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Commission Communication concerning the Development of  
the Social Dialogue at Community level

# Commission Communication concerning the Development of the Social Dialogue at Community level

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## **1. WHAT IS THE PURPOSE OF THIS COMMUNICATION?**

1. In view of the major policy changes facing the European Union, the Commission considers that it is time to reflect on the whole framework of the social dialogue at Community level. The Commission has a formal obligation under the Treaty (Art. 118b) to develop the social dialogue between management and labour (the social partners) at European level. Furthermore, under the Agreement attached to the Protocol on Social Policy in the Treaty on European Union (the Agreement on Social Policy), the Commission has the task of promoting the consultation of the social partners at Community level and taking any relevant measures to facilitate the social dialogue. The aim of this Communication, therefore, is to find ways to strengthen the social dialogue, to make it more adaptable and to associate the work of the social partners more closely in the development and implementation of EU policies, particularly employment and economic growth.

2. In the Medium Term Social Policy Action Programme<sup>1</sup> the Commission undertook to present a number of different documents in the field of social dialogue, reviewing the Standing Committee on Employment, the sectoral social dialogue and the development of the social dialogue in general. The Commission has decided to regroup all three subjects in this Communication, which is consultative in form, so that the issues to be tackled and the different possible solutions can be identified in a coherent way. The Communication also fulfils a commitment in the 1993 Communication concerning the application of the Agreement on Social Policy<sup>2</sup>, for a regular pattern of appraisal and re-examination of the way in which social dialogue works.

3. The social dialogue at European level covers discussions between the European social partners, joint action and possible negotiation between them, as well as discussions between the social partners and the institutions of the European Union. It has played an important role in policy development and policy implementation ever since the establishment of the European Coal and Steel Community. It has allowed the social partners to communicate their views to the EU institutions, and reciprocally to informing their members of initiatives of direct interest to them. This has improved the quality of political decisions and facilitated the implementation of policies in the economic and social field.

4. The most important issue facing the EU is employment, on which there have been significant developments in the last few years, notably the Commission's White Paper on Growth, Competitiveness and Employment<sup>3</sup>, and the action points on employment agreed at the European Council in Essen. These have led to closer co-ordination of employment policies, and have opened the way for a much greater role for the social partners in supporting, completing and possibly correcting Community action in this domain. The importance of this role is reflected in the proposal by the Commission for a Pact of Confidence for Employment in Europe, and leads inevitably to a greater focusing of the social dialogue, including sectoral dialogue, on employment. Adapting social dialogue structures, some of which were not developed to cope with this task, is a major preoccupation of this Communication.

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<sup>1</sup> COM (95) 134, 12 April 1995

<sup>2</sup> COM(93) 600 final, 14 December 1993; notably paras. 21 and 49

<sup>3</sup> COM(93) 700 final, 5 December 1993

5. The Commission's approach is based on the view, as explained in its Opinion on the IGC, that the Agreement on Social Policy must be integrated into the Treaty. This view is supported by all but one of the Members States, the European Parliament, the ECOSOC and the Committee of Regions. Such a step would provide the EU with greater authority to address the social challenges with which it is faced, and would ensure a central role for the social dialogue in preparing the EU response to these challenges.

6. In setting out its analysis, the Commission is aware of the importance of a wider partnership and the involvement of other interest groups in a wider civic dialogue, particularly in relation to the issues of employment and social cohesion, as evidenced by their participation in the Social Policy Forum organised by the Commission in March 1996. The Commission will continue to consult non-governmental organisations on a wide-range of social issues. However, this Communication focuses on the dialogue involving representatives of management and labour concerning employment, industrial relations and working conditions, for which the Commission has an explicit responsibility in the Treaty, and which rests on the role and tradition of social dialogue at national level.

7. This Communication contains an analysis of the potential of the social dialogue, as well as an objective appraisal of the efficiency and impact of the current structures. The Commission has posed a series of questions concerning possible steps for developing the social dialogue and, where appropriate, stated its views on a number of issues where changes are required. On this basis, the Commission wishes to stimulate a debate with the social partner organisations and with the EU institutions, and then to incorporate the most appropriate solutions for the development of the social dialogue into a second Communication in 1997. To achieve this objective the Commission wishes to receive the views of all interested parties on the issues raised by *31 December 1996*.

## **2. AN ASSESSMENT OF THE DIALOGUE AND PERSPECTIVES FOR ITS DEVELOPMENT**

8. The social dialogue has a number of different forms and is carried out with differing participating organisations. The Commission has deliberately kept the description of these features to a minimum, preferring to concentrate on identifying the strengths and weaknesses and suggesting possibilities for reform and development. The social dialogue bodies are analyzed one-by-one, as well as a small number of broader issues, and the Commission suggestions for action or questions for debate identified alongside. A more detailed description of the results of the social dialogue is set out in Annex I, while Annex II contains a listing of the various structures and committees.

### **A THE INTERPROFESSIONAL SOCIAL DIALOGUE**

#### **A.I Val Duchesse Social Dialogue**

##### **Situation**

9. The Val Duchesse Social Dialogue, named after the place where the first meeting was held in 1985, brings together the three European organisations who represent the main national interprofessional employer and trade union confederations. While meetings have taken place under different formulations, including 'Social Dialogue Summits' and, since 1992, the 'Social Dialogue Committee', the Val Duchesse social dialogue is informal and voluntary.

10. Under the informal Val Duchesse system, the social partners have negotiated a number of joint opinions on important policy matters for submission to the Commission and the Council. Of equal significance were the joint declarations on macro-economic, labour market and training issues, and the high-level discussion during a number of Summits in the period 1985-1995. In total 21 joint opinions and declarations have been adopted, two key agreements concluded, and seven high-level summits have been held involving the Commission President and senior representatives of the national and European social partner organisations.

11. This interprofessional social dialogue has thus made a positive contribution for over ten years now, allowing the social partners to give their views on developments in European social policy and to take their own initiative in this domain. Through the measures they have taken, the social partners have helped to stimulate and orientate Community developments - on the question of employment, on macroeconomic policies, on training initiatives or at the 1991 IGC on the changes to the wording of Article 118b of the Treaty.

12. In the last months, there have been major political developments which demonstrate the important role of the social dialogue. The Joint Declaration on the Essen Employment Process, which was transmitted to the Madrid European Council, was an important contribution to reinforcing the EU's key policy objectives. Secondly, the first European Agreement (the Agreement on Parental Leave) was a significant development which shows that the social partners are willing to assume the responsibilities given to them in the TEU and thereby play a direct role alongside the EU institutions in the formulation of EU policy. Lastly, the creation of the European Centre for Industrial Relations, or the launching of the "support system for innovative practises in training in companies" drawn up jointly by the European social partners, illustrate clearly that effective joint action is possible at Community level.

### **Lessons to be learned**

13. The launch of the Val Duchesse Social Dialogue in 1985 was a key development in attempts to revive the EEC and to make a reality the free movement of people, goods and services. Considering how unpromising the initial situation was when the Val Duchesse experiment got underway in 1985, the fact that any direct dialogue has been established between the social partners must rank as an achievement in itself.

14. Over the past few years it has certainly led to a better mutual understanding between social partners at European and at national level. But the social dialogue was not an end in itself - it also gave more legitimacy to the social and economic policies which were being put in place at European level. This is significant when we consider that the circumstances and character of the national organisations vary considerably from country to country.

15. The results of the social dialogue deserve much greater attention. They are not made sufficiently clear to the members of the social partners' organisations at grass roots level. Therefore, there is a need to ensure greater transparency in and awareness of the different social dialogue activities among all interested parties. The success of the social dialogue at European level requires the involvement of social partners from every level: local, regional and national.

### **Perspectives for development**

#### *Continuation of the Val Duchesse model*

16. The Val Duchesse dialogue has made significant achievements, and it shows rich

potential for developing a partnership approach to social policy, which can play an important role in supporting steps towards European integration. Therefore, **the Commission will continue to give its full support to the "Val Duchesse" social dialogue** in the spirit of the Article 118B of the Treaty.

