

# Industrial Relations in Europe 2010



Social Europe





# Industrial Relations in Europe 2010

**European Commission**

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## FOREWORD BY THE COMMISSIONER



The turmoil that hit financial markets and the economy in 2008 led to the deepest recession in the history of the European Union, bringing unprecedented challenges. Employment rates across Europe suffered greatly, but the involvement of employers, trade unions and governments in negotiations and consultation has helped to minimise job losses and we have weathered the crisis better than feared. This report shows how the social partners have helped workers and companies adapt to the dramatic economic situation over the past two years. Strong social dialogue has led to effective responses like, for example, the introduction or extension of short-time working schemes in Germany or the Netherlands and other countries and across various sectors. It has also seen genuine progress on issues like the transition to the low-carbon economy with social partners in countries like Spain and Belgium contributing to proposals for investment in green technologies and skills to their national recovery plans.

The distribution of the full cost of the crisis and the current economic outlook continue however to raise serious concerns among social partners. Public debt has risen and fiscal consolidation programmes are underway throughout the EU. In some countries they carry the risk of undermining recovery. Social dialogue and collective wage bargaining have been especially challenging in countries under pressure from financial markets. Yet it is precisely in this difficult climate that social dialogue can play its fullest role. This year's report shows that in countries where social partnership is strongest - like Austria, Belgium, the Netherlands and Poland - they are managing to get through challenging times. The participation of their employers and workers in shaping concrete policy responses to the crisis is one of their important recovery tools. This is why I believe we need to emerge from this crisis with more, not less social dialogue.

At the same time, the dynamics of social dialogue are very uneven across Member States. In many of the Member States that joined in 2004 and 2007 for example, the weaknesses of employers' organisations and trade

unions are worrying. In countries like Romania, Bulgaria and my own country Hungary, limitations in institutional capacity translate into limitations in the industrial relations system. The EU helps by supporting capacity building of social partners through the European Social Fund or through co-financing of transnational projects. But I call on Member States and social partners to step up their efforts further and reinforce support for social dialogue and collective bargaining.

At European level, social dialogue continues to deliver tangible results and improvements to European workers and companies. The report confirms that collective bargaining is very much present in the EU with two thirds of workers in Europe covered by collective agreements. Although there is still room for improvement, concrete results have been achieved with EU cross-industry social dialogue leading to a number of consultations, joint actions and successful negotiations. All of this shows that both cross-industry and sectoral social dialogue have an important contribution to make to the EU's Europe 2020 strategy, helping to put our economy firmly on the path to smart, sustainable and inclusive growth.

*March 2011*

A handwritten signature in dark ink, appearing to read 'Andor'.

**László ANDOR**  
Commissioner for Employment,  
Social Affairs and Inclusion



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## EXECUTIVE SUMMARY

The Industrial Relations in Europe 2010 report reviews trends and developments in the collective relationships between workers, employers and their respective representatives over the past two years. It is the sixth such report by the European Commission and builds on the 2008 edition. As the period under review coincided with the onset and spread of the worst economic crisis in recent history, this report looks closely at the way industrial relations systems across the European Union coped with the crisis, affected its course and influenced outcomes.

The report illustrates that the economic crisis presented industrial relations actors and institutions across the European Union with unprecedented challenges. On the whole, industrial relations in Europe have been shown to be robust under strain and have been vital in mitigating the effects of the recession, although not to the same extent in all countries. Trade unions and employers' organisations were recognised as being major interlocutors for several governments seeking to respond to the crisis. Together with monetary and fiscal stimulus policies, negotiation and consultation involving the social partners have played a significant role in limiting negative social consequences. However, the importance of this has varied considerably across the Member States.

The recession produced its most severe initial impact in countries that were most vulnerable to the financial origins of the crisis, leading to early tensions between social partners there. As the crisis spread and affected more Member States in 2008 and early 2009, a consensus developed between social partners in many countries on the need for rapid action to preserve employment and to stimulate the economy. This went hand in hand with a better coordinated response to the crisis at European level. Social dialogue led to innovative responses in many Member States and sectors, such as the introduction or extension of short-time working schemes. The success of these measures is evident: the overall rise in unemployment has been less severe than had been feared relative to the dramatic drop in economic activity. Many companies across the European Union harnessed the benefits of social dialogue and accompanying government measures, which enabled them to absorb the shock of the recession through internal flexibility, such as reducing the hours worked, rather than being forced to use external flexibility and having to dismiss workers.

The picture is not uniform across the European Union, however. Some Member States were particularly hard hit and experienced massive increases in unemployment, while in others there was hardly a recession at all. Variations in the traditional role and strength of different countries' social dialogue institutions were also an important factor in

determining whether compromise and agreement between social partners was possible. Consequently the degree of consensus or disagreement varied widely between countries and between economic sectors, with conflicts emerging in a number of Member States. Lately these disagreements have centred on the necessity and extent of austerity measures to reduce public deficits, the reform of social security and pension systems and future wage policy. While a general consensus has emerged on the need for long-term reforms and forward-looking responses to the crisis, the disagreements on specific policy measures may stem from a more fundamental divergence of views between the two sides of industry about the root causes of the crisis.

Nonetheless the social partners have often been influential in bringing new ideas to the attention of policymakers at all levels, as they are the interlocutors who know best the world of work. Throughout the crisis and despite a fair share of conflict, they have forged a remarkable degree of coordination and solidarity across Europe, largely resisting the temptation to call for protectionist national responses. This has also distinguished this recession from similar events in the past. At European level, several agreements concluded by the social partners make a real difference for all workers in the European Union, addressing issues such as parental leave, health and safety at work or inclusive labour markets.

In addition, social partners at both national and European level are paying increasing attention to the transition to a low-carbon economy and they have contributed concrete proposals for investment in green technologies and skills to the recovery plans of several Member States. In the long run, social dialogue will be crucial for a well-managed and socially just transition to a low-carbon economy. This will also have a positive impact on the awareness of the need for increasing specific research and innovation addressing these challenges. Besides contributing to climate change related policy-making, social partners are introducing a green dimension into their dialogue, in particular at company level. They contribute directly to the transition through awareness-raising, labels or research, albeit to different degrees depending on the quality of industrial relations in the Member States.

As this report indicates, the recession has important consequences for the role of the state and public policies in society and the economy. The economic crisis heightens the pressure to modernise public services, which is accentuated by the need to consolidate public finances and reduce deficits. The success of policy measures in the public sector will therefore be crucial to Europe's ability to exit the crisis permanently. Important choices need to be made by governments and social partners in the process of modernisation and structural

change in public services. For this reason, the next edition of the Industrial Relations in Europe report will look in more detail at industrial relations in the public sector.

For the foreseeable future, the social partners have a vital role to play in the implementation of the Europe 2020 strategy for smart, sustainable and inclusive growth. Europe needs to make full use of the problem-solving potential of social dialogue at all levels if it is to realise its objectives. The crisis has shown that the European industrial relations system, in all its diversity and at all levels (company, sector, cross-industry, national, European), is crucial to the success and stability of the European social model and will continue to be of importance as the European Union exits the crisis and enters a renewed period of growth.

### Structure of the report

The report comprises seven chapters. Chapter 1 gives an overview of the main characteristics of industrial relations institutions. It reports on the organisation of workers and employers, collective bargaining, industrial action and state involvement in industrial relations, reviewing variations and trends since the turn of the century.

The second and third chapters analyse social dialogue developments in the face of the economic crisis. Chapter 2 sets the scene by outlining the main economic parameters of the recession and the policy debates amongst social partners in the Member States and at EU level. It examines the views of social partners on the crisis and their differing analysis of its nature and exit strategies, showing where consensus developed and where disagreement predominated. Chapter 3 presents the concrete actions agreed on by social partners to address the challenges identified in the previous chapter, their innovations in procedure and the outcome. In some cases, persistent blockage and conflict rather than consensus were the order of the day. The analysis focuses both on the cross-industry dimension and on sectoral and company-level developments.

Chapter 4 covers wage bargaining and minimum wages in the Member States, with a particular focus on the continuing decentralisation of collective bargaining and the increasing use of wage flexibility in the form of variable payment systems. Chapter 5 explores the effect that the transition to a low-carbon economy will have on industrial relations systems and the extent to which the topic already features on the social partners' agenda. The chapter also shows how social partners themselves contribute to the necessary greening of the economy and the corresponding restructuring.

The final two chapters of the report provide an overview of developments at European level. Chapter 6 outlines the activities of the European social dialogue committees, many of which are actively addressing the consequences of the crisis. It reports on the many instruments that are used in the European social dialogue, from binding agreements to guidelines, which help to make real improvements in the daily lives of the vast majority of workers and companies in the European Union. Finally, Chapter 7 details employment-related legislative developments in the EU, focusing on labour law, health and safety legislation and equality rights in employment.

### Chapter 1: Variations and Trends in European industrial relations in the 21st century's first decade

Earlier trends towards declining union density, decentralisation of collective bargaining and greater employee participation continued, and the company level has become more prominent. Continuity can be seen in the high levels of employer organisation, bargaining coverage, and a slightly less pronounced role for government in industrial relations.

The picture of industrial relations systems in the EU is one of diversity. The organisation of the social partners, collective bargaining over pay and primary working conditions, and industrial action remain varied. Only where there is scope for EU intervention — as on employee representation within the enterprise — is some tendency towards convergence apparent.

The power and presence of trade unions is determined by various factors. The level of membership is an important determinant of trade union power, while the structure of membership influences the extent to which unions can legitimately claim to be representative of workers or even of those currently outside the labour market. Other factors are the support to trade unions given by the legal framework; unity and cooperation inside and outside the union movement; the relationship with other actors; leadership, internal organisation and membership participation; a coherent value system; and the standing of the unions and their leaders in the eyes of the public.

Trade unions at European level demonstrate a high degree of unity. The European Trade Union Confederation (ETUC) brings together 64 national confederations. The ETUC is represented in each country of the EU-27 and its market share at the European level is close to 88 %.

Overall, trade union membership continued to decline but there are large variations between countries. The proportion of union members among all workers across today's EU-27

fell from 27.8 % in 2000 to 23.4 % in 2008, with unions losing nearly 3 million members. This is the result of lower and declining unionisation rates among young people, and the difficulty of recruiting and retaining members in the services sector, in small firms, and among those with flexible and fixed-term employment contracts. Consequently, unions are ageing and increasingly reliant on the public sector. Announced job losses in the public sector are therefore a threat to the unions, as this is where they have the highest membership numbers in nearly all countries. Within this general trend, there are still huge differences across countries. In 2008, union density varied from 68.8 % in Sweden to 7.6 % in Estonia. Trade unions in Lithuania, Estonia, Slovakia, the Czech Republic and Poland have experienced the largest decline in membership since 2000 in percentage terms, while union membership has increased in Spain, Cyprus, Greece, Belgium and Italy. However, only in Belgium has there been no decrease in the share of union members among all workers.

For employers' associations, discipline and cohesion rather than membership are the key issues. National confederations of employers in the EU outnumber national union confederations. At the sector level employers' associations tend to be more differentiated and numerous than the trade unions. Collective bargaining is often no longer their main role. Services and lobbying have become much more prominent. The organisational centralisation of employers is lower than union centralisation in all Member States as a result of both the lower authority and the greater fragmentation of employers' organisations.

Three organisations represent employers at the European level. *BusinessEurope* is the general organisation for businesses in all sectors of the privately owned economy. The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) represents small and medium-sized businesses in Europe. The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP, Centre européen des entreprises publiques) represents enterprises and organisations with public participation or carrying out activities of general economic interest.

At the sectoral level, there is even more diversity among European employers' organisations. However, only a minority of these are employers' organisations in the strict sense. Such organisations are mainly found in those sectors where a sectoral social dialogue has developed (see Chapter 6).

The density of employers' organisations is more than double that of trade unions, but while the level of employer organisation in the EU appears stable and high, employers' associations are challenged by changes in their environment,

such as national and transnational mergers of firms, a greater emphasis on company as opposed to sector bargaining, and pressure for greater effectiveness in European and global representation.

The role, coverage and effectiveness of collective bargaining differs widely across EU Member States. A large two thirds majority of European employees are covered by collective agreements, but decentralisation of actual pay setting has continued and sector agreements are increasingly being amended by company-level agreements and arrangements.

As indicated in the *Industrial Relations in Europe 2008* report, it is the rate of employer organisation rather than the rate of unionisation that determines collective bargaining coverage. High bargaining coverage occurs under multi-employer bargaining, and requires the existence of organisations of employers with a mandate to negotiate agreements with the representatives of employees.

Statutory employee representation at company level is a key feature of European industrial relations systems. Legal provisions are based on Directive 2002/14/EC on information and consultation. Some convergence towards a broader range of rights is apparent, yet there is concern that cross-border mergers and increased financial risk-taking have made works councils and other employee representation bodies less powerful than they once were.

The state is involved in industrial relations in various ways. The state can influence decisions regarding wages, hours and working conditions. Government intervention is associated with statutory minimum wages, the extension of collective agreements and the negotiation of pacts with social partners. Direct government intervention tends to be a substitute for coordination by the social partners themselves.

## Chapter 2: The crisis: challenges and social partner perspectives

The economic crisis was an unprecedented challenge for European industrial relations systems. The economic and financial crisis presented industrial relations actors and institutions across the EU with formidable challenges. In central and south-eastern Europe, the worst crisis since the transition to a market economy two decades ago proved a hard test for the industrial relations institutions established since then.

While the magnitude and timing of the recession differed between Member States, EU GDP declined by over 5 % between the first half of 2008 and the first six months

of 2009. Growth only resumed at the beginning of 2010. The severity of the crisis varied between countries, ranging from a GDP decline of 15 % in the Baltic states to small growth in Poland. The onset of the recession and the timing of renewed growth also differed between Member States.

In most countries, private consumption declined less than GDP, so that purchasing power was an important factor in sustaining economic activity. The trend in consumption reflected wage developments up to the end of 2009, with real wage growth of 1.4 % in the EU in 2009. Contrary to this trend, wages declined, sometimes steeply, in the Baltic states, Ireland, Greece and Hungary, and they essentially stagnated in Germany, France, Sweden and the UK.

Growth in nominal labour costs in the EU was lower in 2009 than in 2008, but was 1.5 times above growth in nominal wages. Productivity fell by 2.5 % in 2009 across the EU, and unit labour costs rose by 3.0 % in real terms in 2009. The crisis had a dramatic effect on the public finances of Member States.

Across the EU, public deficits grew from 2.3% of GDP in 2008 to 6.8 % in 2009; in 11 Member States, deficits increased by over 5 % of GDP.

In general, the employment consequences of the crisis in the EU have not been as severe as might have been expected. Employment dropped by 2.5 % across the EU between the second quarters of 2008 and 2010, less than half of the decline in GDP. Unemployment increased to a record 9.6 % in each of the first three quarters of 2010. To a significant extent, the recession has been tackled through the internal flexibility of companies, by a decline in hours worked rather than through redundancies. Short-time working schemes and other collectively agreed adjustments to working time played a considerable part in this outcome (see Chapter 3).

The magnitude and timing of the employment decline have varied between countries, with the Baltic states, Ireland and Spain being particularly hard hit, with a fall in employment which mirrored or exceeded the drop in GDP. Workers employed on temporary contracts have been more exposed to job loss than those on open-ended or permanent contracts.

The different outcomes in economic and employment developments are due to two main factors. Economies underwent different types of recessions, either originating in the construction and real estate sector, causing immediate job losses, or caused by a collapse in business confidence and trade, affecting primarily manufacturing. Reactions of social partners and public authorities to the crisis differed and may explain the outcomes (see Chapter 3).

There were important sectoral differences in the impact of the recession. The industrial sector was the hardest hit, although a reduction in hours worked offset some of the decline in activity, so that the fall in manufacturing employment was considerably smaller than the decline in output. During the worst of the crisis, public services contributed to sustaining economic activity but budgetary austerity measures are likely to put a halt to this role for the public sector.

Social partners agreed at the outset on the need for public stimulus measures, albeit with differences in emphasis. Employers' organisations gave priority to ensuring access to credit for companies, measures to reduce labour costs and reductions in taxation. Trade unions urged a larger fiscal stimulus, and measures to sustain purchasing power and to boost public investment.

The degree of consensus and conflict between the social partners has differed widely between the Member States. In 12 countries, consensus was dominant. Amongst these are EU-15 Member States with robust social dialogue institutions. In others, policy consensus has also dominated at least partly, where tripartite structures have been mobilised and/or joint platforms forged between the social partners. In 11 countries, disagreements prevailed. Neither the severity of the crisis nor the differences in industrial relations systems can explain the dominance of consensus or conflict. These include Member States with comparatively weak social dialogue institutions, but also countries with traditionally more robust industrial relations systems. In terms of institutional effects, the lines of similarity and difference between countries therefore reach across the distinction between 'old' and 'new' Member States.

### Chapter 3: Negotiating the crisis: social partner responses

Through the processes of social dialogue, employers and trade unions have played a prominent role in countering the impact of the crisis. There is, however, considerable variation across countries and sectors. It appears that differences in the economic situation have influenced the pattern of negotiated responses more at sectoral levels than between countries. The influence of industrial relations institutions is significant as are public policy and the extent to which social partners are involved in it. In a majority of Member States, the cross-industry social partners attempted to reach agreement on measures to address the crisis. Explicit attempts to negotiate bipartite or tripartite national agreements aimed at addressing the crisis were made in 16 Member States. While some focused principally on employment issues such as short-time work and wage moderation, others dealt with a wider range of measures.

The magnitude of the crisis in the Member States did not determine whether attempts at negotiation were successful but public policy has played an important role. Existing social protection systems and active inclusion policies provided a baseline of support during the crisis on which social partner solutions could be built. In addition to the evident role of governments in the conclusion of tripartite agreements, they have frequently played an important role in supporting bipartite ones.

Crisis response agreements at sectoral level were influenced by traditional practices and company-level agreements were more widespread. Sector-level negotiations are confined to a group of countries with well-established multi-employer bargaining arrangements. They also occur mainly in manufacturing sectors, with relatively little evidence of negotiations in the private service sectors. At company level, agreements addressing the consequences of the crisis are spread across a wider range of countries.

While real wages increased considerably in 2009, average earnings grew much more slowly. In most Member States the crisis depressed average agreed pay increases in 2009, but rarely to a great extent. Declining inflation meant higher increases in real wages. But the effects were felt more deeply in actual earnings than in the basic pay rates set by collective agreements, owing to reduced working hours and/or cuts in elements of remuneration.

In the manufacturing sector, measures have been introduced both in specific sector agreements aimed at tackling the employment effects of the downturn and as part of 'regular' agreements dealing with pay and conditions of employment. The main theme was short-time work, but other innovative responses such as 'employee leasing' were also observed. Many agreements related exclusively or partly to short-time work. Others involved 'concession bargaining', with trade-offs between some form of employment guarantee in return for employee flexibility in terms of pay and conditions.

Company-level agreements in the services sector focused on concessions on pay and working conditions, while short-time work featured relatively little. Agreements were mainly concentrated in the civil aviation and post and telecommunications sectors. Over a third of the agreements related to company cost-reduction programmes and provided for a range of employee sacrifices without employment guarantees in return. Half of the remaining agreements also provided for pay cuts or freezes, but in return for guarantees in respect of employment.

Particular strategic choices of the social partners account for much of the cross-country variation observed. This is apparent in the instances of those new Member States where agreements had not previously been concluded and in those EU-15 countries where agreements have not been concluded even though institutional capacity to do so exists.

The pattern of agreements at sector and company level suggests that social partner strategies have been shaped by institutional arrangements for industrial relations as well as by public policy intervention in the form of statutory short-time work schemes.

In several Member States, the crisis led for the first time to social partner agreements at a cross-industry level. Insofar as the crisis has provoked negotiated or concerted responses, where governments or employers might otherwise have acted alone, an issue is the sustainability of such agreements, particularly in several central and east European countries where they were hitherto unknown. There is no indication at present that the parties envisage further negotiations or agreements, but neither can the parties unlearn the process. At sector level, a striking feature is provisions which enhance competence for wage setting at company level. The crisis may thus prove to have further accelerated the long-running trend towards decentralisation.

#### Chapter 4: Wage flexibilisation and the minimum wage

Wage flexibility has been an important element of debate during the economic crisis. The degree of wage flexibility depends to a large extent on factors such as the level and coverage of collective bargaining, the power relations between trade unions and employers, the use of performance-related pay systems and the minimum wage. It refers to the extent to which wages respond to market forces. This debate about wage flexibility took on extra importance during the economic crisis.

The degree of centralisation of wage bargaining varies widely between Member States. In many countries, the recent trend towards decentralisation of wage-setting arrangements and towards company and single-employer bargaining accelerated during the economic crisis. In general, bargaining is more centralised in the public than in the private sector. More centralised bargaining leads to more equal wages and working conditions. In addition, the percentage of employees covered by a collectively bargained agreement in countries with more centralised bargaining is markedly higher than in the countries where company-level bargaining is dominant.

Variable pay systems are increasingly used to provide additional elements of wage flexibility. More than half of workers in the EU have some form of variable pay system (VPS), facilitated by the decentralisation of wage bargaining. While employers are generally positive about VPS, trade union attitudes differ. Some unions see it as a way to give workers a share in company performance, whereas others fear that it may create greater wage inequality and undermine the principle of equal pay for equal work.

Low pay affects one out of every 10 workers in the EU and in general, low pay is a bigger problem in countries with more decentralised bargaining structures and low collective bargaining coverage.

In many countries, the statutory minimum wage has had only a limited impact on the incidence of low pay. Twenty Member States have a statutory minimum wage. While the level differs widely between countries, the gap between the central and eastern Member States and the EU-15 has narrowed slightly in the past few years. Nevertheless, the seven countries with the highest incidence of low pay all have statutory minimum wages. In addition, in more than half the countries, the minimum wage lost value compared to the average wage during the past decade.

In those countries that do not have a statutory minimum wage, the wage floor is set by collective bargaining. In most of these countries, low pay is not a widespread problem. The main exception is Germany, where the incidence of low pay is above the EU average, although the government can make a collectively agreed minimum wage binding for an entire sector, and such statutory minimum wages now exist in a number of sectors.

## Chapter 5: Industrial relations and the transition to a low-carbon economy

Climate change represents one of the greatest threats facing the planet. More and more, the transition to a low-carbon economy has been recognised as a necessity that involves social and economic opportunities and costs.

Social dialogue can help to create consensus for the transition to a low-carbon economy and contribute to a well-managed and socially just transition. Social partners can facilitate innovation and negotiate solutions for change which are to the benefit of workers and businesses.

The European Union is committed to local and global action to control climate change. Each Member State has

also put in place its own domestic mix of policies. These efforts accelerated with the adoption of the European climate change package in 2008. Europe 2020 confirms these commitments and provides an integrated set of policies to achieve smart, sustainable and inclusive growth.

Not only new green jobs but above all the greening of the whole economy will involve structural change. It should have a small but slightly positive impact on the overall employment level, albeit with different effects across sectors, skill types and regions. Anticipation of future skills needs, responsive lifelong learning systems and well-managed restructuring processes are important.

The low-carbon economy has come onto the social dialogue agenda but remains marginal. Social partner involvement with the low-carbon economy differs from country to country depending on the organisation of industrial relations and on the number of years that climate change has been of interest to public authorities, the social partners and the public.

Social partners mostly act by influencing policymaking, including their own policy proposals. Standard tripartite social dialogue bodies rarely address low-carbon economy issues in a systematic manner. But, in many Member States, social partners participate in advisory bodies, such as sustainable development councils, together with other stakeholders. Some address directly the employment consequences of a low-carbon future.

Collective bargaining rarely addresses issues related to the low-carbon economy. But social dialogue at company level on environment and energy matters seems to be slowly developing. Some workers' representatives have information, consultation and sometimes negotiation rights in this respect.

In addition, social partners contribute to the implementation of low-carbon policies and practices. In most Member States, this direct contribution occurs through training and counselling, awareness-raising campaigns and research and innovation, often in cooperation with public authorities.

The transition to a low-carbon economy is being 'mainstreamed' into social partners' sphere of competence, notably restructuring and skills policies. The state is the main actor in the transition to a low-carbon economy and mobilises regulatory, market and financial instruments. It is in the management of the employment implications where social partners have direct competence.

At the EU level, there is clear commitment by social partners to dialogue on the economic and employment implications of the transition to a low-carbon economy.

European social partners influence policymaking and have started to explore the employment consequences and related best practices. The European cross-industry social partners have expressed a keen interest in climate-change-related policies and have recently taken a stance on their employment implications. The ETUC advocates a ‘just transition’ that is based on tripartite social dialogue, green and decent jobs, investment, green skills, with an emphasis on anticipation and management of change, and extended rights relating to the protection of health and of the environment at work. BusinessEurope advocates more flexible labour markets accompanied by efficient public employment services, active labour market policies and training. Anticipation of future skills needs must be improved, and science, technological, engineering and mathematical skills fostered. CEEP and UEAPME focus more on the areas of energy (efficiency) and transport, and have also contributed to the debate on employment and skills in the low-carbon economy. European social partners in six sectors — encompassing gas and electricity, wood, and the extractive industries — have adopted joint opinions in order to draw attention to the specific concerns of their sectors.

European social partners have also started to study the consequences of the transition to a low-carbon economy and related best practices in their autonomous bipartite dialogue. The ETUC, BusinessEurope, CEEP and UEAPME have launched joint research on the employment dimension of climate-change-related policies and intend to develop a common view on this topic in order to assess the role of social partners and to draw conclusions on the consequences for employment and skills. European social partners in eight sectors (e.g. electricity) have launched similar activities.

Some transnational company agreements address environmental protection and climate issues but as yet there are no instances of bipartite autonomous regulation at European level.

## Chapter 6: European social dialogue developments 2008–10

The economic crisis was the dominant subject of discussion in many European social dialogue committees.

The past two years were anything but ‘business as usual’ in European social dialogue. Discussions about the crisis led to a number of joint actions but also to disagreements. In March 2009, the Cross-Industry Social Dialogue Committee failed to agree on a joint declaration due to fundamental differences of opinion about the causes of the economic

crisis and the measures needed to address it. A number of sectoral social dialogue committees agreed on joint statements, including those for the chemical industry, construction, road transport, commerce, live performance, regional and local government, woodworking and furniture sectors.

Many European and national social partners at both cross-industry and sectoral level contributed to the public consultation on the Europe 2020 strategy. In June 2010, the Cross-Industry Social Dialogue Committee adopted a joint contribution, which expressed their belief that a number of objectives will be crucial for successful economic recovery: reform of the global financial system, restoring and improving growth dynamics to create more and better jobs, promoting skills and entrepreneurship, revitalising the single market, developing an integrated EU industrial policy, supporting new means of financing for investment, and combating poverty and inequality, among others. They identify social cohesion as a precondition for a dynamic and sustainable economy.

In the European social dialogue, work on the management of change took on special importance. The cross-industry social partners finalised a five-year project examining their role in economic restructuring in the EU. The Social Dialogue Committee for the Chemical Industry studied restructuring in the sector, while the Electricity Social Dialogue Committee published a toolkit for socially responsible restructuring.

The cross-industry European social partners signed an autonomous agreement on inclusive labour markets. The aim of the agreement, which will be implemented under the responsibility of national social partners within three years, is to make full use of Europe’s labour force potential, improve job quality and increase employment rates in the face of demographic ageing. It covers persons who encounter difficulties in entering, returning to or integrating into the labour market and those in employment who are at risk of losing their job.

Skills and training continue to be a core area of European social dialogue. European social dialogue committees in 16 sectors were active in this area. In particular, in 2009 the social partners in the personal services sector signed an autonomous agreement facilitating comparison of qualifications and cross-border mobility. The agriculture and hospitality sectoral social dialogue committees are working on initiatives to enhance the transparency and compatibility of skills and qualifications. Five sectoral social dialogue committees have expressed interest in setting up European sector councils for jobs and skills.

The European social partners have a key role to play in the second phase of the flexicurity agenda. They are committed to jointly monitoring the implementation of the flexicurity principles, evaluating the role and involvement of the social partners, and drawing joint conclusions.

Health and safety remained an important area of activity for many European social dialogue committees. The European social partners in the hospitals and healthcare sector successfully negotiated an agreement on protection from sharp injuries, aiming to prevent injuries to workers caused by all types of sharp medical objects (including needle sticks). For this purpose an integrated approach to assessing and preventing risks, as well as to training and informing workers, is envisaged. The Personal Services Social Dialogue Committee launched negotiations on a framework agreement on the prevention of health risks in the hairdressing sector.

Mobility remained an important topic for the Cross-Industry Social Dialogue Committee and for sectors with a highly mobile workforce. The Cross-Industry Social Dialogue Committee carried out joint work on the consequences of the Court of Justice of the European Union's rulings in the Viking, Laval, Ruffert and Luxembourg cases relating to economic freedoms and fundamental social rights of workers. While they agreed on the identification of key issues, they expressed clear differences of opinion regarding the consequences of the rulings or the actions ahead. Discussions on mobility were held in the Inland Waterways, Construction, Hospitals, Agriculture, Private Security and Temporary Agency Sectoral Committees.

In the field of equality, the European cross-industry social partners successfully negotiated a revised EU framework agreement on parental leave. The revised framework agreement was implemented as Directive 2010/18/EU, which provides that each parent will be able to take off four months per child, with one month non-transferable between parents. The rights will apply to all workers regardless of their type of contract, and employees returning from parental leave will have the right to request changes to their work schedules for a set period of time.

Five sectors signed guidelines on third-party violence. Following the signature of the cross-industry social partner framework agreement on harassment and violence at work in 2007, the European social partners in the hospitals, regional and local government, commerce, private security and education sectors adopted multi-sectoral guidelines to tackle third-party violence and harassment related to work.

The Commission took stock of more than 10 years of European sectoral social dialogue. After more than a decade of experience with European sectoral social dialogue, the Commission published a staff working document assessing the functioning of the sectoral social dialogue committees and proposing possible improvements. The Commission intends to encourage the European and national sectoral social partners to fully use their area of negotiation, reinforce their administrative capacity and create synergies between sectors. Within this framework, the Commission also encourages the integration of new players as well as better participation of representatives from the new Member States.

Three new European sectoral social dialogue committees were launched during 2010 at the joint request of the respective European social partners. The first meetings of the committees in the metal, paper and education sectors have taken place, while the European social dialogue for central (government) administrations may soon be formalised following a two-year test phase. Social partners in the agro-food industry and sports sector are currently exploring the possibility of sectoral social dialogue committees.

## Chapter 7: Review of European legislation 2008–10

The adoption of a directive on temporary agency work and the recast European works councils directive were major achievements.

In the area of labour law, a number of important directives were adopted during the past two years. A major breakthrough was achieved with the adoption of a new directive on temporary agency work, which provides for a significant increase in the legal protection afforded to temporary workers while recognising the role of temporary agencies in promoting greater flexibility in the labour market and providing job opportunities.

Another success was the adoption of the recast European works councils directive. The joint opinion of the EU social partners expressed during the co-decision process facilitated swift agreement on the final text. The new directive clarifies and strengthens the previous legislation from 1994 in several respects, particularly regarding the information and consultation rights of workers on transnational matters. In the context of the economic crisis, this legislation became particularly relevant.

In addition, the Commission is undertaking an evaluation of existing directives in order to review their effects,

notably Directive 98/59/EC on collective redundancies, Directive 2001/23/EC on transfers of undertakings and Directive 2002/14/EC establishing a general framework relating to information and consultation of workers in the EU.

Three agreements between European social partners were implemented by Council directives. The adoption of Council Directive 2010/18/EU implementing the 2009 framework agreement on parental leave concluded by the European social partners demonstrated the capacity of the social partners — and the EU institutions — to build on the previous 1995 agreement, which was also implemented as a directive. The new legislation strengthens and further clarifies the rights of working parents to take leave.

Council Directive 2010/32/EU implemented the framework agreement on the prevention of injuries from sharp instruments in the hospital and healthcare sector, concluded by the European social partners in the sector. The incorporation of this agreement into EU legislation constitutes a significant contribution to creating the safest possible working environment in the sectors concerned.

Following a consultation of the European social partners in maritime transport by the Commission, they decided to negotiate and subsequently agreed on the incorporation into EU legislation of a substantial number of provisions contained in the 2006 ILO Maritime Labour Convention. The agreement was implemented by Directive 2009/13/EC, which completes or amends existing EU provisions applying to the working conditions of seafarers, including working time.

In line with the Commission's better regulation agenda, work continued on the implementation of the EU strategy for health and safety at work 2007–12. In this area the developments during the period aimed to ensure a regulatory framework capable of continuously adapting to change while respecting the principle that legislation should be coherent, simple and effective and also meeting the objective of reducing the administrative burden on companies. An example of this was the adoption of a third list of indicative occupational limit values for chemical agents (Directive 2009/161/EU), which shows the determination of the Commission to keep the EU health and safety at work acquis in line with the most recent scientific data available. Two 'codification' Directives 2009/104/EC on work equipment and 2009/148/EC on asbestos stem from the better regulation agenda. Good practice guides have been developed, aiming at facilitating and improving the practical application of certain health

and safety at work directives such as those dealing with noise, construction and artificial optical radiation.

Equality rights in employment are being monitored and strengthened. The Commission continues to place great emphasis on monitoring the correct transposition and application of directives in the field of equality. This includes Council Directives 2000/43/EC and 2000/78/EC, which prohibit discrimination based on race and ethnic origin, religion or belief, disability, age and sexual orientation in employment and occupation across the EU. In October 2008, the Commission presented a proposal to amend the current provisions of Directive 92/85/EEC on maternity protection. The aim of this proposal is to provide for better reconciliation of private, professional and family life and thus allow more women to enter or stay in the employment market if they have children. In another important development, the application of the principle of the right to equal treatment between men and women will be strengthened for those working in a self-employed capacity, through Council Directive 2010/41/EU.

Major setbacks and difficulties were encountered in two fields: The failure of the amended working time directive and the interpretation and enforcement of the posting of workers directive.

A major setback occurred when the Commission proposal to amend the working time directive (2003/88/EC) was withdrawn, after the failure of the Council and Parliament to agree on a compromise. The proposal sought to identify a solution to the difficulties in implementing Court of Justice (CJEU) rulings on the SIMAP and Jaeger cases, as well as to address stakeholders' claims in regard to extension of the reference period for averaging weekly working time and the individual opt-out. The Commission responded to the failed conciliation by launching a review of the directive including an extensive evaluation exercise and a first consultation of the European social partners.

Another source of difficulties was the interpretation and enforcement of the posting of workers Directive (96/71/EC), including respect for collective social rights. In the wake of the CJEU rulings on Laval, Rüffert and Commission v Luxembourg, the Commission decided to step up its efforts to facilitate administrative cooperation among Member States, and promote debate with stakeholders. With such difficulties in mind, the Commission is reviewing the implementation and interpretation of the legal framework on posting of workers and has already launched (or commissioned) several external studies of the legal aspects and economic effects of the directive. These studies are still ongoing.



# CHAPTER 1: Variations and trends in European industrial relations in the 21<sup>st</sup> century's first decade

*Trends in industrial relations institutions show a mix of continuity and diversity. Rates of trade union density, decentralisation of collective bargaining, employers' organisations and collective bargaining have remained relatively stable. National industrial relations regimes remain diverse — mainly between the EU-15 and the 12 new Member States, but also within them in different country groupings. The effect of the crisis on industrial relations arrangements is not yet clear.*

*This chapter is based on a draft by Jelle Visser of the Amsterdam Institute for Advanced Labour Studies (AIAS, University of Amsterdam)*

## 1.1. Introduction

This chapter presents an overview of industrial relations in the European Union (EU) during the 2000s. This was the first decade in which economic and monetary union (EMU) was in full operation. In 2004 the biggest enlargement in the history of the EU took place, adding 10 Member States, followed in 2007 by two more, bringing the total to 27 Member States. The decade started with the EU's ambitious Lisbon Agenda of 2000, it ended with the deepest economic crisis since the 1930s. In 2009 the economy of the EU contracted by 4 % and by early 2010 average unemployment in the EU reached 10 % of the labour force. In 2010, under pressure of rising public debts and government deficits incurred during the crisis, many countries are preparing austerity measures that include pay cuts or freezes and significant job loss in the public sector.

In short, the beginning and end of this first decade present different sets of conditions, expectations and challenges. In the early 2000s the three key issues were the design of national and sector wage policies adapting to a centralised European monetary policy; the promotion of labour market participation and social inclusion; and the political, social and economic integration of the new Member States, especially the post-Communist countries of central and eastern Europe (CEE countries). Earlier reports on industrial relations in Europe, especially in 2006 and 2008, have reported on these issues and on

the contribution of trade unions and employers. Today, at the end of the decade, the agenda is overwhelmed by the challenge of the economic crisis: rising unemployment; increased competitive pressures in the private sector; financial problems in the public sector; and finding a new path towards sustainable growth, greater productivity, real wage improvements and more jobs. The next chapters report on the industrial relations' response to the crisis at different levels (EU, national, sector and company). This chapter reports, firstly, on the current state of industrial relations; secondly, on the main developments during the decade; and indicates,

thirdly, what the impact of the crisis on industrial relations might be.

The chapter starts with a portrait of the main collective actors in industrial relations: trade unions (Section 1.2) and employers' associations (Section 1.3), respectively. For each, the main organisational features and representation of members (individual workers and firms) will be highlighted. A key institution in the relation between unions (workers) and employers (firms) is the collective labour agreement. Section 1.4 discusses main features and trends, such as coverage, centralisation and coordination, in collective bargaining. As important for the management of change and the settling of conflicting interests are the structures and practices of employee representation in the enterprise or workplace. This is addressed in Section 1.5, followed in Section 1.6 by a description of the trends and variations in industrial conflict. The role of the government is the subject of Section 1.7. The chapter ends with a brief analysis of the likely effects

### Box 1.1: Data sources

The main source used for this chapter is the ICTWSS — Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts — database, which contains data on some 100 variables from 1960 to 2009 in 34 countries. The database was developed by Jelle Visser and can be consulted at the website of the Amsterdam Institute for Advanced Labour Studies AIAS (<http://www.uva-aias.net/>). An updated version (ICTWSS, version 3.0) is now available (Visser, 2010). Integrated in the database is information from national surveys, the European Social Survey (<http://www.europeansocialsurvey.org>), administrative data obtained from the unions and from the European Industrial Relations Observatory (EIRO) of the European Foundation for the Improvement of Living and Working Conditions, in particular the EIRO country profiles (<http://www.eurofound.europa.eu/eiro/>). Also used for this chapter are the two reports on trade union membership in 1993–2003 and 2003–08 (.../eiro/2004/03/update/tn0403105u.htm; eiro/studies/tn0904019s/tn0904019s.htm), written for the Foundation by Mark Carley, as well as his recent report on 'Development in social partnership — employer organisations' (.../eiro/studies/tn0910049s/tn0910049s.htm). Another invaluable source on employer organisation in Europe is the 2004 study by Franz Traxler and Martin Behrens, also for the Foundation (.../eiro/2003/11/study/tn0311101s.htm). The data on employee representation are from the ICTWSS database and from the 2009 European Company Survey, released by the European Foundation in March 2010 (<http://www.eurofound.europa.eu/surveys/companysurvey/2009/index.htm>). The data on industrial conflict are from the ILO's Laborsta database, combined with Carley's report for the Foundation on 'Developments in industrial action 2005–2009' (.../eiro/studies/TN1004049S/TN1004049S.htm). The employment data in the ICTWSS database are from the OECD's Labour Force Statistics ('Wage and salary earners in employment') and, for non-OECD members, from Eurostat and the Commission's annual *Employment in Europe* reports.

of the crisis on industrial relations. As far as possible, the chapter presents recent data and developments, usually relating to 2008 or 2009. The year 2000 or, to avoid outliers, an average for 1997–99, is taken as the benchmark for comparison with recent years.

## 1.2. Trade unions

The power and presence of trade unions is determined by various factors. The level of membership, in absolute terms and relative to employment, is an important but not the only determinant of trade union power. Other factors are the unity and cooperation inside and outside the union movement; the relationship with employers, governments, political parties and other social organisations; leadership, internal organisation and membership participation; sound finances; a coherent value system or ideology; and the standing of the unions and their leaders in public opinion (see Hyman, 2001; Visser, 1995). The composition of unions and union membership, their representation among different categories defined by skill, sector, gender, age, nationality and status in the labour market is relevant for understanding the policy choices of unions, for instance regarding employment protection, pension reform, incomes policy or wage setting (Iversen, 1999; Ebbinghaus and Visser, 2000).

The present section discusses, firstly, the organisational make-up of the union movement in EU Member States; secondly, tendencies towards concentration or fragmentation, thirdly, issues of leadership, in particular related to the role and authority of the main confederations and largest (sector) unions and, fourthly, the membership basis and composition of the unions. For each issue, where appropriate,

developments at EU and national level will be indicated.

### 1.2.1. Union confederations and divisions in national union movements

In view of the varied pattern of union organisation it is hard to discern any general EU model of trade unionism. Across Member States, the number of confederations or peak associations of trade unions varies from one to nine; the membership share of the largest confederation varies from 100 % in Austria

to 23 % in France; and the number of affiliated unions in the main or largest union confederation varies from eight in Germany to more than a hundred in Poland. There is not a particular north–south or east–west gradient in these variations.

#### 1.2.1.1. General and specialised confederations

Table 1.1 highlights the main divisions. A first distinction can be made between ‘general’ confederations, which organise throughout the economy in all sectors of the economy

**Table 1.1: Number of union confederations, domains and key divisions in 2010**

	Total	General	Divisions				Public	Services
	#	#	Political	Religious	Occupational	Regional	#	#
AT	1	1						
IE	1	1						
LV	1	1						
UK	1	1						
EL	2	1					1	
EE	2	1						1
MT	2	2	X					
SK	3	2		x				1
BG	3	2	X				1	
BE	3	3	X	X		x		
DE	3	2		x			1	
LT	3	3	X	x				
PL	3	3	X					
NL	3	3	x	X	x			
FI	3	3			X			
SE	3	3			X			
DK	4	4		x	X			
CY	4	3	X		x			1
LU	4	2	X	X			1	1
PT	4	4	X					
CZ	5	4	X	x		x		1
RO	5	5	X					
ES	6	5	X	x		x		1
HU	6	6	X					
SI	7	5	X			x	1	1
IT	7	6	X					1
FR	9	5	X	x	x		4	

Source: J. Visser, ICTWSS database 3.0, 2010.

NB: X = major or primary demarcationline; x = minor or secondary.

(including the public sector), and 'specialised' confederations with members in the public sector or some specialised sector (e.g. commerce; financial services, healthcare). Of the 98 confederations counted in January 2010, nine are limited to the public sector, eight to services, and 81 are general.

### 1.2.1.2. *Political, religious and regional divisions*

Politics as a source of disunity is present in 15 of the 27 EU Member States (Table 1.1). It is absent in Scandinavia, Finland, Estonia, Latvia, Germany, Ireland and the UK. In Austria and Greece party-political differences are 'internalised' as factions within the main confederations, ÖGB and GSEE respectively. Religious differences are usually a minor or secondary demarcation, or they overlap with political differences, as is the case in Belgium, Luxembourg and the Netherlands. Small, minority organisations based on religious identity exist in Germany, Denmark, France, Spain, Hungary, Slovakia and Lithuania. Finally, confederations of unions limited to a particular language community or region exist in Spain (Basque area), the Czech Republic (Bohemia, Moravia and Silesia) and Slovenia (coastal area). Within the Belgian confederations, unions have sometimes a distinct regional (and linguistic) identity, especially those for white-collar staff and in the public sector.

### 1.2.1.3. *Divisions by occupational class or status*

Occupational demarcations between blue- and white-collar employees, with separate organisations for (academic) professions and managers, are the main dividing line in the Nordic countries. In a few other countries, higher-ranking white-collar employees have

formed minority confederations, for example in Denmark, the Netherlands, France and Cyprus (<sup>1</sup>). In many other countries, for instance Belgium or Austria and in a more varied way also in Ireland and the UK, occupational status is the source of divisions between unions within the same confederation. In some of these cases blue- and white-collar workers negotiate different collective agreements and/or have different social insurance provisions and employment protection rights. In the industrial unions of Germany, the Netherlands, Spain or Italy, and also in most CEE countries these distinctions are absent, and blue- and white-collar staff in the private sector tend to be covered by the same collective agreements and legal statutes. Recent union mergers and labour market reforms in Austria and Belgium go in the same direction of lowering or removing the distinctions between blue- and white-collar staff. In the Nordic countries, the decline in manual work is a long-term threat to the historically dominant confederations of blue-collar workers.

### 1.2.1.4. *Unity or pluralism?*

In the history of (western) European trade unions, the political, religious and occupational demarcations between trade union confederations emerged relatively early, before or around the First World War. They have proved very stable (Ebbinghaus and Visser 2000). Only in Germany and Austria, under allied occupation, was it possible to overcome pre-war differences and organise all or most unions under the common roof of the German and Austrian Confederation of Trade Unions,

the DGB and ÖGB respectively. Similar attempts in Italy and France failed. The Netherlands is a rare case where, in the 1970s, a general and Catholic union federation merged to become the FNV, which is the country's dominant union confederation. In nearly all countries in which free unions were suppressed, or unionisation was allowed only in a 'united' organisation, the return to democracy expressed itself in union pluralism, with 'old' and 'new' centres competing with one another. This happened in Spain and Portugal in the late 1970s and in Poland, Hungary and the other CEE countries after the fall of communism. The process of experimentation and differentiation has not stopped yet, although some consolidation has taken place, for instance in Hungary where two confederations merged. Compared with 2000, the number of union confederations in the EU-27 has risen from 93 to 98; in the 10 post-Communist CEE countries the number rose from 29 to 38, with further splits and new union federations in Slovenia, the Czech Republic, Slovakia and Romania.

### 1.2.1.5. *Organisational fragmentation and recognition rules*

Union pluralism tends to go together with competition over members, influence, bargaining rights and seats in national, sector or company consultation councils. This competition may be intense when confederations are ideologically and politically opposed to one another, or muted when their membership is demarcated by occupation, region or religion and they have reached a cooperation agreement.

Changes in recognition rules may put pressure on trade unions and confederations to seek a merger with larger organisations. Not reaching the representativeness threshold may shut the confederation and its member unions

<sup>1</sup> There are also separate unions, federations or forums for managers with executive functions in Austria, Belgium, Germany, Greece, Italy, Poland, Portugal, Slovenia, Spain, Sweden and the UK, but they are usually very small, not recognised and not involved in collective bargaining — if known, their membership is included under 'independent or unaffiliated' unions, but they are not included in the list of confederations in Table 1.1.

out from participation in consultation and bargaining. For instance, in Poland a recognition threshold of 10 % applies to unions claiming representation in companies; increasing this threshold, as was debated in the Tripartite Commission in 2008, would probably hurt all unions, but especially those affiliated with the smallest confederation. In Italy, since the late 1990s bargaining rights in the public sector depend on reaching a threshold of 5 %, based on membership and electoral data. Even this low threshold has triggered a spate of union mergers in the public sector. In France, under new legislation applying from 2012, in order to take part in collective bargaining at the sector or cross-sector level, trade union organisations must obtain 8 % of the votes in workplace elections across the sector or nationally, while participation in company-level bargaining will require 10 % of the votes in the relevant enterprise elections. The Confederation of Professional and Managerial Staff (CFE-CGC) and the National Federation of Independent Unions (UNSA), neither of which currently reaches the threshold, have broached the possibility of a merger, but no conclusion has yet been reached. In Luxembourg, a change in the representation criteria set by the law in 2004 triggered a regrouping of union confederations and their overall reduction from seven to four.

#### 1.2.1.6. *Number of unions*

The total number of unions affiliated to the largest confederation in each country decreased from 829 in 2000 to 758 in 2008, which represents an average of 29 per country (Table 1.2). A cautious estimate and considering that smaller confederations may also have a smaller number of affiliates, suggests that the total number of national unions in the EU might be in the order of 2 000. Not included in this count are the independent or unaffiliated unions; they probably add another 1 000 mostly very

small unions in professions and occupations in the public or state-subsidised sector as well as associations representing managers. As mainstream public sector unions have increasingly come under pressure to accept change in the employment status of civil servants and moderation in wage settlements, some powerful and well-organised professional groups have tried to defend their privileges by splitting off from the main unions. Examples of this development go back to the 1980s in Italy and France and the 1990s in the Netherlands. In the 2000s, train drivers, air pilots, and physicians in Germany won separate bargaining rights, often after a strike (Schroeder and Greef, 2008).

There appears to be no relationship between the number of unions or union confederations and the size of the country (the correlation coefficient is close to zero). The country with the largest population in the EU, Germany, has one of the most concentrated union movements, whereas small countries like Slovenia, Hungary or Portugal have many confederations and many unions. A relatively strict application of the sector principle of demarcation between affiliated unions reduces the number of unions, whereas occupational demarcations raise the number, as the comparison between Germany and Britain shows, although mega unions straddling the boundaries of many sectors and occupations now exist in both countries. The relationship between the number of unions and bargaining units no longer exists, as some large unions negotiate many contracts in different parts of the economy.

#### 1.2.1.7. *Union mergers*

The process of consolidation through mergers of separate unions has continued, but at a much reduced pace than at the beginning of the decade when there was a flurry of activity resulting in the

creation of mega unions, for instance in Finland, Germany, the UK, Austria and Denmark. In the early 2000s, union mergers were often broadcast as a solution to problems of membership decline and union renewal, freeing resources bottled up in unions organising in declining industrial sectors for recruitment drives in services. But mergers are costly operations in themselves and the high expectations associated with some subsequently gave way to disillusionment (Waddington, 2006). In early 2008 three white-collar employee unions merged in Sweden, but in Finland a merger of six unions, decided in 2006, was reversed. Another group of Finnish unions is poised to create a mega union in 2010 or 2011. In January 2010, the construction union of the Dutch Christian National Union Confederation (CNV) integrated into the union for manufacturing industries. In the FNV the industry union had merged 10 years earlier, with unions in transport and services, but the construction union has retained its independence. Union mergers do not necessarily make union structures more similar.

Until recently union mergers have respected the boundaries of confederations and nations, but in July 2008 UNITE, the largest 'general union' in the UK, signed an agreement to merge with the North American United Steelworkers union, adopting as its name Workers Uniting and claiming more than 3 million members in the UK, Ireland, the USA, Canada and the Caribbean. Unions operating cross-border are a well-known phenomenon in the USA and Canada, and between the United Kingdom and the Irish Republic, but in continental Europe it is rare. The nearest example is the European Cockpit Association (ECA), which represents 38 650 pilots and flight engineers in 38 national flight crew associations in Europe and operates at the EU level. All of ECA's member associations are also members of the International Federation of Air Line Pilots (Ifalpa). Since 2003 ECA

has been mandated to act as IFALPA's European voice in bodies such as the European Aviation Safety Association and the European Organisation for Air traffic Navigation Eurocontrol.

### 1.2.2. Associational monopoly or membership shares

The 98 union confederations currently existing in the EU are quite different in who and what they represent; they differ in size, internal organisation and ideology and in the tasks they fulfil. To grasp these differences we look at the relative size or 'market share,' i.e. how many of all unionists in a particular country does the confederation represent? Sometimes, where

reliable membership figures are absent the market share can be gauged on the basis of the voting results in elections for works councils or other bodies in which unions compete for seats and influence. In France this has become the main way of adjudicating the relative importance of the different union currents, but such elections also play an important role in Belgium, Luxembourg and Spain. In Italy workplace elections became re-institutionalised through the 1992–93 pacts; and they are used to assign or withhold recognition rights to independent minority unions in the public sector. In Austria works council elections determine the weight of different political currents within the united confederation and its affiliated unions.

The variation is considerable and goes from a market share of 100 % for the largest confederation in Austria to 23 % in France (Table 1.2). The EU average is 60 % for the largest and 22 % for the second-largest confederation. The position of the Austrian Confederation of Trade Unions (ÖGB) is unique and in no other country has one confederation an absolute monopoly. The main confederations in Ireland, the UK, Germany, Latvia and Slovakia approach this situation but must in each case tolerate rival, independent unions.

Between 2000 and 2008 relative membership shares have been fairly stable, with a continued decline of the market share of confederations, like the LO in Sweden and SAK in Finland, which

**Table 1.2: Major union confederations, market shares and effective number of unions**

	Largest confederation			Second confederation			Effective number of unions	
		No affiliation	Market share		No affiliation	Market share	2000	2008
AT	ÖGB	9	100.0 %				8	7
IE	ITUC	43	95.3 %				5.5	5.1
LV	LBAS	23	91.0 %				..	9
SK	KOZ SR	35	88.0 %				20	17
UK	TUC	60	83.0 %				15	10
DE	DGB	8	77.8 %	DBB	40	15.6 %	10	6
EE	EAKL	17	75.1 %	TALO	12	24.9 %	23	20
LT	LPSK	26	74.9 %	LDF	10	19.1 %	21	17
BG	CITUB	35	69.8 %	CL Pokreba	24	19.5 %	26	29
PT	CGTP	60	64.2 %	UGT	53	25.1 %	19	17
NL	FNV	14	63.2 %	CNV	9	17.7 %	10	9
EL	GSEE	70	60.3 %	ADEDY	46	39.7 %	32	29
DK	LO	17	59.6 %	FTF	> 50	17.4 %	14	14
CZ	ČMKOS	33	55.5 %	ASO	..	22.4 %	..	8
BE	CSC/ACV	11	52.3 %	FGTB/ABVV	7	40.3 %	22	19
RO	Cartel Alfa	..	52.0 %	C. Frătia	..	25.7 %	..	..
SI	ZSSS	21	51.3 %	KSJSS	..	19.7 %	30	50
MT	GMU	32	49.0 %	CMTU	..	37.7 %	..	26
PL	NSZZ Solid.	102	48.0 %	OPZZ	36	43.0 %	46	47
FI	SAK	22	46.8 %	STTK	20	28.6 %	26	22
ES	CC.OO	12	44.2 %	UGT	10	31.4 %	26	25
SE	LO	15	43.3 %	TCO	16	35.3 %	14	16
LU	CGT-L	16	43.1 %	LCGB	16	26.1 %	22	24
IT	CGIL	16	41.4 %	CISL	22	32.5 %	33	31
CY	PEO	..	39.6 %	SEK	..	34.8 %	..	..
HU	SZEF	36	28.6 %	MSzOSz	..	26.1 %	42	48
FR	CGT	18	23.0 %	CFDT	15	22.7 %	71	67

Source: J. Visser, ICTWSS database 3.0, 2010.

organise mainly blue-collar workers and have their strongest membership basis in industry. Once dominant, they now represent less than half of all union members. This undoubtedly has a limiting effect on their coordinating abilities in wage bargaining and on their political influence. Most confederations define their domain more broadly and they follow the skill or status upgrading of their members. Competition may come from independent unions in the public sector and in some occupations that enjoy special protection, consultation or bargaining rights, or some unique market powers. Transport sectors are generally those with most, and the most powerful, independent unions.

#### 1.2.2.1. Union concentration

In Germany only a handful of unions determine the direction and terms of union politics and collective bargaining. IG Metall, the large union in engineering, Ver.di, which organises employees and workers in public and private services, and IG Chemie, the union in chemical and extraction industries, represent almost two thirds

#### Box 1.2: Herfindahl index of union concentration

The effective number of unions is the inverse of the Herfindahl (H) index, which measures the degree of concentration. The Herfindahl (H) index is defined as  $\sum_i^n (p_i^2)$ , where  $p_i$  is the proportion of total membership organised by the  $i$ th union and  $n$  is the total number of unions. The maximum of this index is 1, obtained if all union members belong to just one union; the minimum approaches 0, if each union member organises in a separate union. Thus, in the case of Ireland one large union (SIPTU) represents 36 % of all union members, the following four another 40 % and the next 30 unions the rest. This results in a H-index of 0.190 and an effective number of unions of  $1/0.190 = 5.3$ .

#### Box 1.3: Index of union authority

The ICTWSS database constructs an index of union (i.e. confederal and affiliate) authority based on the following set of propositions.

*Confederal authority* is higher if:

- the confederation represents the affiliates politically and is routinely involved in consultation with government through bipartite or tripartite contacts;
- the confederation has (political) control or influence over the appointment of the leaders of its affiliates;
- the confederation negotiates national agreements with employers;
- the confederation runs a 'joint resistance or strike fund' from which affiliates are reimbursed in case of 'approved' strikes; and
- strikes of affiliated unions need prior approval from confederation and/or the confederation can end strikes through central procedures of conflict settlement and arbitration.

*Affiliate authority* increases if:

- affiliate unions negotiate enforceable contracts at sector level;
- affiliate unions have control or influence over the appointment of workplace representatives;
- affiliate unions do not depend on local or workplace branches for their finances;
- affiliate unions run a central strike fund; and
- affiliate unions can veto local strike or end strikes through sector settlement or arbitration procedures.

Each of the variables (a) to (j) is measured on a three-point scale, with (2) as the highest score, (1) as the intermediate score and (0) as the condition being absent. Dividing by 10 ( $5 \times 2$ ), produces a range from 1 to 0 for each of two subscales (confederal authority and union authority).

The measure for *union centralisation* reflects not only the degree of authority or vertical integration but also the degree of unity and concentration. The centralisation index is an additive measure obtained by dividing the level of authority at each level (confederation, union) by the effective number of confederations (unions) at that level. At each level weights are applied to reflect the intensity of divisions between confederations (unions), with a 2 for political and ideological conflict, 1.5 for occupational and religious demarcations, and 1 for no or only minor divisions. The centralisation scale is adjusted by taking the root square, which serves to increase the differences at the lower end of the scale. For further details see ICTWSS database, 3.0; see also Iversen 1999.

of all union members between them. Taking into account the actual number of unions and their relative membership size as a proxy of their weight in bargaining and policymaking, we can calculate the effective number of unions (see Box 1.2).

The effective number of unions — or equal sized unions — varies greatly across countries, from 5 in Ireland to 67 in France (Table 1.2, right-hand column). France's high number is the result of both a relative large number of unions ('federations') within each confederation and the large number of confederations. The opposite applies to Ireland: one main confederation and a few very large unions. Historically, the German and Austrian union

movements are the most concentrated, after the merger wave of recent times the Irish, British and Dutch unions are also in this category. So too are the Czech and Latvian union movements. In general, union movements in southern and in central and eastern Europe are more fragmented, whereas the Nordic union movements, and Belgium, occupy a position in the middle. One implication is that the few large unions in Ireland, or in Germany and the Netherlands, must be taken very seriously in the event of national discussions of wages and/or reform policies, and that they are able to coordinate even if the confederation is not. In any case, their vote will be decisive in any agreement or pact entered into by the confederation. In the opposite case of

many small unions, policy direction and coordination can only be realised through the confederation. In short, union concentration may be a substitute for the confederation's authority.

Although a more concentrated union movement can be more cost-efficient in its services to members and recruitment, there seems to be no relationship between the effective number of unions in a country and the level of unionisation. In fact, the causal arrow may point in the other direction as many mergers tend to be motivated by employment and membership decline (Waddington, 2006).

### 1.2.3. Union authority and centralisation

Authority can be defined as the chance that decisions by the leaders of an organisation will be followed by their members. Applied to trade unions, this can be studied at two levels: 1. Will the affiliated unions follow the confederal leadership in its decisions? 2. Will the members, individually or organised in branches and workplace or enterprise units, follow the directions of their union leaders? To address these questions, an index of union authority has been constructed (see Box 1.3).

As shown in Table 1.3, the average degree of union authority, both of confederations over their affiliates and of national unions over their branches and members, is twice as high in the EU-15 as in the 12 new Member States. Between 2000 and 2010 the two groups of Member States began to converge, however. In the 12 new Member States union authority increased in some countries, starting from a very low level, whereas in the EU-15 developments went in the opposite direction. The coefficients of variation reveal that the authority of unions and confederations varies a

**Table 1.3: Union authority and union centralisation, averages**

	Confederal authority		Affiliate authority		Centralisation index	
	1997-99	2007-09	1997-99	2007-09	1997-99	2007-09
Averages						
EU-27	254	.259	306	.300	319	.324
EU-15	341	.332	-	411	.387	-
EU-10 +EU-2	144	.167	+	175	.192	+
Coefficient of variation						
EU-27	.686	.642	-	.679	.642	-
EU-15	.534	.533	-	.523	.533	-
EU-10 +EU-2	.493	.498		.528	.498	

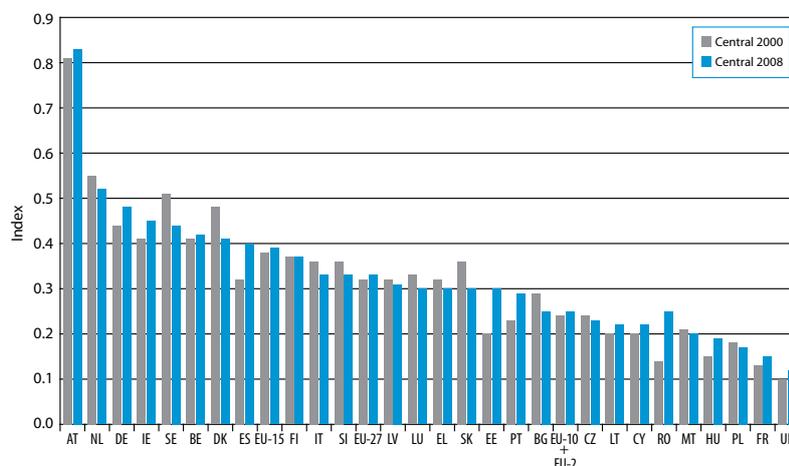
Source: J. Visser, ICTWSS database 3.0; 2010.

great deal in the Member States of the EU and that the diversity in the EU-15 is as large, and as constant, as that in the 12 new Member States.

Overall, measuring the centralisation of trade unions as a combination of union authority and union concentration (see Box 1.3), we observe neither centralisation nor decentralisation. The small decline in union and confederal authority in some countries in the EU-15 is compensated by further concentration, whereas the opposite — rising authority amidst further fragmentation — is found in some countries in the 12 new Member States.

Ranking the countries by degree of union centralisation (Chart 1.1), we find that the five most centralised union movements are in Austria, the Netherlands, Germany, Ireland and Sweden. The position of Germany and Ireland is remarkable, since the authority of the German and Irish confederations (DGB and ICTU) is rather limited. But both union movements are highly concentrated; in Germany, the power of unions over their branches is formidable; in Ireland the participation in seven consecutive social pacts with the government and central employers' associations since 1987 has caused an upward shift

**Chart 1.1: Union centralisation, 2000s**



Source: J. Visser, ICTWSS database 3.0; 2010.

in authority, as the Irish Congress of Trade Unions (ICTU) has increased its role in relation to affiliates.

Judged in terms of union centralisation, the UK, France, Poland and Hungary occupy the bottom positions. The weakness of the Trade Union Congress (TUC) vis-à-vis its affiliates is well-known. In the absence of regular national consultation with employers and governments over the past three decades, and with the replacement of sector by company bargaining, the national unions are left with limited authority. The French union confederations have a centralised outlook and policies are decided in relatively centralised fashion, but local or sectional interests wield significant control on the ground, in particular in the public sector. The Polish trade union movement, in particular NSZZ Solidarność, is decentralised, with its basis in company unions, even though its key political stance tends to be based on centralised decisions. Hungary is characterised by an extreme degree of fragmentation between and within confederations.

#### 1.2.4. Affiliation and organisation at the European level

In spite of massive diversity at the national level, trade unionism at the European level is characterised by a high degree of unity. The European Trade Union Confederation (ETUC) brings together all major confederations. Of the 98 confederations identified in Table 1.1, 64 are member organisations of the ETUC, with a combined membership of 56 million people. This includes the 5 million members claimed by Eurocadres, the European federation of managerial staff, which is an associated member organisation of the ETUC. There is another organisation for

**Table 1.4: Affiliation and membership in the ETUC, 1993–2008**

	1973	1983	1992	2003	2008
Total membership (million)	36	41	45	59	56
Number of national affiliates	17	34	46	77	82
Number of countries	14	20	22	35	36
European industry federations	6	10	15	11	12

Source: Ebbinghaus and Visser, 2000, Chapter 19, updated with ETUC reports and website.

executive managers, the Confédération Européenne des Cadres (CEC, founded in 1989), which claims 1.5 million members in 16 national organisations from 15 countries (mostly in the EU-15). Since 2009, Eurocadres and CEC are recognised, in addition to the ETUC, as official ‘social partners’ by the EU.

About 8 million employees in the EU join independent unions and confederations that are not affiliated with the ETUC. Some of these organisations, with an estimated total of about 4 million members, are represented in the European Confederation of Independent Unions (CESI, reflecting its French name: Confédération Européenne des Syndicats Indépendants, founded in 1990). CESI has member organisations in 15 EU Member States, mostly in the EU-15<sup>2</sup>).

The ETUC is represented in each and every country of the EU-27 and its associational monopoly at the European level, measured as its share in the total membership, is close to 88 %, with majorities in each Member State, varying from 51 % in Slovenia to 100 % in Hungary and Austria. Beyond the EU-27 the ETUC has 18 affiliates in Norway, Iceland, Switzerland, Turkey,

<sup>2</sup> The estimate of 4 million union members of CESI must be interpreted with caution, since only few of these organisations publish membership numbers and no independent check of published data is possible. The four Italian confederations (CISAL, CISAS, Conf. ILL and Conf.S.A.L) are estimated to have a combined membership of 1.8 million, which is 15 % of total membership in Italy. The German Civil Servants’ Federation DBB, with almost 1.3 million members in 2008, is the dominant organisation in CESI.

Turkish Cyprus, Croatia, Andorra, Monaco, Liechtenstein and San Marino, bringing the total number of national affiliates to 82. Five confederations, from Bosnia and Herzegovina, Serbia and the former Yugoslav Republic of Macedonia have observer status in the ETUC.

Starting with 36 million members in 1973 from 14 countries (Table 1.4), all in western Europe, the ETUC’s combined membership has increased to nearly 56 million in 36 countries, spanning the whole European (sub)continent. Also affiliated to the ETUC are 12 European industry federations (see Table 1.5), grouping almost all major EU trade unions in their respective sectors.

Should the ETUC be ranked in terms of ‘union concentration’, ‘union authority’ or ‘union centralisation’, the organisation would score high on concentration and low on authority and centralisation. In other words, the ETUC would find itself somewhere between the TUC in Britain and the ICTU in Ireland. The ETUC does represent its member organisations in consultations with the Commission, the Council, the European Parliament and the European Central Bank, and it has a mandate from its members for negotiating with BusinessEurope and CEEP. Occasionally it does reach agreement with these organisations on matters of labour market regulation, which subsequently requires implementation at the national level. The European framework agreements on stress at work

**Table 1.5: European industry federations, affiliated with the ETUC, 2010**

Sector	European industry federation	Website
Food, agriculture, tourism	European Federation of Trade Unions in the Food, Agriculture and Tourism sectors and allied branches	<a href="http://www.effat.org">http://www.effat.org</a>
Chemicals, mining, energy	European Mine, Chemical and Energy Workers' Federation	<a href="http://www.emcef.org">http://www.emcef.org</a>
Metal, engineering	European Metalworkers' Federation	<a href="http://www.emf-fem.org">http://www.emf-fem.org</a>
Textile, clothing, leather	European Trade Union Federation — Textiles Clothing and Leather	<a href="http://www.etuf-tcl.org">http://www.etuf-tcl.org</a>
Construction and wood	European Federation of Building and Woodworkers	<a href="http://www.efbww.org">http://www.efbww.org</a>
Transport	European Transport Workers' Federation	<a href="http://www.itfglobal.org/ETF">http://www.itfglobal.org/ETF</a>
Services	Union Network International	<a href="http://www.uni-europa.org">http://www.uni-europa.org</a>
Arts and entertainment	European Arts and Entertainment Alliance	<a href="http://www.uniglobalunion.org">http://www.uniglobalunion.org</a>
Journalism, media	European Federation of Journalists	<a href="http://www.ifj.org">http://www.ifj.org</a>
Public services	European Federation of Public Service Unions	<a href="http://www.epsu.org">http://www.epsu.org</a>
Police	European Confederation of Police	<a href="http://www.eurocop-police.org">http://www.eurocop-police.org</a>
Education	European Trade Union Committee for Education	<a href="http://www.csee-etuice.org">http://www.csee-etuice.org</a>

Source: ETUC website (<http://www.etuc.org/>).

(2004) and inclusive labour markets (2010) are examples (see Chapter 6). Although far from a full-fledged federal structure, by relying on majority voting the ETUC can and occasionally does overrule the veto of its largest members and contributors, such as the British TUC and German DGB.

### 1.2.5. Union membership and density

The trend of union decline that began in the 1980s and became more widespread in the 1990s continued. On aggregate, between 2000 and 2008 union membership among the employed salaried workforce in the EU fell by nearly 3 million people, from 46 to 43 million, whereas the number of non-unionised employees increased with more than 20 million from 120 million to 140 million people. As a result, aggregate union density — union members with paid

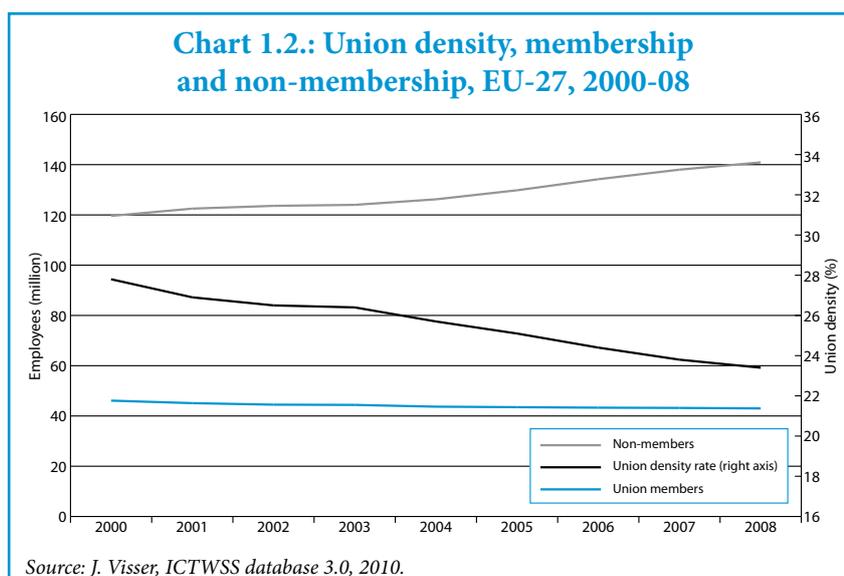
employment as a proportion of all employed wage and salary earners — in the EU-27 fell from 27.8 to 23.4 (Chart 1.2).

Chart 1.2 shows that the decline was fairly linear; each year the trade

unions lost terrain and 2008 was no different from earlier years. At the time of writing, mid-2010, we have not yet comparative membership and employment data for 2009, the first year in which the effect of the crisis on unemployment and union membership can be observed. From scattered data, there is no reason to believe that the trend has turned — the main confederations in for instance Germany, Austria, Denmark, Sweden and Finland had fewer members in January 2010 than a year earlier, and it appears that most losses are due to unemployment and came from the unions in construction and manufacturing. For the near future, the announced cuts in staff numbers in the public sector are a threat to the unions, as this is where they have the highest membership numbers in nearly all countries.

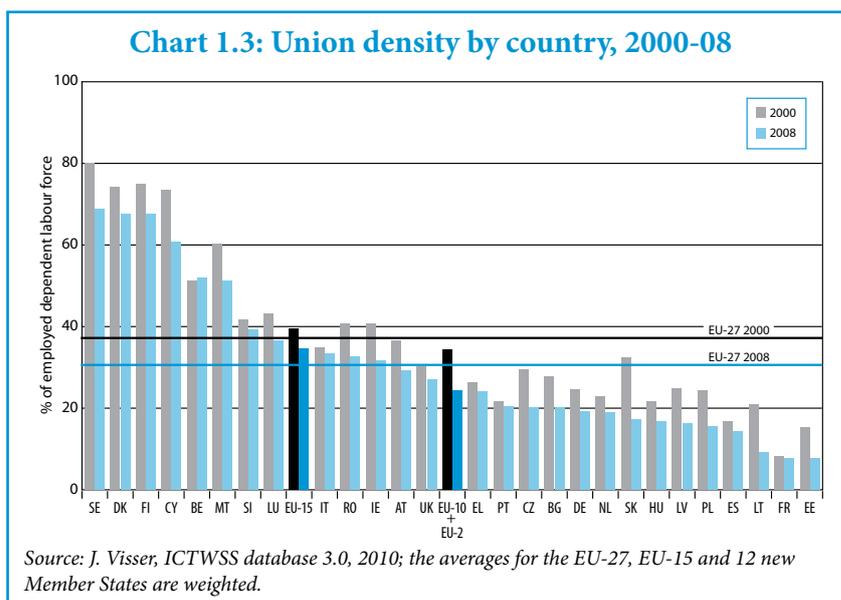
#### 1.2.5.1. Absolute and relative membership gains and losses

During the 2000s unions in about half of the EU Member States lost members; in the other half there were small gains. Of the total losses, 2 million occurred in CEE countries,



1 million in the EU-15. The biggest losses, in absolute terms, happened in Germany (nearly -1.5 million members), Poland (-650 000) and Romania (-424 000); the biggest gains took place in Italy (+555 000), Spain (+317 000) and Belgium (+205 000). In percentage terms, the biggest losses happened in Lithuania (-47.7%), Estonia (-43.6%), Slovakia (-43.4%), the Czech Republic (-27.9%) and Poland (-25.5%); trade unions in Spain (+15.4%), Cyprus (+14.6%), Greece (+13.9%) and Belgium (+11.5%) made the largest gains.

These gains and losses must be compared with developments in employment. For instance, the decline in membership in the Czech Republic or Romania is partly explained by the lack of growth in employment, whereas the strong growth in union membership in Spain reflected, and lagged considerably behind, the very strong increase in employment. The general trend in these years is that increases in employment were not matched by increases in union membership. Two examples of this development over a longer period are Ireland and the Netherlands: both have experienced rapid employment growth, small increases in membership and a falling union density rate. In a recent study Roche (2008) concludes that the rapid increase of the 'pool of potential members' and the inability of unions to organise in new sectors and among (migrant) workers with less than standard contracts 'exerted a drag on density'. Something similar occurred in the Netherlands. Often driven to defend the employment protection rights of the incumbent workforce and membership, unions clearly suffer from the expansion of a labour market built on flexibility and the dualism of two types of employment status.



#### 1.2.5.2. Union density rates

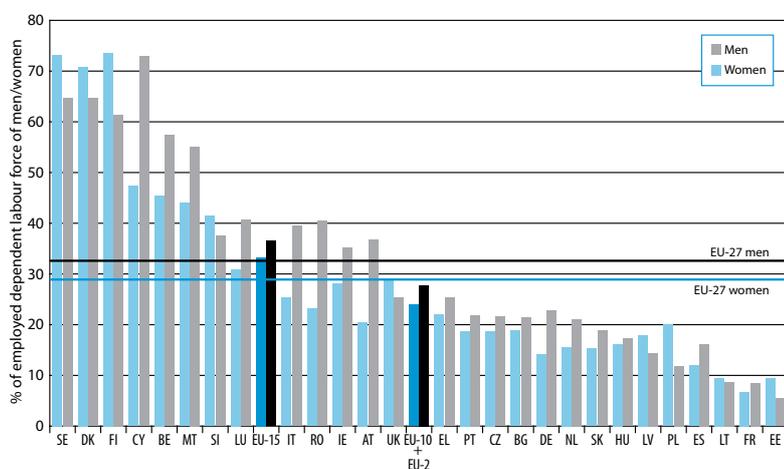
Within a general trend of decreasing density rates, the differences across countries have remained as large as ever (Chart 1.3). In 2008 union density varied from 68.8% in Sweden and 67.6% in Denmark to 7.6% in Estonia and 7.7% in France. In general, the lowest density rates are currently found in the post-Communist countries — Slovenia and Romania are the exceptions — and in southern Europe — where Italy, Malta and Cyprus are the exception. In the EU-15 the highest rates are found in Sweden, Denmark, Finland and Belgium. For explanations of these differences, authors have pointed to political and institutional conditions that vary across countries, such as coordinated and multi-employer bargaining, at sector level or higher, versus uncoordinated and single-employer bargaining; the general acceptance and recognition of unions in national and workplace consultation; and union involvement in unemployment insurance (Ebbinghaus and Visser, 1999, for a summary). In recent times, scholars have drawn attention to variations in union coalition building and legacies of the past, especially in CEE countries (Avdagic,

2005) and differences in union organising strategies (Frege and Kelly, 2003; Kaminska and Kahancová, 2011).

To assess possible future developments it is necessary to decompose these aggregate figures on unionisation. With the help of the European Social Survey (ESS) and national survey data, differences according to selected aspects of three types of characteristic are reviewed: individual (gender, age, etc.), employment status (unemployment, type of contract, working hours, etc.) and employment situation (sector, workplace, size, etc.).

#### 1.2.5.3. Individual characteristics

The feminisation of unions has continued through the 2000s, although at a slower pace than in the preceding decade. This is the result of two contrasting trends — a small decrease of the female presence in unions in CEE countries, starting from very high levels, and continued progress of the share of female members in the EU-15. Overall, the number of female (employed) union members was stable at 18 million, whereas male (employed) membership

**Chart 1.4: Men and women union density, 2008**


Source: J. Visser, ICTWSS database 3.0, 2010, with estimates for the male and female union density rates based on survey data (ESS, ISSP) and national surveys for FR, NL, SE and UK. The averages for the EU-27, EU-15 and 12 new Member States are weighted.

decreased from 28 million in 2000 to 25 million in 2008; as a result the female share rose from 42.8 to 44.1 %. The variation across countries is still large. There are now more female than male union members in Estonia, Latvia, Lithuania, Poland, Hungary, Finland, Sweden, Denmark and the UK. The lowest share of female members, no doubt reflecting their weaker position in the labour market, is observed in the southern countries (Spain, Italy, Greece, Cyprus, Malta, Romania, but not Portugal and Bulgaria) and in the Netherlands, Luxembourg, Germany and Austria.

Age-related density rates can be estimated with the help of ESS and ISSP surveys<sup>3</sup>. From these estimates a clear picture emerges of much lower density

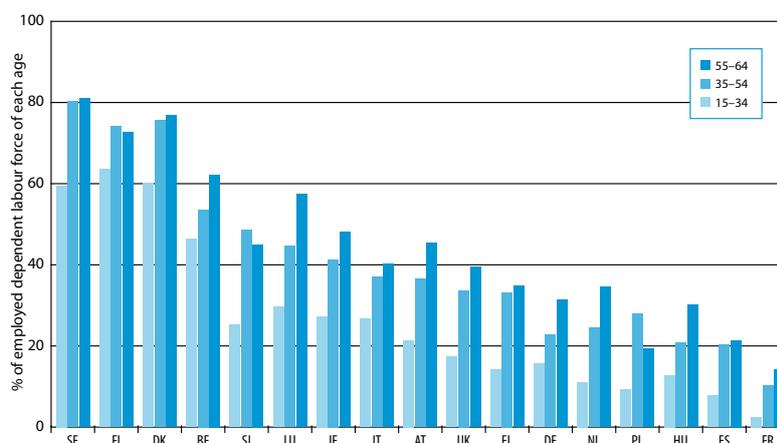
3 Van Gyes in *Industrial Relations in Europe* 2006; also based on the European Social Survey (ESS), waves of 2002/03; Ebbinghaus et al 2008 use the same waves, but show different results. Yet different are the estimates from the same waves published by Schnabel and Wagner, 2007. Blanchflower (2006) and Checchi and Visser (2009) use data from the International Social Science Program (ISSP) which has the advantage of longer time series, but the disadvantage of fewer EU countries.

rates of young people, between 15 and 34 years (Chart 1.5). In many countries young people reach only half the unionisation rate of workers aged 35 years and older. Moreover, unionisation rates in the oldest age group, over 55 years of age, tend to be highest. For the future of trade unionism the development of unionisation rates among young people and the comparison with earlier generations is of great interest. Nearly all trade unions, including those

in Scandinavia, report a lower inflow and decreasing unionisation of young people (Pedersini, 2010). As fewer young people join, European trade unions are ageing and more union members near retirement age. A triple effect is at work: smaller birth cohorts are entering the labour market; entry into the labour market is later, due to longer education and a longer school-to-work transition via temporary jobs; and the unionisation propensity among younger generations is lower.

#### 1.2.5.4. Employment status

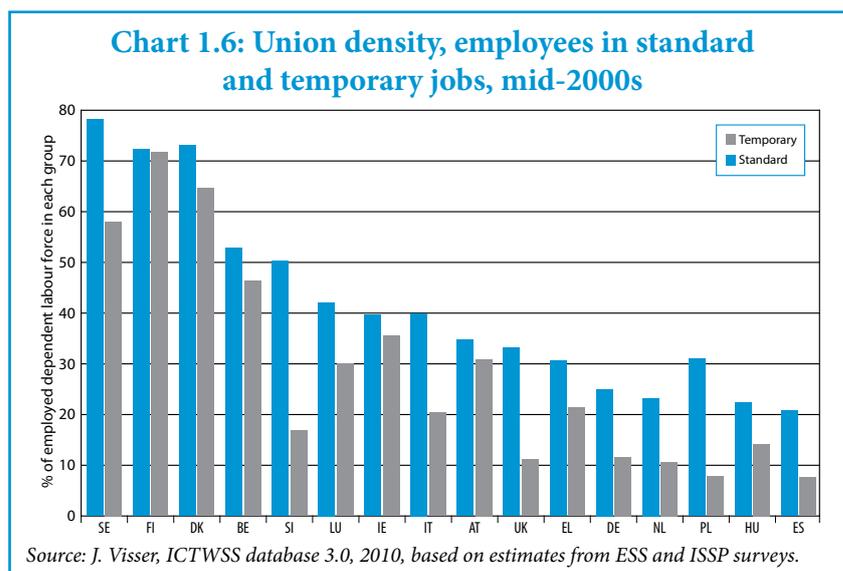
Almost a quarter of all trade union members in the EU are without paid employment: 13.6 million of the total of 56.6 million union members in 2008 (they are excluded from calculating density rates). The average share of members without paid employment varies per country and is almost five times higher in the EU-15 than in the 12 new Member States. The highest share, in particular of pensioners but also members in (temporary or partial) unemployment, is found in Italian unions (52 %), followed by Belgium (37 %) and Finland (34 %).

**Chart 1.5: Union density by age group, mid-2000s**


Source: J. Visser, ICTWSS database 3.0, 2010, based on estimates from ESS and ISSP surveys.

Results from the ESS suggest that in most European countries only a minority of the unemployed are union members. In the Netherlands, Germany and Ireland around 10 % of the unemployed retain membership, in Finland and Belgium about 50 %, and in Denmark and Sweden about 70 %. Recent legislation in Sweden has weakened the incentives for unemployed workers to combine union membership with membership of a voluntary unemployment insurance fund, and this is one reason why in 2007 and 2008 there has been a sharp drop in union membership (Kjellberg, 2009). In Finland and Denmark, the creation of general state-sponsored unemployment funds, at greater distance from the unions, has been associated with a decline in unionisation, especially among the young (Böckerman and Uusitalo, 2006; Lind, 2009). Not relying on voluntary unemployment funds, but with strong involvement in the administration of the compulsory system, Belgian unions have continued to grow, with high unionisation rates among young people, industrial and lower-skilled workers, i.e. those with the highest risk of unemployment (Van Rie and Marx, forthcoming).

Employees working on fixed-term employment contracts are likely to have lower probabilities of unionisation. Chart 1.6 shows that the gap in unionisation between workers in standard and temporary jobs is still very large in Slovenia, Italy, Spain, Poland, the UK, Germany and the Netherlands. There are no data for France, Portugal, Bulgaria, Romania and the three Baltic states. Various unions in, for instance, the Netherlands, Ireland, the UK, Italy, Spain and Hungary have campaigned in recent years to recruit temporary workers. A particular challenge for trade unions is the recruitment of the increasing number of (temporary) migrants and self-employed workers. Migrants, many coming from outside



Europe, are a huge challenge for unions in Malta, Spain and Italy; Irish and Swedish unions have focused on organising migrants from CEE countries, Dutch and Italian unions have set up special unions for the self-employed (Pedersini, 2010).

Employees working part-time tend to join unions less than those working full-time, but with the 'normalisation' of part-time work, the differences have become smaller. They are smallest in countries such as Denmark, Finland and Sweden where part-time work is culturally accepted and distinctions in employment and social security rights, by law and in individual or collective contracts, are absent. However, employees working in small part-time jobs, of less than 15 hours, tend to remain outside unions; the prevalence of these jobs in some countries, especially among young people and married women, explains part of the large gap in unionisation between part-time and full-time workers in the Netherlands, Germany and the UK (\*).

\* Estimates based on the Dutch Labour Force Survey suggest that the unionisation rate of people working between 20 and 35 hours per week is almost twice as high as the rate among people with small part-time jobs, of less than 20 hours (22 versus 12 % in 2006), and nearly as high as among full-timers (26 %).

In southern and eastern Europe, part-time employment is much less present and the unionisation of part-time workers has been much less an issue for the unions.

#### 1.2.5.5. Employment situation

In all countries, unionisation levels are much higher in the public than in the private sector, sometimes by a factor two or three. Density rates in the public sector in Scandinavia are well over 75 %; above 55 % or twice the level in the private sector in Austria, the UK and Ireland, probably also in Italy (if we include the membership of the 'autonomous' unions); above 40 % in Germany and the Netherlands; and some 15 % in France, which is at least three times higher than in the private sector. In Belgium, however, the differences appear slight. Data for most other countries are not comparable or non-existent. The situation in CEE countries seems to be different, with relatively high unionisation rates in the 'old' state-based industries and firms and rather low unionisation rates among central government employees (Bordogna, 2008).

Unionisation levels rise with establishment size (Visser, 1991), perhaps because the benefits of membership rise with size, impersonal management leads to greater alienation and demand for protection, or because size proxies unions' organising costs. This is strongly related to workplace-level union organisation and employee representation, which tends to be guaranteed, by law or national agreement, for establishments above a particular size. Such rights may help trade union representatives to organise, although this is not always the case.

### 1.2.6. Conclusion

The Achilles' heel of European trade unions is the lower and often decreasing unionisation rates of young people, the difficulty to recruit and retain union members in the expanding services sector, in small firms, and among those with flexible and fixed-term employment contracts. The mirror image of this weakness is that unions are ageing and increasingly reliant on the public sector. The strongest unions in Europe in, say, Germany, Sweden, Belgium, Italy, Spain or the Netherlands, still have their basis in industry and in large firms. How these unions weather the current crisis is crucial and the use of short-time working and part-time unemployment schemes (see Chapter 3) may have helped to sustain employment. Challenges ahead lie in the public sector. Given the high proportion of union members in the public sector, austerity programmes and job retrenchment threatens to translate in membership losses and may push more union members into (early) retirement. Whether unions can compensate this by recruiting more members in ill-organised service sectors is an open question (Pedersini, 2010).

## 1.3. Employers' associations

The problems of collective organisation of employers differ from those of workers. For trade unions, the biggest problem is to recruit and maintain members, followed by the problem of solidarity and unity among workers. Control over members is usually much less a problem for trade unions than for employers' associations, whose members are usually not individuals but organisations (firms). For employers' associations discipline and cohesion rather than membership are the key issues: 'employers find it a much greater sacrifice [than workers] to comply with the decisions and regulations of their organisations, as these reduce their much cherished freedom of enterprise' (van Waarden, 1995: 75). This reluctance to cede control and mandate the association, for instance in matters of pay bargaining or negotiations with the government, is visible at all levels: sector, national and European. As will be seen, for most employers associations it is not so difficult to maintain high levels of membership, once the association is established and provides services to its members. This may be different if the association is in its initial phase and has yet to demonstrate its usefulness — as in the case in many CEE countries after 1989, where employers' associations had to start from scratch.

### 1.3.1. Employers' confederations and the main divisions

A total of 111 national confederations and peak associations of employers were counted amongst the 27 EU Member States in early 2010. This is slightly more than in 2000, and also more than the number of national union confederations. This number does not include

farmers' organisations, (con)federations representing cooperatives, organisations for the self-employed and agencies or associations representing public services (<sup>5</sup>). The outcome confirms the conclusion of earlier studies that the organisation of employers tends to be more fragmented than the organisation of workers (Traxler, 1993; van Waarden, 1995). Of these 111 confederations, 49 are 'general' organisations with member firms throughout the private economy; 39 specialise in organising small- and medium-sized firms; and 23 specialise in organising a particular sector, either in industry (6), construction (4), trade and commerce (8), finance (5) or agriculture (10). Table 1.7 presents the data for each country.

There is considerable diversity; on the one hand there is a small group of countries with one or two peak associations, on the other there is a group with five or more, with Italy and Romania in a class apart. There is some relation with the number of union confederations, though the correlation is modest ( $r = .46$ ). In some countries there are only one or two organisations on either side (Austria, the UK, Latvia), whereas in other countries both sides are very fragmented (Italy, Romania, Hungary, Portugal, Slovenia). There are also countries where labour is fragmented but capital relatively united (Luxembourg, the Netherlands, Spain, Lithuania); the opposite also occurs (Ireland). Until 2000 Luxembourg had eight national employers' associations and the Netherlands had five until 1990, but in both countries either through creating a joint umbrella organisation (Luxembourg) or via mergers (the Netherlands), this number was reduced.

<sup>5</sup> Including farmers' organisations reduces the comparability across countries, since in some countries (Netherlands, Italy, France) the same organisations are included that are excluded in others (Belgium, Spain, UK). Organisations representing producers' cooperatives and associations looking after the interests of self-employed persons are excluded for the same reason, and since they may just as well be counted as 'labour' organisations.

**Table 1.6: Number of employers' confederations, domains and key divisions in 2010**

	Total	General	SMEs	Sector	Of which				
					Industry	Building	Trade	Finance	Agriculture
LU	1	1	(1)						
UK	1	1							
AT	2	1		1	1				
FI	2	1	1						1
LV	2	1	1						
LT	2	1	1						
NL	2	1	1						1
ES	2	1	1						
BE	3	1	2						
EE	3	1	2						
ES	3	1	1	1			1		
MT	3	2	1						
SK	3	2	1						
FR	4	1	3						
SE	4	1	1	2	1			1	
CZ	4	2	2						
DK	4	2	1	1				1	1
DE	4	2	2						
CY	5	1	1	3		1	1	1	
IE	5	2	2	1		1			
SI	5	2	2	1			1		
PL	5	4	1						
PT	6		1	5	1	1	2	1	2
HU	6	3	3						1
BG	7	5	2						
IT	10	1	5	4			3	1	4
RO	13	8	1	4	3	1			
<b>Total</b>	<b>111</b>	<b>49</b>	<b>39</b>	<b>23</b>	<b>6</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>10</b>

Source: J. Visser, ICTWSS database 3.0, 2010; Carley 2010.

### 1.3.1.1. Organisational change

The overall structure of peak-level employer representation has remained stable over the past decade (Carley, 2010). In the countries that have seen change, this has in the majority of cases been through mergers, usually with the aim of strengthening employers' collective voice towards the government and the trade unions and, in some cases, avoiding duplication in activities and creating more economy of scale, for instance when building up a (national) representation at European level. Many if not most peak associations have been under pressure to cut their

budgets, scale down or commercialise activities (Streeck and Visser, 2006). As part of a larger trend of re-integrating industrial relations and social policy in general business practice, the once common division between 'trade' or 'business' association on the one hand and 'employers' association on the other has almost disappeared. The separation between the employers' confederation BDA and the industry confederation BDI in Germany is one of the last examples of a dual organisation that was quite common in Europe 20 to 30 years ago.

Another trend, also found among trade unions, is to merge associations

in industry and services. This happened in 2004 in Malta, in 2005 in Finland and, in 2008, at the sector level, in Denmark, when Dansk Industri (DI), the powerful Confederation of Danish Industries, which negotiates the main multiannual collective agreement with a cartel of blue-and white-collar unions in manufacturing, merged with the main organisation in commerce, transport and service. In some cases, confederations, seek more mutual cooperation, whilst stopping short of merger. This is the case in Germany, where BDA and BDI have stepped up cooperation at home by occupying the same headquarters building and abroad through a joint representation in Europe. In Romania eight employers' confederations created an 'alliance' in 2007, but stopped short of full integration. In the Netherlands, however, the attempt to merge the general confederation VNO-NCW with the confederation for SMEs failed. In central and eastern Europe, where employer organisations proper have existed for only two decades, the direction of change has been less clear-cut, and the structure of employer representation is still in a state of flux in some countries (Carley, 2010). There are both cases of business associations, representing special interests, combining their resources, for instance in Bulgaria in 2006, and new organisations splitting off from existing ones or being created new, for example in Poland, Bulgaria and Slovenia.

Business associations usually organise only firms and activities in the private or market sector. Within the public sector, the core of government activities, including local and central administration, policy, army, and most of education remains outside the scope of business associations and the government may have set up special, quasi-independent agencies or coordination bodies for the purpose of representation and negotiations

with the unions, as in Italy or Cyprus. Under the influence of new public management the management and organisation of the public sector has changed with tendencies towards full or partial privatisation, outsourcing, decentralisation, strengthening of the prerogatives of management and management by contract rather than hierarchy, and a reform of personal policies. Generally business associations now also recruit members (firms and associations) that were previously in the public domain. Telecom firms, postal services, railway companies, energy providers, hospital associa-

tions, even university associations are now among the member organisations of general business associations (see, for instance, the European Foundation study on social partnership organisations in hospitals (Traxler, 2009)).

### 1.3.1.2. Number of associations

At the sector level employers' associations tend to be more differentiated and numerous than the trade unions. The main general employers' confederations have an estimated 1 700 sector affiliates, which represents an

average of 74 per country (no data were available for Austria, Slovenia, Lithuania and Romania). This is more than twice the average (of 29) counted for the main union confederations.

The variation across countries is very large, from 15 affiliates in the Danish employers' confederation DA and 18 in the Italian Confindustria, to 134 affiliates in the British CBI, 150 in the Dutch VNO-NCW, and 164 in the Spanish CEOE. The latter three organisations admit also individual (large) firms as members. This contrasts with the practice, for instance of the German BDA or Italy's Confindustria, to admit only associations of firms as member organisations. Often, there are a few dominant affiliates, sometimes themselves federations with associations as their members, which have more resources than the parent confederation. A case in point is Dansk Industri (DI), which after its merger with the parallel organisation in commerce, transport and services, covers 62 % of the DA's total membership and clearly outstrips DA in resources. The General Employer's Association (AWVN) in the Netherlands, VNO-NCW's largest member, is in a similar position, although it has left international representation in matters of employment and social policy entirely to its parent confederation. At home, representing nearly all large firms in negotiations with the unions and responsible for 70 % of all collective agreements in the country, it pays the piper and calls the tune.

### 1.3.2. Involvement in national bargaining and consultation

It is not possible to measure the degree of concentration, authority and centralisation of employers' confederations as was done for trade unions in the previous section. Membership in

**Table 1.7: Major employers' confederations, number of affiliates and organisation rates in the private sector**

	All enterprises			Small- and medium-sized enterprises		
	Members of BusinessEurope			Members of UEAPME		
	Name	Affiliation	Density	Name	Affiliation	Density
AT	IV	21	13.0 %	WKÖ	130	75.0 %
BE	FEB/VBO	33	75.0 %	UCM, UNIZO	...,100	..
BG	BIA	69	..	NCCB, UPEE	..., 24	..
CY	OEB	61	..	KEBE	141	..
CZ	SPŽ ČR	29	..	AMSP-CR, CCC	7,..	..
DE	BDA/BDA	56,34	80.0 %	ZDH	..	..
DK	DA,DI	13,..	90.0 %	Håndværksrådet	..	..
EE	ETTK	24	23.0 %	EVEA	..	..
EL	SEV	..	..	GSEVEE	26	..
ES	CEOE	164	75.0 %	CEPYME	100	..
FI	EK	34	72.0 %	SY	80	..
FR	MEDEF	85	..	CGPME, UPA, APCM	...,50,..	..
HU	MGYOSZ	50	20.0 %	IPOSZ,KISOSZ,OKISZ	...,22,22	..
IE	IBEC	60	..	ISME,SFA	...,..	..
IT	Confindustria	22	..	Cna, Confapi, Confart, Confes.	...,9,..,60	..
LT	LPK	32	..	LVDK	..	..
LU	FEDIL	..	..	ChdM, FDA	...,51	..
LV	LDDK	47	35.0 %	LAK	..	..
MT	MCCEI	..	..	GRTU	..	..
NL	VNO-NCW	150	85.0 %	MKB	120	25.0 %
PL	PKPP Lewiatan	28	..	ZRP	..	..
PT	AIPCIP	...,40	..	CMPME	..	..
RO	ACPR	..	..	CONPMR	..	..
SE	SN	50	85.0 %	Företagarna	..	..
SI	ZDS	..	35.0 %	OZS	..	18.1 %
SK	RUZ	24	..	SZZ	..	..
UK	CBI	150	33.3 %			

Source: J. Visser, ICTWSS database 3.0, 2010; Carley 2010.

business associations often overlaps, with firms belonging to more than one association. Regarding bargaining mandates, there are only limited, recent data on the division of resources, authority and tasks.

Until the 1990s the *raison d'être* of an employers' federation was linked to the conclusion and administration of multi-employer collective bargaining but this is no longer the case. Services and lobbying in national and international arenas have acquired a much more prominent place. This went along with the merger of functions between employer and trade associations and a restructuring of activities in the direction of smaller 'industrial relations' departments and more decentralisation in representational structures. Still, many national peak associations of employers are involved in bargaining or consultation at the national level. However, with fewer binding agreements or with agreements that are in reality recommendations, they need less elaborate structures for monitoring, implementation and adjudication. Probably in all EU countries the organisational centralisation of employers is lower than union centralisation. This results both from the lower authority and the greater fragmentation of employers' organisations.

At some point between 2000 and 2010 in all countries, except Germany, the UK and the Czech Republic, national employers associations negotiated and signed agreements with the unions or the government (Avdagic, Rhodes and Visser, 2011). A minority of these agreements were about wages and wage setting (Belgium, Estonia, Greece, Ireland, Finland, the Netherlands, Slovenia, Romania, Spain and Portugal). In Belgium, Estonia and Greece the central employers organisation negotiate the minimum wage with the central union organisations before it is declared binding by the government.

In Luxembourg minimum wage decisions are in the hands of the tripartite commission deciding on the application of price indexation to (minimum) wages, benefits and pensions. In 2008 the central organisations in Romania reached agreement on the annual rise of the minimum wages until 2014; a similar agreement, for 10 years, was reached in 2006 in Portugal. In Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Portugal and Slovenia and in recent years also in Spain the central organisations are involved in non-binding consultations over the statutory minimum wage.

In France, Belgium and Poland central organisations negotiate over the implementation of European legislation before it is implemented in national law; in the UK, the central organisations of employers and unions, CBI and the TUC, negotiated a 'joint statement' on how to implement the 'Agency Work' directive. Cross-industry bargaining over specific issues, sometimes in preparation of a bargaining round at the sector level happens on a regular basis and with success in Denmark and Spain, and on an irregular basis and in 2009 without success, in Sweden. In sum, in nearly all countries the central employers are involved in negotiations and consultations at the national level, although it is clear that this nowadays rarely results in a wage agreement that binds their member organisations. Slovenia, Finland and Ireland were the last countries where such central incomes policy agreements detailed wage developments, but in Finland the employers pulled out in 2007 and in 2009 social partners in Ireland failed to reach agreement over how the existing social pact had to be revised in response to the severe economic crisis (see Chapter 3).

At the industry level, sectoral employers' organisations with a collective bargaining role are key components

of the industrial relations systems in Austria, Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Portugal, Spain and Sweden. In Ireland, the UK and Luxembourg there are hardly any sectoral employers' associations which retain a bargaining role. In the new Member States, sector bargaining has failed to become the dominant model, with the notable exception of Slovenia. Some degree of multi-employer bargaining, with the involvement of employers' associations at the sector or national level, is also found in Bulgaria and Romania.

### 1.3.3. European-level organisations

There are three European organisations representing employers' interests. BusinessEurope is the main 'general' organisation for large and small businesses in all sectors of the privately owned economy. It has 40 national member organisations: 30 (of the 111 listed in Table 1.6) from the EU, one in each Member State and two in Denmark, Germany and Portugal; and 10 outside the EU, in Croatia, Iceland, Norway, San Marino, Switzerland and Turkey. BusinessEurope was founded in 1957 as the Union des Industries de la Communauté Européenne (UNICE), with eight affiliates from the founding Member States of the European Community. It renamed itself as BusinessEurope. In addition to national member federations, it has formed the Alliance for a Competitive European Industry with 11 major sector industry federations, though this alliance has no direct role in industrial relations. BusinessEurope also has an Advisory and Support Group which brings together 33 major multinational firms.

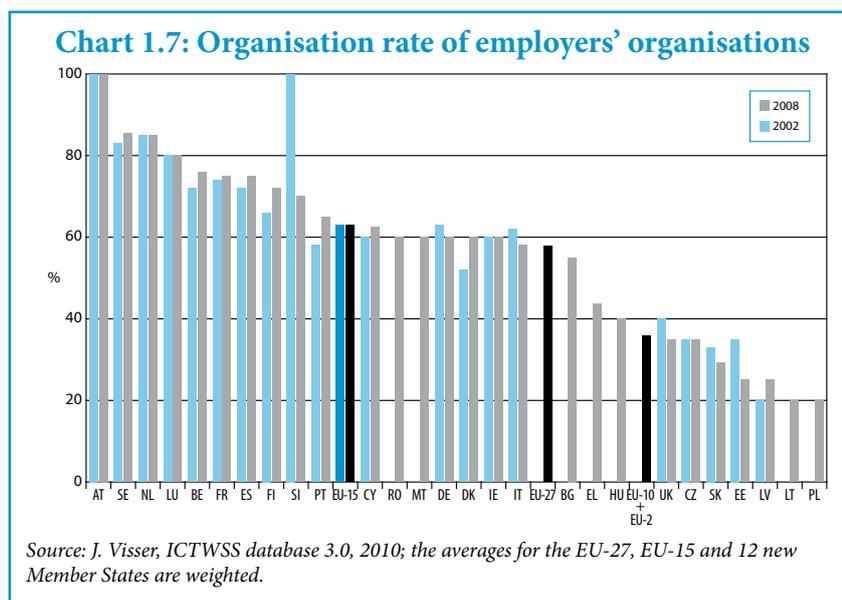
The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) represents small- and medium-sized businesses in Europe. UEAPME has 39 national member

organisations in the EU (out of the list of 111), with one or more in each Member State, with the exception of the UK. UEAPME has associated members in Croatia, Liechtenstein, Montenegro, Norway, San Marino, Serbia and Turkey. There are also five sector European organisations for SMEs in construction, foodstuffs, transport, services and healthcare associated with the organisation. Since 1998, UEAPME and BusinessEurope have cooperated closely in EU-level social dialogue and negotiations with the trade unions. The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP, Centre Européen des Entreprises à Intérêt Public), which was founded in 1961, represents enterprises and organisations with public participation or carrying out activities of general economic interest, irrespective of their legal or ownership status. CEEP has national sections in all EU Member States, except the three Baltic states, Cyprus, Malta, the Czech Republic and Slovakia.

At the European sector level, there are hundreds of organisations representing business interests. However, only a minority of these are employers' organisations, in the sense that they represent their members on employment issues or have relations with the trade unions. Such organisations are mainly found in those sectors where a sector social dialogue has developed. The role and development of the EU sector social dialogue is addressed in Chapter 6.

### 1.3.4. The organisation rate of employers' organisations

The organisation rate of employers' organisations is hard to assess, due to lack of data, difficulties of definition and firms that join two or more



organisations. The figures available therefore need to be interpreted with caution. In few countries membership of employers' organisations is documented in official statistics. Unlike household or labour force surveys with questions on union membership, there are no parallel enterprise surveys with information on a comparable European scale on membership of employers' associations. Consequently, the figures on absolute or relative membership are mostly based on self-reported data from the organisations themselves. An additional problem is the definition of 'potential membership'. Unlike trade unions, which with a few exceptions recruit and represent individuals throughout the economy, the government sector is not within the domain of business and employers' organisations.

Similar to union density, which is measured as the proportion of all employees joining a trade union, employer organisation density can be defined as the proportion of all employers (firms) joining an employers' association. By taking into account the employment size of firms, an employment density rate for employers can be calculated,

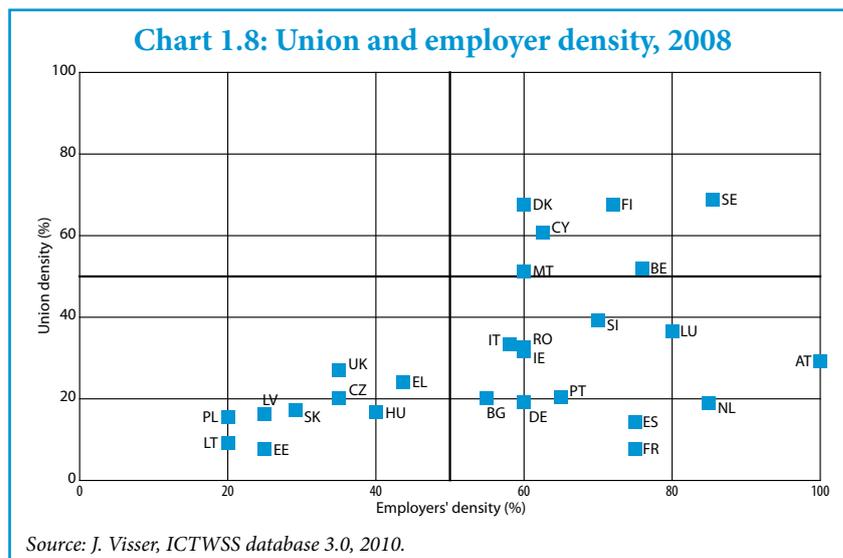
expressed in terms of the share of employees working in firms joining employers' associations. After adjustment for the size of the government sector, this yields a statistic that is commensurate with union density. Chart 1.7 presents the results.

In 2008 approximately 106 million employees, or nearly 58 % of the relevant European Union total, worked in firms affiliated with employers' associations. This is more than double the level of unionisation, illustrating the point made earlier that maintaining high membership levels seems easier for employers' associations than for trade unions. It is not possible to make a comparison with 2000 for the EU-27, as in a number of CEE countries there are no comparable data. However, in the EU-15 the organisation rate of employers was stable at 63 %. Chart 1.7 confirms that the changes over time were rather small — except in Slovenia where obligatory membership of Chambers was replaced by voluntary organisation, and the organisation rate dropped from 100 to 70 %. Within the EU-15 the organisation rate of employees decreased in Germany and the UK,

but increased in Sweden, Denmark, Finland, Belgium, France and Spain. To avoid further membership losses, some German employers' associations have introduced an option for companies to become associate members, not bound by the collective agreements signed by the association ('Ohne Tarifbindung'). Gesamtmetall, the powerful association which coordinates the regional agreements in metal-engineering with the IG Metall union, did so in 2005.

The variation in the level of organisation across countries is considerable, with the 12 new Member States grouped towards the lower end, together with the UK. In central and eastern Europe only about one third of all employees work in firms organised in employers' associations. However, both Romania and Bulgaria appear to have rather high levels of employer organisation, and the same goes for Malta and Cyprus. One of the problems of employers' organisations in CEE countries is that, like trade unions, they find it hard to gain a foothold in the newly emerging private sector, either because these firms are exceedingly small and rapidly changing, or because employers, especially in the international large firm sector, are reluctant to join or form associations for the purpose of collective services and representation. In addition, these organisations often lack a mandate from their members and their financial position is often too weak to enable them to provide adequate services to member firms. Frequently, this creates obstacles to social dialogue, concertation and collective bargaining.

Chart 1.8 compares the density rate of employers and of workers. Overall, there is a positive association between the two ( $r = .47$ ). Three combinations are apparent: (1) high union density and high employers density (in the upper right corner): the Nordic countries, Belgium, Malta and Cyprus;



(2) low union density and low employer density (in the lower left corner): the UK and most CEE countries; (3) low union density and high employer density (in the lower right corner): countries in western and southern Europe. The fourth combination of high union density and low employer organisation does not feature; the upper left corner of Chart 1.8 is empty. The finding suggests three hypotheses. First, where labour is highly organised business will be highly organised as well, and through central bargaining each side will have incentives to maintain cohesion and high levels of organisation (the Nordic trajectory, at least until recently). Second, where labour has a hard time organising and the state prioritises market liberalisation, the pressure on employers to organise is limited and both sides will be locked into a relationship at low levels of organisation and internal cohesion (the post-Communist or CEE countries trajectory). Third, where the state's role in social policy is extensive, business needs to be highly organised, but the pressure on labour to organise is comparatively less since labour may rely on the state and public policy instead (the continental, southern and western European trajectory).

Overall, with 58 % of all employees working in firms joining employers' federations, the level of employer organisation in the EU appears stable and high, albeit with a significant gap between the EU-15 and the 12 new Member States. However, as in the case of trade unions, employers' associations are challenged by changes in their environment, for instance, national and transnational mergers of firms, a greater emphasis on company as opposed to sector bargaining, and pressures for greater effectiveness in European and global representation.

#### 1.4. Collective bargaining

Voluntary collective bargaining plays a key role in industrial relations and is a defining element in social partnership within and beyond the EU. Across EU Member States there are, however, large differences in the role, coverage and effectiveness of collective bargaining and in the attitude taken by the authorities. This section first analyses the differences due to variation in the rate of union and employer

organisation and discusses the use of extension mechanisms by the state. Second it considers the organisation and centralisation of collective bargaining and its coordination across different levels (company, sector, region or nation). The main findings are that a large majority of European employees are covered by collective agreements, that extension mechanisms based on public law continue to play an important role, that decentralisation of actual pay setting has continued and sector agreements, where they apply, are increasingly amended by company-level agreements and arrangements, and that coordination across bargaining units and agents is a distinguishing feature in most EU-15 but not the 12 new Member States.

The existence of EU-level actors notwithstanding, there is as yet no EU-level competence or capacity to undertake collective negotiations over wages, working hours or other core conditions of employment which mirror collective bargaining at national, sector or company level. Unlike the previous sections, therefore, there are no paragraphs devoted to EU developments. The capacity to engage in EU-level agreement-making exists under the social dialogue at cross-sector and sector level, and is addressed in Chapter 6. It has also emerged in some multinational companies, and Chapters 3 and 6 touch on this.

### 1.4.1. Bargaining coverage

The bargaining coverage rate is an indicator of the extent to which the terms of employment are negotiated by trade unions. Operationally, the coverage rate is defined as the number of employees covered by a collective agreement as a proportion of all wage- and salary-earners in employment. This definition renders the measurement of bargaining coverage

comparable with union and employer density. While union density is one of the indicators of potential bargaining strength and solidarity among workers, bargaining coverage measures the real rather than potential extent to which employees are subject to union-negotiated terms and conditions of employment.

There are a number of reasons why employees may not be covered, even if collective bargaining takes place (Traxler and Behrens, 2002). First, unions and employers may be too weak to include all employees belonging to their domain of action. Second,

the bargaining parties may explicitly exclude certain employee groups. In the past, collective agreements often excluded (part-time) employees working less than a minimum number of hours per week, thereby excluding large numbers of women and young people — a practice that would now contravene the spirit if not the letter of the EU's part-time workers' directive and anti-discrimination legislation. Collective agreements may also exclude managers or employees above a certain pay threshold. In such cases, employment terms are regulated by individual contract. Third, certain categories of employees may be legally

#### Box 1.4: Measurement of bargaining coverage rates

The coverage data used are from the ICTWSS database; in some countries this is based on household surveys, for instance the UK; in others on occasional surveys among enterprises and employers' federations (e.g. Hungary, Italy, the Netherlands, Poland); and in most countries on administrative data and estimates by the government. The ICTWSS data incorporate EIRO data (Traxler and Behrens, 2002), including the annual Industrial Relations reports of the European Foundation and the country profiles in EIRO. For 2008–09 we have been able to compare the ICTWSS data with data obtained from the European Company Survey, which relies on estimates from management but excludes firms with less than 10 employees. The ranking is very similar; the correlation coefficient between the ICTWSS data and the ECS data is  $r=0.94$ . The ICTWSS data have the obvious advantage that it allows a comparison through time, in many cases since 1960.

As in the case of calculating union density and employers' organisation rates, there are many data and measurement problems. Comparing across countries it seems useful to take account of the fact that some groups of employees may be excluded from collective bargaining (and from the right to strike). In that case it is necessary to calculate an *adjusted* coverage rate, i.e., to calculate the number of employees covered by a collective agreement as a proportion not of all employees but only of those with the right to bargain. In most Member States the difference is slight, since only very few are excluded. In some Member States, however, such as Austria, Germany, Hungary, Luxembourg or Spain, it does make a difference when public employees without bargaining rights are taken out. Besides these adjustment difficulties, a problem of comparability may also arise due to the fact that, under multi-level bargaining, many employees are covered by two (or more) agreements. This may cause double counting in statistics on coverage. Confusion may also derive from multiannual agreements and missing specification of the date when agreements expire. Sometimes collective agreements are only reported in their first year of validity, thus excluding still valid multi-year agreements from an earlier year. In the statistics reported, every effort has been made to include all collective agreements that are (still) valid during the year under consideration and calculate adjusted rates. Finally, the data refer only to the formal coverage of collective agreements, as demarcated by their scope. Hence the informal application of the terms of the agreement by firms not formally bound by the agreement is not considered, though this may give collective bargaining additional representation and influence. Formal coverage does, however, include those employees covered by extension procedures.

A measurement problem that remains is that bargaining coverage is measured only for the formal sector or registered employment. OECD and Eurostat estimates of the informal sector, including self-employed and family workers, vary from 5 % in some northern economies to 35 % in Greece.

excluded from the right to collective bargaining. This sometimes applies to civil servants or particular groups such as the police and the armed forces, whose employment terms are regulated unilaterally by the state.

An estimated 121.5 million of the 184 million employees in employment in the EU were covered by a collective agreement in 2008. This translates into an adjusted bargaining coverage rate of 66 %, or two-thirds of all EU employees. Over the first decade of the 21st century the number of employees covered increased by more than eight million, but since employment increased much faster, the coverage rate slipped by 2 percentage points. The most striking feature of Chart 1.9 is the huge cross-national variation, ranging from virtually 100 % in Austria to less than 20 % in Lithuania. There was a small decrease in coverage rate in many countries, and some larger declines in Portugal, Slovenia, Slovakia, Cyprus, Malta and Poland. The erosion of collective bargaining coverage in Germany between 1995 and 2005 appears, however, to have slowed. During the 1990s bargaining coverage increased in Denmark, Finland, Sweden, the Netherlands, Spain

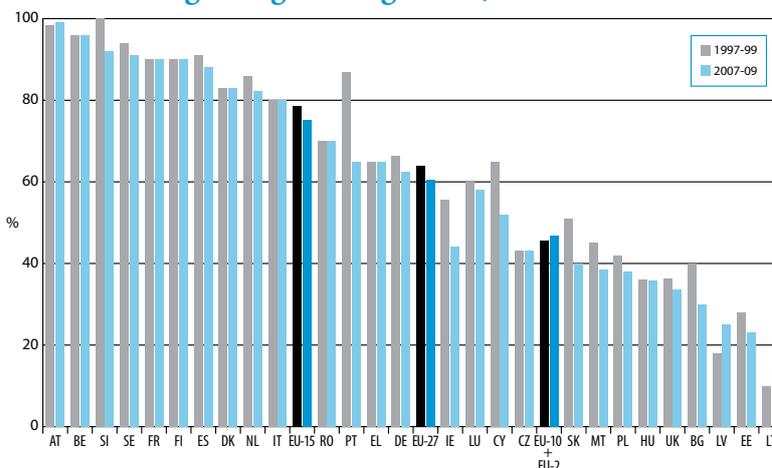
and Portugal, but this increase came to a halt or reversed after 2000. In Portugal there was a large decline in coverage in response to a change in the law in 2004, which ended the practice, common in many countries, that collective agreements remain valid even after they expire, until a new agreement is reached. Although employers and unions reached a central agreement restoring the practice in 2006, the coverage rate — although recovering somewhat — has not returned to its previous level.

In the 1990s the two countries with the largest decline in bargaining coverage were the UK and Germany, but developments after 2000 were less dramatic. In the UK, bargaining coverage shrank from 54 % in 1990 to 32.3 % in 1998, but has since stabilised and was 33.6 % in 2008. This may reflect the effect of legal changes in 1999, introducing a statutory mechanism for workers to secure union recognition and thereby bargaining representation. Nonetheless, bargaining coverage in the UK is the lowest amongst the EU-15 — a striking expression of the consequences of the near absence of significant sector-level collective bargaining. In Germany, the second half

of the 1990s saw a noticeable erosion of bargaining coverage. According to the IAB enterprise panel the coverage rate of firms fell from 72 to 63 % in the 'old' Federal Republic and from 56 to 44 % in the five new eastern states (Kohaut and Schnabel, 2003). Coverage slipped further to 56 % of the firms in the western and stabilised around 41 % in the eastern part between 2003 and 2008 (Ellguth and Kohaut, 2008). Most defections came from small- and medium-sized firms and were related to the difficulty faced by employers' associations in binding employers to standardised collective agreements with the unions. With moderate pay settlements and allowing 'hardship clauses' and settlements emphasising investment, employment stability and flexibility in working time arrangements, the main German unions, especially in chemicals and metal, have tried to stem the decline and strengthened their cooperation with the main employers' federations. This seems to have curtailed the tendency towards 'disorganised' decentralisation and contributed to some degree of re-regulation (Haipeter, 2009).

Collective bargaining structures and practices remain fragile in central and eastern Europe and coverage is low — the average of 43 % around the end of the decade is 4 percentage points below that in 2000. There was a decline in Estonia, Poland, Slovakia, Slovenia and Bulgaria, and a small rise, from very low levels, in Latvia and Lithuania. The rate was broadly level in Hungary and the Czech Republic. Low coverage rates and weak collective bargaining structures amongst the CEE countries tend to go together with a still considerable role for the state in private sector wage setting, mostly through the mandatory minimum wage — a feature which is returned to below (see also Chapter 4).

**Chart 1.9: Bargaining coverage rates, 1997–99 and 2007–09**



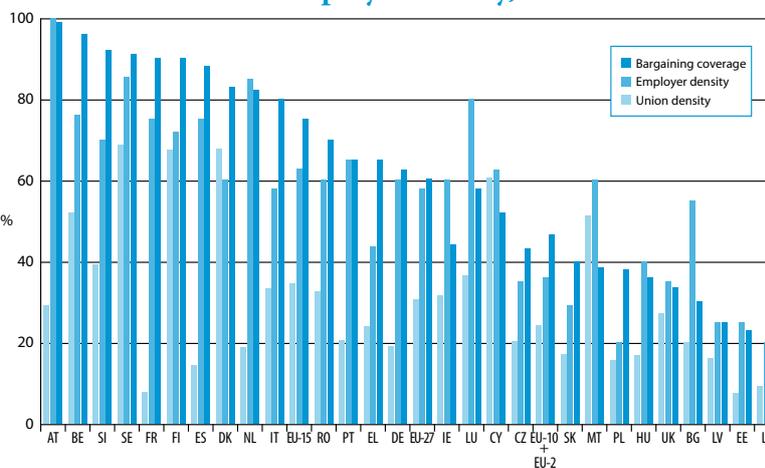
Source: J. Visser, ICTWSS database 3.0, 2010.

### 1.4.1.1. The relation between bargaining coverage, employer organisation and union density

There appears to be a weak albeit significant association between union density and bargaining coverage ( $r = .45$ ; 27 countries). Chart 1.10 shows that coverage rates exceed union density rates in all EU Member States except Cyprus and Malta. Often the 'excess' of coverage over density is by a very wide margin, for instance in France, Spain, Portugal, Austria, Germany and the Netherlands. A much stronger association exists between bargaining coverage and the employers' rate of organisation ( $r = .84$ ; 26 countries). High bargaining coverage occurs under multi-employer bargaining, and requires the existence of organisations of employers with a mandate to negotiate agreements with the representatives of employees.

The level of employer organisation exceeds bargaining coverage, by a large degree in Bulgaria, Luxembourg, Malta and Cyprus, and by a small margin in the Netherlands, the UK, Hungary, Estonia and Lithuania (Chart 1.10). These differences could arise for at least two reasons: some employers' associations may not seek negotiations with trade unions; where they do have a mandate to negotiate they may, however, fail to identify an appropriate union capable of signing an agreement. The standard case, found in most countries, is that bargaining coverage exceeds the rate of employer organisation. The main explanation for this is the extension of agreements to non-organised employers, either voluntary (and perhaps under union pressure, as is customary in Scandinavia) or through extension mechanisms under public law.

**Chart 1.10: Bargaining coverage, union and employer density, 2007–09**



Source: J. Visser, ICTWSS database 3.0, 2010.

**Table 1.8: Extension of collective agreements and minimum wage legislation**

	Extension	Enlargement	Functional equivalents	Mandatory minimum wage
AT	widespread	other sectors	membership Chamber	almost
BE	widespread			yes
BG	limited/not used			yes
CY	no			partial
CZ	limited			yes
DE	limited		public procurement rules	partial
DK	no			no
EE	limited			yes
EL	widespread		national covering agreement	yes
ES	widespread	other sectors		yes
FI	widespread		public procurement rules	no
FR	widespread	other sectors		yes
HU	limited			yes
IE	no		joint labour committees	yes
IT	no		courts	no
LT	limited/not used			yes
LU	widespread			yes
LV	limited			yes
MT	no			yes
NL	limited			yes
PL	limited/not used			yes
PT	widespread	other regions		yes
RO	no		national covering agreement	yes
SE	no			no
SI	limited			yes
SK	limited			yes
UK	no			yes

Source: J. Visser, ICTWSS database 3.0, 2010; Traxler and Behrens, 2002, and EIROOnline.

### 1.4.2. Extension of collective agreement and sector organisation

As reported in the 2002 *Industrial Relations in Europe* report, most EU Member States have availed themselves of a legal technique allowing the public authorities, usually the Ministry of Labour, to extend the collective agreements reached by unions and employers, or clauses from agreements, to similar employers who are not members of the relevant employer association (Traxler and Behrens, 2002). Usually, extension applies to similar firms in the same sector or branch of economic activity. In some countries the mechanism is used to include all firms under a national agreement, for instance in Belgium with regard to the minimum wage. In a few countries extension mechanisms are used to apply the agreement outside the sector by means of a procedure termed 'enlargement' (see Table 1.8).

The possibility of legal extension of collective agreements exists in 19 out of 27 EU Member States. In eight (Austria, Belgium, Luxembourg, Finland, France, Spain, Portugal and Greece) the practice of extension is widespread and quasi-automatic, and in four of these countries agreements can be applied in other sectors or regions. In 11 countries extension is more restricted through the requirement that the agreement meets a threshold of representation, that both unions and employers agree, or that the agreement promotes some public policy objective or at least does not contradict it. In some countries extension is legally possible but hardly practiced because few sector agreements are reached; Poland, Lithuania and Bulgaria, in recent years also Slovakia and Hungary, are cases in point. In Germany extension is little used because employers hold an effective veto and tend to oppose use of

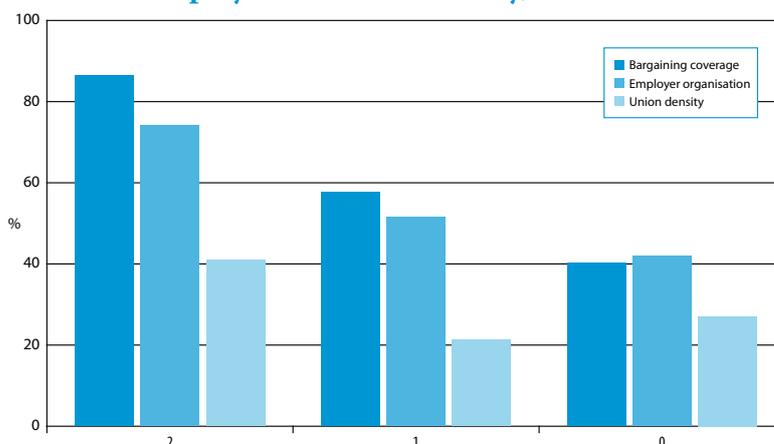
the mechanism to raise the minimum wage in a particular sector, a practice which has expanded from construction to other sectors in the context of regulating minimum conditions for posted workers in Germany. In Ireland, although the formal scope for extension is wider, in practice it applies only in construction.

Of the eight countries without extension laws, five have a mandatory minimum wage (Ireland, the UK, Romania, Malta and Cyprus for some occupations) and in one, Italy, the courts tend to enforce minimum wages in similar occupations. The annual national collective agreements in Greece and the five-year agreement in Romania, concluded in 2006, can also be counted as functional equivalents of public extension in so far as they cover all occupations and sectors in the formal economy. This leaves only two EU Member States, Denmark and Sweden, with neither the possibility of legally extending the collective agreement nor a mandatory minimum wage or some functional equivalent for either of the two. In both countries the trade unions see it as their task to assure that all employers, organised or not, pay the going rate, though the methods

used to assure compliance have been challenged by the Court of Justice 2007 ruling in the Laval case (Davies, 2008; Malmberg and Sigeman, 2008).

Finally, although important for 'excess coverage' above the level of union and employer organisation, extension does not correlate strongly with the ranking of countries in terms of bargaining coverage. There are too many other factors that play a role, e.g. employer organisation, bargaining centralisation and/or union pressure. Far more important is the organisation of collective bargaining and, in particular, the dominance or absence of the sector as the key organising device for trade unions, employers' associations and collective bargaining. Chart 1.11 shows a clear pattern. Where sector organisation is the dominant principle in collective bargaining (score = 2), bargaining coverage, employer organisation and union density rates are higher. Where sector organisation is weakly or partially applied (score = 1), coverage rates as well as organisational levels of employers and unions are lower. Where the sector is absent as an organising principle (score = 0), coverage and employer organisation

**Chart 1.11: Sectoral organisation, bargaining coverage, employer and union density, 2007–09**



Source: J. Visser, ICTWSS database 3.0, 2010.

NB: '2' = AT, BE, DE, DK, ES, FI, IT, NL, SE and SI; '1' = EL, FR, HU, LU, PL, PT, RO and SK; '0' = BG, CY, CZ, EE, IE, LT, LV, MT and UK.

rates, though not union density, are lowest. Finally, 'excess coverage', i.e. the distance between bargaining coverage and the rate of union organisation, is largest in countries where the sector principle applies.

### 1.4.3. Decentralisation and organisation of collective bargaining

The main trend in industrial relations in the past two or three decades is decentralisation. This means that the centre of gravity in decision-making on employment contracting, wages and human resources has moved closer to the firm. In countries with sector bargaining, single-level bargaining tends to make way for multi-level bargaining. These developments put pressure on collective organisations outside the firm, such as trade unions and employers' organisations, and also the state and the law to make room for derogation, for firms, groups or individuals, from general and collective standards set for the entire sector, or wider economy. To this end, different techniques are being used, from individual opt-outs to company social pacts and agreements negotiated by works councils, union workplace representatives or designated staff members.

A further component of decentralisation is procedural, allowing more flexibility in the application of legal norms and collective standards. Rather than standard terms, collective agreements tend to set minimum conditions; or in some cases, the terms set by collective agreements allow deviation both above and below the norm, if some procedural conditions — for instance, fair negotiations involving representatives from the group of workers making concessions — have been met. Some of the implications of these developments for collective labour law have

been discussed in the 2006 *Industrial Relations in Europe* report.

#### 1.4.3.1. The level of bargaining

The distinction between levels (i.e. national or regional, sector and company bargaining) is only a first approximation of the reality in each country. First, in no country does bargaining take place exclusively at one level. The extreme cases are, at one end, Lithuania, where according to the European Company Survey's management respondents, 94 % of all bargaining activity, in terms of coverage, is based on company bargaining and, at the other, Finland where 76 % of those covered rely on sector or national bargaining (ECS, 2010). In many countries, bargaining over wages and working hours takes place at two or more levels: the company and the sector (metal, textile, construction, banking, etc., or in some cases the entire manufacturing or private sector). It may be that the level of bargaining alternates between levels in different years, especially when national or sector agreements set terms for several years, to be detailed in subsequent firm-level negotiations, as is the case the Nordic countries and Italy.

Over the years 2007–09, the sector was the main level at which wage negotiations took place in 11 EU Member States: Austria, Belgium, Denmark, Finland, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and Slovenia. According to the ECS, for more than half of all employees covered by collective agreements in these countries, there was no additional firm-level bargaining. This is a situation which characterises services and smaller firms, rather than manufacturing and larger companies, where multi-level bargaining is becoming increasingly widespread. In Sweden recent collective agreements in

industry have incorporated provisions for local pay review and opportunities for individuals to negotiate their own wages (Granqvist and Regné, 2008). In Denmark, recent agreements in industry detail general conditions and procedures, as well as minimum, youth and entry wages, and leave the allocation and division of pay rises to firm-level negotiations. In Austria since 1997 some industrial agreements include a distributional pay component that can be decided at company level. In the Netherlands, most sector agreements detail pay increases, but there is now a staggering diversity in types of agreements. In the private sector area of FNV Allies and the employers' federation AWWN, which covers some 700 of the country's 1 000 agreements, 36 % of all agreements are multi-level, 55 % have *à la carte* provisions which allow employees to make a choice between types of working hours arrangements and between pay and working hours, and the building up of 'personal budgets' for training, paid leave and early retirement (Zielschot, 2010). Since the 2004 'Pforzheim' agreement in metal engineering in Germany and a similar, earlier agreement in chemicals, 'opening' and 'hardship' clauses in sector agreements have been tied to company negotiations over employment, investment and, in some cases, advantages for union members (Ellguth and Kohout, 2008; Haipeter, 2009). In Italy, ever since the 1993 social pact, bargaining over wages takes place at two levels — sector, over cost-of-living increases and firms, over performance- or productivity-based increases. In practice, firm-level negotiations cover only employees in large firms. In a recent pact, signed in 2009 by two of the three main confederations — but not the CGIL union, Confindustria and the government, this structure was reaffirmed, but with sector pay increases tied to actual (past) rather than predicted (future) inflation and greater scope for firm-level negotiations.

In France, Ireland, Greece, Romania and Luxembourg, too, a majority of all employees were covered by agreements that set standards above the level of firms in 2007–09, but in each of these cases the sector plays a less prominent role. Sector agreements play a role in France, especially in setting minimum standards in sectors with many small firms. They do so with the help of the public authorities, through extension or, if no bargaining takes place or agreement is not reached, through imposing the rules of another, similar sector. However, the most vibrant element in recent times has been company bargaining. This has been stimulated by negotiations over working time reduction, with tax concessions and incentives tied to productivity and work organisation issues. In Ireland sector bargaining never played an important role, except in construction, but since 1987 pay bargaining had been determined by a series of triennial social pacts or ‘partnership programmes’, the last of which was negotiated in 2006 with a pay clause for 24 to 35 months, depending on the economic sector. When negotiations over an adjustment of the pay clause to the economic crisis broke down in 2009 and employers pulled out, Ireland braced itself for a return to company bargaining. Company negotiations prevail in Luxembourg and cover many employees, but the adjustment of the cost-of-living index, based on consultation with social partners, has remained a very important source of wage regulation. In contrast, in Greece, unions and employers, assisted by the government, negotiate each second year a biennial national agreement, though a new agreement for 2010–11 has not yet been reached. In Romania the central social partners are used to signing a national agreement on minimum conditions. In both countries, for most workers the national agreement, together with the law, is the only source of regulation of wages and working hours, since few large companies exist

and additional company negotiations are therefore rare.

In 11 countries the main and for most workers the only bargaining activity, if there is bargaining at all, is in the company: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and the United Kingdom. With the exception of Malta and Cyprus these are precisely the countries with the lowest coverage rates. According to the ECS, in these countries for more than 50 % of the (relatively few) employees who have their pay packages decided through collective bargaining, company bargaining is the only source. Higher-level bargaining, at the level of sectors or groups, does occur in some of these countries, including Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia. But it is unstable and fairly limited in coverage and/or in the scope of the regulation specified.

#### 1.4.3.2. National pay agreements and pattern setting

National pay agreements or cross-industry social pact have not

completely disappeared, but with the end of such agreements and pacts in Finland in 2007, in Ireland in 2009 and in Slovenia in 2010 they have become few and far between. In Greece the national agreement for 2008–09 faces a difficult renewal. National agreements continue to be an important feature in Belgium, the Netherlands and Spain, and the most recent agreements concluded since the onset of the crisis are reviewed in Chapter 3. In the absence of national agreements, pattern setting between sectors is, or has become, prominent in some countries.

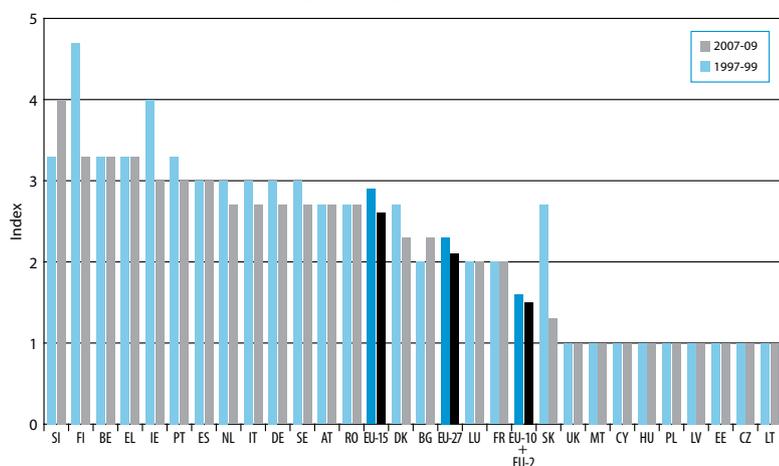
In Finland, which since 1968 has had a history of central incomes policy pacts, the last such pact expired in September 2007. Bargaining has subsequently shifted to sector level, with employers pressing for flexibility at company level. Accordingly, the sector agreements concluded in 2008 and 2009 introduced some measure of flexibility, especially regarding working hours and overtime. It seems that Finland is moving closer to the situation of its Nordic neighbours. In both Sweden and Denmark, national pay agreements have long since

#### Box 1.5: Index of bargaining centralisation and dominant level of bargaining

In the ICTWSS database there is, in addition to the indicator on *union centralisation*, discussed earlier, an indicator of *bargaining centralisation* based on the *dominant level* at which bargaining takes place. This is scored on a five-point scale: 5 = national (cross-sectoral) bargaining; 4 = national (cross-sectoral) bargaining with derogation and additional sector or company bargaining; 3 = sector- or industry-level bargaining; 2 = sector- or industry-level, with additional local or company bargaining; and 1 = local or company bargaining. Bargaining centralisation tends to increase with union centralisation, but the correlation is modest ( $r = .52$ ). With union and confederal authority the correlation is  $.62$ .

The *coordination index* in the ICTWSS database is derived from Kenworthy (2001) and has the following values: 5 = economy-wide bargaining, based on (a) enforceable agreements between the central organisations of unions and employers affecting the entire economy or entire private sector, or on (b) government imposition of a wage schedule, freeze, or ceiling; 4 = mixed industry and economy-wide bargaining: (a) central organisations negotiate non-enforceable central agreements (guidelines) and/or (b) key unions and employers associations set pattern for the entire economy; 3 = industry bargaining with no or irregular pattern setting, limited involvement of central organisations, and limited freedoms for company bargaining; 2 = mixed or alternating industry- and firm-level bargaining, with weak enforceability of industry agreements; 1 = none of the above, fragmented bargaining, mostly at company level.

**Chart 1.12: Bargaining centralisation, 2000s**



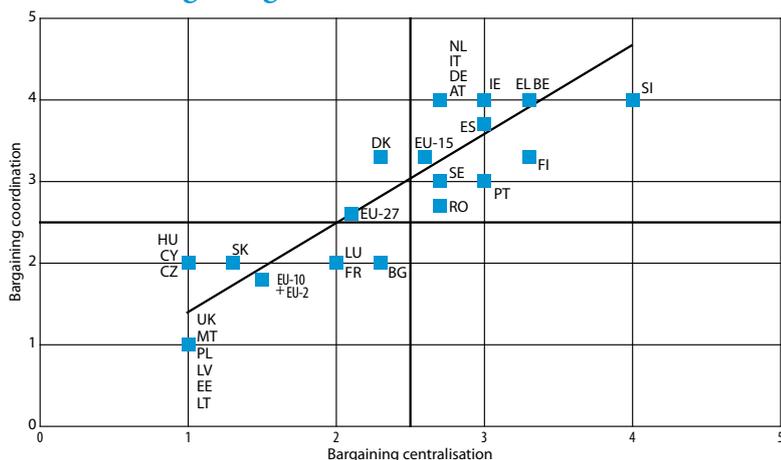
J. Visser, ICTWSS database 3.0, 2010.

**1.4.3.3. Centralisation and coordination of (wage) bargaining**

With more decentralisation, multi-level bargaining and the larger space for company or even individual bargaining, coordination across bargaining units (or bargaining agents, be they firms or unions) in a horizontal sense or within bargaining units (or agents) in a vertical sense tends to become more rather than less important. Some of the national agreements or trend setting arrangements described in the previous section have exactly that function.

The first main message from Chart 1.12 is that there is a large divide between the EU-15 and the 12 new Member States. In the EU-15 sector some other form of multi-employer bargaining prevails, the main exception being the UK. In the 12 new Member States company bargaining prevails, albeit mixed with some element of multi-employer bargaining, although usually not at the sector level; here there appear to be three exceptions, i.e. Slovenia, Romania and Bulgaria. The second main message is that there is a clear tendency towards decentralisation and that sector bargaining with the possibility of additional company bargaining has become the mainstream in the EU-15.

**Chart 1.13: Bargaining centralisation and coordination, 2007–09**



Source: J. Visser, ICTWSS database 3.0, 2010.

disappeared, though in Denmark the agreement between DI and a cartel of unions for the entire industrial sector usually sets the trend for the subsequent private sector agreements under the umbrella of the national union and employers' confederations LO and DA. In Sweden, conflict has arisen over which sector should set the trend — the retail and commercial services sector, as some unions wanted, or the industrial export sector — which has been hit hard by the recession — as

had usually been the case. In Germany and Austria the collective agreement in the metal industry has long acted as the pattern setter for other sectors (Traxler, Blaschke and Kittel, 2001).

Finally, the involvement of unions and employers in agreements and consultations over the minimum wage can play a similar, though clearly less influential role, in coordinating national wage developments, especially in central and eastern Europe.

Finally, bargaining centralisation and coordination are nicely aligned, as is shown in Chart 1.13. There are two main groups in the European Union: the economies of CEE countries plus Malta, Cyprus and the UK, where on average decision-making over wages is taking place in the company, with less coordination among bargaining agents or units (lower left corner); and the continental European countries of north and south Europe, plus Ireland and Slovenia, where decisions over wages are also influenced by bargaining agents above the level of firms and

these agents coordinate among themselves (upper right corner). Within each group, however, there is considerable variation, with for instance France much lower on coordination than Germany, Italy or Spain, and a more coordinated wage bargaining approach in Romania compared to the rest of the new Member States.

## 1.5. Employee representation in the enterprise

Employee representation in enterprises for the purpose of information and consultation is a key feature of European industrial relations. Legal provisions for employee representation exist in all countries and are required by EU law, based on Directive 2002/14/EC on information and consultation. The ways of organising employee organisation; the rights and activities of representatives; their reliance upon the unions; independence from management; formal and informal involvement in grievance handling and negotiations in the workplace or enterprise differ widely across the EU. In the *Industrial Relations in Europe* reports of 2002, 2004 and 2006 various descriptions and categorisations have been offered.

This section takes stock of the situation in 2008 or 2009 and of developments since 2000. First, we discuss the pattern of employee representation, including the relation with trade unions. Next, an attempt at ‘measuring’ the formal or organisational strength of employee representation in the enterprise by integrating four different pieces of information (see Box 1.6) is presented. Third, with help of the European Company Survey, the focus shifts to the incidence of employee representation in the enterprise. Developments in transnational representation in (multinational)

enterprises, through European works councils and the provisions for employee involvement in European Companies (SEs), are also reviewed.

### 1.5.1. National variations in employee representation in the enterprise

Forms of employee representation at the workplace have been legally established and institutionalised in most of the EU Member States<sup>6</sup>. In recent history, EU directives have fostered the formation and revision of institutional arrangements for workplace representation, not least in the 12 new Member States. Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community has been an important landmark in this context. A great variety of institutional structures exists among the Member States with regard to the formal organisation of employee representation in the enterprise. The basic differentiation is whether employee representation proceeds through the union or is based on a construction that is formally independent from the union, i.e. the works council. This difference has various consequences, i.e. how representatives are elected; whom they represent; what powers they hold; and what competences they have.

Workplace representation through the union, as in the pure ‘single channel’ model, is based on election by and or appointment from union members. It does not pretend to represent the interests of non-union members and derives its powers and competences from the union, though this may be specified by the law or in agreement

with employers. Member States in which such ‘single channel’ representation dominates include Sweden, Finland, Denmark, Ireland, the UK, Malta, Italy, Poland and the Czech Republic. Workplace representation based on works councils, as in a pure ‘dual channel’ model, exists in addition to and is independent from unions. It is usually elected by and from all employees (with some restrictions on those with temporary or part-time contracts, etc.); is held accountable to union and non-union members alike; and operates within powers and competences defined by the law. Dual channel representation based on works councils is found in Germany, Austria, the Netherlands, Belgium, Luxembourg, France, Spain and Hungary.

In reality various mixed forms are found and in many countries both structures exist alongside each other. In many countries trade union and works council representation are treated as being complementary, with a division of tasks between them. Negotiating and strike rights tend to be ‘invested’ in the union and denied to the works council, but this is not universally so and in firms where unions are absent councils can sometimes take over the union’s role. The opposite is also possible and in some countries the works council ceases to exist when a trade union is established at the workplace. It is important to note that several countries have separate regulations for the public sector, although these often amount to nominal differences only. Institutional differences also exist in the powers assigned to works councils, in particular whether the works council has only consultation rights, as established through the EU directive, or co-determination rights — that is, the right to decide jointly with management. Works council regulations in Austria, Germany and the Netherlands, for instance, include co-determination powers in specific areas.

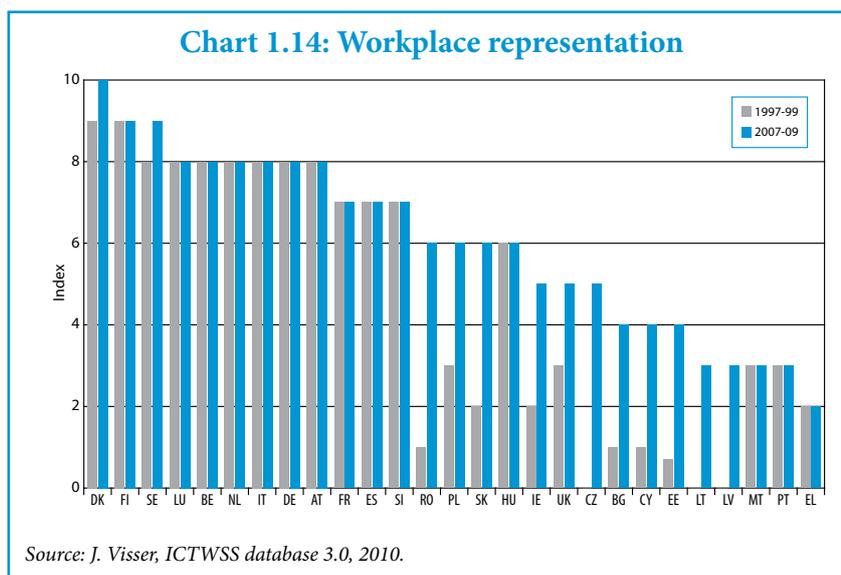
<sup>6</sup> This section draws heavily on a contribution from the European Foundation for the Improvement of Living and Working Conditions, based on the summary findings of the 2009 European Company Survey issued in March 2010.

The ESC data confirm that in most Member States works council members are also active in the trade union. Based on the response of employee representatives, the survey indicates that in 84 % of the works councils there are trade union representatives and in 56 % of the councils union members are in the majority. Compared with the much lower average for union membership in the EU — around 25 % — and considering that works councils are elected, this might be seen as a vote of confidence in the unions.

### 1.5.2. The organisational basis and formal power of employee representation

Combining various pieces of information including formal rights, involvement in co-determination and firm-level negotiations, as well as the nature of the relationship with the union(s), the formal strength of employee representation in the enterprise can be assessed (see Box 1.6). Chart 1.14 summarises the variation between EU Member States and the developments since 2000.

The picture that emerges is, again, one of diversity. At one end are the three Nordic countries, with the strongest workplace representation rights, based on integration between union and employee representation, backed by basic agreements and legal rights. This is followed by a group of continental European countries — Benelux, Germany, Austria and Italy, then



France, Spain and Slovenia — each with strong works councils but with different arrangements concerning the cooperation between unions and councils. At the other are the Baltic states, Cyprus and Malta, Bulgaria and Greece, with weakly institutionalised bodies of employee representation, alongside or instead of trade unions, and with weak rights vis-à-vis management. The other message from Chart 1.14 is that EU Member States have to some extent converged on this issue, with more rights accruing to employees in countries where employee representation was weakly founded. The convergence is clearest in the area of formal rights where, before the introduction and application of Directive 2002/14/EC, few existed amongst the 12 new Member States or in Ireland and the UK. It would, however, be wrong to infer from Chart 1.14 that employee

representatives have become more powerful as against other stakeholders in the firms. In fact, works councils and other employee representation bodies often express concern that they in practice have lost influence in the recent past.

### 1.5.3. The incidence and coverage of employee representation in the enterprise

According to the ECS, in 2009 about 37 % of all establishments with 10 or more employees had an institutional form of employee representation. This translates into a 'representation coverage rate' of about 60 % of the employees in these establishments. With a correction for the employees working in small firms — including them would yield a lower coverage rate, somewhere near 50 % — a comparison can be made with union density and the bargaining coverage rate. The employee representation coverage rate is almost twice as high as union density. In other words, due to institutionalised forms of enterprise representation unions can extend their audience and influence. But representation coverage

#### Box 1.6: the organisational strength of employee representation in the enterprise

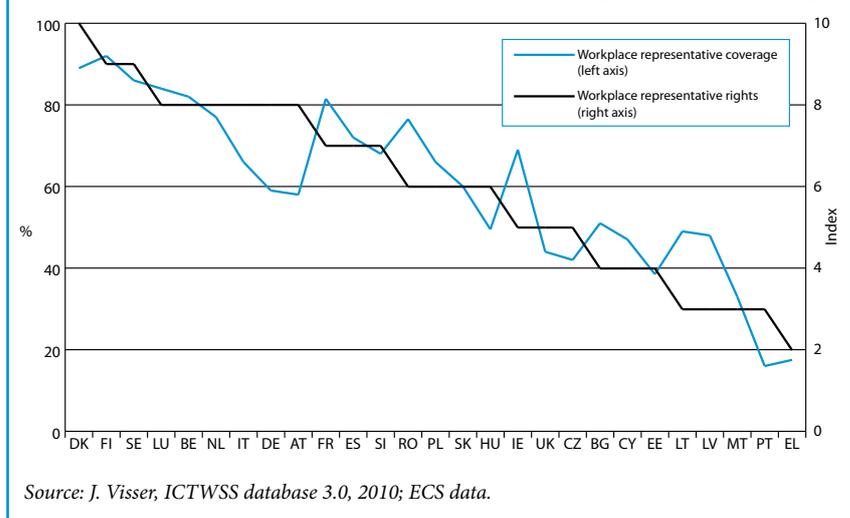
The ICTWSS database contains information on (a) whether a provision for information and consultation in the workplace exists (0–2); (b) whether it can rely on strong or weak powers delegated to it by the unions, or acts independently from the unions (0–4); (c) has strong or weak rights of intervention against management in a narrow or wide range of issues (0–3), and (d) is directly involved in negotiations over (aspects of) pay, working hours and conditions of the firm's workforce (0 or 1). With this information an additive, 10-point scale has been constructed.

rate is lower than that for bargaining coverage. The main reason is that most national regulations and Directive 2002/14/EC contain thresholds, usually 50 employees, above which representation becomes mandatory. There are pronounced differences in incidence and coverage of employee representation by company size and sector. The highest coverage rate — up to 90 % — is reached in large firms and in the public sector, followed by industry. Coverage is noticeably lower in private services, and lowest in firms with 20 to 49 employees.

As shown in Chart 1.15 there are significant differences across the EU in the incidence and coverage of employee representation. These differences are somewhat related to union density ( $r=.41$ ), but more strongly to bargaining coverage ( $r=.57$ ). In one group of countries, a majority of the establishments have an institutional form of employee representation at the workplace, with more than 70 % of the employees being covered. The group is led by the Nordic countries and also includes Belgium, Spain, France, Luxembourg, Romania and the Netherlands, all countries with a high bargaining coverage rate, although some (Spain, France, the Netherlands) have a rather low unionisation rate. Countries with a low incidence and coverage are situated in CEE countries and in southern Europe, with Portugal and Greece revealing the lowest rates.

Chart 1.15 further compares the coverage rate, based on the ECS, with the ICTWSS indicator of ‘representation strength’. The two are aligned: it seems that coverage is highest where employee representation has a stronger organisational basis, independent from management, can rely on union support, workplace representatives are routinely involved in negotiations, and have strong information and consultation rights regarding major company decisions.

**Chart 1.15: Workplace representation — rights and coverage**



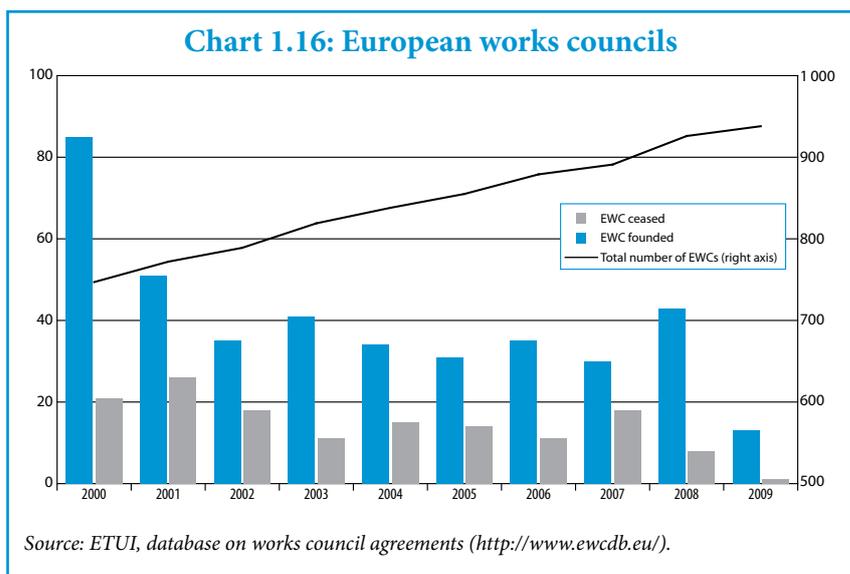
**European-level employee representation within the enterprise**

There are two main forms of European-level employee representation within multinational enterprises. First, European works councils (EWCs) are standing bodies providing for the information and consultation of employees in Community-scale undertakings and groups of undertakings as required by the 1994 European works council directive (Directive 94/45/EC), recast

in 2009 as Directive 2009/38/EC (see Chapter 7). Second, European Companies (SEs) established under the 2001 regulation on the statute for a European Company (Council Regulation (EC) No 2157/2001), have to comply with provisions for employee involvement, including board-level representation and/or European-level works councils under Directive 2001/86/EC (see Box 1.7).

The thresholds required for an enterprise to be covered by the European

**Chart 1.16: European works councils**



### Box 1.7: Employee involvement in European Companies (SEs)

A European Company (Societas Europaea (SE)) is a European legal form established by Council Regulation (EC) No 2157/2001 on the statute for a European Company. The Regulation introduces a set of rules directly applicable in all Member States, in particular on the formation and the structure of the SE. The legal regime of the SE is completed with cross-references to the national legislation applicable to public limited-liability companies. Council Directive 2001/86/EC supplementing the SE Statute stipulates employee involvement rules in SEs in the form of information and consultation of employees and, in some cases, board-level participation. Both the Regulation and the Directive were adopted on 8 October 2001 and were to be implemented in the Member States by 8 October 2004 (however, the Directive was transposed by all Member States only at the beginning of 2007). EU-based companies may form an SE in four ways (the first three involve more than one company): merger; creation of a joint holding company; creation of a subsidiary; or when a Single EU-based company is transformed into an SE, provided it had a subsidiary governed by the law of another Member State for at least two years. A company based outside the EU may (if individual Member States so decide) participate in the formation of an SE on condition that it is created under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy. An already existing SE may also itself set up one or more subsidiaries in the form of SEs.

For the first time ever, the SE directive introduces into and defines 'participation' in Union law, i.e. the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of the right to elect or appoint some of the members of the company's supervisory or administrative organ, or the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ. Though in a manner that leaves significant space for the self-regulation of practical arrangements at company level, the SE accepts the fact of employees' interest representation where applicable. Where this right was conferred by national statute and used before the creation of the SE, employees have the guarantee that this will remain in the corporate bodies of an SE.

As regards the date on existing SEs, as of July 2010, some 595 SEs had been registered in the EU/EEA Member States. Around a quarter (151) were known to be 'normal SEs', i.e. operating and with 5 or more employees. Around 6% (43) of all SEs were known to be 'micro SEs', i.e. operating with between 1 and 4 employees. Many of the SEs (77) are so-called 'shelf' companies which are for sale, with most of them in the Czech Republic (44), 'empty' SEs (83), operating but apparently without any employees yet, and a rather large number of SEs (around 241) which were known or seemed to be operating but for which the information on the number of employees were not available. This implies that to date a large number of SEs is operating but without actively employing people (or only employing few people). This diverse picture of different types of SEs is replicated also with regard to the geographical coverage: in eight EU Member States (BG, FI, EL, IT, LT, MT, RO, SI) no SE had been registered by summer 2010 and the diffusion of 'normal' SEs, operating and with 5 or more employees, in the remaining countries is quite unequal with Germany being the most important country (74 out of 151), followed by the Czech Republic (25), France (9), Netherlands (8) and Austria (7)<sup>(1)</sup>. At least 30 of the 'normal' SEs have employee representatives on the company's supervisory or administrative body, and over 60 have transnational arrangements for employee information and consultation through SE works councils<sup>(2)</sup>.

In reviewing the interim results of the case studies of the Eurofound project<sup>(3)</sup>, the influence of SEs on any 'Europeanisation of industrial relations' should not be overestimated. Two other preliminary findings from the fieldwork are of note. First, initial results of the case studies confirm that the negotiation and implementation of practical arrangements of employee involvement follow company specific requirements and paths. In the long run SEs could turn out to be a factor in the emergence of supranational, enterprise specific industrial relations which are different from the respective national IR environments. Second, there are indications that in some cases the new legal form of an SE may have been used to circumvent existing national regulations for employee participation rights. Yet, the analysis of 10 company cases demonstrates that employee involvement is widely regarded as an integral part of corporate governance in the EU.

1 The figures are taken from the Commission Staff Working Document, SEC(2010) 1391, accompanying the Report on the application of the Regulation on the Statute for a European Company, of 17.11.2010.

2 ETUI (2010), European Company (SE) Factsheets, <http://ecdb.worker-participation.eu/>

3 In July 2009, the European Foundation for the Improvement of Living and Working Conditions in Dublin launched a research project on the European Company Statute. The aim of this research is to gather information about the practical functioning of European Companies (SEs). The project was completed in summer 2010, consisting of an analytical report and 10 separate company case studies. The contactors were Wilke, Maack and Partner, Hamburg, in consortium with IRES, Paris. The consortium was supported by the Seeurope network of ETUI. The analytical report and the company case studies are available online at <http://www.eurofound.europa.eu>

works council directive are, for a Community-scale undertaking, 'at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States' (Article 2(1)(a)). Essentially, the aim of the directive is to promote voluntary agreements on the constitution and operation of EWCs. Not all of the multinational companies covered have established an EWC. This is because

the introduction of EWCs is not automatic but requires either the initiative of central management or 'the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States' (Article 5(1)). According to the EWC database of the European Trade Union Institute, 938 EWCs were active at the beginning of 2010, representing some

16 million workers<sup>(7)</sup>. This represents a coverage rate of around 40 % of the multinationals, and 60 % of the workforce, estimated by the Institute to be covered by the directive. Since 2000, each year some 40 EWCs have been newly established, whereas 14 ceased to exist — largely due to mergers and acquisitions. Cumulatively, the

7 The ETUI's database on European works council agreements can be found at <http://www.ecwdb.eu/>

number of EWCs has increased by 255 since 2000 (Chart 1.16).

Practice amongst EWCs has varied widely. In some instances, they have played an extremely limited role and were often a simple recipient of information about a restructuring exercise, sometimes even after the decision had been taken. More rarely, they have been fully involved participants, becoming a site for collective bargaining in some multinational enterprises <sup>(8)</sup>.

## 1.6. Industrial conflict

Industrial or social conflict is an inherent part of industrial relations. The right to bargain for better conditions implies the right to strike as a means to exert pressure should negotiations reach an impasse or fail. This is recognised in Article 28 of the Charter of Fundamental Rights of the EU: 'Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.' The exercise of this right, notably strikes or lock-outs, constitutes a high-profile aspect of industrial relations in terms of public impact and media coverage.

Considering the period 2000–08, a wave-like pattern in the EU average of strike participation is observed with a peak in 2002–03 (Chart 1.17). In these two years some particularly large strikes took place in 'low strike' countries like Austria, Slovenia and Sweden, whilst large-scale mobilisation affected

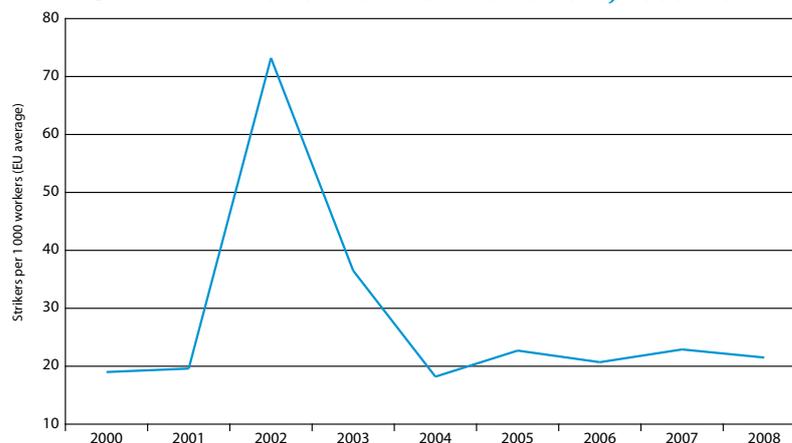
<sup>8</sup> M. A. Moreau and J. J. Paris, 'Le rôle du comité d'entreprise européen au cours des restructurations, expériences et perspectives', *Semaine sociale Lamy*, 2008, suppl. No 1376.

### Box 1.8: strike statistics

Statistics in this area are notoriously difficult, especially when comparing across countries. Methods, definitions and thresholds for recording differ greatly, despite efforts to harmonise statistics by the International Labour Organisation. Eurostat has collected strike data since 1960 and since 2005 has a data-sharing arrangement with the ILO, using the same international definitions. The data include an annual series on the number of strikes and lockouts; the number of working days lost (1 000); the number of working days lost per 1 000 workers; the number of workers involved (1 000); and the number of workers involved per 1 000 workers. Below we have used the national data collected by EIRO (M. Carley, 'Developments in industrial action, 2005–09', document TN10040495), with additional data from Eurostat and the ILO Laborstat database for earlier years. One reason for this choice is that Carley also reports data on the sectors involved, the reasons for industrial action and strike threats that are not carried out. Unfortunately, despite the title, the EIRO data cover the year 2009 for very few countries. Since 2009 is neither covered by Eurostat nor by the ILO, it is not possible to assess the impact of the current crisis on industrial action. For all years, data for the Czech Republic are absent.

In strike statistics it is common to make a distinction between the frequency of strikes (number of strikes and lockouts), the duration and size of strikes (number of days lost) and participation (number of workers involved). This section focuses on participation, i.e. strikes per 1 000 employees.

Chart 1.17: Relative strike involvement, 2000–08

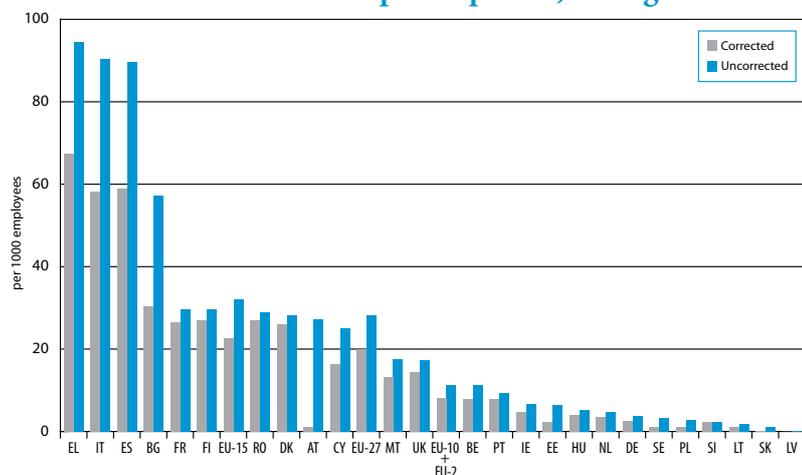


Source: Own calculations from Carley 2010, Eurostat and ILO Laborstat.

'strike prone' countries like Greece, Italy, France and Romania. Generally, strike activity was up in most countries and it is tempting to view this in the context of wage and job conflicts in the wake of the 2001–02 'Dotcom' and 9/11 recession. Some conflicts in central and eastern Europe were related to reforms preparing for accession to the European Union and satisfying conditions for future participation in the EMU. Setting aside this peak,

the 'equilibrium' level, with 20 workers involved in industrial conflicts per 1 000 workers, is lower than the long-term average in the 1970s and 1980s (Shalev, 1992) and also the 1990s <sup>(9)</sup>. The EU average is also lower than the average of the non-European OECD countries.

<sup>9</sup> According to data analysed by the UK Office for National Statistics, as reported in *Economic and Labour Market Review*, April 2008.

**Chart 1.18: Relative strike participation, average 2000–08**

Source: Own calculations from Carley 2010, Eurostat and ILO Laborstat.

The EU average hides large variations across Member States (Chart 1.18). To begin with, there appears to be more labour acquiescence in the 12 new Member States than in the EU-15. This may reflect the weaker position of trade unions and the harsher economic conditions faced by workers in the CEE countries. This is not to say that high rates of conflict, expressed in the number of strikes, the duration of strikes, working days lost or relative involvement, is necessarily an indicator of union strength. It has long been noted that strong unions may call strikes only rarely and judiciously, whereas weaker unions have very limited control over the strike weapon. Moreover, the strike participation data used here are strongly influenced by the use of so-called 24 hours strikes — a practice currently used by the unions in Greece in their mobilisation against the government's austerity package. Generally, these are a more widespread practice in France and the southern Member States than elsewhere in the EU.

In order to show the variations across countries, an 'adjusted' average for the years 2000–08 has been calculated. Since the average can be

unduly influenced by what happened in one particular year, the adjusted average simply replaces the year with the highest strike involvement by the average for the other years. The resulting corrected average, without the outlier year, better reflects the long-term trend in countries' level of conflict. By definition, this procedure reduces the average in all countries (see Chart 1.18), and the difference is particularly large in Austria, where the 'unadjusted' average was strongly influenced by the huge conflict in 2003 over pension reform.

On the basis of the adjusted averages, the 25 EU Member States (no comparable data for Luxembourg and the Czech Republic) can be divided in three groups: (1) countries with, in an average year, less than 10 workers per 1 000 involved in industrial action: Estonia, Latvia, Lithuania, Poland, Hungary, Slovakia and Slovenia, as well as Austria, Germany, Sweden, the Netherlands, Belgium, Ireland and Portugal; (2) countries where industrial action is at moderate levels, with an average of 10–30 workers per 1 000 involved in conflicts: Denmark, Finland, the UK, Malta, Cyprus, France, Bulgaria and Romania; and

(3) countries where industrial action was at relatively high levels, with in an average year more than 50 workers per 1 000 involved in conflict: Greece, Spain and Italy.

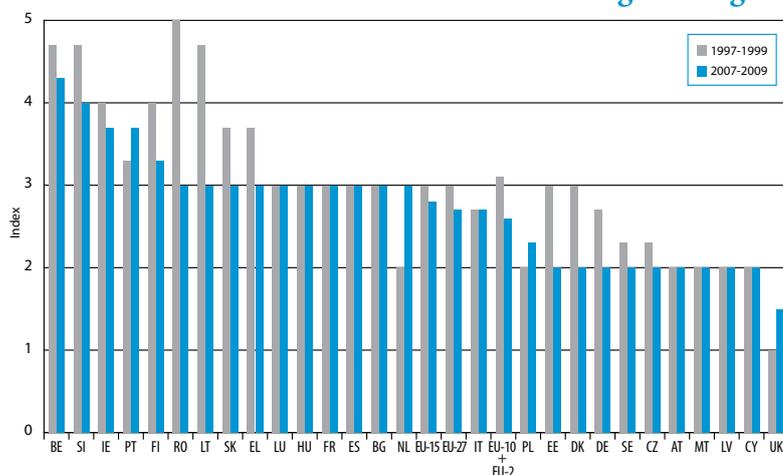
Carley (2010) offers an interesting discussion and some data on the causes of conflict, the sectors where most conflicts occur and strike threats. Pay is the most common source of conflict, together with layoffs, restructuring and redundancies, followed by government reform plans and working time issues. There is also some evidence that the trend, dating from the 1980s, of industrial conflict migrating from industry to public services, is continuing. Manufacturing is where most strikes occur, but the largest conflicts, with most participants, tend to occur in the public sector. Large conflicts, triggered by government public sector and/or welfare reform plans, occurred in recent years in Bulgaria, Greece, Hungary, Malta, Poland and Spain. Italy, too, has seen substantial conflict triggered by such reform plans.

Strikes may be called or threatened, but not materialise, either, because they are meant as a 'warning' and an accommodation is subsequently reached, or because unions are unsuccessful when balloting members. Some countries have statistics on balloting outcomes. In Italy public sector strikes must be announced in advance and they are monitored by an independent Guarantee Authority, which can sanction a union which breaks the rules. In 2008, there were 2 195 strike notifications, of which 39 % were called off. In the UK it is possible to compare the number of disputes involving industrial action with the number of successful strike ballots, which are obligatory before taking industrial action. In 2008 there were 658 successful ballots, with industrial action subsequently taking place in 144 instances (22 %),

suggesting substantial use of ballots as a 'warning'. National strikes which are threatened but subsequently called off are part and parcel of industrial relations in some countries. In Sweden, for example, two national strikes were cancelled in 2009, while LO's affiliates called 16 regional strikes but called them all off. Unfulfilled strike threats were also reported in 2009 in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Malta, Portugal and Romania. Carley (2010) gives some examples of the issues over which collective action was threatened but did not take place. These include pay and job cuts, government reform plans and company restructuring, and suggest at least some of the unfulfilled threats are related to the worsening economic situation. It is not clear, however, whether the phenomenon has increased as compared to previous years. Such conflicts tend to be more intense and the unions' position more constrained in times of recession.

There appears to be no correlation between relative strike involvement and any of the industrial relations indicators discussed earlier in this chapter (union density, coverage, coordination, centralisation). There is some indication that under company bargaining the incidence of conflict is higher but that each dispute is smaller with relatively fewer workers involved; where bargaining takes place at higher levels relatively more workers are involved, but conflicts are fewer. But these associations are weak and further analysis is needed in which it is necessary to model economic and political variables in addition to the institutional ones portrayed here.

**Chart 1.19: Government intervention in wage setting**



Source: J. Visser, ICTWSS database 3.0, 2010.

## 1.7. State and government intervention

There are various ways in which the state is involved in industrial relations and directly or indirectly influences decisions regarding wages, hours and working conditions. All EU Member States lay down basic legal guarantees on association, collective bargaining and strike action, and all are bound by a considerable body of EU law in matters of non-discrimination, health and safety in the workplace, maximum working hours, parental leave, employment contracting and employee rights of information and consultation. As noted above, most EU Member States have minimum wage legislation in

place and many have procedures for extending collective agreements to non-organised employers. Governments can influence the outcomes of wage bargaining, directly or indirectly, in various ways; by prescribing conflict settlement and arbitration procedures; issuing or negotiating wage guidelines; using public sector wage setting as an example and pace-setter for the private sector; by imposing a ceiling on outcomes, raising taxes or even suspending collective bargaining temporarily. The last mentioned technique has not been used in recent years, although it was not uncommon in the 1970s and 1980s. All the other methods have featured in the years since 2000. Based on a measure of government intervention in wage setting (see Box 1.9), Chart 1.19 portrays

### Box 1.9: government intervention in wage bargaining

Using a scale developed by Hassel (2006), with a slight modification, the ICTWSS database distinguishes the following grades of government involvement in collective bargaining: the government imposes a settlement or ceiling on the private sector and/or suspends bargaining (= 5); the government participates directly in private sector wage bargaining and provides norms or ceilings, or tax-based compensation to achieve particular outcomes (= 4); the government influences wage bargaining indirectly through minimum wage setting, wage setting in the public sector, through compulsory arbitration and/or by withholding extension or recognition (= 3); the government provides the institutional framework for national or sector collective bargaining (legal protection of agreements, extension) (= 2); and, finally, no role of government in wage setting (= 1).

**Table 1.9: Issues negotiated in social pacts, 2000s**

	Wage procedure	Wage max	Tax budget	Working hours	Jobs ALMP*	EPL**	Social security	Pension	Training	Union rights	Social dialogue
EU-27	44	15	11	4	12	10	25	10	20	9	8
EU-15	28	13	8	3	8	7	20	8	18	7	2
EU-12 + EU-2	16	2	3	1	4	3	5	2	2	2	7

Source: J. Visser, ICTWSS database 3.0, 2010, multiple issues per pact.

\*Active labour market policy.

\*\*Employment protection legislation.

the cross-national variation in the EU and compares the situation in 2007–09 with 10 years earlier.

Overall, it appears that the intensity of government intervention in wage setting has decreased, albeit by a small amount and not in all Member States. Generally, we note a convergent trend, with the averages for the 12 new Member States and EU-15 moving close to each other. In particular, CEE countries economies have moved away from restrictive government controls, while maintaining influence over general wage developments through minimum wage setting and related procedures of consultation. There are no strong regional differences within the EU as a whole and this variable — the index of government intervention — does not seem to correlate with any of the indicators (unionisation, employer organisation, bargaining coverage, centralisation, coordination) discussed in this Chapter.

Government intervention is associated with minimum wage legislation and the practice of extending collective bargaining and it has centralising effects as it tends to raise the level at which bargaining takes place. But, as has been noted in the *Industrial Relations in Europe* 2004 report, direct government intervention tends to be an alternative, or substitute, for coordination by the trade unions and the employers' associations themselves. However, the absence of government

intervention in matters of wage setting can combine with either a coordinated approach — as in Germany, Austria or Sweden — or with an uncoordinated, market-based one — as in the UK, the Czech Republic or Poland.

### 1.7.1. Social pacts

In various EU Member States governments have tried to engage trade unions and employers' organisations in tripartite social pacts on wage moderation and reform on issues such as pensions, early retirement, employment protection, active labour market policies, unemployment insurance and training. Social pacts are defined as tripartite bargains, more precisely as 'publicly announced formal policy contracts between the government and social partners over income, labour market or welfare policies that identify policy issues and targets, means to achieve them, and tasks and responsibilities of the signatories' (Avdagic, Rhodes and Visser, 2011). Such bargains can take different forms, have a different content or scope in terms of issues and policy domains and they differ in their duration or period of application and in their potential effects.

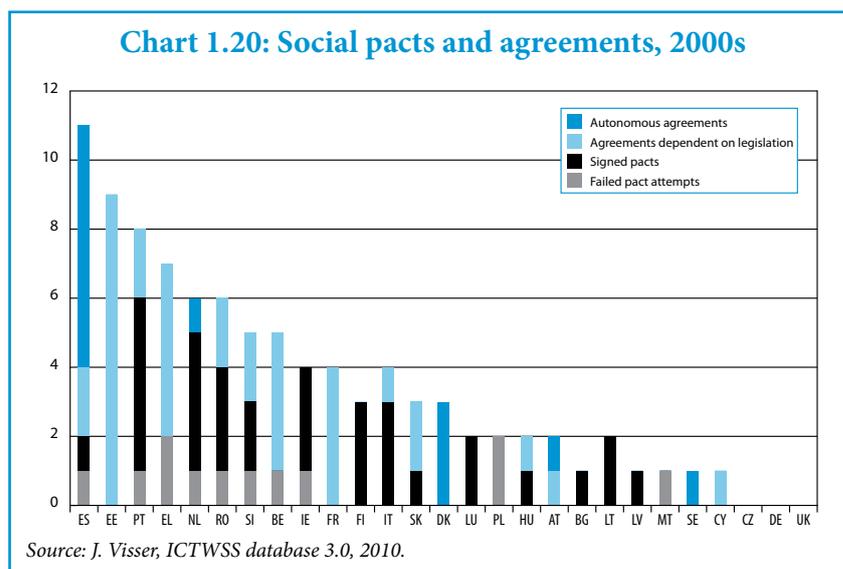
In the years 2000–09, 44 attempts to negotiate a social pact were identified. This is half the total over the preceding decade. In both decades the failure rate i.e. of pact negotiations that

do not end in an agreement is the same, at one third. Compared to the 1990s fewer governments turned to this instrument. One potential reason, discussed in a recent collection of studies (Pochet, Keune and Natali, 2010) is that social pacts were especially popular in the run up to EMU. Even so, since 2000 governments tried to negotiate a social pact at some point in 18 of the 27 EU Member States, and in 14 some agreement was reached. No pact negotiations took place during this period in Austria, the Czech Republic, Cyprus, Denmark, Estonia, France, Sweden and the UK, whilst in Germany the Alliance for Jobs, Competitiveness and Training, begun in 1998, ended at some point in 2001. In four countries — Belgium, Greece, Malta and Poland — one or more attempts to negotiate a social pact occurred but these were never successful.

Of the pacts that were signed Table 1.9 shows that the number one issue was wage setting, including conflict regulation ('wage procedure') and the use of inflation targets ('wage max'). Social security (in particular unemployment insurance) is the next most important issue, followed by vocational training, active labour market policies, employment protection and pension reform. Social dialogue procedures, together with consultations over minimum wage decisions, are relatively frequent issues in social pacts in the 12 new Member States.

Many of these issues can (also) be subject to bilateral agreements between the central union and employers' associations, without the participation or intervention of the government. Two types of agreement can be distinguished, similar to the two procedures specified under Article 136 of the EU Treaty. Sponsored agreements depend for their implementation on subsequent legislation by the government. They can be seen as a form of preparation for legal intervention, similar to the European social partner agreements in the 1990s (on parental leave, fixed-duration contracts and part-time work) that were implemented by means of an EU directive. Autonomous agreements are implemented by the unions and employers themselves, by means of collective bargaining or guidelines and do not seek or require subsequent legislation. Autonomous agreements often pre-empt legislation and surely one motive for employers and unions to conclude such agreements is that they exert more influence over the content of regulation than if it were done through the law. The parallel is found in the European framework agreements on telework, work-related stress, sexual harassment, each concluded since 2000.

As can be seen from Chart 1.20, autonomous central agreements are relatively rare; most agreements rely on subsequent legislation. Some of the agreements in Portugal after 2005, in an attempt to repair the damage of prior legislation on collective bargaining, can be classified as autonomous and the same applies to the seven procedural wage agreements and one further agreement in Spain. The other examples are found in Denmark, the Netherlands and Sweden. Sponsored agreements, some related to EU legislation, are frequent in France, southern and eastern Europe.



## 1.8. Conclusion

This chapter has offered a 'bird's eye' overview of recent trends and variations in industrial relations in the European Union. To that end, it has presented a demography of national variations on the six major variables that, arguably, make up the institutional fabric of industrial relations: trade unions, employer organisation, collective bargaining, workplace representation, industrial action and government intervention. The result can be summarised as follows: on most variables the years since 2000 have seen a continuation and development of trends started earlier, without major breaks. This is true, for instance, for the decline of union density, decentralisation of collective bargaining, lower levels of industrial action and more employee participation in the enterprise (at transnational as well as national and sub-national levels). The combined effect of the second and fourth of these trends has been to further augment the prominence of the company level in the institutional fabric of European industrial relations. Continuities are, moreover, noted in the continued high levels of employer organisation,

bargaining coverage and, a continued, albeit slightly less pronounced role for government in industrial relations, including through public extension of collective agreements to non-organised firms, the institution of a mandatory minimum wage and the negotiations of social pacts.

Amidst such common trends and developments, the chapter has also highlighted the continued diversity of national industrial relations in the EU. Some of this diversity is between the EU-15 and the CEE countries and flows from the enlargements of 2004 and 2007. But the diversity within these two groups of countries is large as well; and other plausible 'quasi-regional' groupings are detectable (see *Industrial Relations in Europe* 2008 report). On many 'hard core' variables where EU competences are limited — the organisation of the social partners, collective bargaining over pay and primary working conditions and industrial action — diversity around common trends has persisted. Only where there is scope for EU intervention — as on employee representation within the enterprise — is some tendency toward convergence apparent.

How the trends outlined in this chapter will be affected by the current crisis, with the prospect — at the time of writing in mid-2010 — of severe public sector cuts and austerity measures in many Member States, cannot be foreseen with any certainty. Will unions gain members, industrial action go up, governments rush to negotiate social pacts? Or will the opposite happen, with further union decline, more labour acquiescence, unilateral government measures? Scattered evidence from various countries indicates tendencies in both directions.

For instance, the data for union membership and union density in 2009, where available, variously show continued but not excessive union decline (Austria, Germany, Denmark, Finland, Sweden), no change (the Netherlands) or an increase (Belgium, related to the continued role of unions

in the administration of unemployment insurance). Longitudinal studies of union membership and business cycles tend to conclude that increases in unemployment are associated with membership decline, sometimes with a delay of one or two years. To the extent that a number of countries have been able to contain the effects of the crisis on unemployment with special measures, in particular by using short-time working arrangements, any consequent reduction in union membership will be less. These measures have been particularly effective in manufacturing and agreements between unions and employers have been a key tool in implementing such schemes (see Chapter 3). Come 2010, the crisis has moved on to the public sector, with most Member States now announcing severe austerity programmes with a standstill or cut-back in wages and/or employment. Unions in many countries will be propelled

to take defensive industrial action in circumstances which threaten them with large losses in membership and in influence.

Finally, it is hard to foretell whether the increased coordination of fiscal policies and financial regulation in the EU, and in the euro area in particular, will trigger joint responses from unions and employers, autonomously or in concert with the public authorities, in the domain of industrial relations and wage policy. Such initiatives would seem vital for retaining some influence over how the crisis will unfold. In crisis conditions the tendency to negotiate social pacts is stronger, but the combination with other conditions — in particular the position of the government and the strength of the unions — is crucial (Avdagic, Rhodes and Visser, 2011). Economic crises as such are poor predictors of concerted, joint action.

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## CHAPTER 2: The crisis: challenges and social partner perspectives

*The economic and financial crisis presented industrial relations actors and institutions across the EU with formidable challenges. There appears to be no obvious association between the magnitude of the crisis in terms of its employment or fiscal impact and the development of consensus and divergence in the policy perspective between social partners. On the one hand, where the crisis has been most severe, policy disagreement has predominated. On the other hand, a degree of policy consensus has developed not only in some EU-15 countries with well-established social dialogue traditions, but also in some new Member States where tripartite structures have been exploited.*

*This chapter is based on a draft by Paul Marginson and Mark Carley of the University of Warwick's Industrial Relations Research Unit.*

### 2.1. Introduction

The effects of the financial and economic crisis have permeated national borders as a form of international contagion, underlining the heightened interdependence of national economies, their labour markets and their national industrial relations systems. The crisis has presented, and continues to present, industrial relations actors and institutions across the EU with formidable challenges. For the countries of western Europe, these are unprecedented in their magnitude in the post-war era. For those of central- and south-eastern Europe, the transition to a market economy 20 years ago was accompanied by major economic upheaval. The present challenges lie in the testing nature of the crisis for the industrial relations institutions established during and since that transition.

The chapter establishes the broader economic, employment and policy context for Chapter 3, which focuses on negotiated and concerted responses by the social partners which address the effects of the crisis. After first establishing the varying scale and nature of the economic and employment challenges that confront the public authorities and social partners across the Member States, the chapter then addresses the perspectives of the social partners on the public policy responses required to deal with the effects of the crisis on economic activity and employment.

Accordingly, the first section of the chapter briefly reviews the main economic and employment dimensions of the crisis. It does so by focusing on trends in output, employment and unemployment and, in addition, on those indicators which are of particular interest to employers' organisations and trade unions, respectively. Employers' organisations tend to pay attention to developments in labour costs (including wages), flexibility and productivity, whilst trade unions tend to be concerned with purchasing power, as reflected in expenditure on private consumption and wage developments. The second section of the chapter surveys the perspectives of national and EU-level social partner organisations on the main policies required to address the effects of the crisis. It pays attention to the extent to which there are commonalities and differences in the policy prescriptions of employers' organisations and trade unions. In broad terms, it finds that substantial consensus on the need for emergency measures to stimulate economic activity and maintain employment in the early phase of the crisis has tended in some, but not all, countries to be followed by tensions over the distribution of costs and the timing and content of measures to reduce public deficits. At the same time, differences are apparent across countries in the presence, and degree, of bipartisan consensus between employers' organisations and trade unions on the measures advocated.

The chapter concludes that variation across countries in the extent of policy consensus between the social partners is associated with the influence of two kinds of 'input' factor. One is 'economic' and concerns the scale and timing of the crisis in different countries. The other is 'institutional' and relates to institutional arrangements for bi- and tripartite social dialogue. It finds that both exercise a partial influence, but that neither is determining.

### 2.2. Economic and employment dimensions of the crisis

This section has three main aims. The first is to establish the scale of the crisis in terms of the main economic and employment indicators identified above, and the relationship between trends in economic activity and those in employment. The second is to highlight similarities and differences between Member States in the scale and timing of the economic and employment dimensions of the crisis. Cross-country differences in the economic and employment context are likely to be one source of variation in the policy responses advocated by the social partners at national level, reviewed in the second section of this chapter. These cross-country differences context are also a potential source of variation in the concrete actions taken by the social partners, which are the focus of Chapter 3. The third is to identify sectoral differences in trends in output and employment, differentiating between broad economic sectors. The rationale for doing so is similar. Sectoral variation in the economic and employment impact of the crisis is also likely to be important in accounting for the sectoral pattern of negotiated responses to the crisis by the social partners, which are the central concern of Chapter 3.

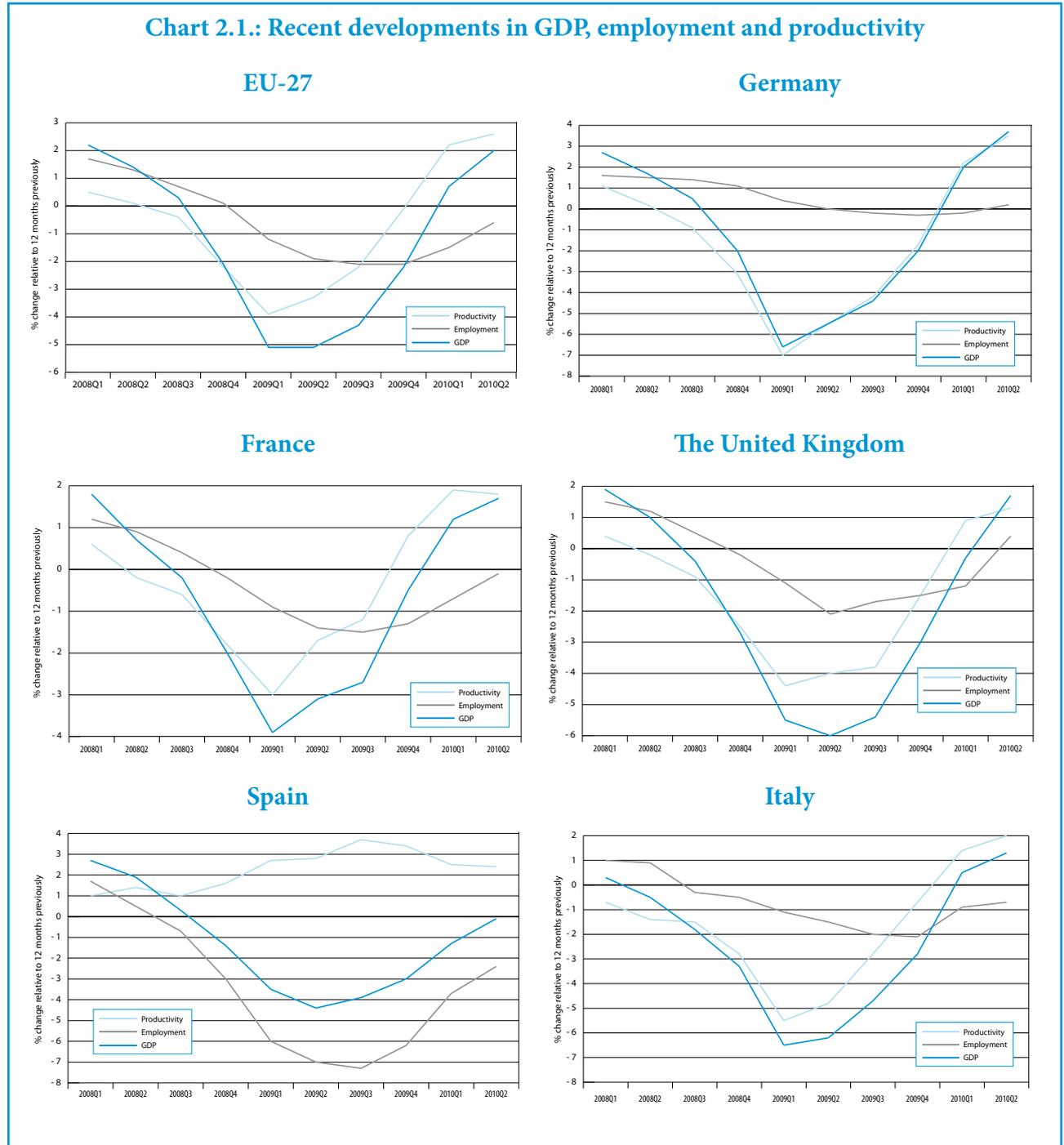
2.2.1. Economy-wide trends

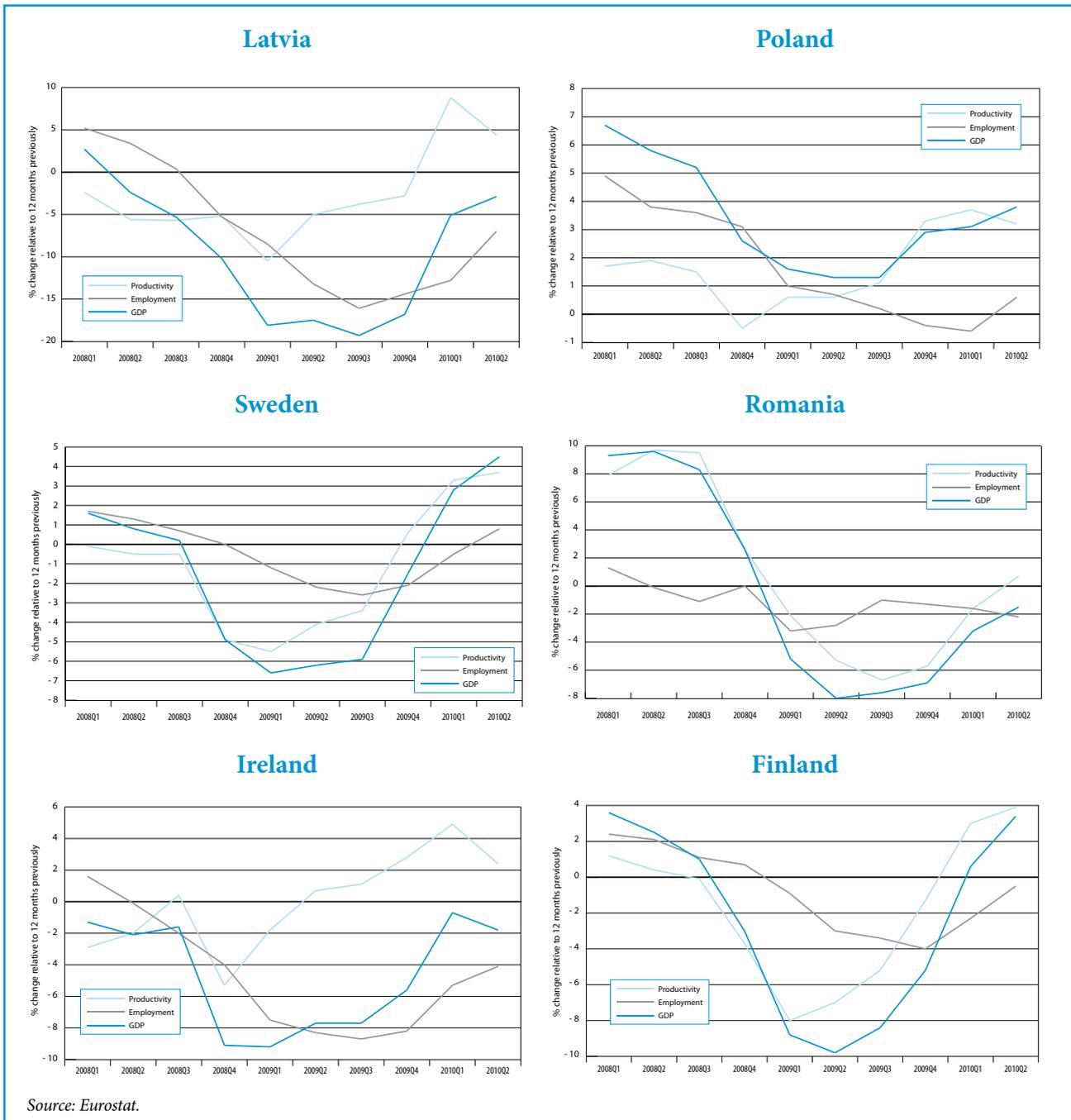
The recession sparked by the financial crisis has seen sharp reductions in levels of economic activity, as

Chart 2.1 shows (Table 2.A1 reports changes in GDP for all Member States). GDP across the EU fell by over 5 % between the opening half of 2008 and the first of 2009, as com-

pared to growth of 2 % in the 12 previous months. Growth only resumed in the first half of 2010, when GDP for the EU-27 rose 1.3 % as compared with the first half of 2009.

Chart 2.1.: Recent developments in GDP, employment and productivity



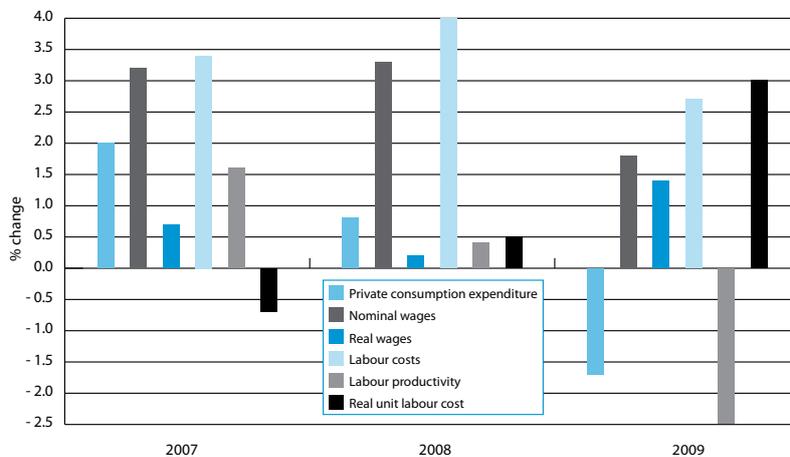


Within this overall picture, the trajectory of individual countries differs in two respects. The first is the degree of severity of the decline in economic activity. The Baltic states each experienced a decline in GDP of the order of 15 %, whilst Finland, Ireland, Romania and Slovenia experienced declines in GDP

of some 7–8 %, between 2008 and 2009. At the other end of the spectrum, GDP grew in Poland, albeit more slowly than the year before, whilst the decline in GDP was comparatively small in Cyprus, France, Greece and Malta. The second is the timing of the onset of recession. The majority of countries entered recession

in the fourth quarter of 2008. GDP had started to fall, however, by the second quarter of 2008 in Ireland, Italy, Estonia and Latvia. In contrast, GDP did not start to decline until the first quarter of 2009 in Bulgaria, Greece, Malta, Romania and Slovakia and until the second quarter in Cyprus.

**Chart 2.2.: Changes in consumption, wage, labour cost and productivity indicators in EU-27 in 2007, 2008 and 2009**



Source: Eurostat.

There are also differences over when countries began to move out of recession. By the middle of 2009 some economies began moving out of recession. Member States registering quarterly GDP growth in the second quarter included France, Germany, Portugal, the Czech Republic, Slovakia and Slovenia, as well as Poland. In the third quarter they were joined by the majority of the other Member States, when aggregate quarterly GDP growth figures for the EU-27 moved into positive terrain for the first time since the first quarter of 2008. Quarterly growth in the aggregate EU-27 figures for the third quarter of 2009 onwards was positive, although small in magnitude, indicating the tentative nature of recovery in many countries. Seven countries remained in recession in the final quarter of 2009: Greece, Ireland, Spain, Cyprus, Latvia, Bulgaria and Romania. By the second quarter of 2010, this was still the case for Greece, whilst Ireland had slipped back into recession after registering growth for a single quarter<sup>(1)</sup>.

<sup>1</sup> GDP quarterly change data, not shown in Table 2.A1, accessed at Eurostat PEELs: <http://epp.eurostat.ec.europa.eu/portal/page/portal/euroindicators/peels/>

Private consumption has declined by less than GDP in most Member States, indicating that purchasing power has been an important factor sustaining economic activity. For the EU-27, private consumption fell by 1.7 % between 2008 and 2009 (Chart 2.2), as compared to a 4.3 % decline in GDP (Chart 2.1). The Baltic states, Hungary, Romania and Spain, where the decline in private consumption was even steeper than that in GDP and Ireland, where it was of similar magnitude, stand out as exceptions to this overall pattern.

The trend in private consumption reflects developments in wages up until the end of 2009. Although growth in nominal wages slowed during 2009, they nonetheless increased by 1.8 % for the EU-27 during 2009 as compared to 3.3 % in 2008. The figures for real wages indicate that real wage growth actually increased, from 0.2 % for the EU-27 during 2008 to 1.4 % in 2009 (see Chart 2.2. for both). Against this overall trend, wages declined or stagnated in a few Member States during 2009. Latvia and Lithuania experienced

nominal wage declines of the order of 10 % (with even larger declines in real wages); nominal wages also declined in Ireland (by 4.1 %), Estonia (by 3.0 %) and Greece (by 1.6 %) (although real wages fell by less in all three). In Hungary, nominal wages fell marginally and real wages fell by over 4 %. In Germany, there was no growth in nominal wages and in France, Sweden and the UK nominal wage growth was not much more than 1 %; real wages fell or stagnated in all but France. Overall, there is considerable similarity with the cross-country variation evident for private consumption.

Growth in nominal labour costs, at 2.7 % for 2009 was down from the 4.0 % of 2008, but was nonetheless above that in nominal wages (1.8 %) by a factor of 1.5 (Chart 2.2). The gap between nominal wage growth and changes in labour costs was relatively large in Austria, Belgium, Germany and Greece. The rate of change in labour productivity had already slowed down in 2008, when it stood at 0.4 % for the EU-27, as compared to the 2007 figure of 1.6 %. In 2009 it fell by 2.5 % (Chart 2.2). This is consistent with the gap between the scale of the decline in GDP and the lesser one in employment (Chart 2.1). Particularly steep falls in labour productivity occurred in the Baltic states, Finland, Romania and Slovenia, all countries experiencing some of the sharpest declines in GDP. Ireland, where productivity rose by 1.2 % in 2009, was an exception in this respect. Elsewhere, Germany — where employment has held up (see below) despite a 4.9 % decline in GDP — experienced an equivalent (4.9 %) decline in labour productivity.

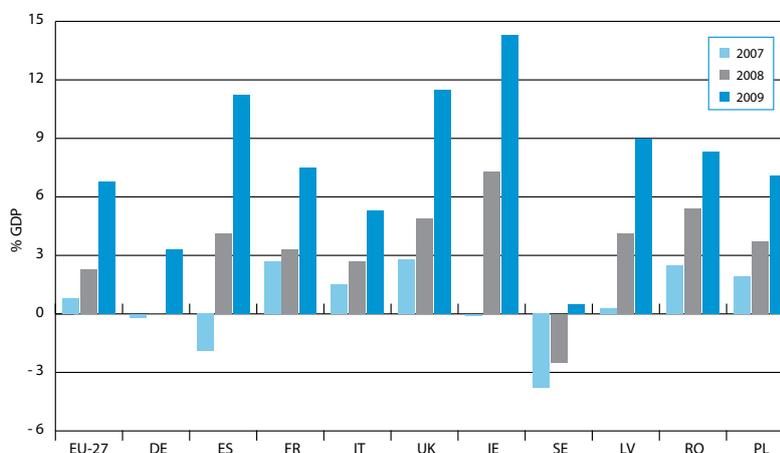
Continued labour cost growth during 2009, combined with declining productivity, meant that unit labour costs rose. Real unit labour costs, which

had declined in earlier years, rose by 0.5 % in 2008 and then by 3.0 % in 2009 (Chart 2.2). Rises in real unit labour costs were particularly sharp, at more than 5 %, in Bulgaria, Cyprus, Finland, Greece, Luxembourg, the Netherlands, Romania, Slovakia and Slovenia. Only Latvia, Hungary and Poland experienced a decline (of 1 % or more) in 2009.

The extent of the impact of the financial and economic crisis on the public finances of Member States is indicated in Chart 2.3 (Table 2.A2 reports changes in the position of the public finances for all Member States). Whereas across the EU-27 public sector deficits amounted to less than 1 % of GDP in 2007, by 2008 this had already grown to 2.3 %. The situation deteriorated rapidly during 2009 by which time public sector deficits stood at 6.8 % of GDP. Sharp increases in the public sector deficit were already evident in 2008 (as compared with 2007) in some countries, notably Ireland, Spain and Estonia. In 2009, this became the case for many more countries. Increases in the deficit equivalent to at least 5 % of GDP occurred in Bulgaria, Cyprus, Denmark, Greece, Spain (for a second successive year), Finland, Ireland (also for a second successive year), Latvia, Lithuania, Portugal and the UK.

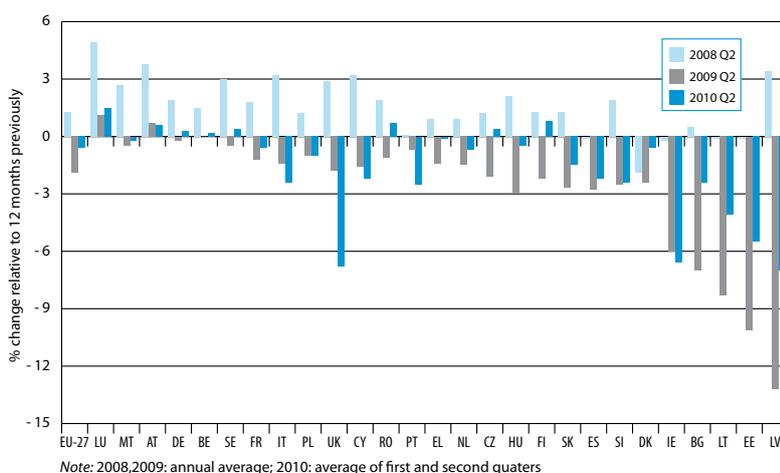
The decline in GDP has only partially been reflected in employment which, as Chart 2.4 shows, fell by just under 2 % between the second quarters of 2008 and 2009 and by a further 0.6 % over the next 12 months (Table 2.A3 reports 12 monthly changes by quarter for each Member State). In proportionate terms the decline in employment was less than half that in GDP between 2008 and 2009. Two influences are potentially at work. One is the lagged effect of a downturn in economic activity on levels of employment, observed in

**Chart 2.3.: Public sector deficits or surplus in the EU-27 and selected Member States 2007, 2008 and 2009**



Source: Eurostat.

**Chart 2.4.: Change in employment for EU Member States, second quarter 2008 to second quarter 2010**



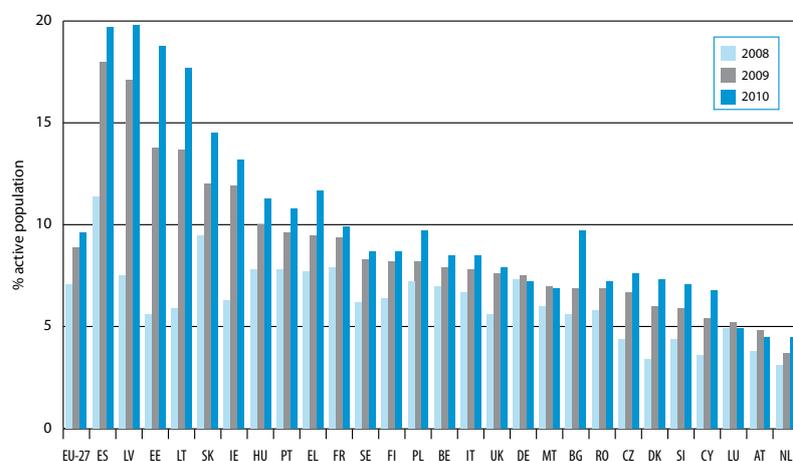
Note: 2008, 2009: annual average; 2010: average of first and second quarters

Source: Eurostat.

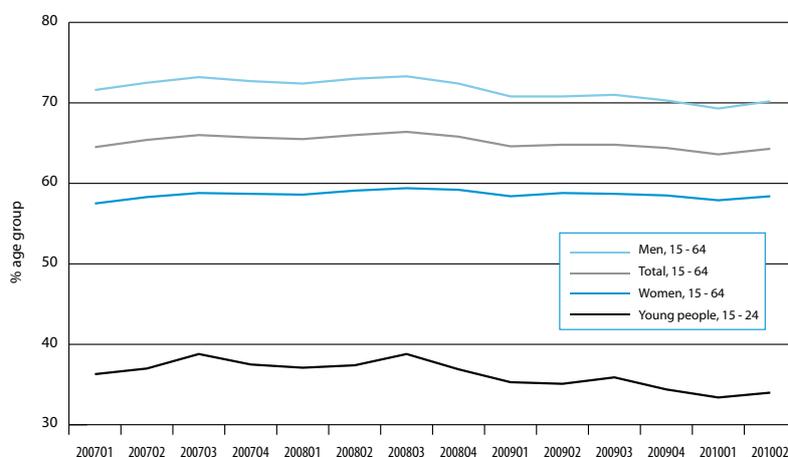
previous recessions (Hurley et al., 2009), which is confirmed by the continued decline in employment reported in most countries in the second half of 2009 and through into the first half of 2010. The second is the impact of measures taken to preserve jobs, for example through short-time working schemes, which are reviewed in Chapter 3. The relevance of this second influence is indicated

by the data on average hours worked, reported below (Table 2.1).

As with GDP, the magnitude of the decline in employment varied across countries (see Chart 2.1). Steep declines in employment were evident in the Baltic states, Ireland and also Spain. In contrast, employment growth continued into 2009; and subsequent declines were modest in Germany,

**Chart 2.5.: Unemployment rates for EU Member States, 2008, 2009 and 2010 (first half)**


Source: Eurostat.

**Chart 2.6.: Employment rates by gender and for young people, EU-27, first quarter 2007 to second quarter 2010**


Source: Eurostat.

**Table 2.1: Fixed-term contracts and actual hours worked in the EU-27 2007, 2008 and 2009**

		2007	2008	2009
Fixed-term contracts (% on total employees)	EU-27	14.5	14.0	13.5
	EU-15	14.8	14.4	13.7
Actual hours worked (full-time employees)	EU-27	39.9	39.8	39.5
	EU-15	39.6	39.5	39.2

Source: Eurostat Labour Force Survey (a) [tps00073], (b) [lfsq\_ewahana, lfsq\_ewhan2].

the Benelux countries, Cyprus, Malta, Poland (where employment did not decline until the final quarter and then only marginally) and Slovenia (where subsequent declines have been comparatively greater). There are two main exceptions to the general trend for the decline in GDP to be markedly greater than that in employment: Ireland and Spain, where the fall in employment paralleled or exceeded that in GDP. Both countries were distinctive in that recession was initially triggered by a sharp drop in activity in construction associated with a slump in the housing and property markets. In addition, in Estonia and Latvia, the steep falls in employment are close in magnitude to those in GDP. At the other end of the spectrum, Germany and the Benelux countries stand out in terms of the magnitude of the gap between GDP decline and the trajectory of employment.

Declines in employment continued into 2010, despite the upturn in quarterly GDP by the third quarter of 2009 in most countries. The rate of quarterly decline in employment had, however, slowed by this point in most countries. Even so, Ireland, Denmark, Bulgaria and the Baltic states reported further substantial falls in employment in the third and fourth quarters, and Bulgaria and the Baltic states again in the opening two quarters of 2010<sup>(2)</sup>.

Unemployment rates have risen since 2008, when the percentage of the EU-27's workforce who were unemployed was 7%. By the first half of 2010 Chart 2.5 shows that the figure stood at 9.6%. Large increases in the unemployment rate between the first half of 2008 and the first half of 2010 were recorded in those countries

<sup>2</sup> Employment change quarterly data, not shown in Table 2.A3, accessed at Eurostat PEEIs: <http://epp.eurostat.ec.europa.eu/portal/page/portal/euroindicators/peeis/>

where the decline in employment was steepest: Ireland, Spain and the Baltic states — where unemployment rates have tripled. Over the same period, the unemployment rate did not rise at all in Germany despite the fall in GDP. Elsewhere, the smallest proportionate rises were in Austria and the Benelux countries, each of which also experienced a sizeable fall in GDP.

Employment rates have declined faster for men than for women (Chart 2.6). Whereas the female employment rate stood at 59.1 % in the second quarter of 2008, and declined only marginally to 58.4 % by the second quarter of 2010, that for males decreased by 2.8 percentage points from 73.0 % to 70.2 % over the same period. Young people under 25 have been particularly affected by the recession. Youth employment rates have slumped by 3.4 percentage points from 37.4 % in the second quarter of 2008 to 34.0 % in the second quarter of 2010 (Chart 2.6).

Workers employed on temporary contracts have been more exposed to job loss than those on open-ended or permanent contracts. Table 2.1 shows that the proportion of the workforce on fixed-term contracts shrank by 0.5 percentage points in both 2008 and 2009. Although the trajectory in the majority of countries corresponds with this aggregate development, there are also some sharp contrasts between particular countries. Spain, where use of temporary contracts is easily the most widespread amongst Member States, registered a fall in 2009 of almost 4 percentage points from the 2008 level of 29.4 % (indicating that workers on fixed-term contracts have borne the brunt of rising unemployment). In contrast, the proportion of workers on fixed-term contracts rose between 2008 and

2009 in a few countries, including Greece, Hungary, Luxembourg and Malta.

Reductions in hours worked would seem to have cushioned the impact of the recession on employment levels. Actual hours worked by full-time employees fell by just under 1 % (from 39.8 to 39.5 hours per week) on average across the EU-27 in 2009 as compared with 2008 (Table 2.1). Larger falls, approaching 2 %, occurred in Austria and Germany, both countries where statutory short-time working schemes have been widely taken up. Reductions in average hours worked seem to be particularly focused on the industrial sector, where they have been proportionately larger (see below).

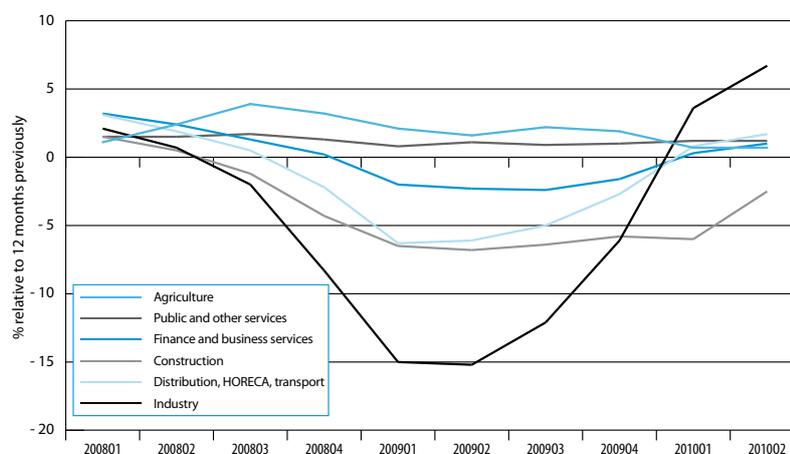
### 2.2.2. Sector and company-level trends

The impact of the crisis has differed markedly between the main sectors of the economy, as Chart 2.7 shows. The industrial sector, including manufacturing but excluding construction, has experienced a steep decline in

activity, amounting to a 12 % decline in value-added for the EU-27 in 2009 as compared with 2008. Construction experienced a 6 % decline over the same period. Private services have been less affected, although there are differences within the broad sector. Value-added fell by over 4 % in 2009, in distribution, transport, communication and hotels and catering, taken together. The decline was only half this, at around 2 %, in finance and other business services. The role of the public services in sustaining economic activity is underlined by the continued increase in activity in 2009. Given the scale of the public sector deficit in many countries (Chart 2.3) and the spread of austerity measures to reduce deficits, this is unlikely to persist.

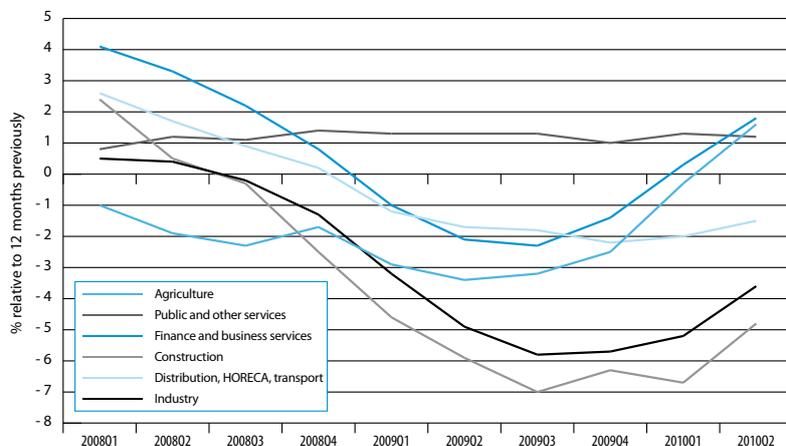
As at the aggregate economy level, sectoral developments in employment in 2009 as compared to 2008 show declines which are noticeably less than those in output (Chart 2.8 and Chart 2.7). The steep decline in activity in industry has been accompanied by a more modest fall in employment, of some 5 %. In construction, however, the decline in employment was broadly equivalent

**Chart 2.7.: Change in value-added by broad sector in the EU-27, first quarter 2007 to second quarter 2010**



Source: Eurostat.

**Chart 2.8.: Change in employment by broad sector in the EU-27, first quarter 2008 to second quarter 2010**



Source: Eurostat.

to that in output. In private services, the decline in employment in distribution, transport, communications, hotels and catering was noticeably less, at 1.7 %, than that in output, whilst that in finance and other business services was of equivalent magnitude. In the public services, employment rose slightly.

In manufacturing, Hurley et al. (2009) indicate the extent to which a reduction in average hours worked has ameliorated the deterioration in employment. Average hours worked in manufacturing in 15 Member States fell by some 7 % between the first quarters of 2008 and 2009 as compared to a reduction in employment of 5 %. There were marked differences between countries. In Denmark, France, Spain and the UK, the percentage reduction in employment exceeded that in hours worked, whereas the reverse was the case in Austria, Germany, Finland, Portugal, Greece, the Czech Republic, Slovakia, Poland, Bulgaria, Romania and Latvia. In three countries the burden of adjustment was heavily weighted towards reduced working hours as

compared to reductions in employment: Austria, Finland and Germany.

Box 2.1 provides a more detailed picture for the EU-15 only of developments in production and employment in selected sectors.

Job losses and newly created jobs announced by companies, which involve at least 100 jobs or more than 10 % of the workforce at sites employing at least 250, are recorded by the European Restructuring Monitor (ERM). It relies on systematic monitoring of reports in the media in each of the EU's Member States (and Norway) to identify these. Although the data are neither comprehensive nor necessarily representative, their value lies in indicating trends and patterns in company restructuring and differentiating between different types of restructuring (Hurley et al., 2009). The impact of the crisis on trends in job creation and job loss amongst companies is clear. During 2007, prior to the onset of the crisis, job gains from company restructuring — totalling over 450 000 — exceeded those from job losses — at around 330 000.

In contrast, over the 18 months covered by the 2009 ERM Report (Hurley et al., 2009), from the start of 2008 up to the end of June 2009, total job losses arising from company restructuring totalled over 900 000 across the EU as compared to 400 000 new job announcements. Job losses started rising in the first quarter of 2008, peaking in the first quarter of 2009 before declining somewhat in the second quarter. Job losses outnumbered jobs created from the second quarter of 2008 onwards, coinciding with the onset of recession.

Analysis of the sectoral pattern of job losses over the 18-month period reported by the European Restructuring Monitor indicates that 49 % occurred in manufacturing and other production industries and 47 % in services (Hurley et al., 2009). The balance was accounted for by agriculture, forestry and fishing and construction, which because of the small-scale of many businesses and high incidence of self-employment often fall beneath the ERM reporting thresholds. Given that service sector employment accounts for over 65 % of total EU employment and manufacturing for less than 20 %, the extent to which the latter has been hit harder by the crisis is again apparent. This is underlined by the 7 percentage point increase in the proportion of job losses accounted for by manufacturing over the 18-month period as compared to the six years up to 2008. The increase was more marked in higher-technology industries, such as automotive, than in lower-technology industries such as food processing. Amongst the service sectors, retail accounted for a markedly higher proportion of job losses over the 18-month period than in the previous period. In contrast public administration accounted for a smaller proportion of job loss, reflecting the role of central and

### Box 2.1: Contrasting trends in production and employment in selected sectors

An examination of developments in selected sectors confirms that the manufacturing and construction sectors in the EU-15 have been particularly hard hit by the economic crisis, and that some private service sectors have also experienced sharp declines in economic activity whilst others have been much less affected. Table 2.2, reproduced from Hurley et al. (2009), shows that within manufacturing, steep declines were experienced in textiles and clothing and across metalworking — particularly in the automotive sector, which saw a 41 % decline in output between the first quarters of 2008 and 2009. One of the least affected industries within manufacturing was food processing where output fell by just 2 % over the same period. Only pharmaceuticals saw an increase in output. An aggregate figure for the service sectors was not available. In general the declines in turnover reported by individual service industries over the same period were smaller than those experienced by manufacturing industries, although reductions of some 10 % were reported in retail and the transport industries. No data were available for financial services, although reported job losses have been substantial (Glassner, 2009). Of the service sectors covered only computing showed an increase in output between the first quarters of 2008 and 2009.

**Table 2.2: Changes in production and employment by selected sectors in the EU-15, 2007–09 (%)**

	Production		Employment	
	Q1 2007–08	Q1 2008–09	Q1 2007–08	Q1 2008–09
Manufacturing (all)	2.9	– 16.7	1.0	– 4.0
Food products	1.2	– 1.9	1.4	– 1.3
Textiles	– 3.9	– 23.0	– 3.6	– 10.4
Chemicals	1.8	– 19.0	– 0.2	– 3.8
Pharmaceuticals	0.4	3.4	1.0	– 4.0
Metal products	3.9	– 26.1	2.8	– 4.2
Motor vehicles	5.7	– 41.4	0.1	– 5.6
Electricity, gas	3.2	– 5.1	0.5	1.1
Construction	0.1	– 11.4	1.8	– 8.0
Retailing, wholesaling	8.7	– 9.8	2.0	– 1.5
Land transport	12.9	– 7.4	2.3	– 2.4
Postal services	3.3	– 3.9	– 0.2	– 2.0
Hotels, restaurants	3.9	– 4.5	2.7	– 1.9
Telecommunications	– 0.4	0.8	– 2.1	– 2.7
Computing	6.4	2.2	4.7	2.6

Source: ERM 2009 Report (Eurostat, Short-term business statistics).

Reflecting the economy-wide pattern, Table 2.2 also indicates that falls in employment in manufacturing were modest when compared to the scale of the decline in output. Employment had fallen by 4 % between the first quarters of 2008 and 2009 as compared to the 17 % loss of output. The same applied to the service sectors for which data were available. Construction, however, registered a much sharper drop in employment, of 8 % compared to output loss of 11 %, probably reflecting the project-based nature of much employment in the sector.

local government employment as a stabilising factor during recession.

The ERM database also differentiates job loss according to the type of restructuring involved. The largest proportion of job losses over the 18-month period — 70 % — were

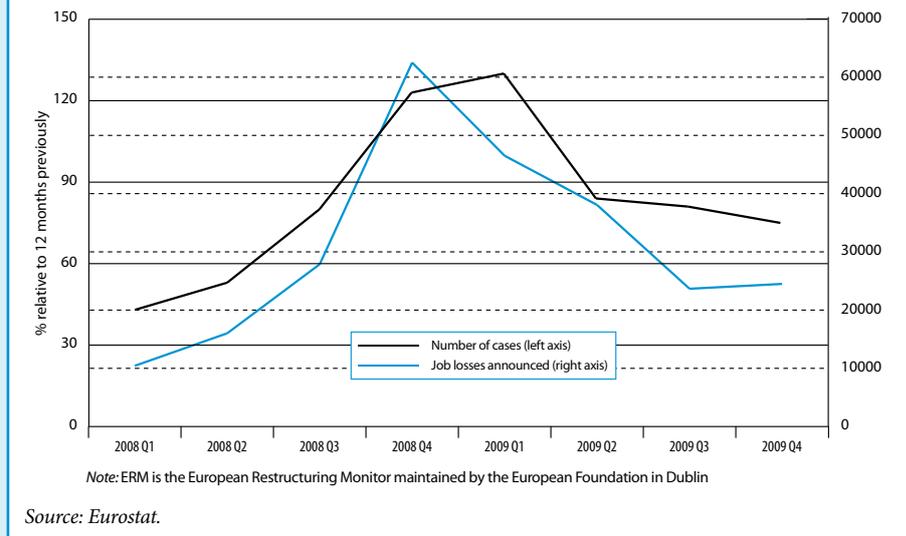
attributed to ‘internal restructuring’ by companies, which includes all those forms of restructuring not falling under other headings. Bankruptcy or closure was the next most prevalent, accounting for 21 %. Restructurings of this kind increased sharply as compared to the years prior

to 2008, when they stood at 14 % (see Box 2.2). In contrast, the relatively small proportion of restructurings attributed to offshoring (or delocalisation) declined, from 6 % to 3 % of the total. Job loss associated with mergers and acquisitions remained steady at around 4 % of the total.

### Box 2.2: From boom to bust: a surge in bankruptcies

The number of cases of bankruptcies or closures reported by the European Restructuring Monitor (Chart 2.9) climbed from a quarterly total of some 10 000 in the opening quarter of 2008 to over 60 000 in the final quarter. By the second half of 2009 it had declined to just under 25 000 per quarter, although this level was still substantially above that prevailing during before the summer of 2008.

**Chart 2.9.: Cases of bankruptcy and closures recorded by the ERM by quarter 2008–09**



Data on bankruptcies for Member States indicated a surge in many countries, more marked in some than others (Coughtrie et al., 2009; Glassner and Keune, 2010). For example, in Belgium, the total for the first four months of 2009 was three-and-a-half times higher than the equivalent period in 2008, and in Spain the total was more than two-and-a-half times higher over the same period. In the Netherlands, the number of bankruptcies doubled between mid-2008 and mid-2009. In Denmark the number rose by 85 % over the 12 months up to May 2009, whilst in Sweden the total was up by 45 % comparing the first quarters of 2008 and 2009. Bankruptcies doubled in Bulgaria comparing the first four months of 2009 and 2008, whilst in Romania the total was up by almost 60 % comparing the first quarter of 2009 with that of 2008. The Baltic states all saw sharp increases in numbers of bankruptcies, with the upwards surge commencing earlier in 2008 than elsewhere. In a few countries, the increase in bankruptcies has been modest or no increase had been recorded by mid-2009. Austria reported a 9 % increase between the first half of 2008 and the same period a year later. The Czech Republic reported no increase over the same period, although a sharp increase was anticipated over the second half of 2009.

### 2.2.3. Assessment

The steep falls in output have, in many but not all Member States, been followed by a period from mid-2009 onwards where output has stabilised and a gradual recovery commenced. Cross-country variation is, however, evident in the severity of the decline in economic activity experienced, the timing of the onset of the recession and the point at which economic recovery commenced. The sectoral pattern of restructuring that the recession has unleashed appears to reinforce longer-run structural changes in the European economy.

The decline in manufacturing output has been much sharper than that in services, with the probable effect of further accelerating the shift in economic activity from the former to the latter (Hurley et al., 2009).

In considering the possible trajectory of economic recovery, account needs to be taken of the origins of the current recession. Historical experience, for example from the Nordic countries in the early 1990s, shows that recovery from a recession triggered by a financial crisis tends to be slower than otherwise. This is for two reasons: financial markets and busi-

ness confidence take time to recover; and aggravated levels of private and public debt remain to be dealt with (Hurley et al., 2009; Eurofound, 2009). Whilst activity in financial markets appears to be picking up, and there are signs that business confidence is recovering, the debt problems seem unlikely to be resolved rapidly. Unemployment and short-time working arrangements will continue to depress earnings levels, and hence constrain the capacity to pay off private debt, until well after a recovery in output is underway. The levels of public debt incurred, in the first instance, to address the immediate financial

### Box 2.3: Work inequalities exacerbated in the crisis (1)

Inequalities in the world of work have been affected by the crisis, although in a differentiated way, depending on individual countries — and their policy responses to the crisis — and the area under study.

The first source of inequality unleashed by the crisis was due to the differentiated impact of employment adjustments among workers. Employment adjustments to the crisis have differed not only between countries, but also between different categories of workers.

The high percentage of temporary workers in countries such as Germany and Spain and also Hungary has led to employment adjustments without these being accompanied by a significant increase in unemployment rates. This also means, however, that temporary workers were the first category to be affected by the crisis, as in Spain, where they account for 95 % of employment adjustments. Short-term work contracts in France have also served as a sort of buffer during the crisis, with 53 % of job losses affecting interim agency workers, with not only low-skilled and young workers, but also older workers being severely hit. Self-employed and family workers have also been particularly hard hit in Bulgaria, where the employment loss was also higher among temporary workers (– 10 %) compared to workers on a permanent contract (– 3 %). Part-time contracts have also been reduced twice as often as full-time contracts. Discriminatory practices have also been on the rise, as shown in Spain, where differentiated employment practices have multiplied on the basis of ethnic origin (reflected in a relatively higher growth in unemployment), or in Estonia where job losses have been much higher for non-nationals.

Younger groups have been severely affected everywhere — often because overrepresented among temporary workers — together with those with only basic or no qualifications, as in Spain and the UK — where long-term unemployment increased significantly among young people (16–17 and 19–24 years of age). In Spain, workers aged 20–29 have absorbed 75 % of the employment decrease. In the Netherlands, even young workers (below 25) in full-time jobs with permanent contracts have been hit hard, accounting for almost half of the total decline in employment. Low-skilled youth employment fell by more than 25 % between 2008 (second quarter) and 2010. Targeted programmes for young people, as implemented in Sweden, have immediately helped. Regional differences also seem to have increased, with a greater impact being felt in, for instance, the south than the north of Italy, leading to a sharp fall in living standards and purchasing power in 2008–09 and a general increase in wage and income inequalities.

Certain sectors have suffered more than others, such as manufacturing and construction — which are dominated by men, and also — in the case of construction — migrant workers. This partly explains why men have so far been hardest hit by the crisis. Italy is an exception, with female — especially young (under 25) — workers so far being most affected by employment adjustments in the crisis.

The crisis has also hurt categories of employees not particularly affected in earlier recessions, such as those in middle-income jobs or in the public sector, or employees from the financial sector. Business failures have also multiplied, leading to a new source of vulnerability and exclusion.

There is also some evidence that the quality of work has significantly declined during the crisis. Intensity at work has often increased, together with the harassment and bullying of regular employees — as witnessed in Spain — while social dialogue and workers' rights became harder to implement. There has also been a reallocation of work from large firms to smaller firms with lower quality jobs as reported in France in the care sector and in other countries in manufacturing. The rate of undeclared work may also have increased in the current crisis. In most EU countries, quality of work has declined not only for those who remain in work, but also from the perspective of those who lost their job in the crisis and had to — or will have to — take another job but of lower quality. The replacement of permanent jobs by temporary jobs (to promote future external flexibility), as observed in Bulgaria, France, Italy and the Baltic states may also have a long-term impact on employment quality.

Inequalities have also increased on the wage front. During the crisis, wage disparity (measured by the first over the last wage decile) has increased in Italy, but also in the Baltic states and other countries, while in Spain the proportion of workers on low incomes has increased — despite massive employment adjustment among the low skilled — together with increasing pressure from employers to renegotiate collective agreements. Government policy of freezing the minimum wage in Estonia and Lithuania has also contributed to this. Similarly, in the UK, France and also Bulgaria, wage disparity seems to have increased due to the fact that the minimum wage has not been raised during the crisis. This is in contrast to countries such as Poland or Portugal where the minimum wage has been raised to protect the most vulnerable workers. Non-payment of wages has also been observed, for example in Bulgaria, notably in railways. Violations of labour law, for instance with regard to the proper payment of working hours and overtime, have been reported in France, but also in other countries.

Alongside wage moderation, enterprises have also adapted through shorter working hours. Government intervention seems to have been decisive in Germany, with an average reduction of working time of 3.5 % or 50 hours per employee, but also in Sweden and France to promote work-sharing and avoid lay-offs in the crisis. In the UK, 20 % of interviewed companies also reported shorting working hours because of the crisis. Enterprise data in Hungary also show a reduction of working hours both in the public and the private sectors. We must report, however, that such avoidance of job losses through working time reduction has been concerning mainly the core labour force that is permanent employees. In Estonia, working time reduction mainly occurred for a middle-aged, trade-unionised labour force.

1 Compiled on the basis of the preliminary findings of an ongoing EC–ILO project on this topic covering 30 countries (EU-27; Croatia, the former Yugoslav Republic of Macedonia and Turkey), forthcoming in Vaughan-Whitehead (ed.), *Work inequalities in the crisis*, Edward Elgar, 2011.

Trends in social dialogue have also had some impact on inequalities during the crisis. In several countries, sectors covered by collective bargaining seem to have benefited from the negotiation of alternatives to employment cuts (see Chapter 3). In contrast, where social dialogue was weaker — as in several central and east European countries — there seems to have been no alternative to immediate employment adjustments and wage cuts have been immediate and more severe. Labour disputes have increased — for instance in 2009 their number doubled in Estonia — mainly because of claims for unpaid wages, bonuses and paid holidays, as well as the unlawful termination of employment contracts and abuses of some work contracts.

The impact of the crisis on other labour areas has also contributed to increase inequalities. The decrease in training programmes in the crisis, as witnessed in Estonia, Spain and also other countries, seems to have put unskilled workers in an even more vulnerable position. Short-term effects should also be distinguished from longer-term effects. While women so far may have suffered less from employment adjustments, this may be changing — with, for instance, current job cuts in the public sector and services. Moreover, it does not mean that women may not have suffered more from other types of pressure, for instance on the wage front, or from a deterioration of other working conditions and work and family arrangements that have been radically curtailed in the crisis.

Cuts in training expenditure but also work and family services within the crisis may have weakened even further the potential for employees to shift toward better quality and better paid jobs, an effect that will only be visible after a long time. It might therefore be expected that, beyond the most obvious increases in inequalities in the crisis, other sources of inequality will become more evident over the years to come.

crisis and, in the second, to sustain economic activity through the worst of the downturn mean that the consequences of the crisis for the public finances are now the focus of significant retrenchment measures across the EU. Major measures to restore and stabilise the public finances have already been implemented in several countries, including Greece, Ireland, Spain, Portugal and the Baltic states.

The employment consequences of the crisis have not been as severe as might have been expected given the experience of previous recessions. The decline in output has not, in the majority of Member States, been mirrored by an equivalent fall in employment, or rise in unemployment. Employment effects are well-known to lag those in output during a recession, and half-way through 2010 the employment situation was continuing to deteriorate in most countries, albeit at a slower rate than in 2009, even though output had begun to rise in many. Nonetheless, job loss has — to some significant extent — been mitigated by a decline in average hours worked. The role of the short-time working schemes implemented in many countries, and of collectively negotiated adjustments to working time, are addressed in Chapter 3.

Different patterns in the relationship between output and employment are, however, apparent across countries. Taking the countries that differ the most, in Ireland and Spain the decline in employment has been at least as great as that in output. In contrast, in Germany and the Benelux countries employment levels have been broadly sustained despite falls in GDP of varying magnitude. One explanation for the contrast advanced by commentators <sup>(3)</sup>, is that economies have undergone different types of recession. One was initially triggered by a sharp drop in construction activity associated with a slump in the housing and property markets, as occurred in Ireland and Spain. Decreasing output in construction rapidly translates into job loss. The other originated through a collapse in consumer and business confidence and in trade, and corresponds to the experience of Germany and the Benelux countries, and a range of other economies including France and the UK. In these countries, the downturn is focused more on the manufacturing sector, where strenuous efforts have been made to sustain employment levels. If the differing nature of the economic crisis in different countries offers one possible

<sup>3</sup> For example, Stefano Scarpetta of the OECD cited in the *Financial Times* feature 'At the sharp end', 22 January 2010.

explanation, another, to be addressed in Chapter 3, is the actions of the social partners and public authorities aimed at mitigating job loss.

### 2.3. Perspectives of the social partners on public policy responses to the crisis

The aims of this section are threefold. First, to identify the perspectives of employers' organisations and trade unions respectively on the public policy responses required to address the crisis and its consequences. Second, to establish the extent to which there are points in common between the social partners as well as differences. Third, to try and account for cross-country variation in the extent to which the social partners have reached similar or common positions according to the magnitude of the crisis and/or institutional arrangements for social dialogue in different countries.

Surveying the perspectives of national social partner organisations towards addressing the effects of the crisis, two main phases can be distinguished (Freyssinet, 2009; Hethy, 2009). In

the first, from the onset of the crisis in mid-2008 through until early 2009, the adoption by governments of anti-crisis packages aimed at sustaining economic activity and employment received broad, if qualified, support from employers' organisations and trade unions. In the second, from mid-2009 onwards, tensions and conflicts between employers' organisations, trade unions and governments emerge in some, but not all, countries over the distribution of costs and uncertainties associated with two main aspects of measures paving the way towards recovery. One concerns the conditions for restoring business activity. The other involves growing recourse by governments to austerity measures to tackle the impact of the crisis on public finances.

The first phase was marked by considerable consensus across countries on the urgency of governments intervening with measures to stimulate the economy, even if there were differences over the magnitude of the stimulus required and the means by which it should be achieved. Trade unions tended to call for a larger-scale stimulus than employers' organisations, and emphasised increases in public investment, including infrastructure and education and training, and measures to maintain purchasing power and thereby consumption. Employers' organisations, whilst also advocating measures to promote education and training, tended to favour measures which reduced labour costs and taxes, thereby facilitating private investment as well as consumption (Demetriades and Kullander, 2009; Rychly, 2009). Nonetheless, bipartite consensus and/or explicit tripartite agreement over anti-crisis measures was evident across a range of countries. The main exceptions were those, such as Ireland, Hungary and the Baltic states, where the severity

of the crisis from its inception eliminated the scope for any stimulus package, essentially confronting these countries from the outset with the distributional issues that were to subsequently emerge elsewhere.

Under the second phase, two kinds of disagreement have become apparent (Freyssinet, 2009; Hethy, 2009; Rychly, 2009). The first, between employers' organisations and trade unions, is over the conditions required for business activity to be restored.

- Employers' organisations place priority on measures to restore competitiveness, including tight control of labour costs — evidenced in calls for freezing wages and/or wage moderation — and measures to further enhance flexibility in the labour market and workplace.
- Trade unions prioritise employment security — for example through extension of short-time working schemes, social protection — for example by extending the reach of welfare systems and the maintenance of purchasing power — through increases in wages sufficient to maintain them in real terms and protection of the real value of unemployment and social benefits. They fear that measures to increase flexibility will negatively impact further on employment security.

Governments are at the centre of the second, where proposed austerity measures have major implications for public sector employment, and, in some countries (the Baltic states, Hungary, Bulgaria, Romania and also Ireland and Greece), involve cuts or the freezing of public sector pay and/or cuts in benefit entitlements and/or levels.

- Such proposals have invoked widespread trade union opposition (see Box 3.7 in Chapter 3), but have been urged by, or received open or tacit support from, employers' organisations, who are concerned to see public deficits brought down.
- Further disagreement between employers' organisations and trade unions over austerity measures has focused on the balance between reduction in public services and increases in taxation, with trade unions favouring the preservation of public services at the cost of higher taxation and employers tending to advocate the converse (Demetriades and Kullander, 2009).

Around this overall trajectory, there is variation across countries in the extent to which there has been consensus between the social partner organisations on the public policy measures required to address the crisis. A broad three-way distinction can be drawn (see Table 2.3) between:

- countries where a considerable degree of bi-partisan consensus has been forged and for the most part sustained;
- countries characterised by a lesser degree of bi-partisan consensus, including some where it has been confined to specific issues and some where disagreements have prevailed over part of the period; and
- countries where disagreements between the social partners prevailed throughout, or for part of, the period.

The extent to which governments were receptive to social partner proposals and involved social partners in the framing of packages of measures has also varied.

In order to gauge the extent and nature of these two kinds of variation, the perspectives of employers' organisations and trade unions on the measures required to address the crisis, and their involvement in framing the policies implemented by governments, in the Member States are briefly reviewed. The perspectives of the two main cross-sector European social partners are summarised in Box 2.5 (BusinessEurope) and Box 2.6 (ETUC). The account focuses on developments from the onset of the crisis, in the summer of 2008, up until April 2010.

### 2.3.1. Panorama of national social partner policy perspectives

In Germany and Austria, there has been a significant degree of bi-partisan support for measures introduced by government, although some disagreements have emerged over proposed austerity measures. Germany's social partners were consulted — and exerted a degree of influence — over the two economic stimulus packages brought forward by the federal government in November 2008 and January 2009, and participated in two economic summits convened by the government in December 2008 and April 2009, respectively (Zagelmeyer, 2009). They also recommended successfully that the duration of statutory short-time work benefit should be extended. Employers' and trade associations welcomed the stimulus packages and have repeatedly called for a reduction in employers' social security contributions and non-wage labour costs, measures to ease companies' access to bank loans and investment in education and infrastructure. Trade unions have welcomed aspects of the stimulus packages, such as the additional

support for short-time working, but criticised the magnitude of the stimulus as being insufficient. They called for a further stimulus package at the April 2009 summit, including education and infrastructure investments. In December 2009, the short-time work scheme was further extended as part of an 'employment pact' tabled by the government and endorsed by the social partners (Planet Labor, 2009). The scale and composition of austerity measures proposed by the government in the spring of 2010 have, however, been strongly criticised by trade unions.

#### Box 2.4: Information sources

The data on the perspectives of national employer and trade union organisations are, unless otherwise indicated, drawn from: Eurofound's European Industrial Relations Observatory; and two private-subscription based online services, European Employment Review and Planet Labor.

In Austria, a government package of measures aimed at stimulating the labour market, introduced in July 2009, drew support from both employers' organisations and trade unions, which had both been critical of an unsuccessful earlier set of measures adopted in January (Adam, 2009). The social partners also made a joint proposal to make the statutory short-time work scheme more flexible, which was enacted in February 2009.

The picture amongst the Nordic countries varies. In Denmark, broad consensus has been apparent between the social partners, but there have been differences with the government. In Sweden, differences between employer organisations' and trade unions on policy responses to the crisis have been

apparent from the start of the crisis, whilst in Finland bi-partisan support for government anti-crisis measures in the early phase has given way to tensions between trade unions and government over distribution of the burden in the medium-term.

The Danish government had set up a tripartite committee in early 2008 to consider labour market reforms. Following the onset of the crisis recommendations were submitted in the autumn. However, the subsequent proposals put forward by the government failed to win the support of the social partners and the initiative was deferred. The social partners called on the government to take measures to strengthen the labour market, notably making the state-supported short-time work ('work-sharing') scheme more flexible. In March 2009, the government launched a four-pronged package of measures to simulate the labour market. Three elements, boosting support for training; introducing an early-warning system for pending job losses; and improvements to labour market monitoring, were welcomed by both employers' organisations and trade unions. The fourth element introducing more flexible rules for work-sharing was, however, criticised by both social partners as not going far enough (Jørgensen, 2009).

Responding to the Swedish government's draft budget bill published in September 2008, employers' organisations welcomed the emphasis on tax cuts and a reduction in social contributions as the principal means of implementing a fiscal stimulus. Unions, whilst welcoming the stimulus, were sceptical over the efficacy of tax cuts and called instead for larger cuts in employee contributions to unemployment benefits and measures to boost employment and training through

more active labour market intervention. Responding to the 2009 finance bill, introduced in April, employers' organisations criticised measures providing extra support for local authorities and the welfare system, advocating instead further stimulus measures directed towards public investment and incentivising private investment. Trade unions, however, considered the further support for local authorities and the welfare system to be insufficient, and raised the spectre of a return to the high levels of long-term unemployment experienced in the early 1990s, unless further action was taken. In July, the social partners again disagreed over measures required to tackle rising youth unemployment. Unions also criticised the government's employment policy programme for 2010–11, issued in August 2009, as being inadequate for dealing with the rising level of unemployment. In the autumn, further disagreement between the social partners emerged over wage policy for 2010 onwards (Lovén, 2009).

Both employers' organisations and trade unions broadly welcomed the January 2009 stimulus package introduced by the Finnish government, although employers expressed concern at the possibility of offsetting increases in company taxation to fund reductions in social contributions. Trade unions particularly welcomed the positive employment impact of measures to boost infrastructure investment. Subsequently, government plans to raise the retirement age (from 63 to 65) and eliminate the possibility of early retirement were fiercely opposed by trade unions and, following the threat of a general strike, were withdrawn in March. The issue was passed to the social partners to identify an alternative solution which would have the desired

impact on public debt. By February 2010, however, agreement could be reached on only one of two linked sets of proposals. Trade unions have subsequently criticised the government's draft 2010 budget on the grounds that the stimulus envisaged is insufficient to impact on unemployment and — like their Swedish counterparts — invoked the risk of a return to the high level of long-term unemployment experienced 20 years ago. Unions were generally more favourable to a government proposal not to increase income tax if unions agreed moderate pay rises in 2010 (Jokivuori, 2009).

Belgium and the Netherlands have seen a considerable measure of consensus between the social partners in the course of sustained bipartite discussions and tripartite concertation with government over policy responses to the crisis, although with some strains appearing as 2009 progressed. In Luxembourg, however, whilst the government developed its initial anti-crisis measures in close concertation with the social partners, further tripartite talks in early 2010 broke down.

In Belgium, the social partners presented a set of joint anti-crisis measures to the government in December 2008, in the context of the inter-sector agreement concluded by the employers' and trade union confederations for 2009–10. The measures proposed bolstering purchasing power by improvements to fringe benefits (travel to and meals at work) and increases in pensions and unemployment benefits and the reduction of taxes on labour costs. Together the measures were aimed at achieving a balance between sustaining purchasing power and improving companies' competitiveness, were incorporated by the government in a stimulus package

launched in January 2009. However, controversy between the social partners erupted in the summer over proposals from the employers' confederation to curtail the possibility of early retirement and recalibrate pension entitlements. Further disagreement emerged later in the year over the emphasis of government plans to reduce public expenditure, with employers favouring cuts in public employment and opposing higher taxation and trade unions calling for a fair sharing of cuts and the protection of social security budgets. In January 2010, the three main union confederations mounted a joint demonstration in support of their position (Van Gyes, 2010).

Whilst the social partners in Luxembourg supported government measures, introduced in March 2009, providing support for purchasing power and businesses, employers' organisations regretted that they did not go further in terms of structural reforms to boost company competitiveness. Subsequent tripartite talks in the opening months of 2010 collapsed over employers' central proposal for a two-year freeze in the indexation of wages and pensions, which received some support from the government but was fiercely rejected by trade unions (Planet Labor, 2010a).

In the Netherlands, the government and the social partners discussed the impending problems as early as March 2008. Cooperation intensified with the onset of the crisis, with the parties agreeing in their autumn consultation that they should proceed by consensus in addressing the effects.

Trade unions emphasised the need for measures to sustain purchasing power, but agreed to moderate wage demands in exchange for other measures, including reduced

### Box 2.5: European social partner perspectives: BusinessEurope

The European economic recovery plan, presented by the Commission in November 2008 and adopted by the European Council the following month, contained two main elements: a fiscal stimulus equivalent to 1.5 % of the EU's GDP; and short-term action to strengthen the long-term competitiveness of the European economy, including fostering a more rapid shift towards climate friendly business activity.

BusinessEurope broadly welcomed the Council's recovery plan (BusinessEurope, 2008). It underlined the need for short-term crisis response measures to sustain economic activity, to ensure access to finance for companies and to maintain employment, to be accompanied by the speeding up of structural reforms. BusinessEurope stressed that short-term measures should not be to the detriment of necessary, longer-run, structural reforms. Neither should they undermine the functioning of the single market, through invoking forms of protection. An effectively functioning and well-enforced single market is seen as integral to the resumption of economic growth and the creation of jobs. BusinessEurope called for macroeconomic coordination, viewing uncoordinated national responses as potentially damaging to the process of economic integration and, relatedly, called for a strengthening of the role of the ECB (BusinessEurope, 2009b, 2009c). It also proposed a series of measures aimed at improving availability of corporate finance and reducing its sharply increased cost (BusinessEurope, 2009a).

In its spring 2009 European reform barometer (BusinessEurope, 2009b), BusinessEurope described the absence of a visible structural reform strategy as 'a vital flaw in the European response to the crisis'. Structural reforms in three areas were highlighted: improving the business environment for companies; cost-saving reforms to public finances, to ensure sustainability; and labour market reforms. On the last, BusinessEurope proposes further measures to increase flexibility in the labour market, including investment in skills, to facilitate the recovery. It views measures to reduce non-wage labour costs as necessary to the achievement of a more inclusive labour market, as well as to improving competitiveness (BusinessEurope, 2009c). More generally, BusinessEurope has emphasised the centrality of flexicurity principles as providing the appropriate policy framework for responding to the crisis (BusinessEurope, 2010c).

BusinessEurope's autumn 2009 economic outlook (BusinessEurope, 2009d) noted the emerging signs that the economic situation was stabilising and renewed its call for accelerated structural reform to facilitate recovery. Further action to stabilise financial markets and alleviate continuing restrictions on companies' access to finance, was urged. And steps to secure the long-term stability of public finances were advocated, through reform of the public sector and changes to social welfare systems aimed at placing them on a sustainable footing. Also in the autumn, BusinessEurope published a strategy for European economic growth and jobs over a five-year period beyond 2010 (BusinessEurope, 2009e). This calls for EU policies to be strengthened around five pillars, seen by BusinessEurope as mutually reinforcing:

- deepening economic integration and restoring financial stability, with particular priority given to completing the internal market for services.
- strengthening governance arrangements for the euro area;
- enhancing innovation, entrepreneurship, education and skills, thereby augmenting the EU's productivity potential and external competitiveness;
- modernisation of social protection and employment systems, involving reforms which reduce public expenditure commitments (and therefore deficits), promote labour mobility and enhance labour market participation. Employment policies should stimulate the education and training required to significantly enhance the quality and quantity of skills available;
- an integrated approach to energy, environmental and competitiveness policies, to simultaneously address the challenges of energy security, mitigating climate change and enhancing competitiveness;
- shaping globalisation and combating protectionism through external policies aimed at promoting trade and balanced and sustainable international growth, and reinforcing the international financial system.

In its spring 2010 economic outlook (BusinessEurope, 2010a), BusinessEurope observed that although severe, the recession was seemingly relatively short-lived and that business confidence was improving. Nonetheless daunting challenges remained and three priorities were identified in order to consolidate the recovery. First, action to restore the viability of the public services, otherwise currently unsustainable levels of public debt would soon impede the recovery. Second, companies needed to be assured that the external financing required for new investment would be available from the currently weakened banking sector. Third, the temporary schemes which had supported employment through the recession needed to be complemented by long-term structural reforms to the labour market to ensure future employment growth. Ahead of the March European Council, BusinessEurope published its own growth agenda (BusinessEurope, 2010b) which called for an 'exit strategy' to cap and reduce public debt, including tighter fiscal rules to ensure long-term budgetary discipline, 'credible' measures to cut public expenditure, efficiency improvements in public administration and healthcare, a greater role for the private sector in public service and public infrastructure provision and the reform of pension systems. These measures needed to be coupled with an 'entry strategy' aimed at doubling the EU's growth potential by 2014, including measures to better anticipate future skill requirements, improve the returns from R & D and innovation and boost public infrastructure investment (BusinessEurope, 2010c).

unemployment insurance contributions and a reduction in VAT. Employers' organisations emphasised actions aimed at competitiveness, including reduction of taxation, wage moderation and reform of dismissal laws. Agreement was reached in October on a compromise package of measures to be introduced by the government. By the spring of 2009, both employers' organisations and trade unions were critical of the government's emergency economic plans as being too cautious, taking the view that a more substantial fiscal stimulus was required. Following extensive tripartite deliberations, a consensus was reached in April between the government and the social partners on a further package, aimed at providing a stimulus to economic activity through until 2011. This package comprised measures in four areas: actions to promote employment, training and education; maintenance of the purchasing power of unemployment benefit; a boost to public investment in infrastructure; and measures to foster innovation and sustainable economic activity. As in Finland, there was disagreement between the government and trade unions over a proposal to raise the retirement age; and the social partners were handed the responsibility of coming up with an alternative proposal. They subsequently failed in their attempt to do so and in October the government announced that it would act unilaterally (Grünell, 2010). As in Belgium, tripartite consensus on the package was accompanied by a bipartite agreement between employers' organisations and trade unions to moderate wage increases in the 2010 bargaining round.

In Spain, a broad measure of consensus between the government and social partners in the early phase of the crisis gave way to deadlock, as

the social partners failed to agree over wage policy and labour market reform. After almost a year the social partners re-established bipartite consensus over pay. Measures to address the crisis were discussed within Spain's tripartite social dialogue process in the spring of 2008. Employers' organisations and trade unions gave broad support to the measures launched by the government to bolster economic activity, which included improving companies' access to credit, a stimulus to business activity and employment, and promotion of training and lifelong learning. By early 2009, the social dialogue process was deadlocked as employers' organisations and trade unions differed over apportioning the costs of the crisis. Employers' organisations and trade unions had failed to make progress on negotiations for their usual annual multi-sector agreement to frame wage negotiations and no agreement could be reached for 2009. Further disagreement focused on the renewal by the main employers' organisation of its long-standing call to reform dismissal law, so as to improve labour market flexibility (Freyssinet, 2009). In February it proposed an 'anti-crisis' employment contract, which would have reduced severance payments and eliminated administrative requirements to notify public authorities of redundancies. Trade unions (and the government) rejected the proposals. Further government measures introduced in March 2009, aimed at combating unemployment, were, as a result, introduced without the views of the social partners being sought. The social partners eventually succeeded in overcoming their differences over the conduct of wage bargaining in 2009, in November, and subsequently signed a new cross-sector agreement in February 2010. The breakthrough encouraged

the government to make a renewed attempt in February to reach a tripartite agreement on labour market reform, largely focused on promoting stable employment (European Employment Review, 2010). However, the initiative was partly overshadowed by government proposals to increase the retirement age, which elicited fierce protests from trade unions (Sanz de Miguel, 2010).

France presents a mixed picture, exhibiting both disagreements between trade unions and government, and between trade unions and employers' organisations, on the measures required to address the crisis, and also government-instigated cooperation between the social partners over employment measures. The government convened tripartite 'social summits' in February and July 2009, set up a tripartite committee to monitor the crisis and in April 2009 launched a joint government-social partner 'social investment fund' to coordinate action on training and reskilling for those workers most affected by the crisis. In January 2009 the social partners — at the behest of the government — agreed on boosting training opportunities for less-well-qualified people as part of an employment action plan. They also reached a cross-sector agreement in July on managing the employment consequences of the economic crisis, many of whose provisions (such as amendments to the short-time work scheme) were implemented by the government. Meanwhile, a government stimulus package, announced in February 2009, which focused on providing public aid for companies, bolstering the welfare system and public investment to modernise infrastructure, was welcomed by employers' organisations but strongly criticised by trade unions. Trade unions organised a series of nationwide demonstrations on four dates

between mid-March and mid-June, to reinforce their call for government action to sustain purchasing power, to abolish taxation privileges for the wealthy and to make reductions in employers' social contributions contingent on employers taking compensating measures to enhance training and/or preserve employment (Robin, 2009). The extent to which France's traditionally fractious union confederations have mobilised around a common platform is noticeable, and contrasts with the situation in Italy. The employers' confederation, Medef, has criticised trade union tactics of instigating large-scale protests, as well as advancing its own policy proposals focused on improving adaptability and employability in the labour market and improving competitiveness.

In Italy, the picture is also mixed. A measure of consensus has been apparent between the main employers' confederation, Confindustria and two of the trade union confederations, alongside sharp differences with the third (and largest) union confederation, CGIL. The former gave a cautious welcome to the government's anti-crisis package announced in November 2008, which was mainly aimed at boosting demand for consumer industries, with a particular focus on the automotive sector and increasing support for the poorest households. Confindustria called, in addition, for support to be broadened to other sectors and to SMEs. The three main trade union confederations each called for the social partners to be consulted over this and subsequent measures, but in contrast to most other countries characterised by multiple union confederations, display divisions. CGIL has proposed different measures to those called for by the other two confederations (Watt and Nikolova, 2009). Whereas CISL and UIL welcomed the government's

package and have continued their dialogue with government and employers' organisations, CGIL was strongly critical. It presented a six-point plan of measures to address the crisis, including support for employment by extending the scope and duration of temporary lay-off benefit, incentives for innovation and investment, public investment aimed at greening the economy and enhanced welfare supports for those on low incomes. CGIL unilaterally called a general strike in April 2009 in protest over the perceived inadequacy of the government's response to the crisis, and a further one in support of similar demands in March 2010 (Tajani, 2010).

Consensus between the social partners in Portugal and Greece has been limited and in neither country have the social partners been closely involved in the development of government measures responding to the crisis. As the debt crisis has escalated, this limited consensus has broken down in Greece. In Portugal, trade unions have pressed government to introduce more ambitious measures than those undertaken to maintain employment, sustain business activity (through enhancing the short-term working scheme) and boost training opportunities throughout 2009. The main employers' organisations called for measures to improve companies' competitiveness and facilitate restructuring including reductions in the burden of taxation, improved access to credit, special assistance for SMEs and public investment in education and training. Autumn 2009 saw sharp differences between the social partners over wages policy for 2010 and the government's decision to raise the minimum wage (da Paz Campos Lima, 2009).

The Greek employers' and trade union confederations have presented their own, separate proposals

to government. There was common ground in the calls of both social partners for support to sustain activity in hard-hit sectors, including construction and tourism, and for public investment in infrastructure. Employers' organisations emphasised measures to reduce the cost of social welfare and tax incentives to promote investment. Trade unions called for measures to support purchasing power, particularly for low earners and those in receipt of unemployment benefit. Differences emerged as the Greek government moved to address the rising public deficit from mid-2009 onwards, with public sector trade unions staging a general strike against measures to freeze public sector pay and pensions, whilst employers' organisations acknowledged the necessity for such measures. As the economic and financial situation deteriorated, further government moves to drastically cut public spending, with cumulative effects on social benefits and public sector pay and pensions, triggered renewed and large-scale protests by private as well as public sector trade unions throughout the opening months of 2010 (Planet Labor, 2010b).

In Cyprus and Malta, there has been considerable consensus around the response to the crisis. In Cyprus, government initiatives to stimulate the economy and protect jobs, launched in November 2009, received a generally positive response from the social partners, while some trade unions decided to moderate their 2010 pay demands in the light of the economic situation (Soumeli, 2009). In early 2009, a number of Maltese social partner organisations made joint proposals for improving the economic situation, such as reducing companies' costs and fiscal burden and supporting employees on short-time working. The social partners subsequently supported and

cooperated with government efforts to prevent job losses and support crisis-hit sectors. However, there were areas of disagreement. Employers called for the statutory cost-of-living wage increase for 2010 to be awarded only to lower-paid employees, or subsidised by the government, given the economic situation. This was opposed by the government and trade unions (Rizzo, 2009).

In the UK, consensus between the social partners has been confined to specific issues. Trade unions and employers' organisations have been involved in informal and ad hoc discussions with the public authorities on the direction of economic and labour market policy. In autumn 2008, trade unions unsuccessfully called for the implementation of a short-time working scheme similar to

those being brought into use in other EU countries. They have also made repeated calls for an increase in statutory redundancy pay (which is below the levels of comparable countries). The employers' confederation, CBI, subsequently proposed an 'alternative to redundancy plan', partially financed by the state, under which employees could be placed on temporary leave for up to six months, but this

### Box 2.6 European social partner perspectives: the ETUC

In the lead-up to the November and December 2008 Council meetings, the ETUC called for a major fiscal stimulus for Europe's economy. It welcomed the fiscal stimulus contained in the European economic recovery plan (see Box 2.5), but drew attention to the absence of a European framework for implementing it, which it regarded as a major flaw. Uncoordinated national measures risked dangers of competition between Member States and, relatedly, the spread of protectionism. In emphasising the need to police the single market, the ETUC underlined the disruptive social consequences of failing to do so. It saw a real risk of Europe being pulled apart economically, socially and politically (ETUC, 2009a).

In a resolution adopted just ahead of the December 2008 Council meeting, the ETUC called for a series of further measures. These included proposals for a 'new social deal', which would focus recovery measures on investments leading to the creation of more and better (including 'greener') jobs, a strengthening of social welfare systems and strengthened workers' rights. The new social deal, formalised in May, covers five main action points (ETUC, 2009b):

- investment in an augmented European recovery plan aimed at creating more and better jobs. The ETUC called for an additional 1 % of the EU's GDP for an investment programme, including accelerating the 'greening' of the European economy which were presented as proposals for a 'New green deal' (see Box 5.7 in Chapter 5);
- strengthening of social welfare systems to enhance social protection, and equality, and to mitigate against social exclusion;
- strengthening of workers' rights, particularly at transnational level, in order to eliminate disruptive social effects of the single market;
- better pay, seen as vital to sustaining purchasing power, to be achieved through the strengthening of collective bargaining and wage formation institutions, and thereby the wage floors that they entrench;
- effective re-regulation of financial markets and actions to secure distributive justice through fair taxation systems. Amongst the measures specified is the creation of a level playing field for tax regimes on sources of income, such as profits and capital gains, which are mobile across borders.

May also saw coordinated protest actions in support of a new social deal in Madrid, Brussels, Berlin and Prague.

In its autumn report on the European economy (ETUC, 2009c), the ETUC warned European and national public authorities against a premature exit from the fiscal stimulus strategy at the heart of the European economic recovery plan. Incipient recovery, according to the ETUC, is based on factors that are temporary in nature: re-stocking, as companies bring inventories up to levels consistent with current demand; the fixed-term nature of elements of the fiscal stimulus undertaken by national governments; and the cushioning of household consumption from the worst effects of the recession by short-time working schemes and the legacy of wage agreements concluded before the crisis broke. Against this, the spectre of public, and private, debt-induced deflation threatens economic recovery in the medium term. For these reasons the ETUC considered that the fiscal stimulus needed to be maintained.

The ETUC's growing concerns at signs that (some) national governments were preparing to exit prematurely from the fiscal stimulus packages which have sustained economic activity and employment were reiterated in its December memorandum to the incoming Spanish Presidency (ETUC, 2009d) and in a March 2010 message to the European Council (ETUC, 2010). According to the ETUC, premature exit would cause more economic and social harm than a further short-term deterioration in public finances, with any budget cuts threatening to choke off recovery, undermine social protection (when it needed to be strengthened) and lead to a spike in unemployment. Winding down of the stimulus packages needed to be synchronised with an upturn in private sector activity, when that arrived. In its message to the European Council, the ETUC declared that 'Social Europe is under pressure' and underlined in particular the need for measures to reduce high levels of youth unemployment. It renewed its call for an augmented recovery plan and a new social deal. It also proposed a strengthening of European economic governance in two respects. First, to enable a recovery programme to be agreed with Greece, and any other Member State in difficulty, which would protect essential public services and the interests of workers. Second, to enable the introduction of new means of raising the funds required to support recovery and return Europe's economy to growth, such as a financial transactions tax.

was not taken up either. Employers' organisations have repeatedly called on government to place more focus on providing support for companies, including access to credit, which would have the effect of preventing unemployment. Ahead of the 2009 budget in April, both social partners called for measures aimed at maintaining employment and mitigating the rise in unemployment, although they differed in the preferred means to achieve this. They also differed over the balance of measures aimed at stimulating the economy and those which addressed the mounting public sector deficit (Carley, 2009). By early 2010, the CBI was increasingly critical of the absence of government action to tackle the deteriorating public finances. The union confederation, TUC, however, was concerned that premature action could jeopardise the fragile economic recovery and exacerbate unemployment.

In Ireland the magnitude of the crisis from the outset, and its impact on public finances, immediately confronted government and the social partners with major policy decisions on the distribution of the burden. Disagreements between government, employers' organisations and trade unions have tested Ireland's long-standing national partnership to, and seemingly beyond, the limit. In January 2009, the government convened emergency tripartite consultations to identify measures to secure an immediate and lasting reduction in public expenditure in the face of the rapidly escalating public deficit. Talks collapsed in February over the government's introduction of a 7% pension levy on all public sector workers and proposed public sector pay freeze. At the same time, the employers' confederation, IBEC requested that implementation of the national wage agreement concluded in September 2008 be deferred in the light of

companies' economic circumstances (IBEC formally pulled out of the agreement at the end of 2009 — see Chapter 3). The union confederation, ICTU, opposed the government's overall approach on the grounds that the pain of fiscal adjustment needed to be shared by other groups in society and not focus on a particular group. It criticised the March 2009 emergency budget, which incorporated the measures, as well as reductions in welfare payments and an increase in employers' social charges; and proposed a reform of the taxation system towards a fairer set of arrangements, with implied increases in taxation and measures to maintain employment, as part a broad 'social solidarity pact' to tackle the crisis. IBEC welcomed the budget's remedial action to address the public finances and emphasised its preference for measures which reduced public expenditure over those which increased taxes. Further talks over a possible tripartite national recovery agreement in summer 2009 again failed, with unions unable to accept the government's planned cuts in public expenditure. Public sector trade unions held a one-day national strike in November 2009, and subsequent talks between the government and unions over further reductions in the public sector paybill failed, with the government rejecting union plans to achieve savings through unpaid leave and going on to impose pay cuts of 6% to 8% in its 2010 budget (Sheehan, 2010). However, renewed talks led to a draft agreement between the government and public services unions in March 2010, which provided for no further pay cuts before 2014 and no compulsory redundancies, in exchange for union commitments on public sector reform.

The economic context in the three Baltic states is even more acute but there was a sharp difference with Ireland in the extent to which the

social partners have been engaged by government. Social partner organisations complained at their lack of involvement in, and consultation over, the preparation of government measures, whilst differing in their policy prescriptions. However, as the economic situation worsened governments moved to engage social partner and other civic organisations in dialogue to varying degree on aspects of the response to the crisis. Governments in all three countries have proposed cuts or freezes in public sector wages, as part of stringent measures aimed at sharply reducing public expenditure.

In Latvia, at the time of the preparation of the state budget in the autumn of 2008, trade unions opposed the freeze on public sector wages and proposed instead taxation increases to fund the public deficit. Employers' organisations supported reductions in public expenditure, but urged that these be achieved through 'efficiencies', and opposed tax increases. Amendments to the budget in June 2009, decreasing expenditure on health and expenditure, prompted trade unions to organise protest demonstrations. Although the government did involve the social partners in dialogue over its 2010 budget plans, the measures announced in December 2009 — which included wide-ranging tax increases — were sharply criticised by employers as damaging competitiveness and trade unions as weakening domestic demand (Curkina, 2010). In Lithuania, sustained opposition by trade unions to government proposals to cut the public sector wage fund culminated in a broader national protest action in January 2009 against the government's anti-crisis plans. Unions called for strengthened social protection arrangements, an increase in the minimum wage, the introduction of a property tax, as well as no cuts in public sector pay. A trade

union-initiated hunger strike in June finally forced the government to abandon proposed public sector wage cuts. The government stepped up efforts to find consensus over its crisis response, and a multi-partite agreement on economic and social policies during the downturn was eventually signed in October 2009 (Blažiene, 2009). The agreement was subsequently criticised by unions organising in the public sector. In Estonia, the positions of the social partners on responses to the crisis differed sharply in autumn 2008. The employers' confederation called for reductions in public expenditure, including benefit levels, a reduction in social charges and further measures to promote labour market flexibility. Trade unions opposed these proposals and called for measures to maintain purchasing power, including avoiding any cuts in public sector wages or welfare benefits. There was also disagreement over the review of the minimum wage for 2009, with employers opposing an increase on competitiveness grounds and trade unions advocating one to sustain purchasing power (it remained frozen during 2009). Nonetheless the social partners reached agreement with government in March 2009 over a set of measures aimed at preserving employment and improving employability. Consensus appears to have been fragile, however, since disagreements again emerged over a further package of employment measures introduced in October (Osila and Nurmela, 2009).

The onset of the crisis found Hungary in a similar economic position, with the government initiating an austerity package in the summer of 2008 to address the rapid deterioration in the public finances — already in a parlous state. The government convened a series of national summits between October 2008 and January 2009, in the hope of securing social partner support for further unpalatable

measures. Substantial differences between the social partners have, however, continued to be apparent. Employers' organisations have supported austerity measures, questioned the sustainability of prevailing levels of wages and opposed addressing the public deficit through tax increases, preferring expenditure reductions. Trade unions criticised the austerity measures and the associated job cuts proposed in public services and called for a fiscal stimulus and action to promote employment. Further disagreements emerged in June 2009 over proposed government amendments to labour laws proposed as an anti-crisis measure, responding to employer organisation calls for more flexibility in working time regulations. These were strongly opposed by trade unions (Fodor and Neumann, 2009).

The other three Visegrad countries present a varied picture. In Poland, significant common ground has been established between the social partners, providing the basis for meaningful engagement with the government. In Slovakia also, the crisis has prompted intensive consultations between the government and social partners, and broad consensus between employers' organisations and trade unions. In the Czech Republic the social partners have forged common positions, but were not involved in the development of anti-crisis measures until the autumn of 2009.

Discussions between Poland's social partners in the early months of 2009 identified common ground on measures to promote economic recovery, including public aid to companies to preserve jobs, improving the availability of loans to businesses and subsidies to supplement low incomes. Differences focused on the extent to which flexibilisation of working time was a necessary measure and whether this required changes to labour law.

Nonetheless, agreement on a set of measures was reached by the social partners in March. The government based its June anti-crisis package on the agreement, although there was subsequent disagreement between trade unions and employers over the balance of measures included. Trade unions objected to the general scope of the flexible working time arrangements introduced, whilst employers' organisations welcomed them. At the start of 2010, the social partners, concerned at the low take up of public assistance to companies to protect jobs, jointly proposed that the qualifying thresholds be reviewed (Czarzasty, 2009).

The Slovakian social partners were also involved in intensive consultations with government over the elaboration of anti-crisis measures in the opening months of 2009, which included the establishment of a tripartite economic crisis council. In a memorandum on solving the impact of the crisis on society, concluded between the government and trade unions in March, unions undertook to moderate their wage demands in exchange for government measures to maintain employment. The government also agreed a memorandum with the main employers' organisations, whereby the government undertook to avoid imposing new legislative or administrative burdens on employers and the employers not to use the crisis as a pretext for worsening employment conditions. Tripartite discussions in late 2009 over further measures to mitigate the employment effects of the crisis revealed differences between the social partners, with trade unions in favour and employers' organisations concerned about the costs to the public finances (Cziria, 2009).

Employers' organisations and trade unions in the Czech Republic addressed joint proposals to government in February 2009, including an

economic stimulus equivalent to that urged by the European recovery plan, a further boost to purchasing power through reduction of utility prices and introduction of a car scrappage scheme, action to improve companies' access to finance and measures to boost training and skills available to companies. The social partners also called for their full involvement in the development of anti-crisis, measures stating that this had not hitherto occurred. A tripartite working group was set up in August 2009 to formulate a new short-time working scheme. In early 2010, tripartite discussions on a wider agenda resulted in agreement, in February, over a package of measures to deal with the effects of the crisis. Prior to the onset of the crisis, government measures to reform public finances had met with substantial trade union opposition including a large-scale national protest in June 2008. Further cuts in public sector employment and the paybill announced for 2010 again drew trade union opposition (Verveková, 2010).

Slovenia has seen a shift from consensus to disagreement between the social partners. In the autumn of 2008, changes proposed by the social partners to anticipated government measures to tackle the crisis were integral to the outcome of tripartite consultations. This included broad agreement over measures to reduce public spending. By the end of 2009, however, disagreement between the social partners over minimum wage policy led employers to suspend their participation in the main tripartite forum (Stanojevič, 2010).

In Bulgaria, differences between the social partners emerged as the crisis progressed, before a degree of consensus was reached in 2010, whilst in Romania a considerable degree of common ground has been maintained between employers' organi-

sations and trade unions. Bulgaria's employers' organisations and trade unions framed joint proposals in late 2008, which were presented to the government at a meeting in December. These stressed the importance of concentrating initiatives on preserving existing jobs and mitigating the rise in unemployment, including provision of public aid to companies, additional support for those being made unemployed and the introduction of a short-time working scheme. By mid-2009, however, differences emerged over government austerity measures and the distribution they entailed of the burden of the crisis. Trade unions withdrew from the main national tripartite institution, partly because of the government's perceived lack of consultation on its anti-crisis measures. They mounted a national protest action in June, opposing the austerity measures and calling for protection of domestic production, jobs and incomes, maintenance of public service expenditures and increases in welfare and pension benefits. Employers' organisations urged further action to tackle the public deficit, supporting the proposed pay freeze and reductions in public expenditures. However, a change of government in July was followed by renewed tripartite discussions aimed at developing and agreeing a new package of measures. This did not materialise immediately, and the austerity measures in the new government's draft budget for 2010 again divided the social partners. Nevertheless, in March 2010 tripartite agreement was reached on a package of measures to support employment, households, businesses and the state budget (Lyuben, 2009).

In Romania, the government set up a tripartite process to draw up an anti-crisis programme, resulting in the publication of a package in February 2009. This included measures on investments, tax, support for SMEs,

unemployment benefits, short-time working, training and public sector pay. The social partners were not entirely happy that the measures reflected their own proposals and later expressed dissatisfaction with the implementation of the package. Both social partners considered the government's stimulus measure insufficient, with trade unions criticising the lack of stimulus for purchasing power whilst employers criticised the absence of incentives for investment and funds for public infrastructure projects. May and June brought protest actions by trade unions focusing on measures to maintain purchasing power and promote employment. Employers' organisations and trade unions combined in a further joint call to the government in June for a package of measures sufficient to stimulate economic activity. Further joint pressure from the main social partner organisations resulted, in February 2010, in the government extending its measures on temporary unemployment (Ciutacu, 2010).

### 2.3.2. Assessment

The early phase of the crisis was marked by a broad consensus on the need for governments to implement measures providing a significant fiscal stimulus in the face of the steep decline in economic activity. Nonetheless, there were differences in emphasis. Employers' organisations gave priority to ensuring access to credit for companies, measures which reduce labour costs and reductions in taxation. Trade unions tended to urge a larger fiscal stimulus and measures to sustain purchasing power and to boost public investment. A parallel difference in emphasis, around a broad consensus between the two main social partners, is evident at the EU level (see Box 2.7). As attention shifted to facilitating recovery and dealing with consequences of the crisis for the public finances tensions and

disagreements have emerged (Freysinet, 2009; Hethy, 2009). In particular, sharp differences are apparent on three issues. The first is wages policy, where employers' organisations see tight control of labour costs, and therefore wages, as essential to competitiveness, whereas trade unions view increases in wages as vital to sustaining purchasing power and therefore economic activity. The second are measures to further increase labour market flexibility, favoured by employers as also enhancing competitiveness but seen by trade unions as potentially further undermining employment security. The third is austerity measures to address rising public deficits, where employers' organisations are urging early action, including reform of social welfare systems, whereas trade unions stress the need in current circumstances to maintain public services and employment and, if anything, to strengthen social welfare systems. The differences between the social partners at EU level again reflect those at the national level (see Box 2.7).

In some countries, two further issues are also a source of contention. Labour law has become the object of controversy in a few, with employer and/or government proposals to

enhance flexibility being resisted by trade unions, with differing degrees of success, in Hungary, Poland and Spain. Disagreements and incipient conflicts have surfaced over proposals to raise the age of retirement, as part of government austerity measures, in Ireland, Finland, France, the Netherlands and Spain.

Although there are differences on these and other policy measures between employers' organisations and trade unions, a degree of consensus on the measures required to address the effects of the crisis is apparent across a majority of countries. Table 2.3 summarises the picture across countries, according to the broad three-way distinction in the degree of bi-partisan consensus introduced above. In 12 countries a considerable degree of bi-partisan consensus has been obtained throughout, since the onset of the crisis in 2008. A lesser degree of consensus characterises four further countries. In another four countries disagreements have predominated. In seven countries, disagreements prevailed for some of the period, but were preceded by and/or gave way to consensus between the social partners. The 12 countries characterised by a considerable degree of

**Box 2.7: Common ground and differences in the perspectives of the European social partners**

There is some common ground in the policy prescriptions proposed by BusinessEurope and the ETUC. Both called early on for a substantial economic stimulus, and for fiscal and other public policy interventions to be coordinated across Member States. In the absence of effective coordination, the cross-sector social partners also warned of the dangers of slipping towards protectionism. Both BusinessEurope and the ETUC have highlighted the need to address the challenge of mitigating climate change as an essential element to successful European economic recovery. Differences are apparent also. In respect of the single market, BusinessEurope reaffirms the virtues of market principles, the further steps needed to complete the process in the market for services and the need to pursue further structural reform in a range of areas, whereas the ETUC underlines the disruptive social consequences of not effectively policing the single market and the need for strengthened workforce rights in the face of some of its consequences. Differences over the continuation of the fiscal stimulus, the priority to be given to tackling deteriorating public finances and over social welfare systems have also emerged as the crisis has unfurled. By late 2009 and into 2010, BusinessEurope was calling for action to reduce rapidly rising deficits in public finances, including expenditure-reducing reform of social welfare systems. The ETUC warned against early removal of the fiscal stimulus to economic activity (which has increased deficits) and called for a strengthening of social welfare systems.

Despite some commonalities in the policy prescriptions of BusinessEurope and the ETUC, the cross-sector European social partners have not as yet (end October 2010) adopted any joint statement on crisis responses. Joint statements on the crisis have, however, been a feature in some sectors at European level (see Chapter 6).

**Table 2.3: Pattern of consensus and disagreement between social partner organisations in the EU-27**

	Considerable degree of bi-partisan consensus	Lesser degree of bi-partisan consensus	Disagreements predominate
Countries	Austria, Belgium (*), Czech Republic (*), Cyprus, Denmark, Finland, Germany, Malta (*), Netherlands (*), Poland (*), Romania (*), Slovakia	France, Italy, Portugal, United Kingdom.  <i>Part of the period since summer 2008:</i> Bulgaria, Estonia, Greece, Lithuania, Luxembourg, Slovenia (*), Spain	Hungary, Ireland, Latvia, Sweden.  <i>Part of the period since summer 2008:</i> Bulgaria, Estonia, Greece, Lithuania, Luxembourg, Slovenia (*), Spain

(\* ) Joint proposals framed by the social partners.  
Source: Own compilation.

consensus include six of the seven (Slovenia is the exception) in which the social partners concluded joint platforms on measures to address the crisis.

In a rapidly evolving situation where, at the time of writing (summer 2010) austerity measures to address public sector deficits are being framed by governments in a number of countries, the picture reported in Table 2.3 may well change, as substantial policy disagreements emerge between the social partners where there has previously been consensus or common ground is established after a prolonged period of disagreement between employers' organisations and trade unions.

Two factors help account, each partially, for the pattern which Table 2.3 presents. The first is the scale of the crisis in particular countries, which might be expected to make consensus more difficult to reach the larger its magnitude. The second is institutional arrangements for industrial relations, and specifically the presence or otherwise of robust institutional arrangements for bipartite and/or tripartite social dialogue. Consensus might be expected to be more likely, and more extensive, in the presence of well-established arrangements.

On the first, there is a marked tendency amongst countries where the crisis has (up to the spring of 2010) been most severe, and its impact from the outset on public finances precluded any recourse to a fiscal stimulus, for disagreements to predominate throughout the period or for part of it. Such countries include Ireland, Hungary, Slovenia, the Baltic states and latterly, as a result of its escalating debt crisis, Greece. At the other end of the spectrum, amongst countries where the crisis has (up to the spring of 2010) been least severe,

such as Poland, France and Cyprus, a degree of bi-partisan consensus has prevailed, albeit the extent of consensus varies. The relative magnitude of the crisis does not, however, seem to clearly differentiate between the countries in the first and second columns, respectively. In addition, amongst those countries where disagreements predominate are some where the crisis has not been exceptionally severe, such as Sweden and Bulgaria (for part of the period). Countries' economic situation, therefore, accounts for only part of the pattern in Table 2.3.

On the second, there is some tendency for differences in institutional arrangements for social dialogue to be reflected in Table 2.3's cross-country pattern. Countries with robust institutional arrangements are to some extent clustered amongst those in the first column. This group includes many, but not all, of those EU-15 countries which have long-established arrangements for cross-sector social dialogue (see Chapter 3). But it also embraces several central-east European countries where tripartite social dialogue structures have been mobilised and/or bipartite initiatives launched. Conversely, countries where there are no national arrangements for social dialogue, such as the UK, and those where social dialogue arrangements are widely seen as being weak, such as Hungary and the Baltic states (Meardi, 2007), are found in the second and third columns. Although tripartite arrangements exist in Hungary and the Baltic states, bipartite arrangements between the social partners are noticeably absent and it is perhaps unsurprising that disagreements between the social partners tend to predominate. Yet, the second column also includes EU-15 countries with established institutional arrangements for social dialogue which have been mobilised on specific issues only, such as France,

or hardly mobilised at all, such as Italy, Greece and Portugal. The third column also includes countries with hitherto robust institutional arrangements for social dialogue, such as Ireland and Sweden and, for part of the period Slovenia and Spain. Institutional arrangements for social dialogue, therefore, also account for only part of the pattern in Table 2.3.

Drawing together both considerations suggests two provisional conclusions. First, faced with a crisis of extreme severity, robust institutional arrangements for social dialogue may not be able to withstand the centrifugal pressures at play, with the social partners being unable to forge common ground over public policy responses. This has been the case in Ireland and latterly Greece and Slovenia. Going forward this situation may extend to further countries where emergency austerity measures to tackle the public deficit have the effect of prolonging the economic recession. Second, amongst the larger number of countries where the magnitude of the crisis has not been so severe, institutional arrangements for social dialogue have been mobilised by the social partners in several central and east European countries, including the Czech Republic, Poland and Slovakia, as well as amongst a number, but by no means all, of those EU-15 countries with long-established arrangements. The reasons why four EU-15 countries with established institutional arrangements — Italy, Portugal, Spain and Sweden — are not amongst those countries in which joint crisis response actions have been elaborated are addressed in Chapter 3.

The extent to which social partners have been involved in the framing of government measures also varies across countries and seems to shape their evaluations of the policy

outcomes. Watt and Nikolova (2009) report that trade union views on the measures taken by governments to address the effects of the crisis during its early phase (up until April 2009) were strongly associated with the extent of social partner, and in particular trade union, involvement in the elaboration of anti-crisis measures. Drawing on a survey of national unions they conclude that ‘Where unions have had a voice in the design of packages, governments have benefited from their political support for the package as a whole, even though they may be critical of specific measures or would have wanted a greater level of ambition [in the scale of the fiscal stimulus provided] (Watt and Nikolova, 2009: 30). Conversely, where governments have not involved the social partners, unions were strongly critical of the anti-crisis measures taken. Equivalent data are not available for employers’ organisations, although amongst the central and south-eastern European Member States Hethy (2009) observes that employers’ organisations have become more active, and more influential, in bi- and tripartite discussions in several countries.

A related outcome, which anticipates Chapter 3’s review of the negotiated or concerted outcomes of national social dialogue, is that insofar as governments have been concerned to secure broad support for unpalatable measures, the influence of the social

partners over measures proposed by the public authorities has increased in several countries. A necessary pre-condition for this to occur is the capacity of the social partners to forge and sustain a common policy platform, since major differences between social partner organisations force or leave governments to act alone. It is not, however, a sufficient one, since governments can choose to act alone even though, as in the Czech Republic and Romania, the social partners succeeded in framing joint proposals.

## 2.4. Conclusion

Translated into the debates on convergence and divergence which have featured prominently in the literature on the Europeanisation of industrial relations (Hoffman et al., 2002; Marginson and Sisson, 2004; Vos, 2006), this chapter has highlighted the influence of two kinds of ‘input’, economic and institutional, in shaping social partners’ policy perspectives, and in particular the extent to which consensus or disagreement prevails between them. The economic one concerns the magnitude of the crisis in terms of its economic, fiscal and employment impact. The institutional one relates to arrangements for bipartite and tripartite social dialogue. The chapter shows that there is no straightforward pattern of association between these two input factors and either the forging of consensus,

involving compromise, between the social partners on measures to be taken or the emergence of tensions and conflicts over the distribution of costs brought by the crisis. Consistent with Hay (2004), convergence (or divergence) in economic and institutional ‘inputs’ does not necessarily give rise to convergence (or divergence) in policy perspectives. Some tendencies are, however, apparent.

First, amongst countries where the effects of the crisis have been most severe, the economic ‘input’ factor seems to have overwhelmed substantial divergence in ‘institutional’ arrangements, and policy disagreement has predominated. This is underlined by the contrast between Ireland, which has robust institutional arrangements for social dialogue, and the Baltic states, where such arrangements are weak. Second, a considerable degree of policy consensus between social partner organisations has been evident not only amongst a number of those western European countries with long-established traditions of social dialogue, but also in parts of central and eastern Europe — the Czech Republic, Poland and Slovakia — where tripartite structures have been mobilised and/or joint platforms forged between the social partners. In terms of institutional effects, the lines of similarity and difference between countries reach across the distinction between ‘old’ and ‘new’ Member States.

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## Appendix

Table 2.A1: GDP growth in EU Member States (% on previous 12 months by quarter)

	2008				2009				2010	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
EU - 27	2.2	1.4	0.3	-2.1	-5.1	-5.1	-4.3	-2.2	0.7	2.0
AT	2.8	3.0	2.2	-0.4	-3.9	-5.1	-4.0	-2.1	0.2	2.3
BE	1.6	1.9	1.1	-1.3	-3.7	-4.1	-2.7	-0.1	1.6	2.4
BG	6.9	6.4	6.5	4.8	-3.3	-4.6	-6.0	-6.7	-0.8	-0.3
CY	4.6	4.4	3.4	2.1	0.2	-1.9	-2.6	-2.7	-1.2	0.2
CZ	3.1	3.5	2.2	0.5	-3.6	-4.7	-4.4	-3.2	1.0	2.4
DE	2.7	1.7	0.5	-2.0	-6.6	-5.5	-4.4	-2.0	2.0	3.7
DK	-0.6	1.3	-0.7	-3.5	-3.9	-6.9	-5.3	-2.9	-0.4	3.8
EE	-1.1	-2.5	-5.5	-11.2	-14.2	-16.5	-15.4	-9.0	-2.7	3.0
EL	2.7	2.7	1.9	0.7	-1.0	-1.9	-2.5	-2.5	-2.3	-3.7
ES	2.7	1.9	0.3	-1.4	-3.5	-4.4	-3.9	-3.0	-1.3	-0.1
FI	3.6	2.5	1.0	-3.0	-8.8	-9.8	-8.4	-5.2	0.6	3.4
FR	1.8	0.7	-0.2	-2.0	-3.9	-3.1	-2.7	-0.5	1.2	1.7
HU	1.9	1.6	0.3	-2.3	-6.1	-7.1	-6.7	-4.7	-1.2	0.1
IE	-1.3	-2.1	-1.6	-9.1	-9.2	-7.7	-7.7	-5.6	-0.7	-1.8
IT	0.3	-0.5	-1.8	-3.3	-6.5	-6.2	-4.7	-2.8	0.5	1.3
LT	8.8	3.5	1.2	-2.2	-15.8	-15.6	-14.6	-12.9	-2.9	0.6
LU	5.0	4.0	1.4	-4.4	-5.3	-8.0	-3.3	2.1	2.9	5.3
LV	2.7	-2.4	-5.3	-10.2	-18.1	-17.5	-19.3	-16.8	-5.1	-2.9
MT	2.8	3.5	3.0	0.7	-2.3	-3.3	-2.2	0.1	3.5	3.7
NL	3.9	3.1	1.6	-1.0	-4.0	-5.0	-4.2	-2.4	0.5	2.7
PL	6.7	5.8	5.2	2.6	1.6	1.3	1.3	2.9	3.1	3.8
PT	1.0	0.9	0.3	-2.0	-3.8	-3.1	-2.3	-1.0	1.8	1.5
RO	9.3	9.6	8.3	2.6	-5.2	-8.0	-7.6	-6.9	-3.2	-1.5
SE	1.6	0.8	0.2	-4.9	-6.6	-6.2	-5.9	-1.5	2.8	4.5
SI	6.3	5.2	3.4	-0.8	-8.4	-9.5	-9.4	-6.1	-0.1	1.5
SK	8.9	8.2	6.8	1.2	-4.5	-5.1	-5.2	-3.9	4.6	5.0
UK	1.9	1.0	-0.4	-2.7	-5.5	-6.0	-5.4	-3.0	-0.3	1.7

Source: Eurostat National Accounts [teina 011].

**Table 2.A2: Public sector deficits (-) or surplus (+) in EU Member States, (% of GDP)**

	2007	2008	2009
EU - 27	-0.8	-2.3	-6.8
AT	-0.4	-0.4	-3.4
BE	-0.2	-1.2	-6.0
BG	0.1	1.8	-3.9
CY	3.4	0.9	-6.1
CZ	-0.7	-2.7	-5.9
DE	0.2	0.0	-3.3
DK	4.8	3.4	-2.7
EE	2.6	-2.7	-1.7
EL	-5.1	-7.7	-13.6
ES	1.9	-4.1	-11.2
FI	5.2	4.2	-2.2
FR	-2.7	-3.3	-7.5
HU	-5.0	-3.8	-4.0
IE	0.1	-7.3	-14.3
IT	-1.5	-2.7	-5.3
LT	-1.0	-3.3	-8.9
LU	3.6	2.9	-0.7
LV	-0.3	-4.1	-9.0
MT	-2.2	-4.5	-3.8
NL	0.2	0.7	-5.3
PL	-1.9	-3.7	-7.1
PT	-2.6	-2.8	-9.4
RO	-2.5	-5.4	-8.3
SE	3.8	2.5	-0.5
SI	0.0	-1.7	-5.5
SK	-1.9	-2.3	-6.8
UK	-2.8	-4.9	-11.5

Source: Eurostat National Accounts [teina 200].

**Table 2.A3: Change in employment for EU Member States (% on previous 12 months by quarter)**

	2008				2009				2010	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
EU-27	1.7	1.3	0.7	0.1	-1.2	-1.9	-2.1	-2.1	-1.5	-0.6
AT	2	1.9	1.6	1.3	-0.4	-1.1	-1.1	-1	0.3	0.7
BE	1.9	1.9	1.8	1.3	0.5	-0.2	-0.9	-0.9	-0.2	0.3
BG	3.6	2.9	2.4	1.5	-0.2	-1.8	-3.7	-5.2	-6.5	-6.8
CY	2.4	2.7	3.5	1.9	1.4	-0.5	-2	-1.6	-1.3	-0.2
CZ	1.8	1.2	1	0.9	0	-1	-1.8	-1.9	-2.1	-1
DE	1.6	1.5	1.4	1.1	0.4	0	-0.2	-0.3	-0.2	0.2
DK	2.1	1.9	2.1	1.6	-1.1	-2.5	-4.3	-5.5	-4	-2.4
EE	1	-0.1	-0.3	-0.4	-6.1	-10.1	-11.2	-12.1	-9	-5.5
EL	0.5	0.1	0.1	-0.3	-0.6	-0.7	-1.2	-2.2	-1.8	-2.5
ES	1.7	0.5	-0.7	-3	-6	-7	-7.3	-6.2	-3.7	-2.4
FI	2.4	2.1	1.1	0.7	-0.9	-3	-3.4	-4	-2.3	-0.5
FR	1.2	0.9	0.4	-0.2	-0.9	-1.4	-1.5	-1.3	-0.7	-0.1
HU	-1.4	-1.9	-0.8	-1	-2.2	-2.4	-3.9	-2.8	-2.1	-0.6
IE	1.6	-0.1	-2	-4	-7.5	-8.3	-8.7	-8.2	-5.3	-4.1
IT	1	0.9	-0.3	-0.5	-1.1	-1.5	-2	-2.1	-0.9	-0.7
LT	1.2	-0.2	-1.3	-2.3	-5.3	-6	-7.5	-8.6	-7.4	-6.6
LU	5.3	4.9	4.9	4	2.4	1.1	0.2	0.2	0.8	1.5
LV	5.2	3.4	0.4	-5.3	-8.5	-13.2	-16.1	-14.4	-12.8	-7
MT	2.7	3	2.6	2.1	0.8	-0.5	-1.5	-0.9	1.6	0.4
NL	1.9	1.8	1.3	0.8	0.1	-1.2	-1.9	-1.7	-1.6	-0.6
PL	4.9	3.8	3.6	3.1	1	0.7	0.2	-0.4	-0.6	0.6
PT	0.8	1.3	-0.2	-0.1	-1.7	-2.7	-3.1	-2.9	-1.7	-1.5
RO	1.3	-0.1	-1.1	0	-3.2	-2.8	-1	-1.3	-1.6	-2.2
SE	1.7	1.3	0.7	0	-1.2	-2.2	-2.6	-2.1	-0.5	0.8
SI	3.3	3.2	2.6	1.8	0.2	-1.4	-2.4	-3.2	-2.9	-2.4
SK	2.2	3.2	3.7	1.9	-0.7	-1.6	-3.7	-3.4	-1.9	-2.2
UK	1.5	1.2	0.5	-0.2	-1.1	-2.1	-1.7	-1.5	-1.2	0.4

Source: Eurostat National Accounts [teina 300].

# CHAPTER 3: Negotiating the crisis: social partner responses

While negotiations and concertation between the social partners have played an important role in tackling the effects of the crisis, there is considerable variation across countries and sectors in their extent and character. Differences in economic situation are more clearly reflected in the differences between and within sectors than between countries. The influence of industrial relations institutions is notable, although the presence of institutional capacity for concertation and/or negotiation at national, cross-sector level is less significant. Public policy and social partners' involvement in it are found to exercise a distinct influence on the pattern of negotiated responses.

This chapter is based on a draft by Mark Carley and Paul Marginson of the University of Warwick's Industrial Relations Research Unit.

## 3.1. Introduction

This chapter explores the responses of employers and trade unions to the crisis at the different levels of economic activity: cross-sector, sector and company. A central focus is the incidence, pattern and character of negotiated and concerted responses between the social partners. Attention is also paid to unsuccessful attempts to negotiate responses and instances of conflict. In terms of the character of the agreements concluded at the different levels, the balance between their distributive and integrative elements is of interest <sup>(1)</sup>. In a context of economic crisis, the distributive element of agreements involves measures aimed at immediate cost reductions, such as redundancies, wage freezes or cuts and enhanced flexibilities including working time. The integrative element entails measures which frame short-term responses in ways which can provide medium-term benefits for both parties, such as those aimed at maintaining

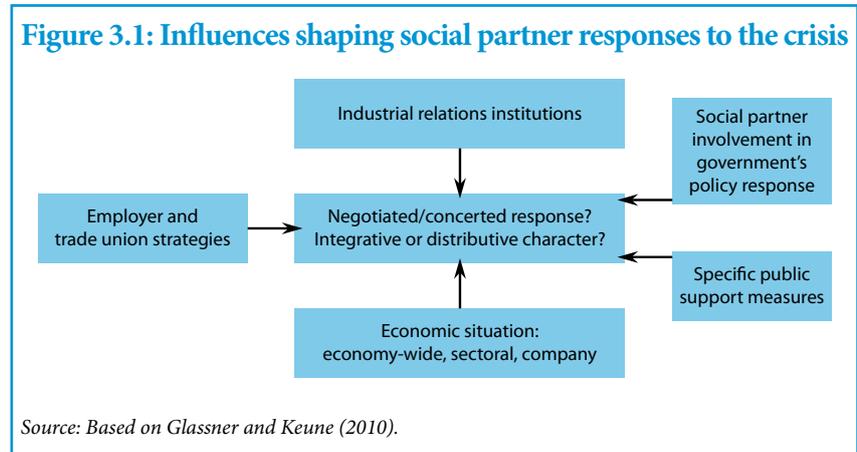
<sup>1</sup> The distinction between distributive and integrative bargaining was first drawn by Walton and McKersie (1965). Traditionally, collective bargaining had been viewed as dealing with issues of distribution, such as wages and the length of the working week. Outcomes of distributive bargaining are zero-sum: one party's gain corresponds to the other party's losses. But collective bargaining can also engage with integrative agendas, under which outcomes are positive sum: both parties can secure gains. Restructuring agreements which aim both to reduce costs and enhance flexibility, and to enhance the skills and earnings capacity of the workforce, are an example. In practice, the distributive and integrative aspects of collective negotiations are intertwined, with the balance of outcomes tending in one direction or the other.

employment through work-sharing, thereby retaining skills — and even enhancing them through using downtime for training (ILO, 2009).

Four main sets of influences can be identified as framing the extent to which responses to the crisis have been negotiated or concerted between the social partners, and the character of the agreements reached (Glassner and Keune, 2010), as shown in Figure 3.1 below.

As Chapter 2 has shown, the economic situation during the course of the crisis at national, economy-wide level and in different sectors has varied. This variation shapes the need for and magnitude of policy responses and also the scope open to governments and social partners to take action. Industrial relations institutions across the Member States display some important commonalities, but also considerable variation, as

Chapter 1 has established. Four institutional aspects are central to theme of this chapter. First, the presence and nature of institutional arrangements for tripartite or bipartite concertation and/or negotiation at cross-sector level, whose relevance is considered in the first main section of the chapter. Second, whether structures for collective bargaining are multi- or single-employer in nature. Under multi-employer bargaining arrangements, the possibility exists of higher levels establishing frameworks which can facilitate and govern further negotiation at company level. Third, is collective bargaining coverage i.e. the percentage of the workforce covered by collective agreements? This is strongly associated with bargaining arrangements: it is well established that collective bargaining coverage under multi-employer bargaining is markedly higher than under single-employer bargaining (Traxler et al., 2001). Accordingly, negotiated responses to the crisis are more likely to cover a greater proportion of the workforce where multi-employer arrangements prevail. Under single-employer bargaining, minority coverage means that unilateral, management responses will be widespread. Fourth, whether under multi-employer bargaining arrangements there are provisions which closely articulate negotiations at the higher and company levels, respectively. Higher-level agreements can only frame and constrain company



Source: Based on Glassner and Keune (2010).

negotiations in the presence of effective multi-level governance arrangements (Marginson and Sisson, 2004; Nergaard et al., 2009). The second, third and fourth aspects shape social partner actions at sector and company level, as the second main section will demonstrate.

Two aspects of public policy shape the extent, and character, of negotiated responses. The first, considered in Chapter 2, is the involvement of the social partners in the framing of anti-crisis packages measures introduced by governments. The second are specific public policy measures aimed at maintaining employment, notably the short-time working schemes that have been mobilised or newly introduced in many Member States, which support the earnings of those affected, through partial unemployment benefits. These schemes, which are briefly surveyed in this chapter, can prompt employers and trade unions to negotiate further measures responding to the effect of the crisis and/or require negotiations for their implementation. In short, there is potentially an important interaction between specific public policy measures and the incidence and character of negotiated responses, with the former enhancing the scope for the latter. For their part, employers' and trade unions' responses are conditioned but not determined by the economic situation, industrial relations institutions and government actions. Responses are also the product of employers' and trade unions' respective strategies (Glassner and Keune, 2010). Each exercises choices, has the potential to advocate innovative solutions and/or to rely on the tried and tested ones, to engage in compromises in the face of differences and/or to test their relative strength through conflict.

The chapter has two main sections. Cross-sector developments are addressed in the first, principally actions taken by the social partners

### Box 3.1: Information sources

The data on specific developments at cross-sector, sector and company level in this chapter are, unless otherwise indicated, based on reporting in: Eurofound's European Industrial Relations Observatory and European Restructuring Monitor; the ETUT's Collective Bargaining Newsletter; two private-subscription based online services, European Employment Review and Planet Labor; EWC News, published by the euro-betriebsrat.de training and consultancy network; in the cases of several company and sector-level agreements, the websites of the companies or trade unions involved; and an ILO Working Paper by Glassner and Keune (2010).

at national level. Developments at regional level have been significant in several countries, and some of these are reviewed in Box 3.4. The second section addresses the sector and company levels, focusing in turn on the production and private service sectors. Developments in the public service sector are briefly reviewed in Box 3.6. The section also reviews social partner actions at European level, which have mainly revolved around European works councils. The chapter has been compiled at a time when the developments with which it is concerned are moving rapidly and sometimes in unpredictable directions. Its assessment rests on data from the onset of the crisis up until April 2010.

The chapter concludes that whilst negotiations and concertation between the social partners have played an important role in tackling the effects of the crisis, there is considerable variation across countries and sectors in their extent and character. In accounting for this variation according to the four sets of factors identified in Figure 3.1, it finds that differences in economic situation are more clearly reflected in the varying pattern of negotiated responses between and within sectors than between countries. The influence of industrial relations institutions is found to be generally marked, although least so for the presence of institutional capacity for concertation and/or negotiation at national, cross-sector level. Both aspects of public policy are found to exercise a distinct influence on the pattern of negotiated

responses. In practice, fully assessing the influence of social partner strategies requires in-depth data of a kind which was not available. At best inferences can be drawn, and these are strongly suggestive of their relevance.

## 3.2. Cross-sector level

This section examines specific bipartite and tripartite action taken or attempted in the EU Member States at cross-sector level by the social partners (along with the government in the case of tripartite action) directly in response to the economic crisis. More general consultative and dialogue processes, and the social partners' perspectives, are dealt with in Chapter 2. Up to the end of April 2010, bipartite or tripartite national cross-sector agreements framing the approach, or on some specific actions, in response to the crisis were concluded in 10 countries: Belgium, the Netherlands, France, Spain, Poland, Estonia, Latvia, Lithuania, Bulgaria and the Czech Republic. In an 11th, Slovakia, trade unions and employers' organisations concluded parallel, but separate accords with the government. In five countries there were unsuccessful talks over agreements: Ireland, Slovenia Spain (in the case of a possible tripartite agreement), Finland and Hungary. In terms of the countries involved, two related features stand out. First, existing tripartite and bipartite institutions for negotiation and/or concertation were not mobilised, successfully or unsuccessfully, to address the crisis

in all the countries in which they are available. Second, agreements were concluded in a number of countries in central and eastern Europe where there is no established tradition of the social partners and/or government doing so.

### 3.2.1. Crisis response agreements

The bipartite or tripartite national cross-sector agreements in six countries, and the parallel accords in Slovakia, were concluded at a relatively early stage in the crisis. In the other four countries, the agreements were concluded more recently. In Lithuania, the tripartite agreement came only after protracted conflict, while the Spanish bipartite agreement came at the second attempt, after a one-year interregnum in negotiations. The tripartite agreements in Bulgaria and the Czech Republic were not concluded until the early months of 2010 and followed calls by the social partners for greater involvement in the response to the crisis. In the cases of the Belgian and Spanish cross-sector and the Dutch tripartite agreements, the initiatives in question were an adaptation and shaping of normal, regular negotiating processes to address the current economic conditions. The accords in France, Poland, Slovakia, Estonia, Latvia, Lithuania, Bulgaria and the Czech Republic were ad hoc and free-standing responses to the crisis. In Poland, the Baltic states and the Czech Republic, the agreements were, it seems, the first of their kind. The Slovak accords followed an earlier agreement anticipating effects of entry in the euro area.

In summary, the six agreements concluded relatively early into the crisis were as follows.

- The Belgian social partners explicitly responded to the crisis in their cross-sector collective agreement

for 2009–10 (such agreements are normally signed every two years), concluded in December 2008, which aimed to achieve a balance among companies' competitiveness, workers' purchasing power and employment levels. It included moderate increases in purchasing power, reductions in taxation of income from night and overtime work, increases in short-time work benefits and tax reductions to encourage employer to recruit long-term unemployed people (Perin, 2009).

- In the traditional autumn consultations in October 2008, the Dutch government and social partners reached wide-ranging agreement on issues such as moderate wage demands, reduced unemployment insurance contributions, reform of dismissals law, assistance for low-paid and vulnerable groups, job creation and training. In March 2009, the bipartite Labour Foundation reached an agreement on dealing with the crisis, covering 2009–10, which promoted employment, wage moderation, training, assistance for redundant workers and flexible employment (Labour Foundation, 2009).
- In July 2009, the French social partners reached a national cross-sector agreement on managing the employment consequences of the economic crisis. This included: the extension of the statutory short-time work scheme to new groups of employees; an increase in the duration of short-time benefit; a framework for 'employee leasing' between companies; the promotion of employees' geographical and occupational mobility; improvements to schemes to help redundant workers back into employment; and assistance targeted at groups such as the long-term unemployed, older workers and young people (see Box 3.2 for further details).

- In March 2009, the Polish social partners reached a bipartite agreement on a package of anti-crisis measures, including greater working time flexibility, the introduction of a short-time working scheme and limits on fixed-term employment, as well as the minimum wage, social security and tax measures (see Box 3.3 for further details).

- A tripartite accord reached in Estonia in March 2009 set out principles for maintaining employment levels, for example through lifelong learning and flexible employment, and providing more effective assistance for unemployed people (Nurmela and Karu, 2009).

- In June 2009, a tripartite accord concluded in Latvia, which aimed to reduce the public sector deficit, embraced both revenue-raising measures and public expenditure cuts, including reductions in the public sector paybill and in pensions and benefits (Cabinet of Ministers of the Republic of Latvia, 2009).

A different type of concerted approach, involving parallel governmental accords with the social partners, was forged in Slovakia. In early 2009, the Slovak government signed both:

- a 'memorandum on cooperation in solving the impact of the financial and economic crises on Slovak society' with the main trade union confederation, whereby the government would seek to maintain employment levels and protection and the unions would pursue moderate wage demands and a dialogue-based approach (Cziria, 2009); and
- a similar memorandum with the main national employers' organisations, whereby the government would avoid imposing new legislative or administrative burdens on

employers and the employers would not use the crisis as a pretext for reducing employment conditions (Planet Labor, 2009).

Linked to the conclusion of these accords, the Slovak government established an Economic Crisis Council, with social partner representation, to make proposals for dealing with the crisis.

In Lithuania, the conclusion of an agreement in October 2009 was preceded, as Chapter 2 indicated, by months of sustained trade union opposition to government austerity measures culminating in a hunger strike in July which successfully prompted the government to change tack. The tripartite national agreement on economic and social policies during the downturn covers areas such as tax, public spending, public sector pay, cuts in social security benefits, public sector reform, economic stimulus measures, energy policy, education and training, healthcare and combating the illegal economy (Blažienė, 2009).

In Spain, the social partners were unable to reach for 2009 their usual cross-sector framework agreement providing guidelines for lower-level bargaining, mainly because of differences over pay increases (see below). However, they were able to resume the practice in 2010, taking the unprecedented step of reaching a three-year framework deal (*European Employment Review*, 2010). The 'agreement for employment and collective bargaining' sets out recommendations for sector- and company-level bargaining in 2010, 2011 and 2012. Its central priority is protecting and creating jobs, including through wage moderation and by promoting open-ended rather than temporary employment. On pay, the agreement recommends moderate increases each year and the inclusion of: wage revision clauses, which would

compensate workers for a rise in inflation which exceeded wage increases over the three-year period; and hardship clauses in sectoral agreements which could be triggered by companies facing financial difficulties. The accord also recommends that collective agreements include a range of

measures to avoid and mitigate job losses, promote open-ended employment, develop workforce flexibility, deal with restructuring and improve training provision.

In the Czech Republic, following calls by unions and employers' organisations

### Box 3.2: French cross-sector agreement on managing the employment consequences of the crisis

With unemployment rising rapidly, social partner organisations decided in May 2009 to open negotiations over a national cross-sector agreement on the 'social management of the consequences of the economic crisis for employment'. The talks resulted on 8 July in an agreement on 'emergency' employment measures, signed by all the main social partners except the CGT trade union confederation (*European Employment Review*, 2009). Further negotiations were to be held on 'structural' measures to facilitate and accompany a future economic recovery.

The July agreement built on various crisis response labour market and training initiatives taken by the government and social partners during 2008 and 2009, providing for supplementary measures aimed at 'limiting the employment consequences of the economic crisis to the greatest extent possible'. These measures aimed to: help 'maintain the contractual link' between employers and employees during periods of reduced activity; provide more secure paths back into employment for redundant workers who have lost their jobs; mitigate the effects of the economic crisis on the most vulnerable groups; and enhance qualifications and skills. All of the agreed measures were temporary in nature and were due to expire on 1 January 2011, and many required implementation by the government, which indicated that it would issue the necessary regulations as soon as possible.

Key provisions of the agreement include:

- the extension of the statutory short-time work scheme to new groups of employees (especially in the services sector);
- measures to promote the training of employees on short-time work and make their future career paths more secure;
- an increase in the general maximum duration of short-time benefit from 800 to 1 000 hours per employee per year;
- simplification of administrative procedures that companies must observe in applying for short-time benefit;
- a framework of rules and procedures to govern 'employee leasing' — this arrangement, whereby a company temporarily places a number of its employees at the disposal of another company, is permitted by French law but lacks detailed regulation;
- the promotion of employees' geographical and occupational mobility by companies, for example through internal 'job exchanges' or allowing employees to try out other jobs;
- improvements to schemes to help redundant workers back into employment, such as opening them up to people who formerly had fixed-term contracts or were temporary agency workers; and
- assistance targeted at groups, such as, the long-term unemployed, older workers and young people, mainly by adapting the use of various existing schemes that seek to keep these groups in employment, find them new jobs, or help them enter the labour market for the first time.

The social partners also reached a national cross-sector agreement on vocational training in January 2009, which was negotiated at the government's behest. The negotiating process was not directly linked to the crisis but the final agreement's content was influenced by the deteriorating employment situation. The accord includes measures aimed at providing training for an extra 700 000 low-skilled or unemployed workers each year and provides funding for urgent training measures to tackle the effects of the downturn.

in 2009 for greater involvement in the government's response to the crisis, and their participation in work in drawing up a new short-time work scheme (Box 3.5), serious engagement on broader issues began in early 2010. This resulted in tripartite agreement in February on a set of 'short-term' crisis response measures (Verveková, 2010). These related to a range of economic and social issues. Directly, employment-related points concerned training programmes, possible greater tax harmonisation between employees and the self-employed, and measures to address misuse of unemployment benefits. Additional measures were agreed in April. In employment terms, the government made commitments to

examine the possibility of introducing a more 'German style' short-time work scheme and speeding up the payment of pensions and sickness benefit.

In Bulgaria, trade unions withdrew from the main national tripartite institution in late 2008, at least partly because of lack of consultation over government anti-crisis measures, and organised protests against the government's policies over the spring and early summer of 2009. However, following a change of government, tripartite dialogue resumed in August 2009, with agreement to draw up a joint anti-crisis package. Nevertheless, there was no consensus on the new government's initial anti-crisis programme. Trade

union discontent with the programme then led to negotiations with employers' organisations over potential additional measures, resulting in a set of joint proposals to government and finally to a tripartite agreement on a package of 59 anti-crisis measures in March 2010 (Daskalova, 2010). These wide-ranging measures sought to support employment, households, businesses and the state budget. The employment measures included: a mechanism for increasing the minimum wage; increases in unemployment benefits; schemes to support employment in companies facing difficulties (such as support for workers placed on unpaid leave); employment subsidies; and promotion of labour mobility.

### Box 3.3 Polish social partner agreement on anti-crisis package

Following talks on crisis response measures within the main national tripartite consultative body, the Tripartite Commission for Social and Economic Affairs, trade unions and employers' organisations opened bipartite talks on the issue and in March 2009 agreed on a package of anti-crisis measures (Czarzasty, 2009).

The main points (many of which were of a time-limited nature) included the following:

- the introduction of a form of short-time working, whereby employers facing economic difficulties may, in order to avoid redundancies, place employees on short time or lay them off temporarily, with the workers concerned receiving a limited public wage subsidy;
- an extension of the maximum reference period for averaging weekly working time from three months to 12 and an amended statutory definition of 'working day' to allow more flexibility;
- the introduction of working time flexibility in order to facilitate the reconciliation of work and family life;
- promoting the creation and use of company training funds;
- a limitation of the duration of fixed-term contracts, with the aim of making employment more stable;
- a gradual increase in the national minimum wage to 50 % of the average wage;
- increased social security benefits for redundant workers and support for families hardest hit by the crisis;
- tax exemptions for allowances and benefits paid by companies and trade unions to workers facing financial difficulties;
- recognition of company collective agreements as a source of labour law; and
- repealing legislation capping the pay of senior executives in state-owned firms.

Many of the agreed measures required implementation through legislation. The government committed itself to introducing the necessary legislation and issued draft laws in June 2009, which were adopted in August. The legislation omitted some of the points agreed by the social partners (such as the increase in the national minimum wage) and amended others, drawing heavy criticism from trade unions (which accused the government of pursuing its own agenda and of failing to consult properly on the legislation) and to a lesser extent from employers. In early 2010, the social partners criticised the effectiveness of some of the measures introduced by the legislation and called for amendments.

The degree to which the various agreements were bipartite or tripartite was not in all cases straightforward. The accords reached in Estonia, Bulgaria and the Czech Republic were clearly tripartite, the Spanish agreement was bipartite, and the parallel accords concluded in Slovakia neither bi- nor tripartite. In the other countries there was a more complex interplay between the social partners and the government. While the Belgian intersectoral agreement was formally bipartite, it was negotiated in conjunction with the government (which mediated in the talks), relies on government funding for some of its measures and forms part of the government's response to the deteriorating economic situation. The Netherlands saw a mixture of tripartite and bipartite cross-sector agreements, with a broad tripartite crisis response accord in October 2008 and a bipartite agreement in March 2009, though the latter apparently emerged largely from work in a tripartite 'crisis team'. In France, the July 2009 agreement on managing the employment consequences of the economic crisis relied on government approval and legislation for much of its enactment. The Polish agreement

was negotiated on a bipartite basis following tripartite talks and many of its points required legislative implementation, which occurred in August. As well as some measures in most of the agreements requiring implementation through legislation, in the case of Belgium, Spain and to some extent the Netherlands, implementation was also predicated on further collective negotiations at lower levels.

The agreements in Latvia and Lithuania were multipartite, involving accords between the government and a range of interest organisations. As well as trade unions and employers' organisations the accords were also signed by organisations representing businesses (other than employers' organisations as such) and pensioners, with various other parties being involved in each case. However, in Lithuania, the agreement was not signed by a number of (mainly public sector) trade unions and relevant interest groups (such as associations representing older and disabled people), and these organisations criticised the accord, claiming that it served the interests only of the signatories and not of the wider public.

In terms of their content, all of the agreements constituted 'packages' of measures aimed at tackling the economic crisis, rather than addressing single issues. The agreements in Belgium, Estonia, France, the Netherlands, Poland, Slovakia and Spain dealt centrally with employment-related matters. The other agreements were more wide-ranging, covering a variety of economic, fiscal, public and social policy matters, including some labour market elements (only marginally so in the case of Latvia, where the accord addressed only austerity measures aimed at restoring the public finances). To varying extent, this second group of agreements seemed to be exercises in obtaining social partner consensus for governments' crisis response measures

(notably spending cuts), in return for some compensating measures.

The most common employment-related issues dealt with in the various agreements were: short-time work (Belgium, the Czech Republic, France, Spain and Poland); employment-related tax/social security measures (Belgium, the Netherlands and Poland); employment incentives, schemes and assistance aimed at unemployed people and vulnerable groups (Belgium, Bulgaria, the Czech Republic, France, Spain and the Netherlands); flexibility in employment type and/or working time (Bulgaria, Estonia, the Netherlands, Spain and

Poland); wage moderation (Belgium, the Netherlands, Slovakia and Spain); and training/lifelong learning (the Czech Republic, Estonia, Spain and the Netherlands).

### 3.2.2. Unsuccessful talks and pressure on existing arrangements

In six countries, negotiations were held over a specific tripartite or bipartite agreement or accord aimed at tackling the effects of the crisis, but without success by the end of April 2010. Five of the countries concerned have established traditions of suc-

#### Box 3.4: Regional cross-sector agreements to address the crisis in Italy and Spain

In several Member States, national political structures devolve important responsibilities in the employment field to the regional level. This is notably the case in Italy and Spain. Since the crisis took hold, agreements on dealing with aspects of its employment effects have been signed in a number of regions in both countries.

In Italy, legislation adopted in January 2009 increased resources for the country's system of 'social shock absorbers' — measures that cushion the effects of redundancies and restructuring, including special unemployment benefits and other forms of income support for workers who have lost their jobs or are temporarily laid off — and provided for the system to be extended and adapted during the 2009–10 period. The national government reached agreement with the authorities at regional level on implementing the law. The operational details were then determined by agreements signed by the social partners and authorities in each region. These regional tripartite accords typically extended support measures to cover types of company and worker normally excluded from the social shock absorbers, and some included training obligations for the workers concerned, or provided for social partner involvement in administering the scheme.

In at least one case, the regional social partners also signed a bipartite anti-crisis accord. An agreement reached in the Rome/Lazio region in June 2009 sought to boost the local economy and increase employment levels. It provided for employers to use enhanced social shock absorbers, while also introducing a new joint regional training fund and calling for a range of initiatives to promote 'green' and high technology industries, along with investments in research and infrastructure.

In Spain, tripartite agreements were signed in a number of regions during 2009 to promote employment and stimulate the economy in the context of the crisis. For example, a 'pact for development and competitiveness', signed in Castilla-La Mancha in August, provided for: major public investments in public works, infrastructure, housing, research and new technologies; support for small businesses, vocational training measures; and subsidies for the recruitment of unemployed people. Similarly, a 'social agreement for productivity and employment' reached in La Rioja in March provided for public investment in innovation, export industries, renewable energy, the environment, competitiveness, infrastructure and tourism. The accord also focused on improving training, public employment services and working conditions. An 'agreement for competitiveness and employment generation' signed in Madrid in December aimed to create 30 000 'high-quality' jobs directly and 50 000 indirectly in strategic industrial sectors, through investments in innovation and new technologies.

successfully concluding cross-sector agreements: Ireland, Luxembourg, Slovenia, Spain and Finland (until very recently). In the sixth, Hungary, there is no previously successful initiative. Of these, Ireland, Slovenia and Spain saw a collapse (at least temporary) of long-standing cross-sector bipartite/tripartite arrangements as a result of the crisis and differences over how to react to it. Tripartite arrangements also came under pressure in Bulgaria, as reported above.

The Hungarian government held tripartite discussions in late 2008 and 2009 over a possible 'social pact' on its reform measures in response to the crisis, but without success. As indicated in Chapter 2, substantial differences persisted between the social partners and amongst the rival trade union confederations, both over each others' respective perspectives on the measures required to successfully address the crisis and over the government's proposals, and particularly those concerning labour law reform (Tóth, Edelényi and Neumann, 2009). The parties would seem to be 'going through the motions' rather than being engaged in a search for compromise.

In Finland, a long period of bipartite/tripartite national incomes policy agreements had come to an end in 2007 and the EK employers' confederation had indicated that it no longer wanted a role in such cross-sector bargaining. However, linked to the late 2009 sectoral bargaining round, EK and the trade union confederations held secret talks over a possible overall framework for pay increases in sectoral agreements, with the aim of promoting employment. The talks ended without success in December 2009 when EK withdrew (Jokivuori, 2009).

Tripartite negotiations during March and April 2010 in Luxembourg were aimed at reaching agreement on

measures to support employment, maintain and enhance competitiveness and address the deterioration of the public finances. The negotiations broke down towards the end of April, with the principal focus of disagreement being the employers' key proposal to freeze the automatic indexation of wages and pensions for a two year period. This was fiercely resisted by the trade unions, although supported by the government (Planet Labor, 2010).

Since 1987, Ireland has been covered by an unbroken series of tripartite national social partnership agreements, regulating a range of employment, social and economic matters, and including multi-year pay deals between unions and both private sector employers and the government. The current 10-year partnership agreement, 'Towards 2016', was signed in 2006 and within its framework a 'transitional agreement' was negotiated in September 2008, which included a two- to three-year pay deal. In early 2009, with the economy in deep recession, the IBEC employers' confederation called for a deferral of the agreed pay increases for at least a year. In practice, many employers did not pay the wage increases due in 2009, and IBEC formally withdrew from the deal at the end of the year, after the failure of talks with unions over an alternative pay accord. The public sector pay agreement also broke down, with the government not paying the wage increases due under the transitional agreement and introducing pay cuts, following the failure of talks with unions (Sheehan, 2009). Discussions were held during 2009 over a form of tripartite national economic recovery plan, but failed. The main stumbling blocks were government plans to cut public expenditure and public sector pay, which proved unacceptable to trade unions (and were subsequently implemented unilaterally by the government), along with the fate

of the transitional pay agreement and the degree of government support for employment preservation and creation. Unions argued unsuccessfully for a wide-ranging pact covering economic, fiscal and social policy.

Bipartite relations between IBEC and the ICTU trade union confederations have not, however, broken down completely. In March 2010, they signed a 'national protocol for the orderly conduct of industrial relations and local bargaining in the private sector' aimed at ensuring that company-level collective bargaining is conducted in an orderly fashion in the absence of a national pay agreement, with efforts to avoid industrial action. The protocol states that bargaining in 2010 should serve the primary purpose of protecting jobs. In the public sector too, there was some rapprochement between the government and unions, with a draft agreement on public sector pay, jobs and reform reached in March 2010 (see Box 3.6).

In Slovenia, where cross-sector agreements have been a recurring feature since the 1990s, tripartite dialogue over responses to the crisis was marked by considerable consensus in 2008 but problems emerged in 2009. Major disagreement focused on minimum wage policy and late in the year employers' organisations started to boycott the main national tripartite forum following the government's adoption of a new minimum wage law (Stanojevič, 2010).

In Spain, the social partners were unable, in 2009, to reach their usual annual cross-sector framework agreement laying down recommendations for lower-level bargaining, mainly because of differences over pay increases in the recession. Such agreements had been signed every year from 2002 to 2008. The lack of a national framework contributed to a difficult

bargaining round in 2009, with negotiations over many collective agreements deadlocked or delayed, and disputes about the payment of wage increases due in 2009 under multi-annual agreements signed in previous years. However, in November the social partners agreed a joint approach to resolving the problems that were affecting bargaining, thereby opening the way for them to conclude a three-year national framework agreement in February 2010 (see 3.2.1 above).

While bipartite cross-sector relations between Spanish unions and employers' organisations moved from disagreement to agreement, the opposite was true of tripartite dialogue over the crisis. In July 2008, the government and social partners signed a 'declaration of principles for stimulating the economy, employment, competitiveness and social progress', which expressed support for the government's diagnosis of the problems facing the country and the financial measures adopted to bolster the economy. During 2009, the government made repeated efforts to engage the social partners in a tripartite pact to boost employment and tackle the effects of the crisis. These efforts foundered mainly because employers wanted to discuss more radical employment law reforms and deeper cuts in employers' non-wage labour costs than those proposed by the government or acceptable to trade unions. After the social partners signed their renewed cross-sector agreement in February 2010, the government reopened tripartite social dialogue, and presented a series of proposals to the social partners for labour market reform aimed at increasing adaptability and flexibility. The dialogue was still under way at the end of April, but with little sign of consensus, and the talks were to some extent overshadowed by sharp differences over the

a pension reform announced by the government at the end of January, which would raise the age of retirement, and by trade union discontent over public sector pay cuts (see Box 3.6).

### 3.2.3. Specific public policy measures: short-time working arrangements

In a number of cases, consensus (bipartite or tripartite) was reached

#### Box 3.5 Short-time work and the social partners

Many Member States amongst the EU-15 already had short-time work schemes in place and responded to the crisis by amending them, as occurred in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg and the Netherlands. The main changes included:

- increasing the duration of the benefits paid to employees (or subsidies paid to employers), as in Austria, France, Germany and Luxembourg;
- increasing the level of income replacement for the employees concerned, as, for example, in Belgium and France;
- extending the scheme to new categories of companies and/or employees, as in Belgium, France, Germany and Italy;
- linking state subsidy to commitments by the employer not to make the workers concerned redundant for a certain period, as in France and the Netherlands; and
- making the arrangements more flexible and/or easier to access, as in Austria, Denmark, Finland, Germany and Luxembourg.

Several of the Member States in central and south-eastern Europe — such as Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia — introduced state-supported short-time work schemes for the first time.

A key feature of all the short-time work schemes referred to here is that they are heavily dependent on state financial support for their operation.

In many cases, the social partners were involved in the adaptation or introduction of short-time work schemes in response to the downturn. The partners jointly initiated change in several countries, for example:

- the introduction of a short-time work scheme in Poland was based on the social partners' March 2009 anti-crisis agreement (see Box 3.4);
- France's statutory scheme was extended to new groups of employees and the duration of benefit was increased as a result of calls made in the social partners' cross-sector agreement on managing the employment consequences of the economic crisis, signed in July 2009 (see Box 3.3);
- the Austrian social partners issued a joint proposal to make the statutory short-time work scheme more flexible, which was enacted by parliament in February 2009;
- the Danish social partners made a joint call to the government to take measures to strengthen the labour market, notably adaptation of the state-supported short-time work scheme, which was partially taken up by the government in March 2009;
- the German social partners made a joint recommendation that the duration of statutory short-time work benefit should be extended, which was enacted in May 2009; and
- the Dutch social partners made joint requests in 2008 and 2009 for enhancing the state short-time work scheme, which were largely taken up by the government.

Elsewhere, social partner involvement was more tripartite and/or consultative. Following the failure of bipartite talks on the issue, the Belgian government issued proposals for temporarily extending short-time work measures (which normally apply only to blue-collar workers) to white-collar workers, which were endorsed by the social partners and enacted in April 2009. The introduction of a new scheme was reportedly agreed by the Bulgarian government and social partners. A tripartite working group was set up in the Czech Republic in August 2009 to formulate a new short-time working scheme, and the Slovenian social partners were consulted on a new short-time work scheme, though in these cases no information is available on the degree of social partner influence exerted.

on measures that were subsequently enacted by the government, or the social partners endorsed government plans. The most common measure to which this applied was the modification, extension or introduction of state-supported short-time work and temporary lay-off schemes (known by other terms, such as partial unemployment, in some countries). These schemes allow employers temporarily to reduce employees' working time, partially or fully, with compensation, funded wholly or partly by the state, for some of the income lost by the employees. Such arrangements allow the employment relationship to be maintained through periods of reduced demand, protecting workers from unemployment and excessive income loss, while enabling employers to retain skilled and experienced staff.

The social partners have been variously involved in the adaptation and introduction of state-supported short-time work schemes. The schemes have also prompted, and in some cases require, further negotiations between employers and trade unions at inter-sector level, as in Belgium, and at sector and company levels in a number of countries (see below). Box 3.5 outlines the incidence of, changes to and introduction of state-supported short-time work schemes, and the nature of social partner involvement.

### 3.2.4. Assessment

To summarise, up until the end of April 2010, explicit attempts to negotiate a form of bipartite or tripartite national cross-sector agreement involving a package of measures aimed at addressing aspects of the economic crisis were made in 16 of the 27 Member States. Agreements were concluded in Belgium, France, the Netherlands, Poland, Spain (in the case of a bipartite accord), the Baltic

states, Bulgaria, the Czech Republic, and, in the form of parallel accords, Slovakia. Negotiations, or short of this, talks, were unsuccessful in Finland, Hungary, Ireland, Luxembourg and Slovenia. They have reopened in Spain (in the case of a tripartite accord) after a considerable interregnum. The aim in all cases was to reach a multi-issue package of crisis response measures, with one exception: the failed bipartite talks in Finland over a pay framework for sectoral bargaining.

The multi-issue nature of the agreements concluded, involving a package of measures, is indicative of an integrative dimension to the bargaining process. Addressing a wide-ranging agenda better facilitates a positive-sum outcome through scope for trade-offs in which each of the parties is able to secure gains, albeit that they also have to make compromises and even concessions (Marginson and Sisson, 2004; Walton and McKersie, 1965). Beyond this, it is difficult to establish with any precision the balance between distributive and integrative elements of the agreements. Because the scope of the negotiation, and the subsequent agreement, was wider in, for example, the Netherlands and Poland, the possibilities for integrative outcomes were greater than in, for example, Estonia and Latvia, where the agenda was narrower. In some instances, for example in Bulgaria and France, distributional conflicts have been a precursor or accompaniment to negotiations which have resulted in integrative outcomes.

In addition, the social partners have exercised a clear influence on the specific issue of short-time working. A close interaction between the action of the government and that of the social partners is a striking feature of most of the countries concerned. Bipartite or tripartite consensus has been reached on, or the social partners have endorsed, the

implementation and/or amendment of standing schemes or the introduction of new ones in at least eight countries: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, the Netherlands and Slovenia. In some countries, short-time working has been addressed as part of a wider package of measures, including Belgium and the Netherlands. Elsewhere, as in Austria, the Czech Republic, Denmark, Germany and Slovenia, social partner accord or endorsement has focused on this specific issue. Integrative outcomes in this instance have flowed from the interaction between public policy measures and social partner actions.

For both types of intended intervention, some procedural innovation was in evidence. New tripartite or bipartite processes or structures were established specifically to address aspects of the crisis in several countries. This would appear to be the case, for example, with the Czech tripartite working group on short-time working and the Dutch tripartite 'crisis team' on addressing the employment effects of the crisis. Other innovations included the launch in France, in April 2009, of a joint government–social partner 'social investment fund' to coordinate their action on training and reskilling for those workers most affected by the crisis; and the establishment by the Slovak government of an Economic Crisis Council, with social partner representation, to make proposals for dealing with the crisis. Such procedural innovation, aimed at facilitating 'problem solving', is characteristic of integrative bargaining processes.

There were few cases of conflict specifically relating to bipartite/tripartite negotiations about crisis response measures, or their absence or failure. The main exception was probably in Ireland, where the breakdown of social partnership

was reflected in significant conflict, including a one-day public sector strike in November 2009. More broadly, trade unions organised protests over government crisis response measures, and especially austerity measures aimed at the public sector services (see Box 3.6), in a range of countries — including Belgium, France, Italy, Spain, Greece, Ireland, Portugal, the Czech Republic, Estonia, Latvia, Lithuania, Romania and Bulgaria.

### Categorising national responses

The countries where attempts have been made to conclude a cross-sector, multi-issue crisis response agreement does not correspond closely to the presence or absence of an established institutional capacity for negotiation and concertation at cross-sector level, as Table 3.1 shows. In terms of established institutional capacity, Table 3.1 classifies countries in five groups (Freyssinet, 2009; Hethy, 2009; Natali and Pochet, 2009):

1. those with an established tradition of regular bipartite or tripartite negotiation or concertation;
2. those with an established tradition of periodic bipartite, sometimes government prompted, or tripartite negotiation or concertation;
3. those with sector-focused bipartite negotiating arrangements alongside social partner involvement in labour market policy;
4. those with tripartite or bipartite social dialogue structures but no tradition of negotiation or concertation; and
5. those with no institutional structures for cross-sector social dialogue.

**Table 3.1: Established institutional capacity for cross-sector negotiation and social partners' crisis response actions**

Established institutional capacity	Negotiations over multi-issue crisis response agreement	SP intervention on STW scheme	Neither development
1. Regular bi/tripartite concertation	BE, NL (successful) BG, ES (successful/unsuccessful) IE, LU (unsuccessful)	BE, LU, NL, BG, SI	
2. Periodic bi/tripartite concertation	FR (successful)	FR, IT	EL, PT
3. Sector bargaining, SPs involved in LM policy	FI (unsuccessful)	AT, DE, DK, FI	SE
4. Bi/tripartite dialogue structures; little concertation tradition	CZ, PL, SK, EE, LT, LV (successful) HU (unsuccessful)	CZ, PL	MT, RO
5. No cross-sector dialogue structures			CY, UK

Source: Own compilation.

Table 3.1 combines this classification with the actions of the social partners in (a) attempts, successful or unsuccessful, to conclude a multi-issue crisis response agreement and (b) intervention on the specific issue of short-time working. The final column indicates those countries where neither development has occurred.

In accounting for the cross-country pattern in Table 3.1, two of the factors identified in Figure 3.1 seem influential: industrial relations institutions, in the form of established institutional capacity for cross-sector negotiation; and both aspects of public policy. Circumstantial evidence points to the relevance of a third factor also, employer and trade unions strategies. In contrast, countries' economic situation seems to exercise less influence. Institutional arrangements for industrial relations partially account for the placement of the countries in each group across the three columns of Table 3.1. Amongst the first group, negotiations over a multi-issue crisis response agreement have indeed taken place, successfully and/or unsuccessfully, in all of the countries concerned, with the exception of Slovenia. Amongst the second group of countries, this has been the

case in France, but not in Greece, Italy or Portugal. Such negotiations would not be expected amongst the third group of countries, given the sector focus of negotiating arrangements, although social partner intervention on short-time work schemes is anticipated given established involvement in labour market policy. This is the case for Austria, Denmark and Germany, but not for Finland (unsuccessful cross-sector negotiation) or Sweden (neither development). Although there is little tradition of successful concertation amongst the fourth group, agreements have been concluded in six of the nine countries and an unsuccessful attempt made in a seventh. Consistent with the absence of cross-sector dialogue structures, neither development has featured in the two countries in the fifth group.

Considering further the second group of countries, the reasons why institutional capacity for cross-sector negotiation or concertation has not been mobilised are partly conjunctural (Freyssinet, 2009). In Italy, arrangements had encountered problems before the onset of the crisis with differences opening up between the main union confederations (see Chapter 2) and attempts by the

government to play on these differences by reaching non-inclusive agreements. In Greece and Portugal, the social partners have not been able to reach common positions on responses to the crisis (see Chapter 2). The significance of the strategic choices exercised by employers' organisations and trade unions (and also governments) in these instances is apparent. In addition, the extent to which institutional arrangements for tri/bipartite negotiation and concertation are stable differs. Natali and Pochet (2009) contrast institutional dynamics over the past 20 years in Ireland and Spain, where institutionalised capacity has been stabilised, with Italy and Portugal, where it has not. Extending this concept of 'uneven institutionalisation' to other countries in the first two groups, Belgium, Luxembourg and the Netherlands also have a stable institutional capacity for agreement-making across a wide agenda, whereas France resembles more the situation in Italy and Portugal.

Turning to the third group of countries, a combination of conjunctural and institutional considerations helps account for the positions of Sweden and Finland. Current disagreements and tensions between the social partners in Sweden (see Chapter 2) are at odds with the role that they have long exercised in labour market policy. Historically, all three Nordic countries featured bipartite cross-sector collective agreements. These central arrangements had been abandoned much earlier in Denmark (late 1980s) and Sweden (early 1990s) than in Finland (2007). It was potentially feasible for institutional capacity to be revived in Finland, but not

in the other two countries, whatever the strategic preferences of employers' organisations and trade unions might have been. In contrast to the 'path dependency' apparent in other countries in the group, Finland represents an attempt at 'path recovery' and underlines the scope for employers' organisations and trade unions to exercise choices, albeit the initiative was unsuccessful.

The fourth group also underlines the scope that exists for strategic choices. The conclusion of agreements in five central and east European Member States with little or no previous history of doing so, and the parallel accords in Slovakia, suggests that the crisis may have acted as a 'moment' spurring innovation in industrial relations at cross-sector level, and therefore 'path change', in a manner similar to the effect that the conditions required for economic and monetary union had in prompting the negotiation of social pacts in several EU-15 Member States during the 1990s (Fajertag and Pochet, 2000). The implication is more relevant to the Visegrad countries, where cross-sector social dialogue structures are well established, than the Baltic states, where they are widely regarded as weakly embedded (Meardi, 2010). In Poland, there have been previous attempts to negotiate agreements — none of which have been successful, whilst in Slovakia an accord anticipating the effects of entry into the euro area had previously been concluded. Such initiatives have not previously been a feature in the Baltic states, where the extremity of the crisis seems to have eventually pushed governments into concluding

accords involving not only the social partners but a wide range of other interest groups.

In general, the economic situation, as reflected in the magnitude of the crisis, does not seem to have a strong bearing on the successful or unsuccessful outcome of cross-sector negotiations. Amongst the first group of countries, the magnitude of the crisis and its impact on the public finances sets Ireland apart from the others, but unsuccessful outcomes also feature elsewhere. Amongst the fourth group of countries, whilst the impact of the crisis, and the consequences for the public finances, in Poland, and to lesser extent the Czech Republic and Slovakia, has been milder than in Hungary, the comparison does not extend to the Baltic states where, as noted above, accords have been concluded in the face of much more severe economic conditions.

The role of public policy emerges as important in both of the respects identified in Figure 3.1. In addition to the evident role of governments in the conclusion of tripartite accords, they have frequently played an important role in supporting bipartite ones. This is underlined *a contrario* by the case of Romania, where although the social partners were able to reach compromises on a package of crisis response measures (see Chapter 2), the government chose not to engage with them. Public intervention to support employment in the specific from of short-time intervention has been a focus for social partner interventions in most of the countries where such schemes operate.

### Box 3.6: Public sector services

In the public sector services, the consequences of the economic crisis for the public finances, and therefore for public services, have become apparent more quickly in some countries than others. As Chapter 2 shows, the scale of the problem with the public finances also varies across countries. The impact of the crisis, in employment terms, has largely manifested itself in government attempts to reduce expenditure on pay and jobs and to secure 'efficiency savings'.

The means for determining pay and major conditions in public sector services vary across countries. In some, pay is determined by government decree or other statutory means, including Greece, Luxembourg and the Baltic states. Tripartite structures play an important role in pay determination in Hungary and Poland. Elsewhere, collective bargaining over pay ranges in coverage from some groups of the public sector workforce, with pay being determined for other groups by statutory or other means, to most or all workforce groups. Where collective bargaining arrangements exist, these are generally multi-employer in nature (Bordogna, 2007; Broughton, 2009). The involvement of government in determining pay, either directly through decree or via their role in collective negotiations or indirectly through setting state budgets, means that trade unions are more inclined to turn to forms of political mobilisation to press home their demands than is the case in the private sector.

In 2009, freezes or cuts in public sector pay and/or pensions, job cuts or recruitment freezes featured mainly (though not exclusively) in countries hit by the crisis deeply and early. For example, total or selective pay freezes were applied in Belgium, Bulgaria (where the government cancelled a planned 10 % rise), Estonia, Greece (except for one-off payments for low-paid workers), Hungary (with an effective pay cut for higher-paid employees), Ireland (with take-home pay cut by a 7 % 'pension levy') and Slovenia, while pay was cut in Latvia and Lithuania. In Belgium and Slovenia, the pay freezes were based on collective agreements. This was not the case in the other countries where, if negotiations were held, they were unsuccessful, with measures subsequently being imposed by governments. For example, in Ireland the government imposed a pay freeze (in breach of an earlier agreement on wage rises), following the breakdown of negotiations with trade unions. In other countries, agreements were not sought by the public authorities before imposing pay freezes or cuts. Examples include Greece and the Baltic states, where pay is set by government decree. In Lithuania, the government subsequently relented somewhat on its proposed public service pay cuts after mounting trade union protests (see 3.2.1). Such protests also occurred, with less success, in countries such as Bulgaria, Estonia, Greece, Ireland and Latvia, including national strikes in the cases of Greece and Ireland. The year 2009 also saw considerable levels of protest against other aspects of government public sector policy in some countries. For instance, French unions organised protests throughout the year against public sector spending and job cuts, and in support of wage increases, while Romanian unions mobilised, including a one-day national strike in October 2009, against government plans to reform public sector pay.

In the latter part of 2009, as governments started to announce their public spending plans for 2010, it became apparent that more countries were intending to freeze or cut public sector pay and/or jobs, and in the early months of 2010, further countries joined the list or issued more detailed proposals. The main instances included:

- plans for a 10 % cut in paybill across ministries and publicly funded organisations in Bulgaria in 2010, to be implemented through reductions in pay or employment levels;
- a three-year freeze in public spending in France, with a pay freeze, workforce reductions and the non-filling of vacant posts, along with changes to public sector pensions;
- public sector pay cuts of 7 % in Greece in 2010, along with reductions in bonuses, allowances and pensions, and a recruitment freeze, or only limited filling of vacant posts, in most areas;
- public services pay cuts of 6 % to 8 % in Ireland in 2010;
- a three-year public sector pay and recruitment freeze in Italy, plus the non-renewal of fixed-term contracts;
- a pay freeze for 2010 in local and provincial government in the Netherlands;
- a public sector pay freeze and cuts in allowances and pensions in Portugal in 2010, along with a recruitment freeze;
- a 25 % cut in public sector paybill in Romania (partly to be achieved through compulsory hours cuts) in 2010, plus a 15 % reduction in pensions and major job losses;
- a 5 % cut in the pay of Spanish public employees in 2010, followed by a freeze in 2011, along with the non-filling of many vacant posts and a pensions freeze; and
- the announcement of a pay freeze over 2010–11 in local government in the UK.

These measures and proposals, generally imposed rather than negotiated, led to major protests by public employees in almost all the countries concerned. By the end of April 2010, these included public sector strikes held, or called for the coming months, in France, Greece, Ireland, Italy, Portugal, Romania and Spain. The situation in these countries is still developing at the time of writing, while it seems likely that further Member States will take similar steps in the near future.

As in 2009, collective bargaining over the various pay and employment measures appears (at the time of writing) to have been largely absent in 2010. Indeed, in the case of Spain, the pay cuts announced have overridden an agreement signed in September 2009, providing for a 0.3 % wage increase for 2010. A partial exception is Ireland. Here, following the government's imposition of public sector pay cuts for 2010, it reached a draft agreement with public services unions in March 2010. This provided for no further pay reductions before 2014 and the possibility of some reimbursement of cuts already made, along with a commitment to no compulsory redundancies, in exchange for union commitments on public sector reform. The deal was subsequently ratified by a majority of unions.

In other countries not yet marked by very deep inroads into public sector pay and jobs, collective bargaining has in some cases enabled wage moderation to be introduced in a relatively consensual manner. For example:

- an agreement signed in October 2009 in Slovakia provided for an increase of 1 % in civil service and public service pay in 2010, considerably lower than in previous years, in the light of the economic downturn;
- an agreement for the Finnish state sector, running from March 2010 to February 2012, provides — despite the government's initial calls for a two-year pay freeze — for a total wage increase of nearly 1 % in 2010 (partly to be negotiated locally), with the 2011 rise to be negotiated later, along with protection of the employment status of civil servants;
- an agreement for (non-civil servant) employees of the German federal government and local authorities, signed in March 2010, provides for pay increases of around 2.3 % over two years, and introduces a flexible working scheme and scope for phased retirement for older employees, aimed primarily at those in areas of the public services subject to restructuring or workforce reductions;
- agreements signed in 2010 (after long and difficult negotiations, marked by industrial action) for local and provincial government employees in the Netherlands, provide for increases of 2 % (local government) and 1.9 % (provincial government, where workers also receive a lump sum worth 0.5 %) over two years, along with measures on job security; and
- agreements signed in Swedish local government in 2010 provide for increases over two years of 4.65 % for blue-collar workers and 3.5 % for white-collar workers.

### 3.3. Sector and company levels

This section examines the response to the economic crisis of the social partners at sector and company level, in terms of agreed actions and unsuccessful negotiations, up until the end of April 2010. It is based on an examination of the evidence available from the sources listed in Box 3.1 above, and seeks to identify attempts to conclude agreements, successful or otherwise, that are, or appear to be, linked to the economic recession or aimed at dealing with its consequences. The information and analysis are for the most part presented separately for two broad economic sectors: the production and manufacturing industries (including construction and utilities) and private services. However, wage bargaining is dealt with differently: cases of clear links or trade-offs between pay and other outcomes are examined in the sectoral analysis, while the overall effect of the crisis on wage bargaining outcomes is dealt with separately (under 3.3.1 below). Within the two broad sectors, social partner actions at sector and company (or establishment) level are reviewed separately.

#### Box 3.7: Institutional arrangements for collective bargaining

The fundamental difference between multi-employer (MEB) and single-employer (SEB) bargaining arrangements conditions whether or not sector-level negotiations take place: where they do negotiations at both sector and company levels are potentially relevant, where they do not, only the company level is relevant.

In the private sector, the relevance of the two levels of bargaining varies between countries. Sector-level bargaining covers a relatively high proportion of economic sectors, and MEB is therefore the predominant arrangement, in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, Spain and Sweden. In Bulgaria and Romania, manufacturing and other industrial sectors are characterised by multi-employer arrangements, whilst the service sectors have single-employer ones. Elsewhere sector-level bargaining is even more limited in its coverage in Cyprus and the Czech Republic, and marginal or almost non-existent in Estonia, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland and the UK. In these countries SEB is the predominant arrangement and the company is the key collective bargaining level. Company-level bargaining of various types is present in most countries with MEB arrangements, often but not always within frameworks of varying rigidity set by sector (or cross-sector) agreements.

Amongst countries and sectors with MEB arrangements, the relevance of sector agreements for what happens at company level in the private sector is determined by the procedural provisions governing the articulation of the two levels (Arrowsmith and Marginson, 2008; Traxler et al., 2001). Broadly speaking these tend to be comprehensive in nature, equipping the sector with the capacity to govern *de jure* if not always *de facto* developments at company level, in the Nordic countries, Germany, Austria, Slovenia, the Netherlands, Belgium and France. In Italy such procedural provisions are more recent, and remain contested. Elsewhere amongst the EU-15, the relationship between sector- and company-level negotiations is only incompletely governed by procedural arrangements in Spain, Portugal and Greece. The same applies to greater extent in those central and south-eastern Member States which have MEB arrangements, with the exception of Slovenia.

Whether MEB or SEB arrangements prevail exercises a strong influence on collective bargaining coverage. In part because the use of legal extension arrangements is widespread amongst countries with MEB arrangements (Traxler et al., 2001), whilst being unknown amongst those where SEB arrangements prevail, collective bargaining coverage is considerably higher under MEB than it is under SEB, as Chapter 1 has shown.

Attempts to negotiate responses are likely to be more widespread under MEB than under SEB arrangements since collective bargaining coverage is much higher in the former. Conversely, the scope for and incidence of unilateral management action is likely to be considerably greater under SEB than under MEB arrangements. Amongst countries and sectors with MEB arrangements, unilateral management actions at company level also seem more likely in the absence of effective governance arrangements articulating the two levels.

The analysis finds that the incidence of crisis response agreements, and unsuccessful negotiations, at sector and at company level varies both between countries and between (and within) broad economic sectors. Sector-level negotiations are confined to a group of countries with well-established multi-employer bargaining arrangements which also have the governance capacity to exercise influence, by simultaneously prompting and constraining the scope of further negotiations at company level. They are also mainly evident amongst manufacturing sectors, with relatively little evidence of negotiations in the private service sectors. At company level, negotiations and agreements addressing the consequences of the crisis are spread across a wider range of countries, although they are more apparent amongst the EU-15 than amongst the Member States of central and south-eastern Europe. As with sector-level negotiations, agreements are concentrated in manufacturing and particularly in metalworking and within that the automotive sub-sector. In private services, the majority of the smaller number of agreements has been concluded in the transportation and communication sectors. In accounting for these differences between countries and sectors, three of the sources of variation identified in Figure 3.1 are significant. The first is institutional differences in collective bargaining arrangements (see Box 3.7). The second is the differential impact of the crisis between (and within) broad economic sectors, shown in Chapter 2. Negotiated responses, and unsuccessful attempts to do so, feature more prominently in sectors which have been hit hard by the recession as compared to those which have remained relatively unaffected. The third is the implementation of specific public policy measures, notably short-time work schemes, which can act to prompt negotiations.

### 3.3.1. Wage bargaining outcomes

In most countries, the onset of the economic downturn from mid-2008 had little effect on collectively agreed pay increases during that year (according to data from the European Industrial Relations Observatory, on which this section is largely based). In many cases these had been negotiated before the recession began, at a time when the economy was growing, inflation relatively high and unemployment falling. The general tendency was for agreed pay rises to be higher in 2008 than in 2007, with the exceptions mainly central and east European countries such as Bulgaria, Hungary, Romania and Slovakia.

The effects of the crisis were much more widely felt in 2009, though some countries, such as Denmark, Finland, Greece (with regard to minimum rates) and Sweden, were still largely covered by 'pre-crisis' collective agreements signed in previous years. In most other Member States for which information is available, the average collectively agreed pay increase in 2009 fell from 2008 levels. However, the decline was rarely dramatic. For example, the average rate of increase dropped: from 3.4 % to 2.5 % in Belgium; 5.4 % to 4.4 % in the Czech Republic (enterprise-level agreements); 2.9 % to 2.6 % in Germany; 3.5 % to 3.1 % in Italy; 3.3 % to 2.9 % in the Netherlands; 3.1 % to 2.9 % in Portugal (private sector); 3.6 % to 2.6 % in Spain; and 3.9 % to 3 % in the UK. The most substantial falls were in Slovenia (7 % to 3.5 %) and Ireland. In the latter case, a national pay agreement provided for a 4.8 % rise in the private sector in 2008, but with the collapse of the agreement, which had stipulated an increase of 2.5 % to 3 % for 2009, survey evidence suggested that the majority of employers froze or (less commonly) cut wages. In the Baltic states, collective bargaining does not play a significant

role in overall pay setting, owing to its low coverage, and no information is available on the outcomes of the wage bargaining that does occur. An indication of pay trends is, however, provided by national data on average earnings/wages, and these reveal substantial falls in 2009, of between minus 8.7 % in Lithuania and minus 4 % in Estonia. The moderation in pay bargaining in 2009 was not, however, universal. In several countries, notably Austria, Hungary and Romania, the average collectively agreed pay rise was higher in 2009 than in 2008, while the rate of increase was unchanged in Malta and Slovakia.

In respect of most western European Member States and those central and east European countries where collective bargaining has significant coverage, the general picture is thus that the crisis depressed average agreed pay increases in 2009, but rarely to a great extent. Moreover, while nominal pay increases agreed in 2009 were often lower than in 2008, sharply declining inflation in many countries (the overall EU inflation rate, according to Eurostat, fell from 3.7 % in 2008 to 1 % in 2009) meant considerably higher increases in real wages in 2009 than in 2008. This did not carry over to average earnings. In virtually all Member States, the fall in the average earnings increase from 2008 to 2009 was much sharper than the fall in the average collectively agreed pay increase. This suggests that the effects of the crisis were felt more deeply in actual earnings than in the basic pay rates set by collective agreements, owing to reduced working hours (short-time working or reduced overtime) and/or cuts in elements of remuneration (such as bonuses and premiums).

The early signs from the 2010 collective bargaining rounds in countries such as Austria, Denmark, Finland, Germany and Sweden are that pay

### Box 3.8: European joint declaration on avoiding redundancies in chemicals

At EU level, the sectoral social dialogue produced a number of joint positions and opinions on the crisis and its effects (see Chapter 6). In most cases these did not provide for specific actions by the signatories or their national member organisations. However, a joint declaration adopted in March 2009 in the chemicals and pharmaceuticals industry by the European Mine, Chemical and Energy Workers' Federation (EMCEF) and the European Chemical Employers Group (ECEG) provided for at least some broad principles to be followed by members in respect of (temporary) lay-offs, short-time work and similar measures aimed at avoiding redundancies. The declaration stated that:

- lay-offs and short-time working should be introduced only after consultation with the workforce and their representatives;
- where lay-offs and short-time working occur, every effort should be made to use 'the opportunities of this available time' for improving employees' skills through training and education;
- training that takes place during lay-offs and short-time work (and indeed all training) should be accredited to ensure that 'intrinsic skills' are maintained so that, when the economic situation improves, the sector does not lose vital human resources for the future.

moderation is more marked than in 2009 and that decentralisation and flexibility in pay setting are frequently on the agenda (see 3.3.2 below).

## 3.3.2. Production and manufacturing industries

### 3.3.2.1. Sector level

Crisis response measures have been concluded both in specific sector agreements aimed at tackling the employment effects of the downturn, and as part of 'regular' agreements dealing with pay and conditions of employment. Specific sectoral collective agreements include instances in France, Germany, Italy and Sweden — see Table 3.2. The main theme was short-time work. The March 2009 agreement covering the whole Swedish manufacturing sector was particularly notable, as it allowed for the introduction of short-time working, which is normally not permitted in Sweden, to prevent redundancies during the downturn. The use of short-time work required a local agreement. The employees affected received at least 80 % of normal pay and the local agreements could provide for training during the

unworked hours. A two-year regular collective agreement for manufacturing signed in April 2010 prolonged local short-time work agreements in companies still facing difficulties until the end of October 2010.

The agreements in French chemicals and French and German metalworking (Baden-Württemberg) provided for training during periods of short-time work. The April 2009 agreement in German metalworking's Baden-Württemberg region modified the compensation for short-time working to reduce the burden on employers. The February 2010 agreement in the North Rhine-Westphalia region — which is expected to be extended, with adaptations, to other bargaining regions — introduced further cost-reduction measures for employers. It also provided for an optional short-time working scheme (with some employer-funded pay compensation) to be applied — with the agreement of the sectoral bargaining parties — in companies where employees have exhausted their entitlement to state short-time benefit. The agreement accompanied a pay agreement (also due to be extended to other bargaining regions) which provided for a degree of wage moderation over 23 months (see Table 3.3).

Beyond short-time work, a common theme in French and German metalworking and German chemicals was 'employee leasing', an innovative alternative to short-time work and redundancy, whereby employers with surplus staff may loan them to other companies that have a staff shortage. The leasing company retains its employees in the longer term, recalling them when activity picks up, and the user company has access to skilled and immediately available workers without having to recruit or train them. The agreements promote this arrangement and/or lay down the conditions to be observed. Other specific points agreed in French and German metalworking included: various measures to develop employees' skills and maintain the recruitment of young people during the recession in France; and an extension of the maximum duration of fixed-term contracts in Germany (Baden-Württemberg), to allow employers to continue employing the staff involved without facing a choice between dismissal and open-ended recruitment. The agreements in German chemicals: stressed the need for employers to explore the full range of previously agreed options to maintain employment, including the use of opening clauses that allow company-level deviations from the terms of the national agreement; and created a EUR 25 million fund, financed by employers, to encourage firms affected by the economic crisis to recruit trainees when they complete their apprenticeships, by subsidising these employees' wages.

While the other specific agreements focused largely on preventing redundancies, the accord in Italian pharmaceuticals dealt with assistance for those faced with redundancy, creating a scheme to retrain and outplace them (in the pharmaceuticals industry or elsewhere) and an observatory to oversee the process.

The public authorities played either a direct or indirect role in several of these agreements (Glassner and Keune, 2010). The German metalworking agreements on short-time working were predicated on the measures already available under the statutory scheme, whilst the observatory established under the Italian pharmaceuticals agreement is a tripartite initiative. In addition to the union-employer short-time agreement in the French chemicals sector, Glassner and Keune report an accord concluded between the industry's employers' organisation and the ministry for economy, industry and employment, with strong support from the CFDT's chemical federation, which addresses the opportunity for training activities brought by shorter working time

arrangements. Specifically, it envisages the provision of state support for training programmes within the framework of the inter-sector agreement concluded in January 2009 (see Box 3.2).

Examples of specific crisis response actions in 'regular', periodically negotiated collective agreements on pay and conditions can be identified in Belgium, Denmark, Finland, Germany, Italy, the Netherlands and Sweden — see Table 3.3. The most common response was to introduce greater flexibility and/or decentralisation in pay setting. In German metalworking, textiles and chemicals, this took the form of new opening clauses, allowing companies facing economic difficulties, on the basis of a works agreement

(negotiated with their works council), to deviate from the sectoral agreements' provisions on pay rises. The metalworking agreement already provided for a range of pay flexibility options, notably allowing for employers and works councils to agree to deviate from sectorally agreed pay and working time provisions as part of a wider business-recovery plan. The 2008 agreement added the possibility for works agreements to postpone for six months a sectorally agreed pay rise of 2.1 % due in May 2009 (a subsequent 2010 agreement allowed for the award of a pay increase of 2.7 % due in April 2011 to be delayed or brought forward by two months, on the basis of a works agreement). The 2009 textiles agreement allows for all

**Table 3.2 Specific sectoral crisis response agreements in manufacturing**

Country	Sector	Date	Details
France	Chemicals	September 2009	Agreement updating existing accord on short-time work in light of recession and changes to legislation. Increased compensation for employees, promoted employment maintenance and provided for training and skills development during short-time work.
France	Metalworking	May 2009	Agreement on preserving jobs and developing employees' skills during the recession. Promoted use of various training and development measures to help prevent short-time working and, where short-time working occurs, provided for the employees affected to receive training during unworked hours. Also promoted the use of employee leasing and young people's access to jobs through the use of work/training contracts.
Germany	Chemicals	April 2010	Revision of agreements on employment and training. Called on employers to explore full range of previously agreed options to maintain employment, including opening clauses (including cuts in remuneration). Provided for establishment of regional networks to promote employee leasing. Subsidised hiring of trainees on completion of apprenticeships in firms that cannot afford to do so because of economic crisis, through central fund financed by employers.
Germany Baden- Württemberg	Metalworking	April 2009	Agreement on dealing with the effects of the economic crisis. Introduced new models for compensating employees on short-time work, aimed at cutting employers' costs and delaying redundancies as long as possible. Also provided for training during short-time work and allowed companies to employ staff on fixed-term contracts for up to four years — double the statutory maximum duration.
Germany (North Rhine- Westphalia)	Metalworking	December 2009	Agreement on employee leasing. Set out the conditions for companies to lease employees temporarily to other employers in the sector, while maintaining their employment contracts, as an alternative to short-time work or redundancy. The agreement of the employee and companies' works councils is required.
Germany (North Rhine- Westphalia)	Metalworking	February 2010	'Future in work' agreement, creating a range of options aimed at maintaining employment, though lowering the costs to employers of placing employees on state short-time working scheme and allowing a form of agreed short-time work when entitlement to the state scheme expires.
Italy	Pharmaceuticals	November 2008	Agreement on assistance, retraining and outplacement for redundant workers, along with the creation of an observatory to monitor the labour market situation and geographical distribution of the workers concerned.
Sweden	Manufacturing (blue-collar workers)	March 2009	Agreement allowing for short-time working and temporary lay-offs to prevent job losses, based on local agreements. Employees receive at least 80 % of normal pay and may receive training during unworked hours.

Sources: See Box 3.1.

or part of the sectorally agreed pay increase (a moderate 2.85 % over two years, taking the form of a consolidated 1.5 % increase plus various one-off payments) to be withheld by works agreement in crisis-hit companies, but only in exchange for employment guarantees (by contrast, the one-off payments may be increased in better-performing companies). In German chemicals, the 2010 sectoral agreement froze basic pay rates for 11 months and provided only for a one-off payment, normally of EUR 550. The payment could be reduced to EUR 300 on economic grounds, subject to a works agreement. Further, in establishments not 'substantially' affected by the recession, an additional lump sum of EUR 200 could be paid.

While opening clauses of various types are common in Germany, more innovative crisis response pay provisions were agreed in Dutch light engineering (metaal en techniek) and the Finnish technology sector. The Dutch agreement provided for a very moderate general pay increase (1.5 % after a 14-month pay pause) in return for employment guarantees. Further, employees were granted 3.5 additional 'crisis' days of holiday during 2010, to reflect reduced production. However, employers may cancel these days off if their situation improves and instead make one-off payments to the employees. The Finnish agreement, which runs for three years, provides for pay bargaining to be decentralised to company level, with the general

level of increase (0.5 %) set only in the first year and subsequent annual rises based on the prevailing economic situation. Increases may be deferred or nil if a company's economic situation is sufficiently poor.

Beyond pay, the three-year agreement signed in Italian metalworking in October 2009 introduced a special income-support fund for workers affected by temporary lay-offs or short-time work due to the economic crisis. Employers contribute EUR 2 per employee per month to the fund in 2011 and 2012. From 2013, employees who wish to be covered by the fund must make their own monthly contribution of EUR 1, and employers will be obliged to make the EUR 2 monthly contribution only

**Table 3.3: Crisis response measures in regular sectoral agreements in manufacturing**

Country	Sector	Date	Details
Belgium	Metalworking	April 2009	Inclusion in 2009–10 agreement of provisions on employment security (e.g. info on mass redundancies) and maintenance of early retirement schemes.
Denmark	Manufacturing	February 2010	Inclusion in 2010–11 agreement of new redundancy payments scheme, increasing workers unemployment benefits to nearer former pay for up to three months.
Finland	Technology	August 2009	Inclusion in 2009–12 agreement of provisions decentralising pay bargaining to company level and linking it to the economic situation in each year, with the possibility of no wage increases in especially poor circumstances, in order to secure employment.
Germany	Chemicals	April 2010	Inclusion in 11-month agreement for 2010–11 of company-level flexibility in award of one-off payment (the agreement froze pay scales and provided only for a one-off payment). The payment can be cut by works agreement on economic grounds, or increased in firms not 'substantially' affected by the recession
Germany (Baden-Württemberg pilot agreement)	Metalworking	November 2008	Inclusion in 19-month agreement for 2008–10 of additional pay flexibility provisions for companies facing economic difficulties: by works agreement, the second stage of the sectorally agreed wage rise can be postponed.
Germany (North Rhine-Westphalia pilot agreement)	Metalworking	February 2010	Pay rate freeze in 2010, with small lump sum payment, followed by a 2.7 % increase in 2011. Timing of payment of 2011 increase can be varied by local agreement. Parallel agreement on employment security and training (see Table 3.1).
Germany (west)	Textiles	March 2009	Inclusion in 2009–11 agreement of provisions allowing companies facing financial difficulties to reduce or withhold some sectorally agreed pay rises, on the basis of a works agreement, in return for employment guarantees.
Italy	Chemicals	December 2009	Inclusion in 2010–12 agreement of special training schemes for workers who have been made redundant or temporarily laid off, aimed at promoting re-employment.
Italy	Metalworking	October 2009	Inclusion in 2010–12 agreement of provisions on the creation of a special income-support fund for workers affected by temporary lay-offs or short-time work due to the economic downturn.
Netherlands	Metalworking (light engineering)	October 2009	Inclusion in 2009–11 agreement of provisions severely limiting pay increases in exchange for employment guarantees and additional days off (which may be converted into wage increases if the economic situation improves).
Sweden	Manufacturing (blue-collar workers)	March 2010	First (of two) pay increases in 22-month agreement can be delayed by up to 12 months through local negotiation. New provision giving priority to employees laid-off ahead of recourse to temporary employment agencies, backed up by sanctions.

Sources: See Box 3.1.

in respect of those employees that join the fund. The agreement also contained provisions promoting training and established a bipartite observatory on training and labour market issues. Support for redundant and laid off workers also featured in the 2010–12 agreement in Italian chemicals, in this case through new vocational training measures aimed specifically at these groups. In the case of Danish manufacturing the two-year agreement signed in February 2010 supports redundant workers by introducing a new form of employer-funded benefit, which tops up their unemployment benefit closer to their former wage for up to three months (dependent on service). Improvements to parental leave and pension entitlement were further measures offsetting a low wage increase. The two-, as compared to the previous three-, year duration of the agreement enabled the parties to address uncertainties about future developments. In Belgian metalworking, the 2009–10 agreement followed the general crisis response guidelines of the country's cross-sector accord, for example on pay moderation and training, along with measures such as enhanced employment security provisions and the maintenance of early retirement arrangements. This agreement may be considered as representative of 2009–10 accords across Belgian manufacturing, which implemented and adapted the cross-sector agreement.

### 3.3.2.2. Company level

Table 3.4 provides summary information on 76 cases of specific agreements concluded at company or establishment level, from autumn 2008 to the end of April 2010, which seek to deal with the effects of the crisis (fuller details are provided in Appendix, Table 3.A1). Actions agreed at this level mainly fall into the following broad categories:

- the introduction of short-time work, usually based on statutory schemes, and the conditions for the employees affected;
- the use of other working time arrangements to prevent or reduce redundancies, or avoid short-time work, notably forms of time accounts or banks, or adjustments to annual leave schemes;
- trade-offs, involving sacrifices in terms of pay and employment conditions in return for employment guarantees;
- measures aimed at mitigating planned job losses, avoiding compulsory redundancies through 'softer' alternatives; and
- compensation and assistance for redundant workers.

Table 3.4 indicates the main categories which apply in each of the 76 agreements.

Much company-level bargaining focused on the application of short-time working and temporary lay-off schemes (see Box 3.5). State-funded

### Box 3.9: Europe-wide crisis response agreements in multinationals

There are three known examples of specific European-level crisis response agreements in multinational companies.

- ArcelorMittal, the Luxembourg-headquartered steel multinational, signed a Europe-wide agreement with the European Metalworkers' Federation (EMF) on managing and anticipating change in November 2009. As well as longer-term policies aimed at anticipating changes in jobs and skills needs, training and developing employees to improve their employability and on social dialogue, the agreement dealt with the economic crisis. It committed ArcelorMittal to maintaining and reopening in future European plants that were then closed, providing that market recovery allowed this. Compulsory redundancies would be avoided as far as possible and workers would be trained during periods of short-time working, while there was to be dialogue over limiting employees' loss of pay during short-time working.
- General Motors Europe (US-based, automotive) signed with its EWC in January 2009 a 'framework agreement on common minimum standards on working time reductions for all European sites'. This provided for the use of working time reductions (without full maintenance of pay), short-time work and sabbaticals to adjust production capacity in the most cost-efficient and socially responsible way. It laid down minimum standards for group companies to compensate employees for part of their resulting loss of earnings, on top of the state benefits available under national schemes. Where employees were placed on state short-time work benefit, the company would top this up by at least 12.5 %. Where working hours were cut in other ways, employees would be compensated for at least 50 % of their lost pay. Management and employee representatives were to continue to work together to find ways of achieving cost savings.
- General Motors EWC reached an agreement with management, in May 2010, on the implementation of a major restructuring plan for Opel/Vauxhall, which involves 8 300 job losses across Europe and substantial cost reductions, along with new investments. Following a series of national-level agreements on the workforce reductions and cost savings, the four-year European agreement lays down detailed investment and production commitments, and provides for labour-cost savings of EUR 265 million a year, which will be returned to employees if the company does not introduce its planned new products. After the current restructuring, there will be no compulsory redundancies before 2015.

In some other multinationals pre-existing agreements which anticipate restructuring and specify a framework for handling the issues arising (see Chapter 6) may have been invoked to help address effects of the crisis.

schemes of this sort have long existed in the majority of EU-15 Member States, and many have been extended or adapted during the crisis, while a number of central and east European Member States have introduced such schemes for the first time (as has the Swedish manufacturing sector, by agreement). Company agreements may be required for the implementation of the schemes, as in Denmark and Germany, for example.

The simplest form of agreement on short-time work essentially sets out the details of the arrangements and the pay guarantees for the employees involved, often providing for additional payments from the company. Examples of such agreements can be found at: Danfoss and Grundfos in Denmark; STX in France; BASF, BMW in Germany; Ast ThyssenKrupp and Ilva and Case New Holland in Italy; and Sandvik, Scania and Volvo in Sweden; Dacia-Renault in Romania; Hyundai in the Czech Republic; and Opel in Hungary. An interesting example from Italy was the negotiation at Gima and Verlicchi of additional payments to workers on short-time work or temporarily laid off, to compensate for the psychological, emotional and social problems caused. Agreements on short-time work may also provide employment guarantees, as at DAF Trucks in Belgium and the Netherlands and Renault in France, or deal with training during unworked hours, as at Manz Automation, Salzgitter Flachstahl and Schott in Germany, Embraco in Italy and Dassault Aviation PSA Peugeot Citroën, Renault and Renault Trucks in France. Short-time work may be used as part of a package of measures to prevent or mitigate job losses, as at MAN Nutzfahrzeuge and Schaeffler in Germany and Indesit in Italy.

Several of the Italian cases — Antonio Carraro, Embraco, Fincibec, IMER International, Piaggio Aprilia and Rimor — relate to ‘solidarity

agreements’ (contratti di solidarietà), a statutory arrangement whereby, in companies facing economic difficulties, employees’ collective working time may be reduced (with state compensation for half of the income loss) in order to avoid redundancies (which are prohibited during the agreements’ term).

Aside from short-time work, some agreements provide for the use of other working time arrangements to prevent or reduce redundancies, notably forms of time accounts or banks, as at STMicroelectronics in France, ThyssenKrupp Nirosta in Germany and Michelin in Spain. In a number of French cases, such as Airbus, Bosch, Michelin and Snecma, such arrangements were agreed specifically to prevent or reduce recourse to the statutory short-time work scheme.

A number of company agreements provided for a pay trade-off, whereby employees make wage sacrifices in exchange for a management commitment to maintain employment levels or reduce the number of planned redundancies. The pay sacrifice may involve a cut in hours and accompanying loss of wages, a pay freeze, a wage cut, a low increase or forgoing bonuses. Examples of this approach include agreements at Honda, JCB, Jaguar Land Rover, Toyota and Vauxhall in the UK, Bosch, Carl Zeiss, Schaeffler and ThyssenKrupp Nirosta in Germany, ISD Dunaferr in Hungary, Corus in the Netherlands, Seat in Spain and Lotos in Poland. Employee concessions may also relate to other matters in addition to pay, such as working time arrangements at Coca-Cola, Daimler (most plants) in Germany and Opel and Sony in Spain, or the termination of temporary contracts at Siemens in Spain.

The employee side of the trade-off may not in all cases directly involve pay and hours. For instance, at Daimler’s

Sindelfingen plant in Germany, the *quid pro quo* for a long-term guarantee of no compulsory redundancies involved measures to improve competitiveness and efficiency, such as internal transfers and job flexibility, while increased flexibility and mobility also formed part of the trade-off at Renault in Spain. The employer side of the trade-off may include promises or intentions to keep plants open or allocate them production in future, as at Ford, Renault, Seat and Sony in Spain.

Agreed measures to cushion the effects of planned workforce reductions and avoid compulsory redundancies commonly include one or more of the following:

- incentives for voluntary departures, as at Electrolux and Whirlpool in Italy, Nokia in Finland, Ford in Spain, and Schaeffler in Germany;
- early retirement (full or partial), as at Schaeffler and ThyssenKrupp Nirosta in Germany, and Ford and Michelin in Spain;
- non-renewal of fixed-term contracts, as at E.ON in Germany, Indesit and Whirlpool in Italy, and Opel in Spain;
- internal and/or external redeployment, as at E.ON in Germany and the Netherlands, and Michelin in Italy; and
- natural wastage, as at E.ON in Germany and the Netherlands and ThyssenKrupp Nirosta in Germany.

Where redundancies occur, company agreements may provide for measures such as increased redundancy compensation, income support for redundant workers, training, outplacement, help for redundant workers to set up their own businesses, and priority for re-recruitment at the company

Table 3.4 Company-level crisis response agreements in manufacturing

Company	Country	Sector	Date	Short-time work (introduction/ conditions)	Other working time adjustments	Employee concessions (pay, hours, etc.)	Employment/ production guarantees	Alternatives to compulsory redundancies	Redundancy assistance
DAF Trucks	BE	Automotive	6/2009	X			X	X	
Stomana Industry	BG	Steel	11/2008						X
Hyundai	CZ	Automotive	1/2009	X					
Siemens	CZ	Transport equipment	8/2008						X
Danfoss	DK	Engineering	2/2009	X					
Grundfos	DK	Pumps	3/2009	X					
Vestas	DK	Wind turbines	2009		X				
Nokia	FI	Mobile phone manufacturing	2/2009					X	
Airbus	FR	Aerospace	12/2009		X				
Bosch	FR	Auto parts	11/2008		X				
Dassault Aviation	FR	Aerospace	6/2009	X					
Michelin	FR	Tyres	2/2009	X	X				
PSA Peugeot Citroën	FR	Automotive	9/2009	X					
Renault	FR	Automotive	4/2009	X					
Renault Trucks	FR	Automotive	2/2009	X					
Rhodia	FR	Chemicals	4/2009	X	X				
Snecma	FR	Aerospace	11/2008		X				
STMicroelectronics	FR	Electronics	4/2009		X				
STX	FR	Shipbuilding	2/2009	X					
BASF	DE	Chemicals	1/2009	X					
BMW	DE	Automotive	1/2009	X					
Bosch	DE	Auto parts	12/2009			X	X		
Carl Zeiss	DE	Optical equipment	6/2009			X	X		
Coca-Cola Erfrischungsgetränke	DE	Soft drinks	3/2010		X	X	X		
Daimler	DE	Automotive	4/2009			X	X		
Daimler	DE (Sindelfingen plant only)	Automotive	12/2009			X	X		
E.ON	DE	Energy	8/2009					X	
InBev	DE	Beverages	6/2009	X			X		X
MAN Nutzfahrzeuge	DE	Automotive	1/2009	X	X		X		
Manz Automation	DE	Automation technology	4/2009	X					
Salzgitter Flachstahl	DE	Steel	1/2009	X	X				
Schaeffler	DE	Ball-bearings	5/2009			X	X	X	
Schott	DE	Glass	2009	X					
Siemens	DE	Electronics	2/2009	X	X				
ThyssenKrupp Nirosta	DE	Stainless steel	9/2009		X	X	X	X	
ISD Dunafer	HU	Steel	11/2008			X	X		
Opel	HU	Automotive	4/2009	X					
Antonio Carraro	IT	Tractor production	1/2010	X			X		
Ast ThyssenKrupp	IT	Steel	4/2009	X					

Company	Country	Sector	Date	Short-time work (introduction/conditions)	Other working time adjustments	Employee concessions (pay, hours, etc.)	Employment/production guarantees	Alternatives to compulsory redundancies	Redundancy assistance
Bosch	IT	Auto parts	12/2009	X			X		
Case New Holland	IT	Agricultural machinery	9/2009	X					
Electrolux	IT	Domestic appliances	9/2008	X	X			X	
Embraco	IT	Compressors	2009	X			X		
Fincibec	IT	Ceramics	4/2009	X			X		
Gima	IT	Automation systems	4/2009	X					
Ilva	IT	Steel	4/2009	X					
IMER International	IT	Construction machinery	2/2010	X			X		
Indesit	IT	Domestic appliances	7/2009	X			X	X	
Michelin	IT	Tyres	12/2008					X	X
Piaggio Aprilia	IT	Automotive	1/2010	X			X		
Rimor	IT	Automotive	9/2009	X			X		
Verlicchi	IT	Automotive	4/2009	X					
Whirlpool	IT	Domestic appliances	12/2008					X	X
Villeroy & Boch	LU	Ceramics	7/2009						X
Corus	NL	Steel	4/2010			X	X		
DAF Trucks	NL	Automotive	6/2009	X	X		X		
EO.N	NL	Energy	12/2009					X	
Lotos	PL	Oil	2/2009			X	X		
Alcatel-Lucent	RO	Telecoms equipment	12/2009						X
Dacia-Renault	RO	Automotive	2008	X					
Ford	ES	Automotive	10/2009			X	X	X	
Michelin	ES	Tyres	11/2008 and 12/2009		X	X	X	X	
Nissan	ES	Automotive	2/2009			X	X		
Opel	ES	Automotive	3/2010		X	X	X	X	
Renault	ES	Automotive	9/2009			X	X		
Seat	ES	Automotive	3/2009			X	X		
Sony	ES	Electronics	1/2009			X	X		
Sandvik	SE	Engineering	6/2009	X			X		
Scania	SE	Automotive	3/2009 and 12/2009	X			X		
Sony Ericsson	SE	Electronics	9/2008						X
Volvo	SE	Automotive	3/2009	X			X		
Honda	UK	Automotive	5/2009			X	X		
Jaguar Land Rover	UK	Automotive	3/2009			X	X		
JCB	UK	Construction equipment	10/2008			X	X		
Toyota	UK	Automotive	3/2009			X	X		
Vauxhall	UK	Automotive	10/2009			X	X	X	

Sources: See Box 3.1, plus Zagelmeyer (2009) for Carl Zeiss, Daimler and InBev.

in future. Examples of agreements on these issues include Whirlpool in Italy, Alcatel-Lucent in Romania, Stomana Industry in Bulgaria, Villeroy & Boch in Luxembourg, InBev and Schaeffler in Germany, Siemens in the Czech Republic and Sony Ericsson in Sweden.

Three of the seven cases where agreements have been concluded in different countries within the same multinational company exhibit a degree of similarity. Those at DAF Trucks' operations in Belgium and the Netherlands both address the use of the state short-time working scheme and provide employment guarantees. The 2009 Michelin agreements in Italy and Spain both envisage mobilising a range of measures to secure workforce reductions, including financial assistance for those affected (while the Michelin agreement in France focuses more on preserving jobs and employees' incomes through working time adjustments). The agreements at E.ON in Germany and the Netherlands derive from the same corporate cost-reduction programme; both envisage a range of measures to avoid compulsory redundancy, including maintenance of pay and job security for employees moving to outsourced operations. At Renault, however, the objective of maintaining employment is addressed through differing mechanisms: short-time work in France, but wage concessions and increased flexibilities in Spain. There was also little similarity between the agreements at: Bosch in France, Germany and Italy; Siemens in the Czech Republic and Germany; or Opel in Hungary and Spain <sup>(2)</sup>.

<sup>2</sup> However, the Opel agreement in Spain was followed, after this report was completed, by similar agreements on cost-cutting and workforce reductions in Opel/Vauxhall operations in countries such as Germany and the UK, as part of the implementation of a Europe-wide restructuring plan, which also involved a European-level agreement in May 2010 (Box 3.9).

### 3.3.2.3. Disputes and unsuccessful negotiations

The sectoral and company agreements outlined above represent, of course, the successful outcome of negotiations. They will have involved disagreements and, in some cases, conflicts before their conclusion: as Glassner and Keune (2010: 19) observe, 'disagreement and conflict are in many cases key elements of the process that leads to negotiated responses.' Unsuccessful negotiations are, however, harder to quantify.

At sector level, instances of failure to agree, and even conflict, over crisis response measures are difficult to identify. In German printing, the 2009 bargaining round was conflictual, featuring a number of warning strikes, and resulted in employers failing to obtain an opening clause for companies with financial difficulties, or an extension of working hours. In Austria's metalworking sector deadlock in the 2009 negotiations — accompanied by threats of industrial action — was overcome by concluding an agreement on wages and referring employer proposals for more flexible working time arrangements to further negotiations. These subsequently failed to reach agreement by the deadline of March 2010. Early 2009 saw a high-profile dispute in UK engineering construction (which is covered by a sector agreement) over issues that were exacerbated by the recession. Several hundred workers employed by construction contractors at the Lindsey oil refinery, owned by Total, started an unofficial strike. The dispute centred on the award of a contract to an Italian company, which planned to use its existing workforce on a posted basis (about whose pay and conditions there was little transparency), and consequent loss of employment opportunities for the UK workforce.

At company level, crisis-induced restructuring has frequently been the

source of contestation — conflicts preceded a number of the agreements identified above, for example — and not all negotiations ended in agreement. Amongst the agreements in Table 3.3, Glassner and Keune (2010) report that industrial action was taken by the workforce prior to agreements being concluded at Case New Holland and Indiset in Italy, and at Siemens in the Czech Republic. The protracted negotiations at InBev's operations in Germany saw a warning strike (Zagelmeyer, 2009), while planned job losses resulted in a longer strike at the same company's Belgian operations (ended by an agreement to suspend the restructuring pending further negotiations). Elsewhere, disagreements stopped short of actual conflicts. For example, Danish unions were reported to be critical of the absence of training measures for workers laid-off temporarily under the agreements at Danfoss and Grundfos. The parties may also manage to agree on one set of measures, but subsequently fail to agree on others. At ISD Dunafer in Hungary, after successful agreement in 2008 on trading cuts in pay and benefits for employment guarantees the parties failed to agree in 2009 on working time reductions and further pay cuts, as a result of which the company implemented redundancies. An example of an unresolved negotiation, involving conflict, comes from Goodyear Dunlop in France, where the court ruled that the company had not properly informed the works councils over its restructuring plan, and ordered that it be re-negotiated. Lasmé, an automotive component supplier in Italy, is an example of a negotiation with an unsuccessful outcome. Following management's closure announcement in September 2009, an agreement was concluded which envisaged relocation of half of the workforce to another company. This, however, was rejected by the workforce who called for the relaunch of Lasmé (<http://www.ildiariodellavoro.it>).

More generally, the effects of the crisis have prompted new forms of action together with the (re)appearance of older forms of conflict. In disputes surrounding proposed site closures, instances of 'bossnapping', in which senior managers (including from the parent company) are taken hostage on company premises by the workforce, and threats to blow-up production facilities, gained prominence in France during the course of 2009. In Italy, as part of a factory occupation at Insee opposing the proposed closure of the plant in the spring of 2009, workers climbed up and remained on the company's crane for several days. This novel action was followed by similar 'rooftop' protests by the workforce at other companies threatened with redundancies and/or closure. Also in Italy, a successful four month mobilisation against the closure of Alcoa's production operations in Sardinia, and near Venice, saw the island's main airport occupied and road blockades, as well as other actions. 2009 also saw the re-appearance of factory occupations in the UK, a tactic rarely used in the past quarter century. Instances included the occupation of two of the three UK sites of automotive components manufacturer Visteon, spun-off from Ford in 2000 and which filed for bankruptcy, and the UK wind-turbine manufacturing facility of Danish-based Vestas. A common feature of the cases involved would seem to be the remoteness of the corporate managers taking closure decisions. Local management were no longer a relevant interlocutor for the workforce, who through these new kinds of action aim to raise the profile of the dispute with the authorities and public opinion (Marginson, 2010; Pernot, 2009).

A notable development during the crisis has been the apparently increasing propensity of EWCs and

European-level trade union federations to organise Europe-wide protests against restructuring and job losses in multinationals, and to intervene in national cases (see Box 3.10). Amongst the multinational companies where EWCs mounted protest actions, sometimes in conjunction with European industry federations, were: Alcatel-Lucent, AreclorMittal, Areva, Bosch, Continental, E.ON, General Motors Europe, Hewlett Packard/EDS, Saint-Gobain, Siemens, Thyssen-Krupp and Valeo.

#### 3.3.2.4. Summary

Within the production and manufacturing industries, instances of the mobilisation of sector negotiations to respond to the crisis, either in the form of additional, specific agreements or through the inclusion of crisis response measures in regular collective agreements, were identified in eight countries: Belgium, Denmark, France, Finland, Germany, Italy, the Netherlands and Sweden. These are all countries in which multi-employer bargaining arrangements generally contain procedural provisions which effectively govern the relationship bargaining at the sector and company levels. In terms of industries, metalworking predominates (combined with other manufacturing sectors in the cases of Denmark and Sweden), with some representation from chemicals.

There was a degree of cross-border convergence in the measures envisaged in either kind of agreement. Amongst the specific crisis response agreements, cases in France, Germany and Sweden dealt with short-time work, including training for the workers concerned, and cases in France and Germany dealt with employee leasing. Concerning the crisis response measures included in regular agreements, support for

redundant workers was a common theme in Danish manufacturing and several sectors in Italy. The agreements in Finland, Germany, the Netherlands and Sweden introduced innovative ways of permitting greater flexibility and/or decentralisation in pay setting. A different kind of procedural innovation characterised the agreement in Italian pharmaceuticals, with a new company-level process for accessing assistance, retraining and outplacement measures for redundant workers.

The only apparent link to any EU-level social partner initiatives in a particular sector concerns the chemical sector, where measures in the French and Italian sector agreements on using the time available under short-time work, or temporary lay-off, to improve workforce skills through training build on one of the key points in the EMCEF-ECEG joint declaration (see Box 3.8). Links between different levels of negotiation nationally were more apparent, including between the cross-sector and sector level in the three countries where this is relevant. The Belgian metalworking agreement (as was generally the case in 2009–10 sectoral agreements in Belgium) reflected the provisions of the national cross-sector agreement for 2009–10 (see 3.2.1 above), the agreement in the Dutch light engineering sector reflected the pay moderation approach agreed at cross-sector level (see 3.2.1 above) and the French chemicals sector accord between employers and the public authorities, supported by the unions, mobilised the inter-sector framework agreement on training (see Box 3.2). