Across the European Union, the employee participation debate has been rather dominated in recent times by issues such as European Works Councils (see EIRObserver 4/98), national-level information and consultation arrangements and direct participation. Board-level employee representation has arguably received relatively little attention. However, the recent revival of the draft European Company Statute has raised the profile of this form of participation and in this issue of EIRObserver our comparative supplement provides an overview of the ways in which employees are represented on company boards across the EU and in Norway. The supplement - based on contributions from the National Centres of the European Industrial Relations Observatory (EIRO) - reveals that board-level participation is widespread in western Europe, but that there are significant differences between national systems in terms of: coverage (private and public sector, type and size of company); board structures and corporate governance; the extent of employee representation on boards; the selection of employee representatives; and the representatives’ identity and role.

As usual, aside from the comparative supplement, this issue of EIRObserver presents a small edited selection of features and news items based on some of the reports supplied for the EIROnline database, in this case for July and August 1998. EIROnline - the core of EIRO’s operations - is publicly accessible on the World-Wide Web, providing a comprehensive set of reports on key industrial relations developments in the countries of the EU (plus Norway), and at European level. On p.15, we provide a brief guide for readers on how to access and use EIROnline, which can be found at:

http://www.eiro.eurofound.ie/

EIRO is based on a network of leading research institutes in each of the countries covered and at EU level (listed on p. 16), coordinated by the European Foundation for the Improvement of Living and Working Conditions. Its aim is to collect, analyse and disseminate high-quality and up-to-date information on key developments in industrial relations in Europe, primarily to serve the needs of a core audience of national European-level organisations of the social partners, governmental organisations and EU institutions.

Mark Carley, Editor
Estonian workers and Finnish industrial relations

According to a survey commissioned by Finland’s SAK trade union confederation, over a quarter of Estonians would be at least “quite willing” to work in Finland. While SAK is worried about the implications for Finnish jobs, employers doubt whether Estonians are really willing to move to Finland for the sake of work.

Estonia is one of the countries potentially due to join the EU in the near future. In March 1998, the Central Organisation of Finnish Trade Unions (SAK) commissioned a survey in Estonia, asking about Estonians’ willingness to move to neighbouring Finland and seeking their opinions on a number of labour market and industrial relations matters. The sample was considered representative of the 1.1 million Estonians aged between 15 and 74 years (out of a total of 1.46 million).

The respondents were asked, given the free movement of labour within the EU, how willing they would be to go to work in Finland if Estonia becomes an EU member. According to the survey results - published in SAK Tutkimustieto 4/98 in June 1998 - over a quarter (27%) of the Estonians surveyed are at least “quite willing” to come for work in Finland, if Estonia joins the EU. This would mean about 300,000 Estonians (the total Finnish labour force currently stands at 2.5 million). According to the survey, particular note should be taken of the group of 7% (77,000) who say that they are “very eager” to work in Finland. The group of potential immigrants contains an above average proportion of: young people under 25 years of age; those who live in Tallinn (the Estonian capital) or in other towns; and unemployed people.

Of particular relevance for the labour market are the requirements of the Estonians regarding potential work in Finland. On the issue of pay, the majority (85%) think that “there should be a strong labour movement in Estonia, which can negotiate with employers national agreements on terms of employment, which are binding for the parties involved.” In relation to potential EU membership, the majority (88%) say that “the labour movement should try to ensure that Estonia never becomes a cheap-labour country.” Neither positive nor negative expectations concerning EU membership are strong in Estonia; this can be interpreted either as uncertainty or as variation between opinions concerning the effects of membership. A majority of the survey respondents (56%) think it unlikely that wages in Estonia would increase to the level of other EU countries as a consequence of membership. Furthermore, a majority (54%) suspect that social and economic inequality in Estonia will increase further. Only 36% believe that the employment situation will improve as a consequence of EU membership.

Social partners’ views

According to SAK department chief, Eero Heinäläoma, the survey provides “a lot of food for thought”. In the context of the EU’s expansion, he considers it most important for the Finnish labour movement to hold on firmly to the minimum conditions laid down by collective agreements and even to strengthen them. The labour market “rules of the game” in EU candidate countries should also be put in good order.

The director of collective bargaining for the Confederation of Finnish Industry and Employers (TT), Risto Alanko, does not believe that Estonians would take jobs from Finns on becoming EU citizens. In his view, it is hardly to be expected that 300,000 Estonians would rush to Finland in large groups. It is more likely that they would come gradually. According to Mr Alanko, this could be controlled in the same way as before.

Commentary

The SAK survey indicates that eastward expansion of the EU will probably increase the mobility of labour towards countries with a higher standard of living. The negative effects of globalisation in terms of job losses have so far been experienced through EU companies moving their operations to countries where production is cheap. Now, with the EU expansion process and the right to seek work in other Member States, jobs can be threatened by cheap labour moving within the EU. On the other hand, labour mobility has not materialised in the way intended, even among the present Member States. As the SAK report points out, the possible threat posed by an imminent flow of the migrant workers should not be taken seriously. In particular, the supply of labour prepared to work in the “informal” economy could cause problems if companies found the temptation too great. This would have a wider impact, even on industrial relations, if the minimum conditions of collective agreements came under threat. (Juhua Hietanen, Ministry of Labour)
Unions propose renewal of Works Constitution Act

The federal congress of the DGB trade union confederation recently approved a set of detailed proposals for a renewal of the 1972 Works Constitution Act. In a context of change at the workplace and in production processes, DGB seeks a modernisation and extension of co-determination rights.

The idea of having a "works constitution" (Betriebsverfassung) at the level of the establishment, ensuring employees an institutionalised representation of their interests in the form of works councils, has a long tradition in Germany and represents a major pillar of the country's industrial relations. The first legislation on the issue dates back to 1920, and the expansion of co-determination rights culminated in the 1972 Works Constitution Act. Except for some relatively small revisions, the 1972 Act still determines the legal framework for co-determination at the level of the establishment in the private sector.

As there had been no major renewals of the Works Constitution Act for more than 20 years, in the mid-1990s the German Federation of Trade Unions (DGB) set up a number of working groups composed of representatives from its affiliated unions, with the aim of analysing current problems of co-determination and developing concrete proposals for a revision of the existing law. After more than two years of discussion within the unions, in February 1998 the DGB federal executive finally adopted a document which contains numerous detailed proposals for a comprehensive renewal of the Act. The proposals were supported by a large majority of the delegates at the DGB federal congress in June 1998 and were subsequently published in a brochure (Novellerungsvorschläge zum Betriebsverfassungsgesetz 1972, DGB (ed), Düsseldorf (1998)).

The DGB proposals come at a time when the future of co-determination is the subject of considerable debate. In May 1998, the "Commission on co-determination" published its final report, which gives a broad evaluation of existing co-determination practices in Germany. The commission - which included representatives from unions and employers’ associations, managers and works councillors, state representatives, labour lawyers and industrial relations experts - was set up in June 1996 in a joint project by the DGB’s Hans Böckler Foundation and the Bertelsmann Foundation. The commission’s report sees co-determination as a central element of German industrial relations, which supports the development of a cooperative and employee-oriented company culture and thereby constitutes an important factor in the high level of competitiveness of German companies. In recent years, however, the number of employees in companies with co-determination structures has been declining. Therefore, the commission sees a need for a continuous improvement of co-determination practices and elaborates various recommendations for modernisation.

Reform proposals in detail

According to the new DGB proposals, major reforms of the existing legal framework for co-determination are necessary because many provisions of the 1972 Act do not correspond to the employment environment of the 1990s. Referring to rapid changes in the economic and social context, as well as radical transformations in the organisation of work and production, DGB sees a great need for a modernisation of the current law on a number of points. These are set out below.

- **The meaning of establishment.** DGB calls for a redefinition of the meaning of the term "establishment". Under the current works constitution provisions, an establishment is formally defined as a legal entity. Current restructuring strategies, however, often split companies into various business units, project groups, product groups etc, and transform the company in a kind of network organisation including various decentralised and legally independent establishments. As a result, established co-determination structures might be undermined. DGB, therefore, demands an extension of the meaning of establishment which takes into consideration a company’s real social and economic relations.

- **The meaning of employee.** Since the employment relationship has become much more flexible in recent years, including an increasing number of "atypical" forms of employment such as teleworking, homeworking, contract work or marginal part-time work, DGB calls for an extension of the meaning of "employee" within the Works Constitution Act. At present, the law’s definition of "employee" is mainly restricted to directly employed workers.

- **Modernisation of co-determination rights.** Rapid changes in economic conditions and the organisation of work and production have created many new tasks for the works council which are not adequately regulated in the current Act. Therefore, DGB would like to modernise and extend works councillors’ co-determination rights - in particular in areas related to modern forms of work organisation (team and group working, new remuneration systems etc). In addition, DGB wants to give the works council more rights to influence the company’s economic decisions, in particular relating to employment. DGB proposes the introduction of a new co-determination right for safeguarding and creating employment” which should give the works council the opportunity to make its own proposals for employment-safeguarding measures such as modernisation of the work process, further training programmes or special promotion programmes for female, foreign or disabled workers.

- **Extension of direct participation.** Since the current modernisation of the work process often gives more responsibility to the individual worker or groups of workers, DGB wants to strengthen the direct participation rights of employees.

- **Improvement of facilities.** As the overall tasks of the works council are increasing, DGB sees a great need for a further improvement of their facilities - such as more time off for works councillors, more and better training possibilities and modern office equipment including full access to modern information and communication technologies (e-mail, internet, company intranet, etc).

- **Increasing the number of female works councillors.** Because the number of female works councillors is still relatively low, DGB demands a binding provision determining that the proportion of female works councillors should at least correspond with the proportion of female employees in the workforce as a whole.

- **Better cooperation between works councillors and trade unions.** Though works councils are representative of the whole workforce and are not trade union bodies, the Works Constitution Act gives unions some rights as an adviser to the works councillors. DGB now wants to extend these rights, in particular in the field of controlling the adaptation at company level of collective agreements.

Commentary

Given the rapid organisational and technological change within companies and at the workplace, it seems obvious that the legal provisions for co-determination need to be in accordance with the reality of modern working life. DGB has now presented a comprehensive package to reform the Works Constitution Act, which is more than 25 years old. Irrespective of the merits of each individual proposal, it should be hoped that the DGB document will lead to a broad public debate on a modernisation of co-determination rights at the level of the establishment, a debate which should include the employers’ camp, which has made no official comment so far. (Thorsten Schulten, Institute for Economic and Social Research (WSI))
New industrial relations legislation adopted

Controversial new legislation on industrial relations has recently been adopted in Greece.

On 7 August 1998, in a climate of tension, and in spite of objections from trade unions, employers and all political parties with the exception of the ruling Socialists, Parliament passed a much-debated bill on the regulation of industrial relations. The bill had been pre-seen in June 1998 and a number of amendments were made before adoption.

Dependent/non-dependent labour

The law introduces a “negative presumption of non-dependent labour” for those providing services or work as self-employed persons, particularly in the case of piecework, teleworking and homeworking - it is assumed that these self-employed people are not actually dependent employees. This presumption that self-employment does not conceal a dependent labour relationship holds insofar as the provision of work or services involved is based on a written agreement communicated within 15 days to the Labour Inspectorate. This provision does not affect the existing rules on the insurance by the Social Insurance Foundation (IKA) of workers outside the employer’s premises (eg teleworkers).

Part-time work

Amendments to 1990 legislation seek to create a unified legal framework for part-time employment. One basic innovation is the extension of the part-time employment option to the wider public sector and provision for coverage of businesses’ seasonal needs through fixed-term part-time employment contracts of six-months’ duration, which may not be converted to open-ended contracts. Also, gaps in existing legislation are filled and currently scattered regulations are codified. New regulations provide that:

- part-time employment can be calculated not only on a daily or weekly basis, but fortnightly and monthly;
- if an individual part-time employment contract is not reported to the Labour Inspectorate within 15 days, the employment is considered to be full-time;
- the definition of part-time employment is extended by law to include “rotating work” - alternation of workers without a break in company operation - and “intermittent work” - periodic employment without prior determination of specific periods of work. Thus, special guarantees and legislative protection for part-time work are applied to these forms of work;
- when exercising the option of imposing unilaterally a system of rotating work where restrictions on their activity require this, employers now need only consult workers’ statutory representatives - permission from the Prefect is no longer required;
- there is legislative recognition of the right of part-timers to the vocational training and social services provided by the enterprise. This right was laid down in the National General Collective Agreement (EGSSE) of 1993 and is also contained in the 1997 EU Directive on part-time work; and
- there are now legislative provisions on the employer’s obligation to inform workers’ representatives of the number of part-time employees and the prospects for full-time employment, as provided for under the 1993 EGSSE.

Working time

The legislation broadens the existing possibility for agreed flexible working time arrangements. For enterprises employing over 50 workers, employers can agree with a trade union or works council to increase the working day to nine hours for up to three months, or to 10 hours for up to six months, provided there are objective, technical or operational needs. For enterprises employing 10-49 workers, employers can agree with a trade union or the “union of persons” to increase the working day to nine hours for up to two months. The possibility of working time flexibility is also extended to enterprises employing five to 20 workers. Exempted from the new provisions are public corporations in recovery, because special laws apply to them.

Other matters

In an attempt to combat unemployment in certain hard-hit areas, the law provides for “local employment agreements” setting wages lower than those stipulated in branch agreements, but not lower than the EGSSE minimum, with no time limitation. However, the agreement of the competent local labour centre is required where pay is reduced to this minimum level. Employers becoming active in high-unemployment areas may pay new recruits wages lower than those in branch agreements, but not lower than the national minimum, for one year, up to 31 December 2001.

The law allows “private employers’ advisory bureaux” (IGSes) to be set up for the purpose of finding, on the employer’s behalf, persons - Greek or foreign - to fill job vacancies. Such bureaus require approval from the Minister of Labour, following certification by the National Certification Centre. The details of their operations will be determined by presidential decree.

The Labour Inspectorates are returned to the competency of the Ministry of Labour and a Corps of Labour Inspectors (SEPE) is set up to monitor the implementation of labour legislation.

Reactions

On 16 July, after emergency consultations within the Economic and Social Committee (OKE) an opinion on the bill was drawn up. Employers believed that it did not go far enough in promoting business flexibility and competitiveness, while for unions the proposals did not serve the goal of increasing full-time employment. The two sides did see some positive aspects - on combating “pseudo-independent” employment, for example, or reforming labour inspection - but also expressed some common concerns.

Although the Government contends that the final law balances the primary demand of management - labour market flexibility - and a primary demand of labour - worker security - both sides retain their initial points of disagreement and neither appears satisfied by the final result. Public opinion was particularly critical of the Government, because such an important bill was passed by Parliament during the summer, when the majority of workers were absent.

Commentary

The Government is progressing structural changes to increase the flexibility of the labour market and industrial relations. According to the European Commission and the OECD, structural changes in the labour market will contribute directly to boosting the credibility of the exchange parity of the drachma set after its recent devaluation. In the long term, it is argued, such changes will also contribute to reducing unemployment without reviving inflation - reduction of the very substantial “structural component of unemployment” is considered to be a necessary condition for a lasting fall in unemployment.

According to the Government, the new legislation aims to: preserve existing jobs and create new ones, and boost the country’s economy’s competitiveness; safeguard and reinforce workers’ rights; and harmonise Greek industrial relations with European developments, and principally with the 1993 EU Directive on working time. These measures are clearly a first step towards a further increase of flexibility. In the run-up to Greece’s inclusion in EMU, and even more so after it becomes a member, the content of industrial relations will move towards flexibility, since pressures in this direction are strong (Eva Soumeli, INE/GSEE).

GR9803161F (Related records: GR9803160F, GR9803162F, EU9708131F, GR9803165F, GR9803166F, GR9803167F)
28 August 1998
Unions seek to represent workers in new forms of employment

During 1998, Italy’s trade union confederations have created organisations to provide representation for workers involved in new forms of employment relationships.

New forms of employment perceived as “midway between” dependent employment and self-employment - such as as consultancy and freelance work “co-ordinated” by an employer - are becoming increasingly widespread in Italy. A study by the University of Parma found that there were 882,892 workers in these categories at the beginning of 1997, while other studies put the number of workers involved much higher. These forms of employment are particularly common in services and among workers aged 30-40. The occupational categories involved are varied in terms of skill levels, ranging from unskilled workers to highly-qualified professionals.

A distinctive feature of these employment relationships is the lack of regulation and protection for workers. Parliament is seeking to remedy this shortcoming and in September 1997 the Minister of Labour submitted a “Jobs Statute” aimed at regulating these forms of work. Moreover, various other proposals for legislation on the matter were presented in 1997. However, due to the lack of unity within the parliamentary majority on the form that regulation should take, these bills have not yet been approved. Meanwhile, another form of employment new to the Italian labour market - temporary agency work - was introduced for the first time by legislation in 1997 (EIRObserver 3/98 p.11).

The trade unions’ initiative

The new employment relationships tend to elude representation by trade unions, which have traditionally concerned themselves with dependent employment. However, now that these forms are becoming increasingly widespread, the unions have realised that these occupational categories also need representation. As a consequence, the three main union confederations - Cgil, Cisl and Uil - have created internal structures designed to organise and provide representation for workers with atypical labour contracts, which have hitherto concerned themselves mainly with un-employed people and workers in employment creation schemes, to cover temporary agency workers and those with atypical contracts.

The main goals of these bodies are to: press for recognition of these atypical workers’ rights and give them protection; and provide services in areas such as tax, social security and training. The main rights and protection issues are:

- legal recognition of the distinctive features of these forms of employment;
- definition of rules on social security, health and tax; and
- regularisation of forms of “clandestine” casual work.

One of the ways identified to achieve protection and rights is collective bargaining. Without eliminating the distinctive features of these employment relationships, it is intended to use bargaining to introduce forms of protection - for example, cover in the case of sickness or maternity. The issue of pay is equally crucial.

One of the first significant actions taken by these new organisations was the signing of the first national collective agreement for temporary agency workers on 28 May 1998, when for the first time a collective agreement was signed not only by the Cgil, Cisl and Uil confederations but also by Nidil-Cgil, Alai-Cisl and Cpo-Uil.

Pensioners’ unions negotiate with local authorities

Unlike employees in new forms of employment, retired people have long been organised by Italian unions, and indeed pensioners’ unions make up a considerable proportion of the membership of the confederations - Spi represents over half of Cgil’s members, Fnp represents 47% of Cisl’s membership and Ulip 25% of Uil’s. Traditionally, the pensioners’ unions have mainly engaged in service activities - especially social security - and leisure activities. However, as with the employees in new forms of employment, unions have recently been developing their representative role into new areas. The 1990s have seen increasingly frequent negotiations between municipal authorities and the three pensioners’ unions on social policies for older people - a novel development in both industrial relations and local authority affairs. More than 2,000 agreements were signed between 1993 and 1997, with a marked increase in 1997, when about 700 were signed. The trend is most pronounced in Emilia Romagna and Lombardy. The unions have sought jointly to obtain greater protection for older people, at a time when more responsibilities are being devolved to municipal authorities.

Negotiations normally take place when the annual budget is being drawn up, and decisions on expenditure and income are taken. The main issues of concern are: income-support measures (reduced rates for electricity, gas, water, heating); tax deductions (property taxes and rates, refunds on healthcare charges, grants); services (home help, healthcare, housing policy); information and union rights; and free time and physical environment measures (architecture, traffic and transport). Negotiations have centred above all on tax deductions and rate reductions. Thus, the pensioners’ unions seek mainly to negotiate income-support measures for older people, followed by service delivery. It is significant, however, that many agreements deal with information issues and contain pledges by local authorities to consult the pensioners’ unions before acting in the field of policies for older people. The importance attributed to information rights demonstrates that the unions aim to obtain recognition by the administrations and institutionalise relationships with them. These negotiations are outside the normal dealings between municipalities and unions, and thus a first difficulty for the unions is the willingness of the municipalities to negotiate with them.

Commentary

The changes in work organisation consequent on the transition from “Fordism” to “post-Fordism” have led to the spread of forms of employment which differ from subordinate employment. This process has given rise to a greater differentiation of workers’ needs, which has complicated the representation activities of trade unions, which are faced with the task of aggregating increasingly fragmented demands. In the case of workers with atypical labour contracts, these cover a variety of situations which require different forms of protection. Moreover, professionals like consultants, highly-skilled specialists and technicians, given their relatively strong labour market position, may give priority to individual rather than collective action. A crucial issue is whether the new organisations created by the unions will be able to aggregate and organise this heterogeneous sector of atypical workers. It is precisely this ability to aggregate and mobilise that gives the unions their legitimacy to provide general representation.

Another important problem is defining and obtaining forms of protection, and in particular how to combine legal protection with the protection achieved through bargaining. The need to introduce rules, protections and rights is flanked by the need to safeguard flexibility, which is one of the distinctive features of these types of employment. (Marco Trentini, Ires Lombardia)
In July 1998 a law reducing the pension entitlements of civil servants was adopted by the Chamber of Deputies. On the same day, a general strike in the public sector brought Luxembourg to a standstill.

Draft legislation was published in mid-1997, designed to reform the Luxembourg civil servants’ pension scheme - aiming to control rising costs while encouraging convergence of public and private sector pensions. Following the breakdown of talks on the proposals in January 1998, the largest public sector union, the General Public Sector Confederation (CGFP), triggered a dispute procedure which began with conciliation (EIROObserver 2/98 p.12). A conciliator submitted a proposal in May 1998, which was rejected by the unions, triggering the next stage of the procedure - mediation conducted by the President of the Council of State. On 1 July, following frequent meetings with representatives of the Government and the CGFP, the mediator acknowledged that it was impossible to bring the parties together, though he did develop a number of ideas for their consideration.

The Government stated its belief that the mediation procedure had been exhausted. However, CGFP saw the mediator once more to tell him that his ideas “bore closer examination”. When the Government refused to examine the ideas more closely, and announced its intention of extending the session of the Chamber of Deputies by a week in order to vote through the pensions law, events became dramatic.

Courts and Council of State involved

At a press conference on 8 July, CGFP deplored the Government’s intention to extend the Chamber of Deputies’ session, alleging that the Government was seeking to force the issue through. The union stated that the public sector minister had specifically “guaranteed the integrity of the system of civil servants’ pensions” at a meeting in September 1990. According to the union, the proposed law would clearly breach a joint agreement, which could be reviewed only by means of a fresh agreement.

In response to these accusations, the Prime Minister was subpoenaed to appear before the civil court of first instance to determine if the draft legislation breached a civil undertaking, and to decide whether an instruction should be issued to have the law withdrawn. The subpoena process caused shock in political circles, and parties stated almost unanimously that it was not for the courts to prevent Parliament from independently performing its task as legislator.

On 10 July, the Council of State - which gives opinions on all draft legislation before it is voted on by the Chamber of Deputies - handed down a “broadly positive” opinion on the draft pensions law. It referred to the “need to act in the field of public sector pensions” and rejected the civil servants’ main legal argument that rights already granted could not be unilaterally taken away. Moreover, the Council stated that the principle of pacta sunt servanda (ie contracts must be observed) does not apply in the public sector, as the latter’s “status” is the exclusive competence of Parliament. The Council also proposed some specific amendments, and adopted a “principled opposition” to one provision of limited importance.

The public sector minister welcomed the Council opinion. He said that the Government would accept the criticism that it contained, and submit to the Chamber of Deputies a version incorporating the suggested amendments, for debate on 21 July 1998.

Controversy and general strike

The pensions legislation affects local authority workers as well as state civil servants. Local authority staff have to follow an identical conciliation and mediation procedure to the one employed in the civil service before they can take strike action. As the minister of the interior (who is also the public sector minister) has not followed up a request to appoint a conciliator for the local authority workers’ pensions grievance since 10 April 1998, these employees are not legally permitted to go on strike - this is possible only once the dispute procedure is exhausted. The workers concerned thus called for a postponement in June 1999 will be awaited with more than the usual interest: the CGFP slogan is “Wahitlag ist Zhaftlag” (“Election day: the day of reckoning”). The two main trade unions in the private sector sympathise with the two government parties, but have kept themselves at a discreet distance in the dispute.

The outcome of the next general election in June 1999 will be awaited with more than the usual interest: the CGFP slogan is “Wahitlag ist Zhaftlag” (“Election day: the day of reckoning”). The two main trade unions in the private sector sympathise with the two government parties, but have kept themselves at a discreet distance in the dispute.

Meanwhile, a Constitutional Court has been in existence since 1997, and its verdict in a few years’ time - when cases against the new legislation finally come before it - could come as a surprise to the Government. (Marc Feyereisen, ITM)

Following the decision to vote on the draft law on 21 July, the CGFP and other public sector unions called their members out on a general strike on that day in protest against the “government’s policy of social dismantling”. The strike call was observed by most civil servants and local authority staff - 80%-100% in the various public services - with the result, for example, that there were no trains or local authority bus services, seriously disrupting traffic.

Meanwhile, demonstrators waited for members of Parliament outside the Chamber. As voting intentions were known in advance, some were applauded, while others came in for heavy censure. Probably for the first time in Luxembourg’s history, members of the government had rotten eggs and tomatoes thrown at them.

The draft legislation was approved by the majority parties - the Christian Social People’s Party and the Luxembourg Socialist Workers’ Party - and the Action Committee for Democracy and Decent Pensions, giving 42 votes in favour. The Democratic Party and the Greens voted against (17 votes). In broad terms, the draft law incorporates the suggestions made by the conciliator in May, which constitute a slight improvement from an employee point of view.

Commentary

After some 30 months, the cut in civil servants’ pension entitlement would at last appear to have been achieved. For once, however, the “Luxembourg model” has not worked. The content and outcome of discussions on the subject have shown that there is a pronounced split in Luxembourg society between people in receipt of public sector and of private sector pensions, and the matter cannot be considered to be closed.

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LU9806173F (Related records: LU9706111F, LU9802146N, LU9806164F, LU9807170N, LU9706511F, LU9806164F, LU9806173F)
AF union confederation loses more members

Another five member trade unions decided in June 1998 to leave the AF confederation in order to line up with Akademikerne, Norway’s new confederation for academically qualified staff. Since autumn 1997, 12 unions with 90,000 members have decided to leave AF.

In the autumn of 1997, seven member trade unions decided to leave the Federation of Norwegian Professional Associations (Akademikernes Fellesorganisasjon, AF), in order to create their own confederation for academically qualified employees, Akademikerne (“the Academics”). The new confederation is aimed at employees with higher university degrees (including five years or more of study).

Further withdrawals

June 1998 saw another five trade unions decide to withdraw from AF. The largest of these was the Norwegian Association of Research Workers (Norsk Forskerforbund), which organises employees in research institutes, universities and postgraduate colleges. This union justifies its withdrawal by arguing that it has more in common with Akademikerne on issues such as pay and working conditions. It is also seen as an advantage that Akademikerne is a more homogeneous group, since it accepts only people with higher university degrees. The organisation for clergy employed by the Church of Norway, the organisation for agricultural graduates and two smaller organisations for social scientists and economists, have also decided to leave AF for Akademikerne. All in all, 90,000 members have decided to leave since autumn 1997, and the implication is that AF will lose a third of its membership base at the end of 1998.

Under AF’s statutes, a member association that wishes to leave the confederation at the end of a year, must report this in advance by 1 July in the same year. This means that any further withdrawals in 1998 will not take effect until the end of 1999. It is likely, however, that AF may lose more affiliates after that date.

One of the largest remaining unions in AF, the Norwegian Society of Engineers (Norges Ingeniørorganisasjon, NITO) has decided to reconsider its membership, but no decision will be made until its representative committee meeting in November 1998. NITO does not satisfy the requirements of membership in Akademikerne, but may choose to continue as an independent trade union. In a newspaper interview in June 1998, the leader of NITO, Sverre Vikhals, argued that the wish to fight for more market-determined pay for its members in the public sector is one of the reasons why the organisation is reconsidering its AF membership. Another reason is the fact that the other union for engineers, the Norwegian Society for Chartered Engineers (Norske Sivilingeniørers Forening, NIF), has decided to leave AF for Akademikerne.

AF has initiated an internal process of deliberation to establish the economic and organisational consequences of its loss of affiliates, but the recent withdrawals have led to a postponement of the plans to reorganise the confederation. AF’s leadership will consider the question sometime during the autumn of 1998, and a new organisational structure is expected to be in place some time in 1999.

Commentary

AF was established in 1975, and its membership base grew quickly. Trade unions affiliated to the Norwegian Confederation of Trade Unions (Landsorganisasjonen i Norge, LO) and the Confederation of Vocational Unions (Yrkesorganisasjonen Sentralforbund, YS) also aim to organise people with higher education, but in most cases these people have joined unions affiliated to AF. Prior to the split in autumn 1997, AF had approximately 240,000 members and the highest membership growth of the three main union federations. The split in AF has led to a situation in which there are two main confederations organising employees within higher education.

Even though the split in AF came as a surprise to the media as well as to AF’s own leadership, there have been emerging signs of dissatisfaction among the member associations with the results achieved by AF in pay settlements in the public sector. The member associations have regularly demanded substantial pay increases prior to negotiations, but these demands have been met to only a minor extent during bargaining. Many groups in AF have been dissatisfied with what has been seen as increasing differences in pay between member groups in the public and private sectors. Recent research also indicates that the gap between levels of pay within the public sector has narrowed, which means that the relative differences in pay between AF’s members and other public sector employee groups have decreased.

There has also been internal tension between the various member groups within AF. To a greater degree than its counterpart organisations in Denmark and Sweden, AF has opened up to include unions which organise people with a lower level of educational attainment, at postgraduate college level. Nurses, teachers and engineers, among others, have been allowed to become members of AF. This has led to conflicting views as to whom priority should be given in public sector settlements; the female-dominated groups with a lower level of education or other groups with a higher level of education.

Within AF there have also been diverging views concerning the principles of pay structures. Many unions want more decentralised and individual pay negotiations, which are established in a clause in the statutes of the new confederation, Akademikerne. AF’s largest union in the state sector, the Teachers’ Association (Lærerforbundet), has been opposed to the setting aside of funds for local negotiations, and does not want to see the development of individual pay increases.

It is uncertain what effect the split in AF will have on the public sector bargaining system in Norway. This is already complicated, because three or four different negotiating partners on the employee side must attempt to agree on one agreement which covers all employees. Although it is almost impossible in practice to achieve better agreements through industrial action than those which have already been achieved through negotiations, strikes have occurred frequently in the public sector.

The fact that there is now one more negotiating partner on the employee side may make it even harder to reach agreement in the public sector without one or more of the social partners resorting to industrial action. The tense relations between AF and Akademikerne may also make it more difficult to reach an agreement which all employee organisations can recommend to their members. On the other hand, the fragmentation of AF may make it easier for the remaining unions to agree on the groups to which priority should be given, something that may increase AF’s effectiveness in pay negotiations. (Kristine Nergaard, FAPO Institute for Applied Social Science)
The Portuguese Government has submitted a set of draft bills to be discussed by the social partners within the framework of the Standing Committee for Social Concertation.

The Government submitted a set of draft bills over the first half of 1998 to the Economic and Social Council (CES) to be discussed within the framework of the Council’s Standing Committee for Social Concertation. The consultation process with the social partners on these issues is in accordance with measures outlined in the 1996-9 tripartite Strategic Concertation Pact (Acordo de Concertação Estratégica, ACE).

The draft bills deal with matters such as part-time work (EIRObserver 3/98 p.8), revision of the legal concept of remuneration, updating the system of penalties for violation of labour regulations, changes in the lay-offs and short-time work system (EIRObserver 4/98 p.13), and a special system of flexible working time arrangements for workers in certain situations (women who are pregnant, nursing or have recently given birth, minors, and workers with disabilities). The package of measures also takes on the transposition of the EU Directives regarding European Works Councils and young workers.

Key proposals

Among the various draft bills are a number that are especially innovative in the context of Portuguese labour law. These are the proposals that deal with part-time work and revision of the legal concept of remuneration.

In the bill that has now been submitted to the social partners, part-time work is defined in relation to full-time work, and it is obvious that the legislator is concerned with bringing the part-time worker’s situation more in line with that of the full-time worker. Pay is to be calculated in proportion to the hours worked and based on the standard of a full-time worker in the same position in the same company or sector. The consent of a worker is required for any switch to part-time status or for a return to full-time status. In addition, the bill would leave open the possibility for collective bargaining to determine the status of part-time work. Lastly, various incentives are established for hiring workers for shared job posts.

The draft bill to change the legal concept of remuneration (retribuição) - for purposes such as the calculation of social security contributions - expressly excludes from the definition pay bonuses, based on collective agreements or internal works rules, that are dependent on factors linked to the professional behaviour of the worker (such as job performance, productivity, or attendance), when verification of these during the period in question is not guaranteed beforehand.

The most notable of the proposed changes to the laws governing lay-off and short-time procedures are an increase in the state’s portion of the unemployment benefit paid to the workers concerned and the elimination of the current preference for short-time working over lay-offs.

Social partners’ reactions

The first public reactions to this set of draft bills came from the General Confederation of Portuguese Workers (CGTP) - which did not sign the Social Concertation Pact - and its affiliated organisations. These took the form of public statements, meetings and street demonstrations. The CGTP challenged, in particular, the proposed system of part-time work and the rules regarding the legal concept of remuneration. It is also concerned about a procedural issue - the Constitution and the law require that workers have an opportunity to be heard in advance on these issues, through the trade unions and the workers’ commissions. This seemed likely to take place during summer 1998 - in other words, at a time when the majority of workers were on holiday.

The reactions of the other union confederation, the General Workers’ Union (UGT), which did sign the Social Concertation Pact, have not been of complete and total disagreement with the proposals. Rather, UGT is in favour of improving the draft bills.

Organisations representing employers have also expressed some displeasure with the bills because they believe that they do not completely fulfil the commitments set out in the Social Concertation Pact. They have expressed their dissatisfaction particularly with regard to the penalties for non-compliance with labour laws, which they feel are too harsh, especially for small companies.

Commentary

With this set of draft bills, the Government has made another of its periodic interventions in labour legislation, adding to an already quite tangled web of regulations. In addition, the proposed measures correspond only in part to the commitments made in the Social Concertation Pact because they diverge, at times, from the terms of that agreement and do not address all the issues dealt with in it. The measures also continue to promote collective bargaining as a means to put the legislative measures into action. Although this principle is, in itself, admirable, it is at odds with the lack of dynamic energy in collective bargaining, which has only rarely taken advantage of the potential that has been made available.

Some of the draft bills deal with practical matters of great importance, and for which there is an urgent need for legislation. This is particularly so in the case of part-time work and in the labour law violation penalty system. Current legal regulations governing part-time work are few and are very inadequate. Nevertheless, this type of work has seen extraordinary growth over the last few years. It affects mostly young people just entering the job market, and the lack of legislation, combined with the inertia of collective bargaining and the decline in union membership, leads to practices that are potentially detrimental to the interests of these workers. Thus, further regulation, in conjunction with employment policy, has become urgent. The priority that the Government is giving to the matter in launching the debate among the social partners is understandable.

Revision of the system of penalties for non-compliance with labour laws has also become urgent. Despite increases in the number of penalties for labour law infringements for many of the laws currently in force, most of the fines are so low that, in practice, they do not have the desired deterrent effect. Revisions must be made, though they need to be balanced and adapted to the way business is structured and operates.

(António Nunes de Carvalho)

17 July 1998
Low Pay Commission reports on National Minimum Wage

June 1998 saw the publication of the report of the Low Pay Commission, set up by the Government to recommend the level of the forthcoming National Minimum Wage.

One of the key commitments of the Labour Government which came to power in May 1997 (euroobserver 2/97 p.9) is the introduction of a National Minimum Wage (NMW). The Low Pay Commission (LPC), appointed in July 1997 to recommend the level of the NMW, published its report in June 1998. The LPC is made up of a chair, Professor George Bain, plus three employers, three trade unionists and two academics.

**Recommendations**

The main recommendations of the LPC report, agreed by all nine members, are as follows.

- **Definition of pay.** All pay for "standard" work should be counted in the definition of the NMW, including: incentive pay, with pieceworkers paid "no less than the NMW on average for the pay reference period"; shiftwork and other premia; and tips and gratuities where there is a centrally organised payroll system for distributing them. The pay reference period should be the normal pay period, up to a month. Earnings during the period, including normal incentive components but excluding overtime and other premia, would be divided by total hours worked to produce an hourly rate comparable with the NMW.

- **Coverage.** All 16 and 17 year olds and those on formal apprenticeships should be exempt from the NMW. Believing that coverage by the adult NMW would risk employment opportunities for young people, the LPC recommends a "development rate" for all 18-20 year olds, also applying for up to six months to workers aged 21 and over beginning a new job with a new employer and receiving accredited training.

- **Level.** The LPC took account of: pay differentials; cost to business; competitiveness; prices; employment; and public sector finances. Three considerations seem to have been influential in setting the rate: (1) uprating minimum rates set until 1993 in low-wage sectors covered by Wages Councils (though bearing in mind changes since then); (2) the NMW as a proportion of average earnings, and how this compares with other countries (the recommended rate is in the middle of the international range); and (3) the direct effect on wage costs. The LPC concluded that an hourly rate of GBP 3.70 (ECU 5.5) in June 2000 would strike a balance between protecting employees and the dangers of raising business costs and lowering competitiveness. However, it recommends an initial rate of GBP 3.60 (ECU 5.3) in April 1999. The development rate should start at GBP 3.20 (ECU 4.7), rising to GBP 3.30 (ECU 4.9).

- **Enforcement.** By being simple and well-known, the NMW could be largely self-enforced. The LPC favours a voluntary approach to communication, mentioning several possible initiatives. The enforcement agency should be an existing agency and not a special inspectorate.

The LPC also considers the impact of the NMW - estimated to cover 2 million employees (9% of the working population) - in terms of groups and sectors affected, the impact on the national wage bill (a direct increase of 0.6%) and economic efficiency.

**Government reaction**

The LPC’s main recommendations were trailed in advance, and there was a widely reported debate within the Government on the rate for those aged 18-21. The Chancellor of the Exchequer, Gordon Brown, reportedly favoured a rate of GBP 3 (ECU 4.4) per hour, possibly even covering workers over 21. In the event, Margaret Beckett, then President of the Board of Trade, announced on 18 June that the initial development rate would be GBP 3 from April 1999, rising to GBP 3.20 in June 2000. That aside, the Government welcomed "all of the Commission’s key recommendations". The main adult rate will be GBP 3.60 per hour, though there is no commitment to raising it to the recommended GBP 3.70 in 2000. The LPC will remain in place to monitor and evaluate the effects of the NMW.

**Commentary**

Many unions had argued for an NMW above GBP 4 an hour and also preferred the adult rate to be paid at 18. The GBP 3.60 rate is around the level at which many employers argued that the effects would be manageable. This outcome reflects the caution and pragmatism running through the LPC report. An NMW is a new departure for the UK, and it comes after two decades in which the dispersion of earnings increased and the ratio of youth to adult wages fell. In these circumstances the shock of a high NMW, in particular if applied to all workers aged 18 and over, might have been considerable. The Government’s response was to lower the development rate to GBP 3 (and to make no commitment to raise the adult rate to the recommended GBP 3.70 in 2000).

The LPC and the Government stress that the NMW should not be seen in isolation. It has parallels with the recent Fairness at Work white paper (euroobserver 4/98 p.8) and relates to the "New Deal" proposals on helping young unemployed people into the labour market. The LPC was keen to avoid any disincentive for employers to become involved in New Deal training schemes: the NMW "can help create a labour market where the unemployed can more readily move into jobs".

The LPC produced a unanimous report: given unions’ demands for a higher rate, employer concerns about pay costs and the Government’s interests in controlling inflation and not upsetting the New Deal, this is a significant achievement.

Many large employers have been adjusting their pay structures in anticipation of the NMW. The preparedness of smaller firms is harder to judge, but the LPC’s view that there should not be major effects on employment or wage bills is based on substantial evidence. One of its most important arguments, backed with evidence, is that pay differentials can change over time. Some unions have confirmed that they would not see the NMW as a reason to seek the restoration of differentials for the higher paid. However, there must be some concern that pay could be allowed to drift upwards.

The question of uprating the NMW also remains open. The Government has started at GBP 3.60 with no commitment to further adjustment. The continuing work of the LPC will be important in assessing the NMW’s effects.

It also remains to be seen whether the NMW has more dynamic effects. In the words of Ms Beckett, "it will help create a better rewarded and more committed workforce, itself a force for driving up standards and helping competitiveness." Yet such effects will depend on the response of employers in terms of training and investment in new production methods, and the LPC makes no strong assertions as to likely effects. How far the NMW pushes employers towards more effective use of labour remains to be seen. (PK Edwards, IRRU)

17 July 1998
UNICE adopts positions on international labour standards and on procurement

At the 86th International Labour Organisation (ILO) Conference held in Geneva on 2-18 June 1998, a Declaration on fundamental principles and rights at work was adopted. The declaration states that all member countries have an obligation to respect, promote and realise the principles underlying seven core ILO Conventions. These Conventions cover:

- freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos. 87 and 98);
- the elimination of discrimination in respect of employment and occupation (Conventions Nos. 100 and 111);
- the elimination of all forms of forced or compulsory labour (Conventions Nos. 29 and 105); and
- the elimination of child labour (Convention No. 138).

To ensure the effective implementation of these principles, the declaration includes a follow-up mechanism to monitor progress in this area, in the form of an annual report. The declaration also commits the ILO to provide technical and financial assistance to those countries which will require additional help to implement these principles.

In a position paper issued on 15 June 1998, the Union of Industrial and Employers’ Confederations of Europe (UNICE) expressed its support for the decision to develop a declaration of principles. In UNICE’s view, the ILO is the most suitable body to deal with the observance of internationally recognised labour standards. It is argued that the principles inherent to the declaration mirror work and commitments undertaken by the International Organisation of Employers (IOE), to which UNICE member federations are affiliated. UNICE argues that “European business is strongly opposed to abusive exploitation of child and forced labour, and supports active promotion of the respect of basic human rights.”

The ILO declaration states that it may not be used by any member country as a basis for adopting trade measures that are protectionist in nature. This position is very much in line with UNICE’s comments in respect to trade and labour standards issued in 1996, when UNICE rejected the notion of introducing a “social clause” in relation to trade and investment policies, believing that it would have negative implications.

In addition, UNICE supports the work being done towards the adoption of a new ILO Convention on the elimination of the most intolerable forms of child labour (due for discussion in 1999). UNICE argues that it is vital that this work is undertaken in an international forum in order to build an adequate consensus on the most effective way to tackle the problem.

UNICE also states that many positive efforts have been made by companies to address social issues such as labour standards through the adoption of codes of conduct. However, it stresses that a code cannot be imposed or enforced by third parties, as this might damage the commitment of those responsible. UNICE has pledged to continue to follow this debate and wishes to play an active part in contributing to progress in this area.

On 17 June, UNICE adopted a further position paper, outlining its views on the inclusion of social criteria in public procurement tenders. Over recent years there has been a significant level of debate on public procurement policies, both those of the European Commission and those at national level. It has been argued from the trade union side that public tenders are often awarded to the lowest bidder, leading to reductions in the pay and conditions of employees. There is also perceived to be too little attention given to the social impact of contracting-out.

In its new paper, UNICE expresses its belief that all companies, including suppliers to the public sector, must comply with the legislation applicable to them, including social legislation. However, at the same time, UNICE is opposed to attempting to achieve social policy goals through the inclusion of social criteria in public procurement tenders. This is based on the belief that attempting to marry the goal of social cohesion through the promotion of employment and social protection, with the goal of fair competition between all suppliers in the internal market, would effectively jeopardise the achievement of either goal. UNICE therefore strongly rejects the inclusion of social criteria in public procurement tenders, and argues that public procurement should not be used as a tool, despite the importance of social considerations.

EU9807117N, EU9807119N
24 July 1998

AUSTRIA/NEWS

Negotiations continue over civil service reforms

The Austrian Government’s declared objective is to have the cost of public administration grow more slowly than the Gross Domestic Product (GDP). Its recent successes include reducing public administration costs, excluding pensions, from 5% of GDP in 1994 to 4.5% in 1998. The strategy is to provide incentives for greater efficiency and to examine critically the kind of task being performed. Greater service orientation is also to be achieved. Similarly, the Government has put a brake on granting job tenure. The Public Service Trade Union (GÖD) claims there are now 2,500 federal employees fulfilling the requirements for tenure who are being kept waiting.

In 1997, GÖD and the Ministry of Finance began to negotiate a reform of the pay structure of so-called “contract employees”, that is, non-tenured civil service staff. Because of the prevalence and divisiveness of the issue of pension reform, these negotiations were then postponed until 1998. Having resumed, they are now being conducted with extreme tact, since the Ministry’s wider aim is to replace most tenured positions in the long term with contract positions.

An attractive pay structure for contract positions, especially as seen from the vantage point of new entrants, is an important element in the Ministry’s strategy. GÖD is opposed to phasing out tenure but it is in favour of reforming the pay of contract employees. Despite the caution being shown, the negotiations have been declared dead more than once. They were meant to be concluded by early June - that is, before the start of the Austrian Presidency of the EU - but were then given a July deadline - ie before the Parliament’s summer recess - and are now carrying on into the autumn.

The negotiators have basically agreed on the pay structure. The hitch they have not been able to overcome since May is the Ministry’s desire to open up all positions to contract employees, as GÖD wants to permit them only in the lowest levels of the hierarchy.

The pay reform for contract employees will initially cost about ATS 500 million (ECU 36 million) annually - a 1% rise in tenured salaries, by comparison, costs ATS 1.7 billion (ECU 125 million). This will be financed from the budget and not by cutting staff elsewhere. The new pay structure is made up of higher entry salaries - they could be up to 40% above tenured salaries - but a more gradual subsequent rise than in tenured positions. They will also comprise a performance component and an extra pension of up to 10% of the final salary financed from a separate pension fund. The Government wants to limit the option of switching to tenured employment to the first five years of federal employment.

There are currently about 60,000 contract employees, roughly one quarter of federal employment.
On 16 June 1998, the bipartite National Labour Council concluded Collective Labour Agreement No. 68 on the protection of workers’ private life as regards video surveillance in the workplace. While taking into account the International Labour Organisation’s code of good practice on workers’ privacy and the Belgian law of 8 December 1982 on the protection of private life, employer and worker representatives on the National Labour Council wanted to define specific safeguards with respect to surveillance in the field of industrial relations. With that aim in mind, they agreed to introduce mandatory consultation and information disclosure on video surveillance in firms.

The new agreement covers all video surveillance systems, whether or not the pictures are kept, and specifies four authorised purposes for which they may be used:

- health and safety;
- protection of the firm’s property;
- monitoring the impact of machinery or workers on the production process; and
- monitoring workers’ output.

In relation to the first three purposes, video surveillance can be permanent, though if the monitoring of the production process is carried out on workers - to improve the organisation of work, for instance - the surveillance should be temporary only. This is also the case for the fourth point, monitoring workers’ output to fix earnings.

The agreement specifies that surveillance ‘‘should be appropriate, relevant and not excessive with respect to the objective’’ and that it should not intrude into private life. In other words, it should be employed with moderation.

While written in general terms, this agreement does introduce some innovations with respect to the protection afforded by the law. First, it imposes an obligation to inform workplace joint bodies and trade union delegations on the introduction of video surveillance, stating the following:

- the purpose of the surveillance;
- whether or not pictures are kept;
- the number of cameras and where they are placed; and
- the operating periods.

Second, the agreement imposes an obligation to consult the same bodies if it appears that video surveillance might have an impact on workers’ private life.

In that event, employers are required to reduce intrusion to a minimum.

Third, in the event of a production process check on workers or on workers’ output, a joint agreement must be obtained.

It should, however, be noted that in small firms without employee representative structures, the application of these information and consultation mechanisms is uncertain.

BEN707150N
24 July 1998

FRANCE/NEWS

Early retirement once again on the agenda

Danish early retirement scheme is becoming increasingly popular. In 1997, 30,300 people took early retirement, bringing the overall total at the end of 1997 to some 136,000 - seven out of 10 of the population aged 60-67 years. With a 7% yearly increase, the number of people on early retirement will reach some 200,000 in 10 years’ time.

A decreasing number of new labour market entrants, an emerging labour shortage (unemployment is forecast at 180,000 persons, equal to 6.2% of the labour force, in 1999), and the fact that more than half of those who chose early retirement in 1997 left a job, have in summer 1998 caused employers once again to call on the government to alter the early retirement scheme. The Danish Employers’ Confederation (DA) proposes eliminating the “200 hours rule” which makes it possible for people on early retirement to work 200 hours per year without reduction in their allowances.

The Danish Confederation of Trade Unions (LO) argues that employers should be better at motivating older employees to remain in the labour market. By improving companies’ personnel policies with regard to older employees, LO believes that it will be possible to diminish the proportion (21%) of the total who take up early retirement voluntarily.

The Minister of Labour, Ove Hygum, is prepared to have tripartite talks with the social partners on the 200 hours rule and the need for better personnel policies. As a new initiative, Mr Hygum is prepared to issue a written guarantee to all persons aged 60, ensuring that those who remain in the labour market after this age do not lose their right to early retirement. Surveys show that the more the early retirement scheme is debated, the more people fear changes and therefore take early retirement.

The guarantee is the Government’s attempt to diminish this effect and ensure that more older employees stay for another year or two at the labour market. A survey conducted by Greens Analyseinstitut in February 1997 showed that a vast majority of respondents (71%) expected that changes would be made to the existing early retirement scheme.

BEN9807179N (related records: DK9710136N, DK9706114F)
24 July 1998

BELGIUM/NEWS

National agreement signed on workplace video surveillance

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In that event, employers are required to reduce intrusion to a minimum.

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It should, however, be noted that in small firms without employee representative structures, the application of these information and consultation mechanisms is uncertain.

BEN9807150N
24 July 1998

DENMARK/NEWS

Early retirement once again on the agenda

Denmark’s early retirement scheme is becoming increasingly popular. In 1997, 30,300 people took early retirement, bringing the overall total at the end of 1997 to some 136,000 - seven out of 10 of the population aged 60-67 years. With a 7% yearly increase, the number of people on early retirement will reach some 200,000 in 10 years’ time.

A decreasing number of new labour market entrants, an emerging labour shortage (unemployment is forecast at 180,000 persons, equal to 6.2% of the labour force, in 1999), and the fact that more than half of those who chose early retirement in 1997 left a job, have in summer 1998 caused employers once again to call on the government to alter the early retirement scheme. The Danish Employers’ Confederation (DA) proposes eliminating the “200 hours rule” which makes it possible for people on early retirement to work 200 hours per year without reduction in their allowances.

The Danish Confederation of Trade Unions (LO) argues that employers should be better at motivating older employees to remain in the labour market. By improving companies’ personnel policies with regard to older employees, LO believes that it will be possible to diminish the proportion (21%) of the total who take up early retirement voluntarily.

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The guarantee is the Government’s attempt to diminish this effect and ensure that more older employees stay for another year or two at the labour market. A survey conducted by Greens Analyseinstitut in February 1997 showed that a vast majority of respondents (71%) expected that changes would be made to the existing early retirement scheme.

BEN9807179N (related records: DK9710136N, DK9706114F)
24 July 1998

FRANCE/NEWS

Working time agreement signed in metalworking

On 28 July 1998, the Union of Metalurgy and Mining Industries (UIMM) signed an agreement with three trade unions - CGT-FO, CFTC and CFE-CGC - on the implementation in the metalworking industry of the June 1998 “Aubry” law on the 35-hour working week (EIRObserver 4/98 p.4). The two strongest unions in metalworking in terms of votes cast in representative elections, CGT and CFDT, did not sign the deal and were critical of it. The main provisions of the agreement are as follows:

- annual working hours will henceforth include 11 public holidays (though respecting a 1970 agreement guaranteeing that public holidays must be observed in the industry) and will total 1,645 hours. According to the agreement’s signatories, nothing has thus changed with regard to public holidays, but CFDT and CGT feel that this wording will result in the paid unworked hours on bank holidays being taken into account in the calculation of the overall reduction of hours over the year;
- the amount of allowable overtime working has been increased;
- the cut in the number of hours worked will be brought about by a reduction of the working week or by the granting of extra days off for employees whose working hours are annualised;
- the annualisation of working hours has been made easier. Companies will not need to conclude an agreement with the unions to adopt this system. They will have to open negotiations but if they fail, simply consulting the workforce will be enough;
- as part of the process of calculating working time over a 12-month period, daily and weekly working hours will be variable. The maximum working day may last up to 10 hours, while the maximum working week cannot exceed 48 hours, with an average of 42 hours (or 44 in some circumstances) over a period of 12 consecutive weeks, unless there is an
exemption resulting from a company agreement;

- various new remuneration models are introduced, providing for flat-rate pay, irrespective of hours variations and overtime; and

- the central trade union confederations and employers’ associations are requested to revamp and broaden an intersectoral agreement signed in 1995 enabling employees who began work at 14 or 15, and who have worked for a period of 40 years, to take early retirement provided that the company takes on a young employee to replace them.

UIMM, like the CNPF employers’ confederation within which it is the largest and most active federation, has never made a secret of its opposition to the 35-hour week. However, rather than isolating itself in a defensive posture, UIMM acknowledged the existence of the new legislation and suggested to the unions negotiations on “modernising metalworking’s national collective agreements in order to adapt them to the new context created by the coming reduction of the statutory working week to 35 hours from 2000”. If no agreement were reached, UIMM indicated that it would terminate the industry-wide collective agreements to which it is a signatory. Employers in the banking industry, high-street department stores and the sugar industry had already taken this path.

Both UIMM and the signatory unions gave a positive response to the new agreement. However, CGT claimed that the agreement “evades the spirit and objective of the Aubry law, and will create no jobs, as it does not actually reduce the length of the working time”. The union emphasised that as part of “an agreement on the 35-hour working week, employees may work more than 39 hours through the increase in the amount of allowable overtime.” CGT is also critical and, along with CFDT, asked the Ministry of Employment and Solidarity not to go ahead with the extension of the agreement to all companies in the sector.

The Government has downplayed the importance of the agreement, and plans to give greater importance to company than to sectoral agreements in the evaluation exercise which will be used as a basis for a second law on working time, establishing the detailed ways in which the statutory reduction of the working week to 35 hours will be achieved, in 1999.

Agreement on the changeover to the euro in metalworking

On 30 June 1998, the metalworkers’ union, IG Metall, and the Gesamtmetall metalworking employers’ association concluded a collective agreement “on the conversion of currency-related provisions in collective agreements in the framework of the currency changeover from the Deutschmark to the euro”.

The basic aim of this “euro agreement” is to make sure that neither employers nor employees will obtain any advantages or disadvantages because of the changeover from the Deutschmark to the forthcoming single European currency, the euro. Considering the still rather sceptical view of large parts of the German population on the introduction of the euro, both social partners see this agreement as a symbolic expression of their support for EU Economic and Monetary Union.

Under the terms of the agreement, all collective agreements will usually use the Deutschmark for calculations until the final introduction of the euro as the only valid currency from 1 January 2002.

After the announcement of the legal exchange rate, all agreements will have to provide additional calculations, using the euro.

Companies which want to calculate wages and salaries using only the euro after 31 December 1998 should conclude a works agreement on the conversion procedure. If the companies fail to reach a works agreement, a regional arbitration panel composed of representatives from the social partners’ organisations will take the final decision.

IRELAND/NEWS

Local bargaining trends show degree of employer flexibility

Ireland’s current economic and social pact, Partnership 2000 (P2000), agreed in early 1997 (EIROserver 1/97 p.6), provides for a total private sector pay increase of 9.25% over the lifespan of the 39-month agreement - a settlement broadly similar to that for public services. A total of 7.25% is payable in four months early, four have paid it 18 months early while, in five other cases, the early payment varies by between three and 12 months. In all, 36 are paying the 2% on the “due” date, nine are to pay it on a phased basis and just one is to pay it “late”.

National agreement signed for agricultural workers

On 10 July 1998, the national collective agreement for 700,000 workers employed in agriculture and floriculture was signed by the Confagricoltura and Coldiretti employers’ organisations and the sectoral trade unions affiliated to Cgil, Cisl and Uil. This was an important event in Italian industrial relations, as the relationship between the social partners in this sector has gone through a long period of crises and difficulties which have prevented the signature of national agreements for years. Previous bargaining in the sector required interventions from the political authorities, resulting in

21 August 1998
the social partners accepting complex and painful governmental mediation solutions. On this occasion, however, the negotiations lasted only 10 months - not very long compared with previous agreements, and without mediation interventions besides those of the social partners.

The contents of the agreement - which is seen as a very important achievement for the trade unions - are highly innovative for this sector and meet the principles established by the central tripartite agreement on incomes policy of July 1993. The new agreement’s provisions include:

- a pay increase at provincial level of 2.7% from 1 July 1998;
- the modification of the system of job classification. Two main groups are established - agricultural workers and floricultural workers. Within these two groups there are three different "professional areas" regulated according to specific job descriptions;
- the postponement of working time issues. The partners commit themselves to dealing, through negotiations, with working time issues linked to any changes required in the sector after the possible approval of the law on the reduction of working time that is now being discussed by Parliament (EIRObserver 5/97 p.7);
- the establishment of two bargaining levels - national and provincial. The latter has an important role in defining contractual wages and productivity/ quality pay supplements as well as job classification;
- the establishment, in companies with more than 15 employees, of unitary trade union representative bodies (Rsus) elected by the workers on the basis of lists presented by union organisations (as already exist in most other sectors). The activities of the Rsu are regulated by a protocol negotiated among the partners;
- the strengthening of the "participatory" industrial relations system with the establishment of bipartite bodies which will regulate important aspects of the employment relationship - vocational training, equal opportunities and safety at work;
- the establishment of permanent bipartite "observatories" at national, regional and provincial level, aimed at fostering employment and the development of the sector and at monitoring the labour market;
- the regulation of part-time work, apprenticeship and temporary work (a special protocol has been agreed for the last-named issue);
- the establishment of a complementary occupational pension fund that will become operational from 1 January 1999; and
- the establishment of an end-of-service allowance which will be managed by a specially created fund. Each year, companies will have to deposit an agreed amount of money per worker in this fund.

On 18 July 1998, the Labour Party (PvdA), Liberal Party (VVD) and Social Democrats (D66) concluded a coalition agreement for the 1998-2002 period. The parties thus reformed their "purple coalition", led by Prime Minister Wim Kok, which had governed before the general election in May. The parties intend to budget NLG 9.2 billion (ECU 4.1 billion) for new policies, primarily in healthcare, education and infrastructure. The main issues in the coalition agreement for industrial relations are the following:

- Before the end of 1998, the cabinet will present a bill on "work and care" (Arbeid en Zorg). This will give employees, in theory, the right to work part time, unless the employer can demonstrate that considerable company interests necessitate otherwise. The law will apply only to employees who are not covered by collective agreements already containing clauses concerning part-time work. This group amounts to 30% of the total labour force.
- The administration of both the Disability Benefits Act and the Unemployment Benefits Act will be almost completely privatised.
- The employment scheme for long-term unemployed people (the so-called "Melkert jobs") will be expanded. More highly skilled jobs will be created in addition to the existing jobs in daycare, street cleaning and healthcare. The maximum wage for the existing jobs will also be raised from 120% to 130% of the legal minimum wage. Earlier in 1998, strikes occurred over this issue.
- A relatively large proportion of the budget is directed towards sectors which were recently hit by labour unrest, such as education, daycare and healthcare. One of the aims of the new government is to lighten workloads in these sectors.

This agreement has prompted mixed reactions. Employers in education are pleased, while the trade unions feel that not enough attention was devoted to alleviating the heavy workloads. The civil servants’ union, Abvakabo, is strongly opposed to the cuts of NLG 2.16 billion (ECU 970 million) in the government sector.

The Federation of Dutch Trade Unions (FNV) criticised part of the intended cuts as "not having any teeth". The Christian Federation of Trade Unions (CNV) and the Federation of Managerial and Professional staff Unions (MHP) have also raised doubts about the financial integrity of the deal - for example, the agreement assumes that the reduction of the financial burden will result in lower wage demands by the unions. However, FNV has already announced that this is out of the question. Both FNV and CNV feel that more money should be invested in daycare.

FNV is positive about the tax plans. An important element of these plans is that taxation of labour will be decreased, while indirect taxes (such as value added tax) will be raised. The largest employers' organisation, the Confederation of Netherlands Industry and Employers (VNO-NCW), echoes the unions' sentiments about the financial soundness of the plans. According to VNO-NCW, the parties involved rely too much on future cuts occurring as a result of future policy.

It also felt that the cabinet wrongfully ignored the recommendations made by the Social and Economic Council (SER) regarding the privatisation of social security. Like the FNV, the VNO-NCW is positive about the tax plans.

Collective bargaining has been making good progress in 1998: in the first six months of the year, 2,034 agreements were reached (378 new ones and 1,656 revisions) and the employment conditions of 5,488,446 workers were thus regulated for 1998 (almost 600,000 workers more than in the same period of 1997). The average agreed wage increase is 2.54%, and 58.5% of the workers concerned are subject to a wage revision clause, with an average value equivalent to the forecast increase in the retail prices index. These pay increases are moderate and, according to the trade unions, they leave companies with a margin for investing in the creation of secure jobs and reducing working time.

The unions are placing special emphasis in bargaining on the development of the national intersectoral agreement on employment stability (AIEE) of April 1997 (EIRObserver 3/97 p.10), above all with
respect to converting temporary contracts into permanent ones. The incentives established in the AIEE for the conversion of temporary contracts can be applied to the temporary contracts that were valid at the time that the agreement was signed or that were signed during the following year. Agreements have been reached to extend this period of application in several sectors and companies. A relevant example is the national agreement for extraction, glass and ceramic industries, which regulates the employment conditions of around 52,000 workers. The agreement was signed in 1996, but in May 1998 trade unions and employers’ associations signed an agreement on the “promotion of permanent employment”. Through this, all fixed-term contracts or temporary contracts (including training contracts) signed during the period that the agreement is in force may be transformed into permanent jobs under the conditions established in the AIEE.

On the other hand, the results of bargaining on working hours have been more limited. In the agreements signed over the first six months of 1998, the reduction in working time is not very significant and, where it has occurred, in most cases consists of an annual reduction. Nor have there been any significant agreements on limiting and controlling overtime.

A case which has caused much debate in Sweden was finally settled on 30 July 1998, when the European Court of Human Rights dismissed the request by Torgny Gustafsson for a revision of the Court’s judgment in a dispute between him and the Swedish state. Formally, the case dealt with the question of whether the state had failed to protect Mr. Gustafsson’s “negative” freedom of association according to Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In practice the outcome has been significant for the rules on industrial action, as Sweden would have been forced to modify its legislation had the complaint been upheld.

Mr Gustafsson was a restaurant owner who was the target of industrial action when he refused to sign a collective agreement. After four years he sold his restaurant owing to difficulties in running his business, allegedly caused by the industrial action. He complained to the European Commission of Human Rights. The case was brought before the Court, which in April 1996 came to the conclusion that Sweden had not failed to secure Mr Gustafsson’s rights (Case of Gustafsson v. Sweden 18/1995/524/610).

In 1997, Mr Gustafsson applied for a revision of this judgment. He argued that the Government had based its argument before the Court on false information when it claimed that the working conditions in his establishment were inferior to those required under a collective agreement, and that the trade union acted at the request of one of its members who worked for Mr Gustafsson.

In a judgment issued on 30 July 1998, the Court dismissed Mr Gustafsson’s request by 16 votes to one. The Court had examined whether the new evidence presented by him would have had a decisive impact on the original judgment if known at that time, and came to the conclusion that it would not. It reiterated the statement in the original judgment that the applicant had not been compelled to opt for membership of an employers’ association because of any economic disadvantages attached to the collective agreement offered to him, and that Article 11 of the Convention does not as such guarantee the right not to enter into a collective agreement. The state’s obligation to protect a personal opinion (which, according to the Court’s case law, is one aspect of freedom of association) can well extend to treatment connected with the operation of the collective bargaining system, but only where such treatment impinges on freedom of association. This was not the case here, and the Court stated that it was sufficient to support the Court’s original conclusion.

The legislation - the “Whistleblowers’ Charter” - won support from the main political parties and social partners. It protects workers who disclose information which they “reasonably” believe to expose such actions as financial malpractice, dangers to health and safety or miscarriages of justice. If whistleblowers are penalised by their employers they will be able to claim compensation at an industrial tribunal (tribunals handle all claims for unfair dismissal as well as other matters, and their case load has grown rapidly during the 1990s). There will be no limit on the size of the financial award which can be made - which is in line with current proposals in the Fairness at work white paper to remove current limits on awards for unfair dismissal (EIRObserver 4/98 p.13).

“Gagging” clauses in employment contracts are void if they run counter to the Act. The legislation covers most employees, including those in the public sector, though the armed forces, police and security services are not covered.

On 19 August 1998, an interregional trade union council for the “Southern Baltic Sea” area (interregional Gewerkschaftsrat Südlche Ostsee) was established by: the regional organisations of the German Federation of Trade Unions (DGB) for Nordmark and Mecklenburg-Vorpommern; the Danish Confederation of Trade Unions (LO); and the Swedish Trade Union Confederation (LO). Peter Deutschland, chair of the Mecklenburg-Vorpommern DGB, was elected the first chair of the new council.

The interregional council intends to develop joint concepts for the future of the regions of the Southern Baltic Sea. According to Mr Deutschland, in recent years the Baltic region has developed more and more into an inland sea within the European economic area. However, the different actors involved have different historical experiences and different economic and social structures. This might involve threats of social dumping and of competition, but also raises opportunities, due to high levels of education and infrastructure in the area. One of the main aims of the new union network will be to agree on “social and ecological minimum standards as well as developing joint policy goals”.

The Public Interest Disclosure Act became law in July 1998 and will come into force in January 1999. It is designed to protect so-called “whistleblowers”: employees who identify a serious wrong being carried out by their employers and who speak up publicly about it. The issue has gained growing prominence in the UK during the 1990s in the light of concerns to promote corporate responsibility. Some researchers see whistleblowing as the product of an increasingly information-oriented economy, combined with a growing tendency for employers to demand total loyalty, the result being that the possibility of “blowing the whistle” has risen while the freedom to do so has been curtailed.
Using EIROnline - the Observatory's database on the Web

EIROnline, the European Industrial Relations Observatory's database is accessible to the public on the World-Wide Web.

EIRObserver contains a small edited selection of the records supplied to the European Industrial Relations Observatory (EIRO) by its network of national centres in the EU Member States (plus Norway) and its European-level centre. Each month, a comprehensive set of reports on key developments in industrial relations across Europe is submitted by the network, edited technically and for style and content, and loaded onto the EIROnline database. EIROnline is available via a site on the World-Wide Web.

Getting started

To make use of EIROnline, you require Internet access and browser software - EIROnline is best viewed with Netscape Navigator or Microsoft Internet Explorer versions 3 and above. Simply go to the URL address of our home page: http://www.eiro.eurofound.ie/

This will bring you to the EIRO home page. EIRO's central operation is based on a monthly cycle, with national centres submitting news and features on the main issues and events in a calendar month towards the end of that month. These records are processed, edited and then uploaded from the middle of the next month. Thus, records relating to events in September will appear on the home page, clicking on news or features on the EIROnline navigation bar connects to lists of the news and features for the most recent month - an ideal form of browsing for users who want quick access to the most up-to-date records.

Site map

The site map - accessible from the EIROnline navigation bar on every EIROnline page - is the most useful starting point for browsing the contents of the database. The site map provides a list of all countries covered by EIRO, plus the EU level. Clicking on any of the country names connects to a full list of all the records submitted for that country. It is also simple to navigate by date: each month since EIRO started collecting data in February 1997 is listed, and clicking on a particular month connects to an editorial page and from there provides access to all the month's records. To follow up a story in EIRObserver, and read the full text of the original record(s) on which it is based, the easiest way is to input the record's unique record ID (eg SE9704111F), which is provided at the end of each item in EIRObserver (along with the IDs of related records). Type the ID into the field alongside Record ID in the site map, and click the Search button to connect with the record.

Those interested in information on particular organisations will find the organisations facility useful. Clicking on index connects you to a list of all the EIRO countries, plus the EU level, and an alphabetical list of letters. Clicking on any country will connect to a list of all the significant organisations mentioned in records referring to that country, and clicking on the name of any organisation provides a list (with links) of all the records in which it is mentioned. The alphabetical list sets out all the organisations mentioned in EIROnline, and again provides links to relevant records.

News and features

The basic content of EIRO consists of news and feature records. News items are short factual article about a significant event or issue in industrial relations in the country concerned. Features also set out the facts, but they are longer, allowing more detail and a commentary (“signed” by the author(s)) to be included. Features cover the most significant developments, activities and issues, and those which can benefit most from a greater degree of analysis and background. From the home page, clicking on news or features on the EIROnline navigation bar connects to lists of the news and features for the most recent month - an ideal form of browsing for users who want quick access to the most up-to-date records.

Searching

The most sophisticated way of finding information in EIROnline is to use the search option - accessible from the EIROnline navigation bar on every EIROnline page. EIRO uses the powerful Muscat search engine and offers users three types of search - free text, advanced and thesaurus. Before starting to search, it is strongly recommended that you click on help, which connects to useful tips on how to conduct all three types of search.

Feedback

A fuller users’ guide was published in EIRObserver 1/98 p.2 and is available on EIROnline under the help facility. EIROnline is still being developed and improved continuously (some features are not yet fully operational), and we welcome the views, comments and queries of users in order to feed into this process. As well as the feedback form available on the website itself, please send any input about EIROnline, by e-mail to eiroinfo@eiro.eurofound.ie.

New facilities

Two useful new facilities have recently been added to the EIROnline website:

• EMIRE. The links to additional facilities from the EIROnline home page (located in the left-hand margin), now include a link to the EMIRE database. EMIRE is the online version of the European Employment and Industrial Relations Glossaries, which explain the national industrial relations systems of the EU Member States through their terminology. It currently covers Belgium, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain and the UK; glossaries on Austria, Denmark, Finland, Luxembourg and Sweden are forthcoming. Many EIRO records already contain specific links to EMIRE definitions, and users can now browse the alphabetical list of terms for each country, or search for specific topics in the text of EMIRE.

• Searching by sector. In the advanced search facility, there is now the option of searching EIRO records by sector - such as metal and machinery or hotel, restaurant and catering - as well as by country and date.

The site map also provides a chronological list (with links) of all the comparative studies produced by EIRO. These focus on one particular topical issue in industrial relations and its treatment across the countries covered by EIRO.
The European Foundation for the Improvement of Living and Working Conditions is an autonomous body of the European Union. It was established by a regulation of the EC Council of Ministers of 26 May 1975. This regulation was the result of joint deliberations between the social partners, national governments and Community institutions on the ways and means of solving the ever-growing problems associated with improving living and working conditions.

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The representation of employees on the supervisory boards, boards of directors and similar bodies in companies is an important form of employee participation in many EU countries. The revival of the European Company Statute following the 1997 Davignon report, with the possibility of further progress during 1998, gives the issue a new relevance at EU level - the “standard rules” in the most recent proposal for the Statute would give employees seats on the European Company’s board in some circumstances.

The aim of this comparative supplement is to provide an overview of national provisions governing board-level employee representation, looking in detail at the ways in which employee board representatives are selected. It also summarises the current position on the proposed European Company Statute and examines social partners’ views on this proposal at European and national level.

The supplement draws on the contributions of the national centres of the European Industrial Relations Observatory (EIRO) describing the situation and developments in the 15 EU Member States, plus Norway.

Readers are reminded that this supplement is a heavily edited version of a full comparative study on this subject, available on the EIRO online database, which covers a wider range of issues and provides considerably more detail (for information on accessing EIROonline, see p.15).

The concept of board-level employee representation

Board-level employee representation (BLER) involves the presence of employee representatives on the supervisory board, board of directors, or similar structures, in companies. These representatives are directly elected by the workforce, or appointed in some other way, and may be company employees, officials of organisations representing those employees, or individuals considered to represent employees’ interests in some way. BLER is an indirect, or representative, form of participation. It involves the expression of employees’ collective interest through the intermediary of representatives and differs from direct participation in that:

- it focuses on the workforce as a whole rather than individual employees or workgroups;
- its fundamental aim is democratic input into company decision-making rather than fostering employee motivation and commitment; and
- it is in general regulated by legislation or collective agreements, rather than being a unilateral management initiative.

BLER differs from other types of indirect participation such as works councils in that it attempts to provide employee input into overall company strategic decision-making rather than focusing on information and consultation on operational matters at the workplace. Although BLER may be distinguished from other forms of employee representation in the enterprise and from collective bargaining, there are links to works councils and trade unions, which in many cases are involved in BLER by having nomination or appointment rights, while board-level employee representatives are often union members.

Finally, the content, meaning and impact of BLER differ with the degree of employee representation. In most cases, employee representatives are in the minority, and BLER is associated with obtaining information and understanding and expressing and exchanging opinions, views and arguments about an enterprise’s strategy and direction. In a few cases, however, when employee representatives are equal in number to those of shareholders or other parties, issues of control, veto and real influence over company strategy - sometimes known as “co-determination” - come into play.

Systems of board-level employee representation

BLER is a widespread form of employee participation across Europe, though systems of BLER in the various countries vary widely. Table 1 on p. ii briefly sketches the key characteristics of these systems in the countries covered by EIRO.

Arrangements for BLER vary widely. Some countries provide a statutory right to such representation, some do not. Of the 16 countries covered here, only three (Belgium, Italy and the UK) have no general legislation or widely applicable collective agreements providing for BLER in at least some types or company. However, even in Belgium and Italy, there are specific provisions for BLER in some public companies. The UK stands alone in having no statutory form of BLER, or significant collectively agreed provisions.

Of the 13 countries with BLER, this applies only to some or all wholly or partially publicly-owned enterprises in Greece, Ireland, Portugal (though here the legal provisions are not implemented in practice) and Spain. Relatively comprehensive legislation on BLER can be found in Austria, Denmark, Finland, France, Germany, Luxembourg, the Netherlands, Norway and Sweden.

There is generally limited numerical data available on the extent and importance of BLER. However, among the countries with relatively comprehensive BLER provisions, it is known that: in Austria, there are some 1,800-2,000 employee representatives on supervisory boards in 1,000 enterprises (including union officials appointed for other reasons); in Denmark, employees in 1,400 out of 4,500 eligible companies (30%) have made use of the right to BLER; in Germany, 45 companies with 400,000 employees are subject to the specific coal, iron and steel co-determination scheme, while 728 companies with 5 million employees were covered by the 1976 Co-determination Act in 1996; and in the Netherlands, where some 580 companies were covered by “structure law” in 1992, a 1994 survey of 103 of the largest companies found that one or more members of the supervisory board had been nominated by the works council in 46% of cases. In Ireland, with a more limited BLER scheme, the relevant legislation covers under 10% of the total workforce, and there are approximately 60 “worker directors” in total.

Legislation plays the key role in regulating BLER, where it exists to any significant extent, in all cases apart from Spain, where agreements are the basis of some public sector arrangements. Collective bargaining generally sets the maximum extent to which companies are legally bound to allow representatives to play a very limited role in this field. In Germany, a number of additional collectively agreed provisions exist in the private sector (at companies such as Thyssen Krupp AG). A notable agreement was concluded during the privatisation of Arcelor in Spain, where there are also a number of company agreements (relating mainly to employee share ownership) in Italy. In Norway, agreements provide for BLER in a few areas not covered by law.

Systems of corporate governance

Across Europe, three broadly defined systems of corporate governance can be identified for the types of company in which there is BLER.

1) Dual systems. In these systems, the performance of the management board is monitored and controlled by a supervisory board. The supervisory board is normally composed of representatives of the shareholders (and often of employees), while the management board is made up of managers (employed by the company). Countries with BLER which fall into this broad category are Austria, Denmark, Germany, Greece, the Netherlands, and Portugal.

2) Monistic or single-tier systems. In many countries there is a single institution at board level, usually called the “board of directors” (sometimes “administrative board”), which is responsible for the control of the company, though there is no formal distinction between supervisory and management functions. The board may contain members of the enterprise’s management alongside members from outside, representing shareholders and sometimes other parties. Countries with BLER in this category are Ireland, Luxembourg, Spain and Sweden (Italy and the UK also
Table 1: Systems of board-level employee representation (BLER) - overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>The works council has the right to choose one-third of the representatives on the supervisory board in companies with at least 40 employees.</td>
</tr>
<tr>
<td>Belgium</td>
<td>There is no system for the representation of employees on the boards of private companies, in the strict sense of the term. However, in some public service companies such as railways, other public transport and universities, employees have seats on the boards.</td>
</tr>
<tr>
<td>Denmark</td>
<td>Employees in companies employing at least 50 employees are entitled (though not obliged) to elect at least two representatives on the board of directors and up to one-third of the total number of members.</td>
</tr>
<tr>
<td>Finland</td>
<td>In companies with 150 and more staff, employees have the right to board-level representation. Much of the detail is left to local negotiation between employer and trade unions. There must be one-four employee representatives, making up one-fifth of the body in which they sit.</td>
</tr>
<tr>
<td>France</td>
<td>In private sector companies, two or four representatives of the works council (depending on the number of managers and engineers employed) may attend meetings of the board of directors or supervisory board in a consultative capacity. In public sector organisations, elected employee representatives constitute up to one-third of the board and act as full members. Furthermore, in all limited companies the shareholders may voluntarily decide to include elected employee representatives on the board.</td>
</tr>
<tr>
<td>Germany</td>
<td>Employees in companies with 500 employees or more have representation on the supervisory board. The proportion of workers’ representatives varies from one-third, in companies with 500-2,000 employees, to one-half, in companies with more than 2,000 workers. In these larger companies, the chair in effect represents the shareholders and has the casting vote, except in larger coal, iron and steel companies where the chair is independent. Also in coal, iron and steel, the employee representatives can appoint the “labor director”, who is part of the management board.</td>
</tr>
<tr>
<td>Greece</td>
<td>Employee representation on the board exists only in the “socialised sector”, such as public utilities and transport, where there are two levels of worker participation. The highest level is the “representative assembly of social control”, which sets broad policy objectives. Employee representatives constitute up to one-third of this group. Below this there is the board of directors, where again one-third of the members are elected by the workforce.</td>
</tr>
<tr>
<td>Ireland</td>
<td>There is no statutory requirement for BLER in the private sector. In a number of state-owned companies, employee representatives are entitled by law to one-third of the seats on the main boards.</td>
</tr>
<tr>
<td>Italy</td>
<td>Although the Constitution recognises “the rights of workers to participate in management, in the manner and within the limits prescribed by law”, this has never led to legislation on BLER, which is largely absent. However, some company agreements provide for the participation of employee representatives on boards, usually through forms of employee share ownership.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Employees have representation on the boards of companies which are more than 25% state-owned or which receive state aid for their main business, and of all companies with over 1,000 employees. In the latter case, the employee representatives make up one-third of the board, while in the former there is one employee representative for every 100 employees, with a minimum of three employee representatives and a maximum of one-third of the total board.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Companies with more than 100 employees, a works council and a set amount of capital must set up a supervisory board. The supervisory board elects its own members and the shareholders, the works council and the executive board have the right to recommend new members. There is no fixed proportion of employee representatives on the board: a works council may use its right of recommendation, but employees do not necessarily have a real representative on the board. Members of the supervisory board must take the interest of the company and the undertaking as a whole into account in the fulfilment of their duties; they are not employee representatives as such.</td>
</tr>
<tr>
<td>Norway</td>
<td>A significant proportion of private sector enterprises are regulated by legislation that safeguards employee representation on company boards - usually one-third of the total. In some, but not all, state and municipal institutions, political authorities have decided that employees should be entitled to be represented on the boards. Similar voluntary arrangements may be found in companies not covered by the traditional legal framework.</td>
</tr>
<tr>
<td>Portugal</td>
<td>The appointment of employee representatives to the governing bodies of state corporations or other public entities is provided for expressly by the Constitution and legislation. The legislation on public corporations also provides for the appointment of an employee representative to the board of directors and supervisory board. However, this legislation is not complied with in practice and there are no known cases of employee representatives being appointed to a corporation’s governing bodies. In the private sector, the law expressly states that recognition of the right to BLER depends exclusively on the wishes of the parties involved. In practice, there are no known significant cases in which this right has been recognised.</td>
</tr>
<tr>
<td>Spain</td>
<td>There is no statutory right to BLER. However, as a result of tripartite agreements, there is some union representation on the boards of the largest public sector companies. There is also provision for BLER in institutions with a special legal status, such as savings banks.</td>
</tr>
<tr>
<td>Sweden</td>
<td>In almost all companies with more than 25 employees, employees have the right to two board members. In companies with over 1,000 employees engaged in at least two types of business, this rises to three board members. The employee representatives can never be in a majority.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>There is no legal right to BLER for workers. There are very few examples of “worker directors,” except in the area of management buy-outs of particular companies, mostly in the recently privatised or deregulated areas of the economy, such as transport.</td>
</tr>
</tbody>
</table>

Sources: European Industrial Relations Observatory; and “Worker representation in Europe”, Labour Research Department, LRD booklets, March 1998

have monistic systems). The regulations governing monistic systems are quite diverse.

3) Mixed systems. Of the countries with BLER, Finland, France and (to a lesser extent) Norway have a combination of dual and monistic systems.

Selection and rights of employee representatives

Legal regulation and practice is quite diverse regarding the selection of employee representatives to sit on the board - see table 2 on p. iii. Elections among the workforce concerned is a basic method of selecting representative, applying in Denmark, Finland, Germany (except for the parity co-determination system), Greece, Ireland, Norway and Portugal. In Austria, it is the works council and in Luxembourg the employee representatives on the works council that appoint the board representatives (though in the latter case, trade unions also appoint representatives in the iron and steel industry). In France, works councils appoint (non-voting) board representatives in the private sector, while unions play a decisive role in the selection of board representatives in the public sector. In Sweden, it is the local branches of union which appoint the board representatives. In the Netherlands, it is the supervisory board which co-opts its own members, with the works council being one of the bodies with nomination rights.

With few variations and exceptions, employee representatives enjoy the same rights, responsibilities and obligations as other board members. In France, works council-appointed representatives have only a consultative role. However, they receive the same information as the other members and have the right to present lists of requests for information and must receive a documented response. Elected board representatives in France have the same rights and obligations as shareholders’ representatives and representatives appointed “due to their expertise”. In the Netherlands, all members of the supervisory board have equal rights but are not allowed to act as
representatives of particular interests. In Portugal, the law says nothing about the status of the employees’ representatives and seems to leave it for the statutes of each public corporation to define. However, in practice, no employee representatives have been appointed.

### The European Company Statute

The concept of a European Company (Societas Europaea, or SE), incorporated in Community law has been mooted since the 1950s. The essential idea is that the obstacles to the development of European-scale companies – such as problems with cross-border mergers, or differing tax and company law – can be overcome by giving companies the option of escaping national company law and incorporating at EU level. Since the first draft of a European Company Statute (ECS) was issued by the European Commission in 1970, there have been various amended proposals, but none of them has been able to find sufficient support in the EU Council of Ministers.

A main reason for the deadlock on the ECS has been the Member States’ inability to agree on the question of what worker involvement provisions, if any, should apply to the SE. All versions of the draft Statute have included provisions on worker involvement – information, consultation and, especially, BLER. The Council’s dilemma arises from the different national perceptions of, and institutional arrangements for, worker involvement across Europe: on the one hand, countries with comprehensive statutory systems of involvement and especially BLER (for example, Germany) have been afraid that EU legislation may give companies based in or operating on their territories the opportunity to escape the involvement legislation; on the other hand, countries with few or no statutory involvement provisions (for example, the UK) have not wanted to see legislation on involvement imposed from outside.

The deepening of European economic integration, pushed forward by the completion of the single market and the coming Economic and Monetary Union, has created a growing need for a ECS to allow European enterprises to unify their organisational structures and adapt to the increasingly transnational dimension of their activities. Therefore, in 1996 the Commission again took the initiative and

### Table 2: Selection of employee representatives on the board

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Appointment by the (central) works council from amongst its ranks. Appointees must be elected works council members (ie not trade union appointees).</td>
</tr>
<tr>
<td>Denmark</td>
<td>Elected directly by workforce from among employees.</td>
</tr>
<tr>
<td>Finland</td>
<td>The workforce elects board representatives – who must be company employees – from among candidates nominated by “staff groups”.</td>
</tr>
<tr>
<td>France</td>
<td>In private sector companies, representatives attending board meetings in a consultative capacity are appointed by works councils from among their members (all company employees), with proportional representation among occupational groups. In government-run companies where full board representation is obligatory – and in private sector companies which have opted for such representation – board members are company employees elected on the basis of slates run by the five nationally-recognised unions.</td>
</tr>
<tr>
<td>Germany</td>
<td>(1) In companies covered by the Coal, Iron and Steel Co-Determination Act, trade unions and works councils propose candidates to the shareholders’ meeting for election; this is a formality and the meeting must confirm their nominations. The “additional” board member, who provides a casting vote where necessary, is elected by the shareholders’ meeting on the proposal of the majority of both groups on the supervisory board. The management board must include a member responsible for personnel matters, the “labour director”, who may not be elected against the majority vote of the employees’ side on the supervisory board. Four of the employee supervisory board representatives (three blue-collar workers and one white-collar) must be group employees. (2) In companies covered by the Works Constitution Act, employee representatives are elected by the entire workforce. (3) In companies covered by the Co-Determination Act, the seats allocated to workers’ representatives are divided between company employees and candidates proposed by unions. In principle, representatives in companies employing under 8,000 employees are directly elected by the workforce, while those in larger companies are elected through an electoral college system. In both cases, employees may opt to switch to the other election method. Candidates for election as white- or blue-collar workers must be nominated by one-fifth of all their category of staff, or 100 such employees. Managerial staff representatives must be nominated by 5% of their category, or 20 such staff. Candidates for election as union representatives on the board must be nominated by unions.</td>
</tr>
<tr>
<td>Greece</td>
<td>Board-level employee representatives are elected by direct, universal vote, by a system of proportional representation, and may be recalled in the same way. Nomination is by trade unions and representatives may be company employees or external parties.</td>
</tr>
<tr>
<td>Ireland</td>
<td>Representatives are directly elected by the workforce under a proportional representation system. Candidates may be nominated only by a trade union or other organisation recognised for collective bargaining purposes by the company concerned. Representatives must be company employees.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Employee representatives on the works council appoint board representatives from among the company’s workforce, with proportional representation and separate ballots for blue- and white-collar workers. In iron and steel, the most representative national trade unions directly appoint three board representatives, who need not be company employees.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>In companies that fall under the “structure” regime, the supervisory board elects its own members. The general meeting of shareholders, the works council and the executive board are entitled to recommend new members for the board when there is a vacancy, while the shareholders and the works council can object to a nomination. Employees of the company (or dependent companies) may not be members of the supervisory board, and the same applies to union officials who are involved in collective bargaining with the company.</td>
</tr>
<tr>
<td>Norway</td>
<td>Employee representatives are chosen by and from the employees. They are elected by all employees, with the exception of the chief executive officer and employees owning more than 10% of the share capital. The elections may take various forms - majority voting or (at the demand of trade unions or a certain number of employees) proportional representation or dividing the company into constituencies. In companies with union branches, it is common for the unions to nominate candidates for the board.</td>
</tr>
<tr>
<td>Portugal</td>
<td>The employees’ representative on a public corporation’s board should be elected by and from among the employees. NB - legislation not implemented in practice.</td>
</tr>
<tr>
<td>Spain</td>
<td>In the case of the public sector metalworking agreement, trade unions that have obtained at least 25% of the number of workers’ delegates or works council members in workforce elections are entitled to board-level representation. There is one representative per union with a right to participate, and if only one union has this right it has two representatives. The unions may appoint and dismiss their representatives according to the criteria they see fit. There is no provision that the representatives must be company employees, although in fact this is usually the case.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Board representatives are appointed by local branches of trade unions bound by collective agreements with the employer. The board representatives should as a rule be employees of the company (or group), though this is merely a legal recommendation. It is possible to appoint an outsider, for example a union official, as often occurs in small companies where the local union feels that it does not have enough resources to take on this task.</td>
</tr>
</tbody>
</table>

Source: European Industrial Relations Observatory.
Commentary

The concepts, structures and procedures covered by BLER in the various countries differ widely with regard to their scope - ie, in terms of private or public sector coverage and restrictions on the sizes and types of companies involved. As a result, the coverage of companies and employees by this form of participation varies widely across Europe. There are also differences in the position and the role of the body where the employee representatives sit. The companies concerned have different management and supervisory structures, the basic distinction being between "single-tier" structures (monistic systems) and "two-tier" structures (dual systems). Furthermore, there are wide variations in: the extent of employee representation on boards; the selection and appointment procedures of employee representatives; and the representatives' identity (company employees, trade union officials or other) and role. Considering the national diversity of worker participation in Europe, the Davignon report emphasised that "there is no ideal system for worker involvement, the most efficient one being that best suited to the parties concerned and the particular conditions in which it is required to operate." Furthermore, the Davignon report argued that active worker involvement is a crucial element of the European social model and indispensable in order to meet the coming social and economic challenges: "Globalisation of the economy and the special place of European industry raises fundamental questions regarding the power of social partners within the company. The type of labour needed by European companies - skilled, mobile, committed, responsible, and capable of using technical innovations ... cannot be expected simply to obey the employers' instructions. Workers must be closely and permanently involved in decision-making at all levels of the company." However, there are contrasting lines of argument regarding the impact of BLER. Its proponents emphasise the productive effects of consensus and cooperation, the support for "social peace" and the contribution made by co-determination to a corporate culture based on trust, and to the greater understanding among the workforce of the needs and interests of the company. On the other hand, fears have been voiced that the presence and influence of employee representatives on the board could result in a preference for structurally conservative corporate strategies, shielding management from control by shareholders and the capital market and leading to technological immobility, excessive emphasis on personnel and employment-related aspects, and excessively consensus-oriented management. This would negatively affect economic efficiency, flexibility and adaptability. In response, it is claimed that the long-term orientation of corporate strategies, associated with BLER, creates advantages and that problems of implementation are taken into account at an early stage of firms' decision-making processes.

As regards the ECS, positions across Europe between and within the national social partner organisations are as diverse as the national systems of BLER. In general, trade unions want to make sure that the ECS will not weaken existing national systems of employee participation. In contrast, the employers argue that all proposals for new participation rights might become a threat to national participation rights. However, there are contrasting lines of argument regarding the impact of BLER. Its proponents emphasise the productive effects of consensus and cooperation, the support for "social peace" and the contribution made by co-determination to a corporate culture based on trust, and to the greater understanding among the workforce of the needs and interests of the company. On the other hand, fears have been voiced that the presence and influence of employee representatives on the board could result in a preference for structurally conservative corporate strategies, shielding management from control by shareholders and the capital market and leading to technological immobility, excessive emphasis on personnel and employment-related aspects, and excessively consensus-oriented management. This would negatively affect economic efficiency, flexibility and adaptability. In response, it is claimed that the long-term orientation of corporate strategies, associated with BLER, creates advantages and that problems of implementation are taken into account at an early stage of firms' decision-making processes.

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Social partners' views

The Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Trade Union Confederation (ETUC) both welcomed the Davignon report as a useful contribution to overcoming the deadlock on the ECS. They also supported the emphasis on free negotiations between the social partners at company level to find an acceptable form of worker involvement in each SE. However, they were concerned about the potential minimum requirements on participation in the event that negotiations fail, the EU-level social partners show a continuing divergence of views.

UNICE states that, given the fact that some Members States do not provide for BLER, employers' organisations from those countries strongly oppose the introduction of "standard rules". UNICE, therefore, demands that all proposals for new participation in the SE should be optional and introduced on a voluntary basis. By contrast, ETUC has expressed its serious concerns that the Davignon proposals could lead to an undermining of national provisions on participation, finding the proposed minimum employee representation of 20% on SE boards to be much too low. ETUC, therefore, welcomed the UK proposal as a better protection for existing national BLER rights, while also criticising the draft for providing a possible "zero option" for BLER in the event that a SE is founded by companies coming from countries with no provisions on such participation.

The national debates among the social partners' organisations on the proposals for a ECS are mainly influenced by its potential implications for existing national systems of worker involvement. To summarise, at least four main - to a certain extent "stereotyped" - positions on the question of worker involvement can be identified:

1) Trade unions from countries with strong statutory provisions on BLER are still afraid that the ECS could undermine their systems and, therefore, tend to support the UK proposal which might give the best protection for national participation rights.

2) Employers' associations from countries with strong statutory provisions on BLER are afraid that their strong national participation rights might become a disadvantage in finding partners for the creation of SEs and, therefore, tend to support the Davignon/Luxembourg proposals.

3) Trade unions from countries with no provisions on BLER have mostly overcome their former political scepticism on such participation and, therefore, tend to support the Davignon/Luxembourg proposals, which might create the opportunity to introduce new participation rights into the national system.

4) Employers' associations from countries with no provisions on BLER still strongly oppose any legally-binding form of BLER in the SE.