### Participation

17. Participation in the Val Duchesse social dialogue is based on the mutual recognition of the parties, not on a decision of the Commission. Nevertheless, the Commission has received a series of requests to participate in the interprofessional social dialogue from organisations who were not party to the original initiative.

18. The issue of participation is dealt with in more detail in the section of this Communication dealing with the consultation and negotiation procedures under the Agreement on Social Policy. The Commission is conscious of the practical problems posed by a multiplicity of potential actors, and believes that only the social partner organisations themselves are in a position to develop their own dialogue and negotiating structures. Nonetheless, there continue to be some problems concerning the participation and representation of certain organisations in this process. The Commission cannot designate participants in the Social Dialogue Committee, but **calls on the social partners themselves to reinforce the social dialogue by ensuring adequate representation of all appropriate interests.**

## **A.II Interprofessional Advisory Committees**

### **Situation**

19. The interprofessional Advisory Committees have the task of advising the Commission in the drawing up of specific policies and assisting the Commission in their implementation, and have an important role in communicating the views of those who are directly affected by Community policies. There exist also a number of other consultative structures which involve the social partners (for example the LEONARDO Committee or the annual consultation on the Structural Funds).

20. The ECSC Treaty (Article 18) itself recognised the role of the Social Partners by establishing a consultative committee, containing representatives of governments and the social partners. Apart from this committee there are six advisory committees in the social policy area<sup>4</sup>, which are appointed by the Commission, on the basis of nominations by the Member States, with representatives of governments, trade unions and employer organisations. The Commission consults them regularly on technical and policy matters (e.g. implementation of the Social Fund Regulations, drawing up of technical health and safety regulations in the context of the framework health and safety Directive, vocational training, etc.).

### **Lessons to be learned**

21. Systematic and timely consultation in the advisory committees on proposals being prepared by the Commission does not always take place. The advisory Committees are not actively involved in the implementation of policies. An example of this is the current poor functioning of the Committee of the European Social Fund, despite its important position in

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<sup>4</sup> These are the Committee of the European Social Fund, and the Advisory Committees on Social Security for Migrant Workers, on Freedom of Movement for Workers, on Vocational Training, on Safety, Hygiene and Health Protection at Work, and on Equal Opportunities for Women and Men.

relation to a key structural instrument of the EU.

22. Social partners often find that they have to rely on other means than the advisory committees to have an effective input with regard on policy. In June 1993 the interprofessional Social Partners adopted a recommendation on the advisory committees, which supported the principle of such committees, but was critical of their operation and of some of their structures, for example the existence of separate Committees on social security of migrant workers and on freedom of movement for workers. Social partners also experience difficulties in trying to participate actively in the operation of the Structural Funds in the context of the mechanisms currently in place to provide for their participation.

23. As a result of recent developments, the European social partner organisations are now full members of the Advisory Committee on equal opportunities between women and men<sup>5</sup>. In the other Committees, however the European social partners are either not present or only have observer status. Added to the fact that the national social partner representatives in the Committees are nominated according to very different procedures and criteria depending on the Member State involved, this situation means that the position of the social partners is often not coordinated with the views expressed in other fora.

24. This has been highlighted since the introduction of the new consultation procedures under Article 3 of the Agreement on Social Policy, where the existence of the interprofessional advisory committees means that two procedures sometimes operate in parallel: consultation of European social partners by written procedure and consultation of individual social partner representatives in the advisory committees.

## Perspectives for development

### Review of structures and tasks

25. As the functioning and working methods of the advisory Committees continue to be problematic, **their continuation in their present form will be examined**. There is also a need to define clearly the different tasks and objectives of the advisory committees on social policies and vocational training, and of the consultative committees operating in the context of sectoral policies.

26. Where possible, the tasks of the advisory committees could be streamlined. For example, the Health and Safety Committee has recently agreed to revise its working methods, by reducing the number of plenary meetings and electing a programme committee. Another suggestion is that **the advisory committee on social security for migrants workers and the advisory committee on freedom of movement for workers could be merged** and cover all problems linked to free movement of workers and questions relating to immigration from third countries, as was suggested by social partners in their joint statement of June 1993. This would of course involve a close examination of the detailed regulations in place.

*Are there other reforms which should be considered for improving their functioning?*

### Adapting membership

27. The Commission considers that it is necessary to **review the status of the European Social partner organisations on the advisory committees**, with the objective of assuring the

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<sup>5</sup> Since a Commission decision on 19/7/95, 10 representatives of the European social partner organisations are members of the advisory committee on equal opportunities for women and men.

autonomy of the social partners and at the same time ensuring greater continuity with any bilateral consultations which may take place under the Agreement on Social Policy.

## **B. SECTORAL SOCIAL DIALOGUE**

### **Situation**

28. Some of the earliest social dialogue structures were in the sectors, often those with a particular significance in economic or employment terms. They are organised either as Joint Committees (JCs), appointed by the Commission usually in sectors corresponding to one of the common policies, or Informal Working Parties (IWPs), organised in response to a joint request of the social partners. In either case, the Commission identified those organisations who represent at European level the national confederations in the sectors concerned, and the members of the JCs or IWPs are nominated directly by the social partners.

29. There are ten Joint Committees and ten informal working groups in sixteen key sectors. Since they were set up, both the JCs and IWPs have issued nearly one hundred opinions and recommendations focusing above all on the Community proposals for legislation or regulation having social implications for their particular industry.

### **Lessons to be learned**

30. Thanks to these opinions and recommendations, the Commission has been well-informed about the positions of the partners on the objectives and content of its proposals. The process has demonstrated in most cases that the social partners are able to respond pertinently and in reasonable time with their views on the possible scope of a Community action or the envisaged proposal, and that a high degree of cooperation exists.<sup>6</sup>

31. Although consultations have been useful, it has to be underlined that the Commission normally is not obliged to hold consultations during the stage preceding the formal adoption of a text (the exception being social policy where there are formal procedures under Article 3 of the Agreement on Social Policy). The potential of the JCs and IWPs as consultative bodies has therefore not been used to the full in respect of envisaged proposals having social implications. The opinions of the JCs and IWPs on envisaged proposals have, up to now, been requested only on a few occasions and the sectoral bodies have often been unable to give their opinion until after the Commission has adopted the text in question.

32. A further point is that the terms of reference of the JCs (and *mutatis mutandis* of the IWPs as well) are restricted to the social aspects of Community policies. The compartmentalisation between social and economic aspects is artificial, usually to the detriment of social policy considerations, which tend to be neglected. Furthermore, over the years the Commission has established various technical and consultative committees in addition to the JCs and IWPs on which the social partners are not represented on a joint basis.

33. Although it is true that the social dialogue has demonstrated a strong continuity over the years, one fault has been the tendency of some of the JCs and IWPs to become over-institutionalised or to preserve structures which have outlived their usefulness. With more than 130 meetings per year (in 1994) and numerous participants at each meeting (between 24 and 50), these bodies impose a heavy budgetary and administrative burden. Attention should

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<sup>6</sup> Annex I includes a description of how consultation and dialogue have worked in the sectors

be drawn here in particular to the specific workload of the JCs, with their plenary meetings (usually one or two a year), their Bureau meetings (up to four a year) plus the meetings of their various working parties. Because of the status they convey, in the past the social partners have preferred additional JCs (for example on postal services), despite the fact that it represents a heavy workload for the Commission, and that more efficient means exist.

34. The Joint Committees and Working Parties are focused on quite specific policy areas, which often correspond to the interests of the branch organisations (trades unions) or industry associations (employers). This means that information on the results and activities of the sectoral social dialogue has tended not to be widely diffused outside the groups directly concerned, and there has been very little interlinking between sectors or with the interprofessional dialogue. This lack of exchange and information must be addressed so that the sectors can learn from experience in other areas, and take account of horizontal policy considerations being developed in the interprofessional dialogue, while the latter must be aware of the issues and concerns of the sectors.

35. In view of the current exercise of assessing the Social Dialogue, the Commission postponed the renewal of the mandate of some of the Joint Committees, and has yet to modify their statutes in order to appoint representatives from the three newest Member States. However representatives from Sweden, Finland and Austria will be formally nominated as soon as possible.

## **Perspectives for development**

### Review of the structures

36. The fact that the social dialogue structures were developed on an ad hoc basis, largely reflecting the historical importance of a sectoral policy rather than any overall strategy for sectoral dialogue, has created inconsistencies in the sectoral dialogue coverage. **More substance could be given to the social dialogue at sectoral level by focusing it on strategic issues and sectors**, particularly where the social partners are clearly active. These priority issues should cover the social implications of the relevant social policy as well as questions of general interest to the sectoral social partners, from employment, work organisation and the improvement of working conditions, to vocational training and the acquisition of skills.

*The Commission wishes to have the views of all interested parties on how to develop a more effective and relevant sectoral social dialogue.*

### Organisation of consultations

37. The Commission will **strengthen co-operation and co-ordination within its services concerning the consultation procedures**, which sets out the obligations of the Commission's services prior to preparing formal proposals for the Commission, and commits the Directorates-General to sectoral consultations during the preparatory stage of Commission initiatives. This will also set limits on the number of meetings and the number of participants in such consultations, and provide for equal treatment of all sectoral committees.

38. A further suggestion is for the Commission to move some of the tasks relating to the JCs and IWPs from DGV to the relevant sectoral DGs. In the belief that the sectoral JCs and IWPs are the forum where social partners can express their views on all measures taken in the context of their sector, such a move could reduce the compartmentalisation between social policy and the social effects of sectoral policy. Under this system, which aims for a rationalisation of consultative bodies, the responsibility and administrative structure, at least

for the Joint Committees which cover a Common Policy of the EU, would involve the relevant Directorate General more directly, with DGV retaining responsibility for coordination, for dialogue on social policy and for monitoring the effectiveness of social dialogue and its input to employment policies.

*What are your views on the organisation of responsibilities for sectoral dialogue? What do you think of the alternative suggestion for the management of consultations?*

*A study of the representativeness of social partner organisations*

39. The Commission does not have a comprehensive picture of the activities and membership of sectoral social partner organisations, especially as the changing social and economic priorities of the EU has an impact on the importance of different sectors and on the relationship between partners within those sectors. **A study of the representativeness of social partner organisations in the sectors will be launched in 1996**, which will also update the data collected on the representativeness of interprofessional organisations collected in a similar study in 1992.

*Adapting the membership*

40. The sectoral Joint Committees cannot continue to expand exponentially with every enlargement, so without prejudice to the overall review of structures referred to above, the Commission considers that **in order to ensure efficiency the number of members of the Joint Committees should be reduced**. In changing the Decisions creating the Joint Committees, the Commission will take account of special circumstances in the representation of social partners, using the study referred to above, including the problem of certain sectoral organisations who are not members of specific Joint Committees.

*Operational reforms*

41. The Commission will proceed with operational reforms in the sectoral dialogue, with particular attention needing to be paid to the problem of ever-increasing demands for meetings and the associated problems of interpretation and translation resources. The sectoral JCs and IWP's should be able to operate in a more flexible manner and under a restricted linguistic regime, in order to make consultation in advance more feasible. The use of new technologies could be envisaged to enhance the ability of the European social partners to communicate with their national members. For example, by equipping them with communications technology, the conditions for a fast and flexible dissemination of information would be created, which would also allow for a quicker response to consultations.

*How can the sectoral dialogue operate more effectively and with a view to the efficient allocation of resources?*

*Improving information and coordination*

42. In any event, it is proposed to strengthen inter-sectoral coordination, bringing together representatives from the different sectoral dialogues for information from the Commission on the initiatives likely to interest them and an exchange of information between the sectoral social partners on the progress of their work. This would provide for a more efficient way of informing social partners, avoiding duplication and ensuring that important information went to all sectors.

*What are your views on the co-ordination of the sectoral social dialogue and communicating its results ?*

## C. THE STANDING COMMITTEE ON EMPLOYMENT

### Situation

43. The Standing Committee on Employment (SCE) was established by a Council Decision in December 1970, and its composition was amended in January 1975<sup>7</sup>. It is a tripartite consultative body bringing together the Council, the Commission and representatives of the social partners.

44. The tasks of the SCE are laid down in Article 2 of the Council Decision establishing it. *"The task of the Committee shall be to ensure, in compliance with the Treaties and with due regard for the powers of the institutions and organs of the Communities, that there should be continuous dialogue, joint action and consultation between the Council - or, where appropriate, the Representatives of the Governments of the Member States - the Commission and the two sides of industry in order to facilitate coordination by the Member States of their employment policies in harmony with the objectives of the Community. The Committee shall fulfil its function before any measures are adopted by the relevant institutions".*

45. Between 1971 and 1996, the Committee held 49 meetings. It did not meet between October 1972 and February 1975, nor during the second half of 1992. Discussions between Social partners, the Council and the Commission have also taken place in other fora. For example, in recent years, representatives of the social partners have been invited to take part in an exchange of views with Ministers on questions relating to employment and social policy immediately prior to informal meetings of the Social Affairs Council. In addition the French Presidency decided to organise an informal meeting of the Committee on 30 March 1995 in the form of a "Social Conference".

46. More recently the informal European Council in Turin put forward the idea of a Tripartite Conference on Employment and Growth, with participation based on the membership of the SCE, which was held in Rome on 14/15 June 1996. The Conference highlighted the usefulness and relevance of the 'tripartite' approach (even if it does not correspond exactly to the tripartite model from the Member States) particularly in regard to action on employment which concerns the Member States, the EU institutions and the social partners.

### Lessons to be learned

47. Over the years meetings of the Standing Committee have discussed a very wide range of questions relating to employment: the operation of the labour market, reorganisation of work, employment for young people, technological changes, long-term unemployment, women's employment, immigration and continuing vocational training. Despite the abundance of subjects, these meetings have only rarely resulted in real consultation.

48. The ambitions with regard to joint action, which underlay the setting up of the Standing Committee on Employment, have been realised only to a very limited extent. Debates within the Committee are mostly limited to a succession of interventions setting out each member's position; this is far from being a debate, let alone joint action. As a ritual with no obligation to achieve a result, the Committee no longer attracts the attention of the leading players. The large number of participants often leads to a great deal of unhelpful repetition.

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<sup>7</sup> Council Decision of 14 December 1970 (OJ L 273, 17.12.70), amended by Council Decision of 20 January 1975 (OJ L 21, 28.01.75).

49. Although the parties are sounded out in advance, the conclusions of the SCE meetings are entirely at the responsibility of the Presidency. They vary in their content and are little used. Therefore the responsibility of the various parties involved for developing joint action on employment is not engaged by the present functioning of the SCE.

## **Perspectives for development**

### Preserving the objectives

50. The tasks set out in the 1970 Decision establishing the Committee remain valid. The role and objectives are still relevant, particularly with regard to the implementation of the conclusions of the Essen European Council. The European Council in Madrid decided to create a permanent and stable structure for employment policy, including an Employment Committee of senior representatives of the Member States, and a close coordination between employment and economic policy. The Commission considers that **the reform of the Standing Committee on Employment should be linked to the implementation of this European Council decision on a stable structure for employment**, given that this will lead to a new way of preparing initiatives on employment policy and will have an impact on the role of the SCE. The results of the IGC in this domain, of course, will also have to be taken into account.

### Renewal of working methods

51. As stated in the 1970 Decision, continuity in the work of the Committee should become a priority. This is a key to its success, enabling it to proceed with analyses and make good use of experience acquired. This continuity should be sought in organisational procedures and in the choice of subjects and their follow-up. **The SCE should establish a work programme**, setting its work in a long-term context. The Commission could also establish a secretariat to prepare the SCE work

### Improving the output of the SCE

52. An effective Committee providing genuine Community added value is a precondition for successful joint action. Committee meetings should enable the Council to gain a better awareness of the social partners' concerns. In keeping with this, the Committee's conclusions would be more transparent and more effective if they were truly joint conclusions. They should be published through official channels and systematically forwarded to the European Council, while clearly indicating if necessary the points of divergence between the social partners on the one hand and the social partners and the Council on the other or, as the case may be, between Member States.

*Do you support the idea that the conclusions of SCE meetings must be given a higher profile?*

### Updating the membership

53. **The current composition of the Committee should be modified and rationalised.**

Dating from 1975, the relevant Council Decision has not been revised to take account of the successive enlargements of the Community and developments affecting the representative organisations. Because it is called upon to discuss questions relating to trends in employment and drafts submitted for discussion within the Social Affairs Council, the Committee is the forum for the expression of general interests and solidarity across industry. Its composition should reflect this approach, concentrating on interprofessional organisations at European level, particularly as sectoral consultation bodies also exist.

### Liaison committee

54. The Commission proposes that, for the sake of clarity in debates and in order to avoid a proliferation of statements, **the various social partners' organisations should be called upon to express their views through a liaison committee.**

## **D. SOCIAL DIALOGUE UNDER THE AGREEMENT ON SOCIAL POLICY**

55. The most significant change in European social dialogue in recent years has been the introduction of the new consultation and negotiation mechanism under the Protocol on social policy attached to the Treaty on European Union. The use of these mechanisms, particularly the successful completion of the negotiations leading to the first European Agreement between social partners, and its subsequent adoption by the Council, was an innovative and challenging experience for social partners and the EU institutions alike.

### **D.1 Consultation of the Social Partners**

#### **Situation**

56. The Commission has consulted the social partners on an informal basis for many years, but the Agreement on Social Policy formalised its obligation to consult in advance on social policy initiatives, and the new consultation process is explained in Annex I.

57. The Agreement did not specify which social partner organisations were to be involved in Community-level social dialogue. In its Communication on the application of the Agreement on Social Policy, the Commission set out criteria to deal with the key issue of the organisations that can be considered as social partners for the purposes of consultation at Community level.

58. A list of the social partner organisations which fulfil these criteria was compiled on the basis of a study on the representativeness of such organisations conducted in collaboration with the Member States. Apart from the major interprofessional umbrella organisations UNICE, CEEP and ETUC, the original list of 28 organisations included some European organisations representing certain categories of workers or undertakings, such as UEAPME<sup>8</sup> or CEC<sup>9</sup>, and a series of sectoral employers' organisations (e.g. in the area of the distributive trades, banking, insurance and transport)<sup>10</sup>.

59. In addition, the Commission continues its policy of wide-ranging consultations which cover all European or, where appropriate, national organisations which might be affected by the Community's social policy. This wider consultation therefore covers those organisations, who are European in vocation but not represented in most of the Member States, who were excluded from the list annexed to the Commission's 1993 Communication.

#### **Lessons to be learned**

60. The consultations have worked very well so far, and the Commission is generally

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<sup>8</sup> European Association of Craft, Small and Medium-sized Enterprises.

<sup>9</sup> Confederation Européen des Cadres (European Management Confederation).

<sup>10</sup> The full list is set out in Annex III

satisfied with the operation of the procedures established in its 1993 Communication. The consultation of social partners does not in itself imply access to negotiations, and the Commission is striving to hold wider consultations with all European social partners organisations. All the contributions received are fully taken into account by the Commission. However, the first experiences of the new procedures have shown that there are limitations to the capacity of the social partners to respond, but also some problems with regard to procedure.

61. The list of organisations corresponding to the criteria is kept under review by the Commission, but certain problems identified since 1993 suggest that the Commission should re-evaluate the appropriateness of these criteria and ensure that those participating are mandated to do so, and that the views submitted under consultations organised by the Commission are representative.

### **Perspectives for development**

#### *Reviewing the criteria for identifying organisations to be consulted*

62. The European Parliament suggested adapting the criteria to determine the organisations to be consulted formally under the Agreement on Social Policy, established in the Commission Communication, by including two further considerations to the list:

- that eligible organisations are composed of organisations representing employers or workers with membership which is voluntary at both national and European level;
- that they have a mandate from their members to represent them in the context of the Community social dialogue and can demonstrate their representativeness.

*Do you agree with adapting the representativeness criteria for organisations to be consulted?*

#### *The organisations consulted*

63. Based on these existing criteria, and in order to ensure the representativeness of the views which it receives, **the Commission will keep under review the list of European organisations to be consulted** at interprofessional and sectoral level. This conforms with the undertaking in the Commission's Communication in 1993 to review the list annexed to that Communication in the light of experience.

64. At the same time, and as suggested in 1993, the Commission will promote the development of linking structures between all social partners. Special attention will be paid here to the due representation of small and medium-sized undertakings. In that spirit **the Commission will organise regular meetings between all interested social partner organisations for information and an exchange of views** on developments in relation to consultations and social policy in general.

*For this to be successful, what measures do the social partners consider necessary in order to develop linking structures?*

#### *Amending consultation procedures*

65. In the light of early experience with consultations based on Art. 3 of the Social Protocol, the Commission considers that it is useful to amend the procedures which it established in the 1993 Communication concerning negotiations. **The time-limit of the first-stage consultations should be reconsidered.** The Commission suggests that, while keeping

the general six-week time limit, the deadline for consultations should be adaptable and should be fixed by the Commission on a case-by-case basis depending on the nature and complexity of the subject.

*Are there other procedural changes which should be considered?*

## **D.II Negotiation under the Agreement on Social Policy**

### **Situation**

66. The negotiation procedures are still relatively untried, but the first formal negotiations ended successfully in the European Agreement between social partners on parental leave, which was signed on 14 December 1995 and adopted by the Council as a Directive on 3 June 1996. The negotiation procedures are described in Annex I.

67. As the Commission makes greater use of the consultation procedures, so the potential for negotiations grows accordingly. Certain issues are clearly not suitable for negotiation, as was the case for the recent consultations on a possible initiative to reverse the burden of proof in case of alleged gender discrimination. However, the social partners have recently agreed to open formal negotiations on the vitally important subject of flexibility in working time (fixed-term, part-time and temporary work) and the security of employees.

### **Lessons to be learned**

68. The experience of the negotiations and conclusion of the Agreement on Parental Leave brought the procedures in Articles 3 and 4 of the Protocol into focus, and confirmed the analysis of the Commission set out in its Communication on the Protocol [COM(93)600 of December 1993]. A description of the events leading to the signing of the Agreement by the Social Partners, and its subsequent adoption as a Directive, is included in Annex 1. The following remarks can be made concerning this experience of formal negotiations:

- the time elapsed between the signature of the framework agreement and the adoption of the Directive was very short;
- this experience has made it clear that, where the signatory parties request the implementation of an agreement through a Council decision, the choice of legal instrument depends on the content of the agreement;
- the European Parliament reacted critically to the fact that it has no role in this decision making procedure (as evidenced in its opinion of 15 March 1996);
- the Council accepted that it could not modify the agreement, but nevertheless expressed its concern about certain elements of the content, which some Member States felt were the responsibility of national authorities or concerned procedural and institutional matters;
- certain social partner organisations have criticised the fact that they were not party to the negotiations, and have questioned the validity of the Agreement on Parental Leave and whether it is applicable to them. UEAPME have indicated their intention to have this question referred to the Court of Justice. Before transmitting the agreement to the Council for a decision, the Commission examined this issue carefully and considered that the three organisations involved fulfilled the criteria of representativeness

necessary to render the agreement valid. The Commission also organised a meeting of all organisations who had been consulted on the initiative but who were not party to the negotiations, to inform them fully about the agreement.

## **Perspectives for development**

### Reviewing procedures

69. As regards negotiations, the Commission would be happy to receive the views of all interested parties on the lessons to be drawn from the first negotiation (on parental leave) - particularly the procedural aspects. This would clarify the steps to be taken in the context of future negotiations so as to avoid as many difficulties as possible.

*What are your views on the first experience of negotiation of an Agreement?*

### Representativeness of the contracting parties

70. The issue of participation in negotiations under the Agreement on Social Policy has obviously proved to be sensitive and controversial. The Commission continues to believe that only the social partners themselves can develop their own dialogue and negotiating structures, and that it cannot impose participants on a freely undertaken negotiation.

71. Nevertheless, in cases where Art 3.2 of the Agreement is being applied, the Commission does have the responsibility to assess the validity of an agreement in light of its content, which requires an assessment of whether those affected by the agreement have been represented. The Commission considers that the question of the representativeness of the parties engaged in a negotiation must be examined on a case by case basis, as the conditions will vary depending on the subject matter under negotiation. The Commission must therefore examine whether those involved in the negotiation have a genuine interest in the matter and can demonstrate significant representation in the domain concerned.

72. The Commission would like to encourage the European social partner organisations to co-operate more closely in finding a solution to this question. It appeals to the social partners to be open and flexible on the issue in order to ensure appropriate participation in negotiations. The Commission is ready to help and support any positive steps taken by the social partners in this regard.

*What steps can the social partners take to reinforce the acceptability of a negotiated agreement to all interested parties, including social partner organisations who did not participate, the Council, the Commission and the European Parliament?*

## **E BROADER ISSUES FOR THE DEVELOPMENT OF SOCIAL DIALOGUE**

### **E.1 Employment and the changing policy environment**

73. Employment is the principal economic, social and political objective of the EU. The White Paper on Growth, Competitiveness and Employment, and the European Councils at Essen, Cannes and Madrid gave clear indications of the role they wished to see the social partners play in implementing employment measures. The Madrid Council welcomed the fact that the Social Partners at European level arrived at a common criterion for measures to promote employment (the Joint declaration) and the broad degree of convergence between this agreement and the Single Report on employment to the Summit. Following that, the

Commission met the European social partners in a Round Table on Employment, to discuss its suggestion for a European Pact of Confidence for Employment. In June, the Commission issued a formal Communication on the Pact, which has three objectives: to mobilize all the actors in a comprehensive strategy for employment, to make better use of the European multiplier effect and to incorporate the fight against unemployment in a medium and long-term view of society.

74. It is now a natural step to **focus the social dialogue at interprofessional as well as at sectoral level on employment**, while continuing their work on the social impact of industrial and sectoral policies, as well as their involvement in policies dealing with economic and social cohesion. The social partners have a key role in developing and complementing action on employment at Community level, particularly in the context of their responsibility for determining working conditions and labour market rules concerning flexibility, working time, access to training and the acquisition of skills, and the insertion of young people. The Social Dialogue Committee and the sectoral committees are therefore expected to be the driving force in the development of social dialogue on a coordinated employment policy.

## **E.II Social dialogue and enlargement**

75. There is a vital need to assist the countries of Eastern and Central Europe in the development of an appropriate system of social dialogue as part of their social and economic development. In the context of the future enlargement of the EU to certain ECE countries it is vital to develop a dialogue with and between the social partners in the countries applying for membership, who have fundamentally different traditions in industrial relations and social dialogue, so that they will be able to play their role both in preparing for accession and once their countries have joined the EU.

76. Where the EU social partners have been requested by their counterpart organisations in Eastern and Central Europe to help the latter in developing their structures and their social dialogue activities, **the Commission is willing to assist the EU social partners in developing links and practical cooperation.**

77. In countries which have applied for membership of the EU, as a complement to the projects financed through the PHARE programme (e.g. 10m ECU for trade union activities), the Commission can encourage activities linked to reform which should lead to the social partners in those countries being able to play their role both before and after accession. The limited access for ECE countries established by the European Parliament to budget lines dealing with the social dialogue can also be exploited for the development of social dialogue in these countries, a task in which the European social partners have a principal role to play.

## **E.III Information and Communication**

78. It is proposed to hold **regular meetings for the exchange of information between interprofessional social dialogue and sectoral social dialogue representatives**. These meetings would not replace the existing dialogue structures, and they would involve the European organisations which are currently not part of the social dialogue structures.

79. The work and results of the European social dialogue are not sufficiently familiar to workers and employers in the Member States even though their interests are directly affected. This is manifested by an absence of activity at national and regional level relating to the output of the European social dialogue. Therefore, **the Commission wishes to ensure the**

dissemination of information about the European social dialogue and to encourage the social partner organisations to inform their members on the activities and results of the social dialogue and on social policy in general. This in turn should stimulate national and regional follow-up, and ensure a high level of participation and feedback in this representative process.

*What steps and practical assistance are necessary to create an effective information policy on social dialogue?*

80. As much of the work of the social dialogue structures addresses policy developments in which the institutions have a formal role **the Commission will provide regular information to the EU institutions on developments in the social dialogue.** The Agreement on parental leave highlighted the need for regularly informing the Council and the European Parliament of what is going on, particularly if institutional and procedural prerogatives are not to become a stumbling block for the development of the dialogue. In line with the obligations of the Agreement on Social Policy, the Commission will also issue annual reports on the balanced support for the parties involved in social dialogue.

#### **E.IV Support measures for joint initiatives**

81. The Commission feels that the EU can do more to support the co-operative activities of the social partners, both those in the framework of Community action programmes or in the form of autonomous initiatives. Bodies set up by recognized European social partners, with the objective of furthering the goals of European social dialogue, such as training and research institutes, need to be supported financially by the EU because of their important role in developing European awareness and education in key grass roots organisations and for the public in general.

82. It is proposed **to strengthen and support operational joint initiatives under the social dialogue;** to provide a quick response to requests for the funding of such initiatives; and to make better use of the existing bodies - either those of a tripartite nature established through a Council decision (the Dublin Foundation, CEDEFOP) or through the joint initiatives of European social partner organisations (such as CERI).

#### **E.V New levels of social dialogue**

83. While the principal levels of Community social dialogue are the interprofessional and sectoral dialogue, organised centrally, there is a growing need **to assist the development of new levels of dialogue in the light of challenges facing the EU.** These include:

- the social dialogue in the growing transnational industries. The European Works Council Directive has already played an important role in encouraging greater dialogue, but has demonstrated how national-based industrial relations systems are no longer sufficient;
- the social dialogue at regional level, particularly in cross-border regions where the Internal Market and other EU policies are having a significant effect, and in light of the decentralisation of collective bargaining:- current pilot projects in this field will indicate what contribution can be made by the EU.

### 3. CONCLUSIONS

84. In order to strengthen the social dialogue, the Commission has set out certain steps which it considers essential for the reform process, and which will be put into effect immediately. The Communication has also identified a number of questions concerning important, and sometimes sensitive, issues where a debate is required in order to identify the best answers. The social partners, the Member States and the European institutions are invited to reflect on these issues and to present their views to the Commission. The second Communication from the Commission, planned for next year, will take account of the opinions which are received following this reflection.

85. The proposals and questions on which the Commission wishes to hear the views of all interested parties are as follows:

#### VAL DUCHESSE SOCIAL DIALOGUE

**The Commission will continue to give its full support to the "Val Duchesse" social dialogue.**

**The Commission calls on the social partners themselves to reinforce the social dialogue by ensuring adequate representation of all appropriate interests.**

#### INTERPROFESSIONAL ADVISORY COMMITTEES

**The continuation of the committees in their present form will be examined.**

**The advisory committee on social security for migrants workers and the advisory committee on freedom of movement for workers could be merged**

*Are there other reforms which should be considered for improving their functioning?*

**The status of the European Social partners on the committees will be reviewed.**

#### SECTORAL SOCIAL DIALOGUE

**More substance could be given to the social dialogue at sectoral level by focusing it on strategic issues and sectors.**

*The Commission wishes to have the views of all interested parties on how to develop a more intensive and relevant sectoral social dialogue.*

**The Commission will strengthen co-operation and co-ordination within its services concerning the consultation procedures.**

*What are your views on the organisation of responsibilities for sectoral dialogue? What do you think of the alternative suggestion for the management of consultations?*

**A study of the representativeness of social partner organisations in the sectors will be launched.**

**The Commission considers that in order to ensure efficiency the number of members of the Joint Committees should be reduced.**

*How can the sectoral dialogue operate more effectively and with a view to the efficient allocation of resources?*

*What are your views on the co-ordination of the sectoral social dialogue and communicating its results ?*

#### THE STANDING COMMITTEE ON EMPLOYMENT

**The reform of the Standing Committee on Employment should be linked to the implementation of this European Council decision on a stable structure for employment.**

**The SCE should establish a work programme.**

*Do you support the idea that the conclusions of SCE meetings must be given a higher profile?*

**The current composition of the Committee should be modified and rationalised.**

**The various social partner organisations should be called upon to express their views through a liaison committee.**

#### CONSULTATIONS UNDER THE AGREEMENT ON SOCIAL POLICY

*Do you agree with adapting the representativeness criteria for organisations to be consulted?*

**The Commission will keep under review the list of European organisations to be consulted, in line with the undertaking in its 1993 Communication.**

**The Commission will organise regular meetings between all interested social partner organisations for information and an exchange of views.**

*For this to be successful, what measures do the social partners consider necessary in order to develop linking structures?*

**The time-limit of the first-stage consultations should be reconsidered.**

*Are there other procedural changes which should be considered?*

## NEGOTIATIONS UNDER THE AGREEMENT ON SOCIAL POLICY

*What are your views on the first experience of negotiation of an Agreement?*

*What steps can the social partners take to reinforce the acceptability of a negotiated agreement to all interested parties?*

## BROADER ISSUES FOR THE DEVELOPMENT OF SOCIAL DIALOGUE

**Focus the social dialogue on employment.**

**Assist the EU social partners in developing links and practical cooperation with social partner organisations in Eastern and Central European countries.**

**Hold regular meetings for the exchange of information between interprofessional social dialogue and sectoral social dialogue representatives.**

**Disseminate information about the European social dialogue and encourage the social partner organisations to inform their members on the activities and results of the social dialogue.**

*What steps and practical assistance are necessary to create an effective information policy on social dialogue?*

**Provide regular information to the EU institutions on developments in the social dialogue.**

**Strengthen and support operational joint initiatives under the social dialogue.**

**Assist the development of new levels of dialogue in the light of challenges facing the EU.**

## HOW DOES THE SOCIAL DIALOGUE WORK?

### Val Duchesse: Interprofessional dialogue

In the initial phase (1985-1988) the Val Duchesse social dialogue sought to involve the social partners in the plans for completing the Internal Market, which made cooperation between the European institutions and the social partners more important than ever. Therefore, the Social Dialogue was relaunched on the initiative of the Commission, bringing together in the 'Val Duchesse' meetings<sup>1</sup> those organisations who were ready to start a dialogue at EU level. A forum was created to contribute to the debate on the social aspects of the internal market, while at the same time two working groups, one on macroeconomics and one on microeconomics, were established.

Since the outset, the Val Duchesse meetings between the Union of Industrial and Employers Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC) had an informal status and were based on mutual recognition of the parties involved.

With the introduction of Article 118b into the EEC Treaty by means of the Single European Act in 1986, the promotion of social dialogue at Community level became one of the Commission's official tasks: "The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement". This obligation was reinforced by the political recognition given to the social dimension of EU policies by the Social Charter of the Fundamental Social Rights of Workers adopted in 1989, which required a greater involvement of the social partners and the promotion of dialogue between management and labour.

At the same time, the dialogue was reinforced by the establishment of a political Steering Group, made up of high-ranking representatives of the three European umbrella organisations and their national member organisations. The adoption of the Social Action Programme of the Commission also provided fresh stimulus, as it provided for consultation of the social partners' umbrella organisations on Commission proposals in areas where there were no advisory committees.

The negotiations of 1991 in the Inter-governmental Conference leading to the Treaty on European Union were distinguished by the willingness of most Member States to introduce qualified-majority decisions in the Council for areas of social policy in order to overcome obstacles in implementing the SAP. Having discussed the question of how both sides' influence in this area could be increased, UNICE, CEEP and ETUC adopted a Joint Agreement on 31 October 1991 addressed to the Inter-governmental Conference, which provided for mandatory consultation of the social partners on Commission proposals in the field of social affairs and an option for negotiations between the social partners which could possibly lead to framework agreements.

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<sup>1</sup> Named after the place where the first meeting was held on 31 January 1985 in Brussels.

This joint agreement was carried over almost verbatim into the Agreement (of the eleven) on Social Policy (Agreement on Social Policy), thus becoming an integral part of the EU Treaty, and included the possibility of social partner agreements which may be implemented, in accordance with Article 4, by the social partners at national level or by a Council decision on the basis of a proposal from the Commission.

In October 1992, following the signing of the Treaty on European Union, UNICE, CEEP and ETUC formed a new Social Dialogue Committee which, under the new circumstances, operates as a forum for orienting the dialogue.<sup>2</sup> This Committee has laid down terms of reference for additional working parties: on Education and Training, in existence since 1989, on Macroeconomics, which has been reactivated and has been concentrating on a cooperative growth strategy and the follow-up of the White Paper on growth, competitiveness and employment. The Social Dialogue Committee is also consulted on broad social policy, macro-economic and employment policy, as well as vocational training policy and other developments of interest to social partners.

#### Interprofessional Advisory Committees

Apart from the Advisory Committee under the European Coal and Steel Community, there are six interprofessional advisory committees in various areas of Community social policy. These are the Committee of the European Social Fund, the Advisory Committees on Social Security for Migrant Workers, on Freedom of Movement for Workers, on Vocational Training, on Safety, Hygiene and Health Protection at Work, and on Equal Opportunities for Women and Men.

While managed by the Commission, the Advisory Committees are made up of national tripartite delegations (employers, trade unions and national representatives of government) who are nominated by the Member States and appointed by the Council. Since June last year, ten members of the Advisory Committee on Equal Opportunities are appointed directly by the European Social Partners.

The Committees have the task of advising and assisting the Commission in the implementation of specific social policies, and are not, generally speaking, a forum for dialogue with the social partners, but they are a formal part of the legal framework for certain social policies, and it is important that social partners have a place in them.

#### Sectoral dialogue

At sectoral level, the dialogue between social partners has been in existence for some years, with the Joint Committees (JCs) and the Informal Working Parties (IWPs) operating as consultation, dialogue and even sometimes as negotiation bodies. They give their views on the formulation and implementation of Community sectoral policies aimed at improving and harmonising living and working conditions and also, in some cases, at improving the

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

economic and competitive position of the sector in question. This dialogue tends to take the form of discussions of these policies, on which joint opinions can be drawn up.

The form and the outcome of this dialogue varies considerably from sector to sector. Sometimes the result is no more than a better understanding of European developments by the two sides of industry. But experience has shown that it can produce more practical results. In addition to the opportunity for meetings, for exchanges of ideas and information under such dialogue arrangements, there have also been a certain number of specific initiatives, for instance joint participation by the social partners in Community vocational training programmes resulting from the adoption of a joint position, the creation of databases and job creation studies.

As early as 1978, for example, the social partners in the JC on Social Problems of Agricultural Workers adopted a first recommendation fixing the working week of permanent workers employed on arable land. This recommendation was extended to all agricultural workers in 1981, and is currently being renegotiated by the social partners in the sector with the support of the Commission.

In the context of the Internal Market, the social partners in the Commerce and Retail IWP adopted in 1988 a memorandum noting the lack of vocational training structures in the retail trade and recommending that the Commission draw up minimum training standards at Community level. Other initiatives have followed on from this memorandum: a European Forum on the social aspects of the retail trade and a first transnational project in the vocational training field (ASSIST) which constitutes a step towards the practical application of the general principles laid down in the 1988 memorandum.

In 1995, the social partners in the IWP on the Cleaning Industry adopted joint guidelines concerning the application of the Directive on the organisation of working time in their sector.

As far as Community social policy is concerned, the sectoral social partner organisations have been consulted in particular in the context of initiatives proposed by the Commission under its 1989 action programme implementing the Community Charter of the Fundamental Social Rights of Workers. Since 1993 the social partner organisations represented in JCs and IWPs have been formally consulted in accordance with Article 3 of the Agreement on social policy on any social policy initiative. Sometimes they have been consulted on industrial initiatives having a social impact on the sector (for example, in 1996, consultation by DG III of the IWP for Textiles and Clothing on the draft Communication on subcontracting).

#### The Standing Committee on Employment

The Standing Committee on Employment (SCE) was created in 1970 by Council decision, and is a formalised mechanism for joint action, which also takes place within the ad hoc tripartite Conferences held under the auspices of the Council Presidency, and to a lesser extent in the interprofessional advisory committees. The SCE, which brings social partners and the Commission together with the Council of Ministers, has the task "to ensure (...) continuous dialogue, joint action and consultation between the Council (...), the Commission and the two sides of industry in order to facilitate coordination by the Member States of their employment

policies in harmony with the objectives of the Community".<sup>3</sup>

Since 1974, each Council Presidency convened on average one meeting. Preparations for each meeting begin with the convening by the Commission of a "steering group" comprising representatives of the Presidency, the Commission and social partners, with the task of establishing the subject for discussion. The Commission then draws up a working document, on the basis of which the Presidency prepares draft conclusions in coordination with the social partners. A "mini-debate" on the eve of the meeting enables these draft conclusions to be finalised, but has tended to leave little room for genuine debate and exchange of views in the meeting proper. This meeting itself opens with a restricted meeting of Ministers, followed in plenary session by a series of speeches by the social partners and Council members. The Presidency is solely responsible for the conclusions of the meeting.

#### Consultations under the Agreement on Social Policy

At the Intergovernmental Conference in 1991, an important step was taken to strengthen the role of the social partners in the European decision-making process. Articles 3 and 4 of the Agreement on Social Policy constituted a significant development of Article 118b of the EC Treaty. Article 3(1) states: "The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties." Articles 3(2) and 3(3) imposes an obligation on the Commission to consult management and labour before presenting proposals in the social policy field. In addition, new avenues were opened up in the dialogue between the social partners at Community level, including possible agreements which may be implemented, under Article 4 of the Agreement, either by a Council decision on the basis of a proposal from the Commission, or in accordance with the procedures and practises specific to management and labour and the Member States.

The consultation procedures set down in the Agreement on Social Policy provide for a two-stage consultation before the Commission issues a legislative proposal. In the first stage the Commission informs the Social Partners that it is considering action on a particular subject and asks their views on the "possible direction of Community action" (Art. 3 §2). The partners can, individually or collectively, give their response to the Commission. This means that the Commission gains a clear view of the issues before deciding on whether to proceed.

The second stage of the procedure is launched "if, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation" (Art. 3 §3). This gives a direct input, in advance, to the measures to be proposed. The new consultation procedure is mandatory only within the context of the Agreement on Social Policy. In order to standardise its approach, the Commission has, however, committed itself to applying the procedures of Article 3 of the Agreement on Social Policy, irrespective of the legal basis (EC Treaty or the Protocol) for

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<sup>3</sup> Article 2 of Council Decision in OJ L273/25 1970. In fact, linked to the creation of SCE as a joint action body, arrangements were originally made for dialogue at Community level with the social partners' most important umbrella organisations in form of "tripartite conferences". For various reasons, this first attempt at a social dialogue with and between social partners stopped in 1978.

all social policy initiatives. In addition, the Commission has signalled the possibility of formal consultations on envisaged proposals for legislation of a horizontal or specific sectoral nature which have social implications. Here, however, the Commission reserves the right to decide whether and how such consultation should be conducted.

#### Negotiations under the Agreement on Social Policy

In the second stage of consultations on the basis of Art. 3 of the Agreement on Social Policy, the Social Partners can decide to negotiate an agreement on the issue in hand. In this case, the Commission suspends its activities and the Social Partners have up to nine months to negotiate an agreement, or longer if both parties and the Commission agree. If an agreement is concluded, this can be implemented by the Social Partners in accordance with national structures and practises. Alternatively, the partners can request the Commission to transmit the Agreement to the Council for adoption as a decision, which will give it the status of EU legislation. Even if no agreement is reached in such negotiations, the elaboration of both sides' positions and the problems evoked in the course of negotiations will be very useful for the Commission in drafting its own proposal.

As soon as the Maastricht Treaty came into force in 1993, the Commission decided to consult the social partners on the possible direction of Community action on information and consultation procedures in Community-scale undertakings, in accordance with the procedure under Article 3 of the Protocol Agreement on Social Policy. Following a second consultation on the content of the envisaged proposal in February 1994, and despite a series of informal meetings to see if there were possibilities for a negotiation, the social partners decided not to open negotiations. So the first trial with the new procedures led to a Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings, which was adopted in September 1994 (94/45/EC).

Reconciling working and family life is a key element in equal opportunities policy, and in 1983 the Commission submitted a proposal for a Council Directive on parental leave and leave for family reasons<sup>4</sup>. As, after eleven years, no progress had been made in the Council, the Commission decided to take advantage of the new procedures under the Agreement on social policy and to initiate the procedure under Article 3. On 22 February 1995 it therefore gave its approval for consultation of the social partners under Article 3(2) of the Agreement on the basis of a text which retraced the steps of the Commission's conciliation policy and examined it from various points of view.

The social partners' responses showed that there was a consensus on the need for action on conciliation in one form or another in accordance with the guidelines in the Commission's first document. The social partners came out very clearly in support of promotion of equal opportunities for men and women. As regards the proper form and level for action to be undertaken in this area, it was generally acknowledged that a Community initiative might be what was needed. At the very least, a Community text might recommend various measures and standards, and a binding Community framework measure was also suggested to establish guidelines which could be implemented at national, local or enterprise level. Many of the

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<sup>4</sup> COM (83) 686 final.

responses also recommended that the social partners play an active role in drafting the principles and in putting them into practice through collective negotiations.

After analysing the reactions to its document, the Commission decided to initiate the second round of consultation provided for under Article 3(3) of the Agreement on social policy. On 5 July 1995, three organisations (UNICE, CEEP and the ETUC) announced their intention of starting negotiations on this matter and, in particular, on parental leave. At the end of these negotiations, the three organisations concluded a framework agreement on 14 December. At the same time they forwarded the agreement to the Commission, asking for it to be implemented by a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on social policy.

The Commission adopted its proposal for a Directive<sup>5</sup> on 31 January 1996. This proposal took into account the representative status of the signatory parties, the legality of the clauses of the framework agreement and the respect for provisions regarding SMEs. In spite of the fact that the legal basis does not foresee the participation of the European Parliament in the legislative process, the Commission sent it the proposal for information. This allowed the EP to deliver, on 15 March 1996, an opinion on the issue. The Directive was approved by the Council on 29 March 1996, and formally adopted on 3 June.

On 5 July 1995, the Commission launched the first phase of a consultation concerning the burden of proof in cases of male/female discrimination. The social partners gave their opinions but indicated clearly that they did not envisage any negotiation on that matter. The Commission subsequently decided to consult the social partners on the content of an envisaged proposal in this field. On 27 September 1995, the Commission also launched the first phase of consultation on the issue of flexibility of working time and security of workers. Given the complexity of the issues, the Commission did not consider that a six-week deadline was appropriate for the receipt of views of social partner.

It was only in April 1996, having considered all the responses to the consultation, that the Commission decided that it was appropriate to proceed and launched a second-stage consultation of the social partners concerning the possible contents of a proposal. On 19 June, the social partners formally notified the Commission that they wished to enter into negotiations under Art. 3 of the Agreement on Social Policy.

Finally, on 14 November 1995, the Commission adopted a Communication [COM (95) 547 final] which had the purpose of consulting the social partners and the EU institutions on worker information and consultation, concerning the impact of the Works Council Directive on other proposals, pending before the Council, which contain provisions concerning information and consultation of workers.

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<sup>5</sup> COM(96) 26 final

## Annex II: Institutional framework of the social dialogue at Community level

	Constituent Instrument	Composition	Competences
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### CONSULTATION

#### 1. Cross-Industry Advisory Committees

Social Security for Migrants workers (1959)	Council Regulation 1408/71 - OJ L49, 5.07.71	6 per Member state : (2 unions; 2 employers.; 2 government)	Examine general questions/regulations
European Social Fund (1960)	Art. 124 Treaty and Council Regulation 2082/93 - OJ L193, 31.7.93	Idem	Assist the Commission
Freedom of movement for workers (1961)	Council Regulations 15/61 - OJ L57, 26.8.61 - and 1612/68 - OJ L257, 15.10.68	Idem	Effect of implement. of regulation 1612/68
Vocational Training (1963)	Council Decision of 9/04/68 - OJ L91, 12.4.68	Idem	Reasoned opinions
Safety, Hygiene and Health Protection at work (1974)	Council Decision of 27/06/74 - OJ L185, 9.7.74	Idem	Assist the Commission
Equal Opportunities for Women and Men (1981)	Commission Decision 95/42 - OJ L249, 17.10.95	2 per Member State (bodies responsible for womens' affairs) + 10 European social partners	Advise the Commission

#### 2. Sectoral level

Joint Committees (JC)			
Agriculture (1963)	Commission Decisions 74/442 - OJ L243, 5.9.74 and 87/445 - OJ L240, 22.8.87	COPA / EFA	Assist the Commission Joint opinions
Road Transport (1965)	Commission Decisions 85/516 - OJ L317, 28.11.85 and 87/447 - OJ L240, 22.8.87	IRU / CSTCE	
Inland waterways (1967)	Commission Decision 80/991 - OJ L297, 6.11.80	ESO, UINF / CSTCE	
Rail transport (1972)	Commission Decisions 85/13 - OJ L8, 10.1.85 and 91/407 - OJ L276, 14.8.91	CCFE / CSTCE	
Fishing (1974)	Commission Decisions 74/441 - OJ L243, 5.9.74 and 87/446 - OJ L240, 22.8.87	EUROPECHE-COGECA /CSTCE	
Sea transport (1987)	Commission Decision 87/467 - OJ L253, 4.9.87	ECSA / CSTCE	
Civil aviation (1990)	Commission Decision 90/449 - OJ L230, 24.8.90	AEA, ACI, ACE / CSTCE	
Telecommunications (1990)	Commission Decision 450/90 - OJ L230, 24.8.90	Operators / PTTI	
Postal services (1994)	Commission Decision 595/94 - OJ L225, 31.8.94	Operators / PTTI	

Constituent Instrument	Composition	Competences
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Informal Working Parties (IWP)			
Hotel and catering (1984)	-	HOTREC / SETA, UITA	No formal competences
Sugar (1984)	-	CEFS / SETA,UITA	
Commerce and retail (1985)	-	EUROCOMMERCE/EUROFIET	
Insurance (1987)	-	UPEA-CEA-AACE-BIPAR/ EUROFIET	
Banking (1990)	-	FB, GBC, GCE/EUROFIET	
Furniture (1991)	-	UEA / FETBB	
Footwear (1977)	-	CEC / CSE, THC	
Construction (1991)	-	FIEC / FETBB	
Cleaning industry (1992)	-	EFCI / EUROFIET	
Textiles and clothing (1992)	-	COMITEXTIL, ECLA / CSE-THC	
Wood (1994)	-	CEI WOOD / FETBB	
Private security (1994)	-	COESS, IPSA / EUROFIET	

### 3. Application of the Agreement on social policy (ASP)

<u>Mandatory</u> All social policy proposals (based on Agreement on Social Policy)	Art 3 of ASP	28 organisations identified in the COM(93)600 of 14/12/93	Under the terms of Article 3(1) of the Agreement, the social partners now have a right to be consulted by the Commission on social policy
<u>Optional</u> Horizontal or sectoral-type proposal which has social implications			

Constituent instrument	Composition	Competences
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## DIALOGUE AND NEGOTIATION

### 1. Cross Industry level ("Val Duchesse" Social Dialogue)

Summit Social Dialogue Committee Working parties - <i>Macroeconomics</i> - <i>Education and Training</i> - <i>Labour market</i>	Treaty: Art 118B Art. 3 and 4 ASP	UNICE - CEEP - CES	Voluntary dialogue Every subject under the responsibility of social partners
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### 2. Sectoral level

Joint Committees	Treaty: Art 118B Art. 3 and 4 ASP	Idem consultation	Dialogue between social partners, sometimes negotiation. Links with EU policies
Informal Working Parties	Idem	Idem consultation	Voluntary dialogue Every subject under the responsibility of social partners

### 3. Application of the Agreement on social policy

Negotiation on Parental leave	Art 4 of ASP	Mutual recognition by parties concerned	Autonomous negotiation
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## CONCERTATION

### Standing Committee on Employment

SCE (1970)	Council Decision of 14/12/1970 - OJ L273, 17.12.70 - amended by Council Decision of 20/01/1975 - OJ L21, 28.01.75	UNICE, COCEE, UACEE, CEA, COPA, CEEP CES, CGT, CGC, CFTC	Continuous dialogue, joint action and consultation. Facilitate coordination of employment policies
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**List of European social partner organisations  
currently consulted in accordance with Article 3 of the ASP**

1. General cross-industry organisations : \*
  - Union of Industrial and Employers' Confederations of Europe (UNICE)
  - European Centre of Enterprises with Public Participation (CEEP)
  - European Trade Union Confederation (ETUC)
  
2. Cross-industry organisations representing certain categories of workers or undertakings:
  - European Association of Craft, Small and Medium-Sized Enterprises (UEAPME - "Joint Committee of Social Dialogue")
  - Confédération européenne des cadres (CEC)
  - Eurocadres
  
3. Specific organisations
  - EUROCHAMBRES
  
4. Sectoral organisations with no cross-industry affiliation
  - Eurocommerce
  - COPA/COGECA
  - EUROPECHE
  - Association of European Cooperative Insurers, AECI
  - International Association of Insurance and Reinsurance Intermediaries, BIPAR
  - European Insurance Committee, CEA
  - Banking Federation of the European Community
  - Savings Banks Group of the European Community, GCECEE
  - Association of Cooperative Banks of the EC
  - European Confederation of woodworking industries, CEI-bois
  - Confederation of the National Hotel and Restaurant Associations in the EC, HOTREC
  - European Construction Industry Federation
  - European Regional Airlines Association, ERA
  - Airports Council International - European Region, ACI-Europe
  - Association des Transports aériens à la demande
  - Association of European Community Airlines, AECI
  - Association of European Airlines, AEA
  - Organisation européenne des bateliers
  - International Union for Inland Navigation
  - European Community Shipowners Association, ECSA
  - Community of European Railways, CER
  - International Road Transport Union, IRU

\* Sectoral organisations of UNICE and committees of the ETUC also consulted as required