned. This demand, which was inspired by the EU Social Charter, was taken up by Representative Don Pease: however, opposition from business and the Mexican government meant that it did not find majority support in Congress (Brecher and Costello 1992:123). NAFTA merely provides for recognition of each national body of labour legislation.
3 Effective controls and sanctions to expose and prevent breaches of environmental and labour legislation. According to the text of the Treaty, there is only an obligation to act if there are repeated and unwarranted acts of failure to comply with the law. Instead, the trade unions called for extensive and effective monitoring mechanisms, as provided for by the NAFTA Treaty for the Protection of Patent Rights (AFL-CIO 1993:1).

However, the Clinton administration rejected further negotiations and criticised the trade unions for seeking to put Democratic members of Congress under pressure using 'brute force' and 'crude methods' (Wall Street Journal Europe, 8 November 1993:2). In fact, the AFL—CIO succeeded in winning over the majority of Democratic Representatives to reject NAFTA, but the Treaty was ratified with the votes of the Republican opposition.

Should the political process fail to allow the expected negative consequences of NAFTA to be controlled, the trade unions will be left with the recourse to negotiating protective provisions, and as a last resort industrial action.

Whether US trade unions are capable of establishing international collective bargaining must be doubted. Over the past two decades, the American trade unions have been hard pressed to maintain 'pattern bargaining', in which one settlement acts as a national model for the rest of an industry. Establishing a common approach with trade union movements in neighbouring countries will first require that trade union solidarity within the USA be re-established. In turn, this presupposes advancing beyond the narrow approach characteristic of 'business unionism': however, failure to do so could mean that NAFTA might become the final nail in the coffin of US trade unionism.

NOTES

1 'Job control' should not be confused with the notion of 'craft control', which is associated with the early periods of industrialisation in which craft workers exercised substantial control over the labour process, or 'workers' control' in the sense of the democratic control of work. 'Job control' refers to the forms of trade union workplace control which grew up in the 1930s and were primarily associated with industries in which craft workers no longer controlled labour processes.

2 These extensive restrictions to management's rights to supervision and direction are initially quite surprising from a German standpoint. However, the formalised division of labour between managements and trade unions meant that the employers did not sacrifice a huge amount of control as this was entirely compatible with the Fordist—Taylorist model of rationalisation. The recognition of seniority-based employee rights seemed to many managers to be the 'lesser evil' when set against the scope for constant skirmishing with employees or demands for greater codetermination. In many workplaces workforces won a high degree of control on output standards and other questions of work organisation during the 1930s and 1940s and regarded it as legitimate to respond to instructions to increase performance with spontaneous stoppages or even sabotage. The agreed constraints on managerial prerogatives were, therefore, a compromise which took account of management's need for stability at the workplace—even though its specific shape represented a permanently moving frontier (Scherrer 1992:95–9).

3 For a dramatic example, see the dispute by packers at the Hormel company, Austin/Texas (Kwik and Moody 1988).

4 For a recent answer to Sombart's question 'Why is there no socialism in the United States of America', see M.Davis 1986.

5 The figure was as high as 41 per cent in 1987 (Whichard 1987:29).

6 See the analysis of expected job losses prepared by the Economic Policy Institute, a body close to the trade union movement, in Faux and Spriggs 1991.

7 See the letter from the President of the UAW, Owen Bieberm, to Trade Secretary Mickey Kantor, 15 June 1993.

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THE DEBATES ON THE 'SOCIAL DIMENSION' IN THE NORTH AMERICAN FREE TRADE AGREEMENT

Norbert Malanowski

INTRODUCTION[1]

The inclusion of supplementary 'side agreements' on employment in the North American Free Trade Agreement (NAFTA) was preceded by an intense debate on what these agreements should specify. The calls by US trade unions for a 'North American Social Charter' with international minimum standards was successfully opposed by the determined opposition of a number of interests. Instead, the agreement provided for the 'cooperative' control and monitoring of defined basic national employee rights.

The conclusion of the North American Agreement on Labor Cooperation cleared the way for the establishment of a specific body, the Commission for Labor Cooperation, to ensure compliance with a number of national labour standards within the overall NAFTA framework. However, the inception of the Commission, which began work on 1 January 1994, was accompanied by considerable debate and controversy about its role, despite the fact that several preceding US trade laws had contained mechanisms for safeguarding compliance with social standards. The following contribution sets out, first, to outline the main strands in these debates. And, second, it seeks to draw on the structure and early practical experiences of the Commission to consider a number of issues, such as the following:

- To what extent can the Commission monitor compliance with social standards and social provisions?
- Has European experience with the 'social dialogue' between employers and trade unions any relevance for the work of the Commission?
- How have the trade unions used the scope offered by the new institutional framework?
- What forms of cooperation have emerged between national trade union movements in the signatory countries?
- To what extent has the Commission acquired the status of a model for other international bodies, such as the World Trade Organisation (WTO)?

US TRADE LEGISLATION AND SOCIAL STANDARDS

Social clauses were first attached to trade legislation at the behest of Congress under the impact of persistent and high trade deficits in the 1983 Caribbean Basin Initiative, which gave the Caribbean states duty-free access to the US market (Hickey 1988). This requires that when making a decision as to which states should be granted this privilege the US President should take into account their compliance with international labour standards (Charnowitz 1992:350).

Similar provisions were adopted in the 1984 Generalized System of Preferences (GSP), in Section 301 of the 1988 Omnibus Trade and Competitiveness Act, and in the 1993 Foreign Assistance Act.

All these laws allow trade sanctions to be invoked in response to breaches of minimum social standards. Although there are differences of detail between the individual statutes, they all share the fundamental aim of requiring countries with preferential access to the US market to comply with selected and internationally recognised social standards—specifically, the right of organisation and association, the right to collective bargaining, protection against forced labour, a minimum age for child labour and 'acceptable' conditions as regards minimum wages, working time and health and safety protection at work (Levinson 1995).

As far as the application of the GSP was concerned, eight countries were temporarily denied access to the US market: the Central African Republic, Chile,[2] Liberia, Myanmar, Nicaragua, Paraguay, Romania and Sudan (see Charnovitz 1992). Notably, however, these countries usually had only a minor significance for world trade; Republican administrations viewed them for the most part as political opponents and multinational companies had only scant interest in their economies (Rothstein 1993:23). Other countries, such as Guatemala, El Salvador, Indonesia, Thailand, the Philippines, Mexico and Malaysia—all of which permitted serious violations of human rights—continued to enjoy preferential trade relations with the USA, in part because they could rely on the support of multinational companies. Moreover, the conservative administrations of Reagan and Bush were evidently not overly interested in the consistent application of social standards. Instead, they 'politicised' the trade legislation already in force, repeatedly overlooked violations of established employee rights and attempted to exclude social interest organisations from any influence over this area of policy (Collingsworth *et al.* 1994:12ff). For example, in 1988 the US trade union confederation AFL-CIO submitted a petition to the administration which called on it to suspend preferential duties for Malaysia because of violations of trade union rights. After the US administration had announced that it would examine these charges, the Malaysian government responded by allowing enterprise unions with considerably restricted rights but continued to ban the setting up of industrial unions. President Bush then rejected

the AFL-CIO's petition on the grounds that Malaysia had taken appropriate steps to meet American trade conditions. After several further violations against the right of association, the AFL-CIO and a number of civil rights organisations submitted another petition to the administration in 1990. The Bush administration refused to undertake any further investigations as in its view a solution had already been found in 1988. Following a legal challenge by the trade unions, the administration was supported by a court ruling which noted that 'the decision of the President is subject to a degree of discretion and he is legally protected from challenges by groups which pursue abstract social interests' (Rothstein 1993:23). Moreover, conservative administrations have taken no action against China over human rights violations (Charnovitz 1992). It is against this background that concerns have been raised as to whether the 'scope for discretion' enjoyed by the US President might have become too wide. Previous practice has shown that the administration has not developed any general and consistent mechanism for safeguarding social standards within the framework of US trade legislation. In fact, the policy pursued by Republican administrations was characterised by selective omission and ideological misuse. Nonetheless, there are indications that the potential penalties posed by the combination of trade and social legislation did at least induce some Latin American countries to act with greater circumspection and to refrain from gross violations of labour law and employment standards (Rothstein 1993). Although these provisions can never be wholly free of the possibility of ideological misuse—given the reality of alternating administrations—the main threat to the notion of incorporating social standards in trade legislation has been more that of simply being marginalised within the operation of policy. As a consequence, the advocates of social provisions in trade agreements in the USA have been confronted with the need to develop binding stipulations which are less susceptible to executive caprice and set limits on misuse. Since the fundamental approach of the Bush administration ran counter to the very idea of endowing trade policies with an active social content, it is not surprising that it opposed any notion of mandatory linkage between the two and refused to include provisions on employee rights and labour standards in the NAFTA text for the treaty between the US, Mexico and Canada. The first steps in this direction were taken by the subsequent Clinton administration (Hecker 1993:336).

THE COMMISSION FOR LABOR COOPERATION

NAFTA was signed under the Presidency of George Bush in April 1992, with no provisions on minimum social or ecological standards. This was somewhat surprising in at least one respect. Faced with an effective mobilisation by the environmentalist lobby, the Republicans had made a commitment

to include environmental issues associated with North American trade in their negotiating position (Charnovitz 1992:335; Bethell 1993:34ff). Environmental organisations in the USA, together with their counterparts in Canada and Mexico, mounted an effective campaign of opposition to the treaty (Sierra Club 1993) on the grounds that it gave insufficient consideration to environmental protection and lacked mechanisms for rectifying the damage already inflicted on the environment in the US-Mexico border region (Zeuner 1995).

The opposition to the treaty from the US and Canadian trade unions was primarily rooted in their fears of a major loss of jobs to Mexico, accompanied by generalised social dumping in all the signatory countries concerned through infringements of employment standards and laws (AFL-CIO 1991; CLC 1992). Indeed, following their bad experience with the US—Canadian Free Trade Agreement (FTA)—most notably a dramatic loss of manufacturing jobs—the Canadian trade unions rejected all forms of regionally based neo-liberal free trade arrangements (see Chapter 18). Instead, they argued for agreements to be concluded within a modified General Agreement on Tariffs and Trade (GATT) which was to include both economic policy instruments and a 'social dimension linked with a social charter (CLC 1992; De Boer and Winham 1993:17ff; Malanowski 1995). Both the US and Canadian unions received little support from Mexico, although some smaller, usually independent, employee organisations did reject the trade agreement with the USA and Canada.

It was only with the inauguration of Bill Clinton as Democratic President in 1993 that trade unions and environmental organisations found a hearing for their views on NAFTA (Silvia 1993). Following the debates on NAFTA both within and outside the Congress, Clinton had announced during the electoral campaign that he would ratify the treaty only if it included a number of so-called 'side agreements'. By giving qualified acceptance to NAFTA and initiating negotiations on environmental and social standards in March 1993, Clinton's main aim was to unite both advocates and opponents of NAFTA within the Democratic Party around a common stance vis-à-vis the 'Republican free trade model'. In addition, Clinton was eager to refute the Republican charge that the new administration was protectionist (Robinson 1993:37).

However, the neo-liberal economic policy of the Mexican and Canadian governments meant that neither had a particular interest in negotiating supplementary employment and environmental agreements. Nonetheless, the Clinton administration stuck to its position that acceptance of NAFTA was conditional on incorporating a number of minimum standards. Even before talks began, the Mexican government put up three broad conditions for a 'successful' conclusion:

1 Issues already regulated by NAFTA were to be excluded.
2 Side agreements should not constitute a form of 'covert' protectionism.

3 The side agreements must not restrict national sovereignty.

In contrast, the US administration had commissioned the National Economic Council (NEC) to draw up a staged approach to the negotiations based on three different models within the employment field, all of which envisaged a 'developable' North American Social Charter with selected basic employment rights and compliance to be guaranteed by the governments of Mexico, Canada and the USA. In addition, all three variants proposed the establishment of a transnational commission for employment, consisting at the top level of government representatives from the three treaty signatory countries, although relatively independent of ministerial control at other levels. However, each of the variants exhibited considerable differences. The 'cautious' version simply envisaged an 'improved' application of existing national laws as the minimum standards. Accordingly, the proposed Commission for Labor would simply oversee the various mechanisms for implementing national employment rights. The new institution was not to be equipped with any powers to impose sanctions. Instead, it was to undertake to persuade the parties involved and ensure that where investigations revealed breaches of employment standards these should be publicised in order to exert moral pressure on the government concerned. In contrast, the 'emphatic' version envisaged a commission with 'significant' resources, able to elaborate transnational minimum standards to some degree independently of national governments, and with powers to ensure that these would be put into practice within a stated time period. Moreover, the institution would be able to initiate 'economic' sanctions in response to national breaches of employment law. On this issue, the second—slightly weaker—version envisaged fines, for example, and the imposition of court costs; the stronger version provided for the application of penal tariffs and export quotas. However, neither of these models provided for any institution comparable with the structural funds seen in the European Union (Robinson 1993).

The prospects for successfully negotiating the draft with the more extensive powers were dimmed early on in the proceedings by the fact that those economic experts within the Clinton administration who supported NAFTA swiftly gained the upper hand. This group came to lead the American negotiating team in the trilateral talks on the side agreement for employee rights and labour standards, whilst the delegates from the Department of Employment were merely participants. In addition, corporate lobbyists urged the exclusion of some employment provisions from the sanctions mechanisms—including the rights to association, to collective bargaining, and the right to strike—hoping to thwart criticisms of the practices of US companies and prevent formal investigations into them. One further inhibiting factor was the 'watered-down' positions of the Mexican and Canadian negotiating delegations. They either rejected the possibility of trade sanctions or pared them to the minimum and opposed the US conception

of transnational minimum standards with a relatively independent and strong enforcement body. US companies intervened again in force when the talks stalled in June 1993, urging a rejection of the incorporation of trade sanctions in the supplementary agreement and mounting intense criticism of the reference in negotiations to International Labour Organisation (ILO) conventions which had not been ratified by the US Congress. Despite these major problems and differences of view, none of the three governments were willing to entertain the risk of NAFTA's collapsing. And since the US Congress appeared to be willing to agree to the treaty only with the two side agreements, all the negotiating parties offered concessions and in August 1993 agreed on a compromise solution capable of being ratified by the US (Robinson 1993).

The North American Agreement on Labor Cooperation (US Department of Labor 1993; US National Administrative Office 1995a) took as its main objective the improvement of living and working conditions in the three signatory countries. This was to be promoted in particular by cooperative measures such as technical support, the exchange of information and consultation. A 'few' control mechanisms were also established to ensure that national laws and standards were being properly implemented. Trade sanctions became possible, but only as a last resort and only in the event of violations of standards in three selected areas—child labour, minimum wages, and health and safety. In the fields of forced labour, minimum employment standards, equal pay for men and women, protection for migrant workers and equal opportunities at the workplace, standards can be established by an expert commission; violations of freedom of association, and the rights to collective bargaining and to strike would become the objects of 'a process of discussion'.

Compliance with these agreements, which are solely concerned with national standards and do not provide for any transnational improvements, is monitored by a new North American Commission for Labor Cooperation, consisting of three core elements. At transnational level there is a Council of Ministers, composed of the labour ministers (or their representatives) of the USA, Mexico and Canada. In addition to its monitoring function, this body also has the task of making recommendations for future negotiations, gathering and submitting information, and clarifying issues of interpretation on the treaty's agreements. The Commission's Secretariat functions as its executive organ and is led by an Executive Director appointed unanimously by the three signatory countries. This institution is principally responsible to the Council of Ministers through its provision of the necessary expertise, initiation and promotion of cooperation, and support for the specialised committees concerned with the problems of implementing standards. Finally, each of the national labour ministries has a branch of the Commission, the National Administrative Offices (NAO), which are responsible for exchanges of national publicly available information; this information is

also forwarded to the Secretariat and official bodies in Canada, the USA and Mexico. These NAOs also constitute the 'local' bodies to which complaints can be submitted and which make the initial decision as to any investigation. Moreover, in the event of direct consultations breaking down after documented violations of rights, any of the signatory parties can call for the establishment of an independent group of experts, which submits recommendations to resolve the conflict to the Council of Ministers.

COMPLAINTS PROCEDURES

The complaints procedure operates as follows. In the first instance, the relevant NAO decides whether to accept or reject a complaint within sixty days. If the procedure is initiated, the alleged breach must be investigated within 120 days, during which time those involved can make their case in a hearing, to be held in public in the USA. Only if the NAO's report establishes that there has been a breach of established national standards can the case be submitted to the Council of Ministers, which, in turn, can initiate consultations—without any pre-specified time limits—between its members. The Council can also commission a group of experts to prepare a report. Finally, provided two out of the three ministers are in agreement, a conciliation committee can be established. Following another hearing, this produces a second report. If the fact of a violation is confirmed, the 'condemned' government has sixty days in which to submit a plan for taking steps to remedy the situation. If there is no agreement on such steps, the competent committee of the Commission for Labor Cooperation can decide within 120 days on a suitable plan for remedy or impose penalties such as fines or trade sanctions.

The North American Agreement on Environmental Cooperation—the second side agreement to NAFTA—provides for broadly similar structures and procedures for its Commission on Environmental Cooperation (Sierra Club 1993; *Inside US Trade,* 20 August 1993). However, a number of detailed differences indicate the greater political value attached to this agreement and provide for broader public participation in the Commission's work. For example, the transnational Secretariat has the power to trigger an investigation into possible breaches of environmental standards on its own initiative (Robinson 1993). There is also an open public advisory committee, including representatives of environmental organisations, as a fixed part of the Commission, one of whose roles is to consider the expertise of independent individuals and organised interest groups (Leahy and Trivett 1994).

Given the weaker provisions in the North American Agreement on Labor Cooperation, discussion on the mandate, independence and *modus operandi* of the new Commission was by no means brought to a conclusion by the signing of the treaty. Debate remained both intense and polarised,

with advocates and opponents forcefully setting out their assessments of the side agreements in great detail, in the hope of influencing the Congressional vote. The American Bar Association, for example, noted that the link between trade and employment issues was given a secure legal basis in the side agreements (American Bar Association 1993). They gave unqualified support to the institutional framework which had been created and its instruments for implementing and controlling national employment standards. In their view, a binding mechanism equipped with sanctions as a last resort had been guaranteed, although efforts needed to be devoted to ensuring that conflicts were resolved before this stage was reached. Certainly, the new provisions offered much more extensive scope for this preceding trade legislation. The Association also commended the protective mechanisms in the treaty which secured the national autonomy of the USA and which encouraged public participation.

In contrast, the North American trade unions regarded the powers, resources and operation of the Commission as inadequate. The AFL-CIO (American Federation of Labor/Congress of Industrial Organizations) also rejected the modified NAFTA, including the side agreements, and criticised the disparity between the original plans of the Clinton administration and the final form of the treaty as negotiated (AFL-CIO 1993). They highlighted four points:

1 The agreements were merely directed at national labour standards and did not offer adequate protection in the event of violations of minimum international standards.
2 Sanctions could only be imposed in the case of breaches of 'labour standards' but not of violations of the right to organise, to bargain collectively and to strike. This represented a step backwards compared with existing US trade legislation (including the GSP).
3 The protracted processes of consultation and conciliation would impede willingness to raise complaints.
4 The limited scope for sanctions in the event of demonstrable violations would be ineffective as the 'condemned' government had six months within which to take remedial action.

Moreover, the new institution had only very restricted options for implementing any decision to impose sanctions should a government refuse to take the appropriate remedial steps. Instead, swift and effective mechanisms were required, as envisaged by NAFTA on the protection of patent rights.

The Canadian Labour Congress (CLC) rejected the whole of NAFTA and its side agreements on similar grounds, pointing additionally to the fact that 'social provisions' were entirely inappropriate to the task of securing jobs in Canada and employee rights and labour standards in the other signatory countries. The CLC rejected the view that the side agreements represented an authentic and integral 'social clause' in NAFTA which was

able to counteract the negative effects of economic integration. Rather, the agreements were merely verbiage around an agreement which would do employees in all three signatory states more harm than good (CLC 1993).

The trade unions found theoretical support from a number of progressive research bodies, such as the Economic Policy Institute, the International Labour Rights and Research Fund, and the Canadian Centre for Policy Alternatives, as well as other 'progressive' interest organisations (Grinspun and Cameron 1993; Levinson 1993; Compa 1994; Robinson 1993). Despite the criticism of allied groups and individuals, the Clinton administration refused to engage in further negotiations with Canada or Mexico and insisted on a vote in Congress, arguing that it had been unfairly pressured by 'allies'. Although 60 per cent of representatives from the Democratic Party voted against NAFTA, the treaty was eventually ratified as the votes of the Republican opposition were sufficient to secure a majority for a treaty which they had themselves initiated and to a great extent shaped.

THE NEW INSTITUTIONS IN PRACTICE: THE WAY FORWARD?

With the entry into force of NAFTA on 1 January 1994, the Labor Commission could formally begin work. However, progress was slow in establishing the new institution in practice (*Globe and the Mail,* 21 February 1995). Although the National Administrative Offices were immediately set up in the labour ministries in Canada, the US and Mexico, there was some delay in establishing the joint secretariat in Dallas, which was not in place until September 1995—headed for the first three years by an official of the Canadian government with a staff of fifteen (*Dallas Morning News,* 9 October 1995). This meant that the Council of Ministers, which first met in March 1994, had to operate for nineteen months without the expertise of its formal 'substructure'. A budget of US$6 million was set aside for the entire work of the Commission for 1994 and 1995, shared between the signatories. In contrast, the environment commission had a budget of US$15 million a year, was set to have thirty-one staff in its secretariat, and became fully operational in 1994 (Leahy and Trivett 1994:6ff). Against the background of criticism of the Labor Commission, these facts suggest a much greater degree of support for its environmental counterpart and declining interest in pro-labour sentiment within the US administration. At the same time, two US trade unions, the International Brotherhood of Teamsters (IBT) and the United Radio and Electrical Workers (UE) had raised grievances to the US National Administrative Office against two American transnational companies with plants in Mexico as early as February 1994, although no director was in post until July 1994 (*Naftathoughts,* 1994:1f). Both symbolic and tactical considerations guided the action of the two US unions,

both of which had coordinated their action with the independent Mexican union *Frente Auténtico del Trabajo* (FAT) (Compa 1994:27). Both cases involved an investigation into the applicability of the side agreements in the event of breaches of internationally recognised standards, which, moreover, were guaranteed both by Mexican employment law and its constitution. In addition, the complaint served to place the operation of the Commission in the spotlight and publicise the violations of Mexican law by US companies (Hecker 1994:24). The two companies—Honeywell and General Electric—were accused of illegal activities against local employees who, following infringements of health and safety legislation, had tried to establish a trade union at their workplaces. Following a formal examination, the US NAO took up the grievance and in September 1994 carried out a formal combined public hearing in Washington at which seven Mexican employees directly reported on their experiences (US National Administrative Office 1994).

The report was submitted in October and concluded that the Mexican government could not be proved to have violated employment legislation as the dismissed employees had accepted a severance payment on personal grounds, effectively precluding any investigation by the Mexican authorities. As a consequence, the report recommended that the complaint should not be pursued by the Council of Ministers and was to be rejected. However, NAO did propose that the three countries should draw up joint guidelines for freedom of association within the framework of 'government seminars' and a programme of public information (US National Administrative Office 1994:28ff).

This proposal was taken up by the Council of Ministers, and a conference specifically devoted to this subject took place in March 1995 (US Department of Labor 1995). Following this initial decision, the two US unions accused the US Department of Labor of providing inadequate support for employee rights and highlighted the fact that, in the absence of unemployment benefits, the Mexican employees concerned had little choice—one year after their dismissal—other than to accept a severance payment (*Naftathoughts,* 3/1994:4). Furthermore, as a consequence of the NAO's role some trade unions began to express concerns about the intervention of US companies—which had opposed the idea of a transnational body capable of exercising a degree of control over workplace industrial relations—in the establishment of the Labor Commission (Compa 1994:29ff). For example, the powerful Council for International Business (CIB) called for an investigatory procedure, which would have to consider all national guidelines and hence, in practice, would have lasted from three to five years. Moreover, public hearings were also rejected, there were calls to keep the identities of firms secret, and emphasis was placed on the 'cooperative' element of the side agreements. Given these divergent conceptions expressed by the representatives of capital and labour, the US NAO was under massive pressure from the very outset and ran the serious risk of being unable to pursue any clear

line (Harvey, no date). Amongst the main criticisms from the 'progressive camp' in the US were the failure of the investigatory procedure to provide adequate information to both participants and the broader public, the choice of Washington as the place for hearings (rather than somewhere near the Mexican border), the timing of the hearings (two days before the Mexican Presidential elections), the limited time allowed for witness statement (ten minutes) and the apparent lack of interest in the broader picture of such violations in Mexican society.

As a consequence of this—for the trade unions—less than satisfactory experience with the new institution, a somewhat different approach was chosen for an initiative on the protection of social standards, which illustrates some further indications of the practical possibilities for implementing the side agreements. In August 1994 the International Labour Rights Education and Research Fund, the Coalition for Justice in the Maquiladoras, the American Friends Service Committee and the Mexican National Association of Democratic Lawyers brought a complaint against a Mexican subsidiary of Sony. This involved the accusation that the company, in consort with the compliant local branch of the established union CTM *(Confederatión de Trabajadores Mexicanos),* had acted against efforts by employees to reform the workplace trade union by dismissing those involved. Moreover, it was alleged that the leadership of the CTM in Mexico City had given the local workforce only eight hours' notice of a proposed workplace election. The ensuing protests of the workforce were then violently suppressed by the police. In addition, the Mexican labour authorities were also accused of rejecting applications from the workforce for permission to establish an independent trade union. This complaint was accepted for assessment in September 1994 and a public hearing was held near the Mexican border, in San Antonio, Texas, in February 1995. In its April 1995 report the NAO proposed that the Council of Ministers should pursue the complaint against the refusal to allow registration of an independent union. However, it recommended that additional information should be obtained from the Mexican authorities on the police action, with the other two complaints referred to the transnational 'seminar programme' (US National Administrative Office 1995b:24ff). The US Department of Labor responded positively to these recommendations. Within the framework of 'ministerial consultations' a series of three public seminars was agreed, to be held by spring 1996, at which, in addition to academic specialists, the representatives of companies, the three governments and trade unions from the three countries would be able to discuss the issue of the Registration and Authorisation of Trade Unions.

THE OUTLOOK

Following the first significant decision in the 'Sony case', further cases can be expected which will give more substance to the activities of the Labor

Commission. For example, the complaint lodged with the Mexican NAO in February 1995 by the Union of Telephone Workers of the Republic of Mexico marked a new approach. Following the mass dismissal of 235 Latin American employees one week before the agreed date for trade union elections at the telephone company Sprint in San Francisco, the NAO was asked to refuse the company the right to establish a subsidiary in Mexico until the sacked workers were rehired and company recognition of trade unions in both countries secured—where requested by a majority of the workforce (AFL-CIO 1995:12). In addition, a large Canadian trade union affiliated to the CLC has been examining the scope for a complaint against the employment legislation of the US states of Tennessee, North Carolina, South Carolina, Mississippi and Florida, which—in the union's view—restrict trade union organisation and activity (Leahy and Trivett 1994:14). This marked the first time in which the prospect of an investigation into breaches of applicable employment standards and labour norms in the USA was raised within the framework of the North American Agreement on Labor Cooperation. It remains to be seen what effect this has on the implementation of social rights in connection with trade and national industrial relations. However, there is considerable resistance in American corporate circles to the activities of the Labor Commission, which not only is seen to offer the trade unions a public forum for this whole range of issues but also provides a focus for the American media (Hecker 1994:24). Given these opportunities, and the corporate response, it remains to be seen whether national trade union movements, and those who support them, can coordinate their initiatives in this area and how companies will respond. At present, the trade unions are continuing to argue for changes in the make-up of the Commission and an extension of its role. This positive engagement could change, were union grievances to encounter further setbacks—some of which are inevitable. Would the institution be boycotted or would the trade unions continue to make constructive demands during the Commission's developmental phase and ensure that it acquires sufficient powers and independence to secure the elaboration and monitoring of transnational minimum standards? At the moment, many close to the trade unions are arguing for patience and perseverance in a field which will undoubtedly increase in significance (Compa 1994:31; Harvey, no date: 19).

As yet, this outline of developments within NAFTA and the Labor Commission has only marginally touched on the European Union's 'social dialogue'. 'Social dialogue' as a multinational discussion forum for the two European 'social partners' in principle envisages regulation in the field of social policy via agreements. For example, given a willingness on both sides, a decision to incorporate social clauses in international (or European) trade agreements could be made within this framework and be given the force of law. However, the parties to the 'social dialogue' would not have the powers to enact such an instrument or set penalties for infringements: this would remain a matter

for existing European and international institutions. In contrast, the North American Commission for Labor Cooperation and its national bodies do have the power to take executive action in the event of violations of minimum standards already accepted by NAFTA signatory governments, although they do not have any involvement in the determination of those standards. In contrast to the European 'social dialogue', however, the representative organisations of employees and companies have not, as yet, been extensively formally integrated. The sole exception is the series of information seminars, which might be construed as a very precarious and indirect precursor to a form of 'social dialogue'. North America lacks any underlying culture of 'social partnership', especially as far as the employers are concerned. As a consequence, there is little prospect in the short term of any 'cooperative Europeanisation' in the sense that the European original might be transferred to the North American environment.

At the same time, one might ask whether and to what extent the structures and strategies of the Labor Commission might be transferred to other institutions, such as the World Trade Organisation, which, in the view of the International Congress of Free Trade Unions, ought to have the task of ensuring compliance with social clauses in international trade agreements (International Confederation of Free Trade Unions 1994).[3] This would require an analysis of the strengths and weaknesses of the individual arms of the Labor Commission (Council of Ministers, Secretariat, National Administrative Offices and expert committees), in terms not only of their formal links but also of their practical operation. This would have to include a consideration of what practical lessons might be learnt from the functioning of the environmental commission. One interesting issue in this context would be whether the 'social dialogue' in Europe could be strengthened with executive powers along the lines of the 'model' offered by the Labor Commission. However, given the special features of the North American situation, the scope for such transfers of 'completed' structures and strategies from the Labor Commission to the World Trade Organisation and European 'social dialogue' would still appear to be very limited.

NOTES

1 This chapter is based on the results of the research project 'International trade agreements and social standards: North American experiences', financed by the Hans Böckler Foundation. The report was concluded in July 1995. With the support of a research visit to the library of the John F.Kennedy Institute at the Free University of Berlin, it was possible to incorporate developments up until the autumn of 1995.

2 Chile represents an exception in this group and did not constitute a political opponent of the USA. Nevertheless, there was severe criticism of the numerous violations of human rights in Chile in both the international and US press and media, so that—in all probability—the Reagan and Bush administrations felt themselves compelled to make use of the available trade sanctions.

3 International Confederation of Free Trade Unions, *International Workers' Rights and Trade: The Need for Dialogue,* Brussels, 1994.

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20

INDUSTRIAL RELATIONS AND COLLECTIVE BARGAINING IN JAPAN

A challenge for Europe

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Until the 1980s, discussion in Europe on the 'Japanese challenge' or the 'Japanese model' was characterised by a focus on the raw facts of Japan's export offensive, its technological potential, high rates of economic and productivity growth, and in particular the comparatively low wage costs. It was the later global interest in the phenomenon of 'lean production', prompted in particular by the Massachusetts Institute of Technology (MIT) study (Womack *et al.* 1990) on the car industry, which served to turn attention increasingly to the Japanese system of industrial relations—centred on team working, a degree of individual employee autonomy at the workplace, job enrichment, job enlargement and, not least, the social productivity of employees. However, discussion of lean production in the West often overlooked the fact that one of the central pillars of the Japanese production system was the strict demarcation between core and peripheral workforces, and that the numerical flexibility of peripheral workforces, achieved through highly gradated supply chains, was a precondition for the sought-for task flexibility in the sphere of final assembly undertaken in core plants. These elements comprise the three distinctive features of Japanese industrial relations in comparison with those found in Europe, bearing in mind the differences between national European systems referred to above. They are:

- team working;
- the strict segmentation of core and peripheral workforces;
- the importance of company/workplace-level collective bargaining and enterprise unions.

Given the fact that Japanese direct investment in Germany accounted for 7.4 per cent of total foreign direct investment in 1993, putting Japan in fifth place, above France, Sweden and Italy, it is evident that the undoubted efficiencies of the Japanese system are of much more than academic interest:

they have already exercised a massive exemplary impact on European approaches to production management and industrial relations, in particular in the automotive industry—not least through the presence of Japanese-owned vehicle assembly plants in the UK. The main areas at issue have been flexible working, work intensification—not simply physically but also psychologically—management control over the individual employee and the work group, pay differences based on personal appraisal, and cooperation between management and employee representatives. All these central areas of workplace industrial relations have seen clashes between the Japanese and European (i.e. national) perspectives of employee representatives and managements which can prove both frustrating and demotivating, especially where the underlying origins and assumptions of the Japanese system remain unexplored and unstated.

THE BASIC FEATURES OF JAPANESE INDUSTRIAL RELATIONS

Industrial relations and collective bargaining in Japan are primarily organised at workplace level (Lecher 1993a:193ff). The conduct of the parties at this level is regulated by three main elements.

The first is the dominance of group orientation compared with the individual or (historically) class orientation of industrial relations in the West. Although individual performance is important in Japan, it is evaluated in the context of group-related criteria and the overall success of the entire workforce. Decisions are taken, at least formally, with the agreement of all those affected, with the role of supervisor in Japan, in contrast to the West, consisting more of aggregating and balancing a broad-based structure of decision-making than implementing systems of control and delegation. However, it is now increasingly conceded in Japan that decision-making is not usually 'egalitarian' or 'democratic', as overall objectives are mostly set by top management. Nonetheless, it remains true, at least for core workforces, that employees are generally much more willing to identify with their organisation and its objectives than is the case in the West. This also makes it very difficult for enterprise unions to win majority support—even for a short period—for views which differ from corporate or plant priorities. Enterprise unions are left with the stark alternative of extensive or even total agreement with the company's profit-maximising strategy, tempered by efforts to incorporate some social elements into the process, or the extremely difficult task of redirecting employee identification towards an autonomous employee or trade union standpoint—with its implicit opposition to the aims of the employer. The privileged conditions bestowed on core workforces since the mid-1950s[2]—on the basis of which investment undertaken to raise efficiency rather than expand capacity leads to internal

transfers and the shift of the burden to the peripheral workforce rather than dismissals of core employees—have meant that enterprise unions in large plants have almost universally adopted the first alternative.

The second decisive difference is the central role of the enterprise in shaping the life and outlook of the individual employee. Social status is primarily conferred through employment in a particular company and, within that, through membership of a work group, which serves to structure and shape the employee's private relationships. This social focus on the enterprise leads, in turn, to the entire socialisation of the individual, from early childhood to the completion of education, being directed towards the goal of employment, and social integration in a high-status large-scale enterprise. And whilst there is a spirit of reasonable equality between employees within an enterprise—which should not be overestimated given the growing role of individual appraisal—there is enormous competition between companies in the same or closely associated branches, especially for exports, obstructing trade union efforts to organise at branch level. The fact that there are currently some 70,000 enterprise unions with effective autonomy at workplace level, and that the vast majority of collective agreements are concluded at this level, indicates the enormous importance of good contacts and a functioning consensus at the workplace. In contrast, strategies to cross the boundaries between enterprises—pursued either by trade unions or by employers—play a minor role compared with the West.

The third characteristic lies in the Japanese relationship between personal dependency and authority, which is rooted in Confucianism and according to which the uniqueness of interpersonal relationships, and hence their value for the individuals concerned, has a subjective and emotional foundation rather than an objective and rational one. The Japanese ideal of communication is therefore to base all relationships, and in particular those at the workplace, on mutual trust and harmony. That such contacts might also serve as sources of information or fulfil other functional needs would be very much a secondary consideration.

In contrast to the western relationship between supervisor and subordinate, overshadowed by the relationship between the buyer and seller of labour power and always determined by considerations of rationality and control, the corresponding relations in Japan are determined by a sense of obligation and personal loyalty 'from below' and responsibility, mutual trust and a striving for harmony and minimisation of attitudes of domination and control 'from above'. Naturally, such an emphasis on emotional relationships and the minimising of decisions guided by objective rationality within capitalist enterprises also serves to conceal real relations of dependency and exploitation, especially outside privileged core workforces. This makes it extraordinarily difficult for Japanese trade unions not only to elaborate differences of interest between employers and dependent employees, especially for peripheral workforces, but also to come to terms with these differences themselves.

LEAN PRODUCTION—HEAVY WORK

Japanese industrial relations have been globalised above all via the notion of 'lean production'—by no means a neutral new paradigm for the organisation of industrial production, but rather one requiring sober analysis and a careful assessment of its advantages and disadvantages for workforces and their representatives (Lecher 1992:699ff). What are the implications of the central principles of lean production for work, what can be learned from existing examples, and on what issues might western models of industrial relations prove vulnerable to the advance of Japanese approaches?

Task integration and polyvalency have been identified as the key future skills of production and assembly workers: these require a radical break with previous conceptions of work organisation and vocational training. Specialised activities in pre-production and post-assembly are being replaced by the broader skilling of production workers; work organisation is being refocused on the assembly process, based on Japanese experience with on-the-job training and frequent job rotation, with its associated all-round familiarity with the manufacturing operation. For dual systems of training, classically seen in Germany, this could result in greater emphasis being placed on the on-the-job element. Training would become more company-specific, with greater investment by the enterprise in the training and continuing training of its 'broad-band skilled' employees, whose knowledge and abilities could be optimally used only within the specific circumstances of an individual plant. Broader, more demanding and involving work (for example through the integration of personnel responsibilities within the management of the team) could mean that job satisfaction might be much higher than in the case of standard assembly-line work—accompanied by a greater willingness to accept work intensification and flexibility. The relationship between plant management (in Japan, mostly promoted from the sphere of production) and assembly operatives (most with a career aim—if rarely realised—of becoming a manager) are close. Conversely, ties of solidarity spanning workplaces are weak.

The second principal element of lean production is the close and enduring relationship between supplier and final producer, rooted in three organisational forms:

- the pyramid structure of the supplier chain, through which individual elements, larger components, and entire sub-assemblies are manufactured in several stages, pre-assembled and sometimes already finally assembled at the highest stage within the supply chain on a modular basis;
- the integration of final assembler, the most important suppliers—especially of the first two tiers of the pyramid—and the house bank *(keiretsu)* into one overarching business grouping;
- the exchange of ideas and coordination between skilled employees (engineers, design engineers, IT specialists, well-qualified employees), final assembly

operations and first-tier suppliers to resolve problems on the spot and ensure skills training on new machines and tools, a key precondition for a successful just-in-time *(kanban)* system.

Within this, enterprise-grouping work is organised along product lines. In contrast to the practice in the West, Japanese trade unions are organised at enterprise level, with a high degree of autonomy from their respective sectoral, regional and central organisations. Their members are recruited from the permanently employed core workforce of the final assembly plants and the upper levels of the supplier pyramid, possibly including the skilled core of the lower levels of the supply chain. Excluded from union organisation are non-core employees of supplier companies and all employees with atypical contracts, in particular temporary workers, agency employees and part-timers. As a consequence, the strict line of demarcation between core and peripheral workforces within the enterprise and between different enterprises and groupings is reflected at the level of industrial relations. The employee in a lean production system, not only in Japan but wherever such models are applied, is therefore especially subject to the exigencies of the enterprise community.

The third central element of lean production is the creation of a corporate culture or identity, with its sense of a shared responsibility and commitment on the part of all those engaged in the labour process. From the standpoint of the organisation of work, the aim of lean production is the maximum utilisation of the subjective production capacities present in the enterprise. This aim is also served by polyvalent employee skills, the relative autonomy of work teams, the transparency of the labour process, and the close links between core employees and the enterprise forged through a wide range of enterprise social provisions. The participation of all those involved in the production process in joint problem-solving and the optimisation of individual processes within the system of lean production generates a sense of mutual commitment and responsibility which, rather than being imposed, is generated by this form of work organisation. Put possibly at its most extreme, under lean production core employees put their whole being—emotionally and rationally—at the service of the enterprise, and in return receive a high level of protection, above all as regards job security, career development, training and pay. Although techniques of social control can certainly be encountered in Japan, it would be a profound misunderstanding to believe that corporate culture and the identification of the firm's employees can only be implanted 'from above'. This is possibly the most serious challenge for traditional forms of employee representation in Europe and for the associated conception that the development of employment is to be viewed at the level of society as a whole, not simply confined to the individual 'workplace community'.

For elected employee representatives and trade unionists in the West, the introduction and progressive refinements of lean production raise the following questions:

- Do existing forms of employee representation focus exclusively on core employees or do they also attempt to represent peripheral workers, those outside the immediate workplace community?
- Have representatives actively involved themselves in organising around issues connected with teamwork, for example by leading group discussions, or have they clung to their traditional external representative role?
- Have they accepted or resisted the intensification of work, not only in its customary extensive forms, such as longer working hours, but also in new and less controllable forms, such as multi-skilling and multi-tasking, increased stress through excessive demands placed on employees, and self-exploitation?
- Can trade unions motivate well-trained, confident and cooperative employees engaged in lean production—that is, the new technical intelligentsia at the workplace—to see beyond the tasks predefined within the context of the enterprise community and develop a broader social engagement? Relevant topics might be the ecological problems of extreme just-in-time production arrangements created by the fact that, in effect, stock is warehoused on the streets in the form of constant deliveries, the social injustice of the division between core and peripheral workforces, and associated issues of race and sex discrimination.

THE LOSERS IN THE JAPANESE SYSTEM—PERIPHERAL WORKFORCES

Many western treatments of lean production and the favourable preconditions offered by the development of the Japanese system of industrial relations underplay or overlook the fact that one of the key pillars of this system is the rigid separation of core and peripheral workforces, in which the numerical flexibility of the latter constitutes a precondition for task flexibility in core plants.[3] Core employees, mostly male, are located within an almost hermetically sealed internal labour market, whilst the peripheral workforce, mostly female, is subject to the vagaries of the external labour market. This strict segmentation of employees and labour markets is reflected within the trade unions. Although the Japanese ideology of community also rubs off on peripheral workforces, conditions of employment for these employees differ substantially, both quantitatively and qualitatively, from those of core workforces. Fixed-term contracts, subcontracting, agency employment, home working, seasonal work, casual work and the employment of older people retired from ordinary employment all play a comparatively major role in Japanese society compared with the West. Following the

economic crisis of the 1970s and as a consequence of the flexibility imparted to Fordist systems of mass production by lean techniques, this trend has gained ground, especially in the forms of female part-time employment and the rapid emergence of agency work. In 1986 legislation was introduced to regularise and standardise these new forms of flexible peripheral and unstable employment relationships. In the view of a number of Japanese observers, rather than restricting these activities, the change in the law simply led to their legalisation.

In contrast to the very detailed and well-documented official statistics on the conditions of employment of core workforces, equivalent material for peripheral employment is hard to come by. In part, this is attributable to the difficulties which official statistics (in particular from the Labour Ministry) have in recording the diversity of types of atypical employment. However, it is also a product of the focus of most trade union studies on core workers. Both organisations tend to be concerned with the situation and problems of core employees and collect data on very small enterprises and poorly organised peripheral workforces only in exceptional cases. Nonetheless, some 70 per cent of all workers are employed in firms with fewer than 100 employees; and there is continuing growth of those with fewer than ten employees, where a large peripheral workforce of the quasi-self-employed operates in a situation of dependency on the virtually monopsonistic large-scale enterprises which buy their products. Data collection is also made more difficult by the lack of any clear definitions of the various categories of peripheral employee.

For example, there is no precise demarcation of agency employees, who are categorised in terms of the length of their working hours, the duration of employment or the type of remuneration. Although a new law sought to establish some criteria, this did not change the fact that, in practice, agency employees are dubbed 'part-timers' at the workplace.

Also, there are varying lines of demarcation between the two major labour market segments of core and peripheral workforces. Classically, core workforces are characterised by lifetime employment security in a single enterprise, seniority pay and membership of an enterprise trade union. This presupposes that core workers are found only in large enterprises, since only they can offer the defined conditions of employment. Accordingly, peripheral workforces are defined by the complete or overwhelming absence of these conditions.

However, such a clear demarcation of the two spheres is at best possible only in an ideal-typical sense: reality is less black and white. The principle of lifelong employment security is punctured by increasingly early retirement in weaker sectors and 'holding stacks' of unemployed young people created by cutbacks in recruitment by large employers. Seniority pay is being eroded by an increase in the proportion of pay accounted for by performance-related elements and bonuses. And trade union organisation is being progressively

rolled back because of shrinking core workforces, especially in industry (not least as a result of the rationalisation effects of lean production), and the sectoral shift to the less strongly organised private service sector. Nonetheless, it continues to be case that peripheral workforces are characterised by a much greater risk of economic dismissal, lower skill levels, a much higher proportion of women, and employment in small- and medium-sized enterprises. They fulfil a buffer role, conditional on orders, and can be deployed as a variable mass to absorb the impact of cyclical or structural crises, often being employed on fixed-term contracts.

A few figures on the extent of peripheral groups in the workforce illustrate the scale and development of the problem. Since 1974 the number of core workers has stagnated in all branches of industry and has fallen by one-tenth in manufacturing. According to a survey conducted by the Labour Ministry, in 1980 77 per cent of pensioners—that is, retired core employees—immediately found a new job, either on poorer terms and conditions with the former employee or in smaller and lower-paying firms, and thus joined the ranks of the peripheral workforce. Finally, the quasi-independent subcontractors who manufacture small components for their former employer and use their high severance payments to build mini-businesses should also be seen as members of the peripheral working population. The share of subcontractors in total value-added in the Japanese car and electrical engineering industries is around a half more than in the USA. In many instances, older people take on jobs which would be carried out by migrant workers in the West.

Unstable employment also characterises the situation of seasonal workers, day labourers and home workers, of which the latter—with an estimated 1.3–1.5 million—represent the bulk; on average they earn only half the pay of employees in small enterprises (1–29 employees), themselves amongst the lowest payers in Japan, on average offering rates of some 70 per cent of those paid in medium-sized and large enterprises. There are currently no official absolute figures for temporary employment. However, it is known that this highly precarious form of employment has expanded rapidly since the early 1980s, and that estimates from a variety of Japanese institutions working in this area put the number of such employees at up to 1 million. The most completely recorded group of peripheral workers are 'part-timers', the bulk of whom are women and whose number has also expanded substantially. The official definition of 'part time' is any activity of up to 35 hours, although employees working a longer week can also fall into the discriminatory category of 'part-timer'. Whereas the share of part-timers in the manufacturing workforce stood at a mere 2.7 per cent in 1975, it had risen to just over 10 per cent by the early 1990s. In 1990, 73 per cent of part-timers were women.

Based on this problematic and uncertain statistical basis, it is nonetheless possible to venture an estimate as to the quantitative relationship between core and peripheral employees. Employees in small enterprises, agency

employees, older workers who have retired from conventional employment and part-timers occupy the dominant role. In the early 1990s the composition of the peripheral workforce was as follows:[4]

- 29.2 million people working in enterprises with 1–29 employees, where the likelihood of conditions of employment akin to those of a core employee are virtually nil;
- 5 million atypical employment relationships, such as various forms of fixed-term contracts and casual work, home work, day labour;
- 4 million older employees already retired from core employment;
- *c.*1 million temporary workers;
- 2 million unemployed (based on a definition that one hour's work a day is sufficient to exclude someone from the unemployment statistics).

This total of 41 million peripheral employees can be set against the overall total of 54.4 million employees in private industry: that is, there are approximately four peripheral employees to every core employee. This corresponds to the relationship of 75 per cent peripheral to 25 per cent core employees suggested, but not quantitatively established, in critical discussions of Japanese industrial relations since the early 1980s. Given the constraints under which Japanese trade unions operate, it is no surprise that overall trade union density is around 25 per cent, and falling.

This attempt to explore the quantitative dimension of the reality of Japanese employment should not be read as a claim that the introduction of lean production techniques in the West will automatically reproduce this pattern. However, it is intended to highlight the fact that the positive effects of lean production and the actual (or supposed) influence of Japanese industrial relations on labour efficiency also have a negative dimension.

TRADE UNIONS AND COLLECTIVE BARGAINING

Collective bargaining conducted within a system of industrial relations rooted in cooperation and focused on the workplace offers many points of contrast to the bargaining systems which prevail in—continental—Europe (Shirai 1982; Bergmann 1990). We cannot hope to do more than highlight the main—and very substantial—differences between the two approaches. In the first place, the concept of the collective agreement, indispensable in any western form of negotiated resolution, is absent in Japan; true collective bargaining is alien to the Japanese system. The issue in Japan is not the sale and purchase of labour power, but rather relationships of power and dependency shaped by considerations of status. The ideology of the paternalist manager is matched by loyalty and the exercise of duty by employees. This generates a 'workplace family consciousness', to which the consultative procedures between enterprise trade unions and workplace management correspond

much more closely than does the confrontation of differing positions seen in the West. This leads to the procedural aspects of agreed provisions (recognition and securing of trade union activities, extent of and limits on industrial conflict) which reflect the contractual relationships between the two parties predominating over the economic elements (specification of pay rates and conditions of employment). The unambiguous and, where possible, quantifiable provisions and regulations characteristic of collective agreements in the West are avoided as far as possible. Even written collective agreements are open to constant interpretation and case-by-case treatment, and hence fit easily into a system based on consultation (Park 1982). However, large companies in particular may have elaborate 'company rule books' which set down matters customarily regulated by framework collective agreements or works agreements in Germany. It is evident that such an extremely decentralised 'bargaining system' centred on securing the privileges of core employees cannot fulfil the social tasks ascribed to collective bargaining in the West (regulating distributional conflicts, restricting unproductive forms of competition between enterprises, maintaining aggregate demand).

Nevertheless, despite its strongly developed principle of consensus, there is a need in deregulated Japanese society for some 'rational' means of integration. The collective bargaining instrument introduced to achieve this in the mid-1950s was the so-called 'spring wage offensive', the *Shunto*. This was developed and sustained in particular by the 'left' central trade union organisation Sohyo and its sectoral affiliates. Up until the oil crisis of the 1970s, it was exclusively concerned with the setting of pay, which needed to be adjusted to the rapid growth of productivity. The particular beneficiaries were employees in small and medium-sized industries and public-sector workers, whose rights and scope for collective bargaining were restricted. Although the range of bargaining issues and union claims has since widened to embrace institutional reforms and conditions of employment in the broadest sense—especially cuts in working hours—the influence of the *Shunto* as a framework of coordination for workplace negotiations had declined by the late 1980s. This had a variety of causes:

1 The recession and declining growth rates had narrowed the scope for bargaining compared with the 1960s and 1970s.
2 Sohyo—with its strongest roots in the public sector—merged to form a new integrated confederation Rengo in 1988, strengthening the positions of the previously competing private-sector union confederation Domei, which favoured enterprise unionism.
3 The campaign for working time cuts waged since the mid-1980s within the context of the *Shunto* proved unsuccessful and undermined the credibility of this demand, both in Japan and in the West.
4 Increases agreed in the *Shunto* were applied only to basic pay, which was losing its significance as a proportion of total earnings with the

growth in performance-pay and bonuses. In many workplaces, basic pay accounts only for some 30–50 per cent of total remuneration, and is progressively losing its key role as the basis for the calculation of twice-yearly bonus payments and the severance payment made at the end of an employee's working life.

CONCLUSIONS

Compared with the situation in Europe, Japanese collective bargaining appears as a decentralised, deregulated, markedly consensus-oriented system of negotiations tailored to the needs of privileged groups of employees. It fits seamlessly with those core features of the pattern of industrial relations of group orientation, the central role of the enterprise, and personal dependency and authority, and thus rounds off a model which, although 'alien' in its extreme forms, demonstrates a number of features of great relevance to the development of industrial relations in Europe. This has also seen decentralisation of collective bargaining to the workplace, deregulation, and an orientation towards consensus between management and workforce under the rubric of 'lean production', as well as signs of a growing gap between the pay and conditions of skilled and secure core employees and those of expanding peripheral workforces.

However, pressure to reduce long working hours is growing in Japan; young workers in particular are rejecting poor and arduous working conditions and there is a public and very effective movement against physical and mental stress at work *(karoshi)*.[5] Much now depends on whether the integrated, and theoretically stronger, Rengo trade union confederation can work with the grain of these initiatives, adopt and generalise them, and move to represent them vis-à-vis companies and employers' associations, and in particular the state. Given the shortcomings of the system of workplace consensus, such a central 'corporatism' with a clear division of roles could represent a positive step. At issue, therefore, is not only the oft-cited Japanisation of European industrial relations but also the possibility of a degree of Europeanisation of the Japanese system of industrial relations (Demes 1992).

NOTES

1 The author is grateful to Dr Helmut Demes, Deutsches Institut für Japanforschung, Tokyo, for comments on an earlier draft of this chapter.

2 The decisive break in industrial relations in Japan during the 1950s, which is still not widely recognised in the West, is portrayed in detail and analysed in Kawanishi 1989.

3 This section is adapted from Lecher 1993b.

4 All data are taken from various issues of *Japanese Working Life Profile—Labor Statistics*.
5 See *Karoshi—When the 'Corporate Warrior' Dies* [Karaoshi bengoden zenkoku renraku kaigi hen], Tokyo, 1990.

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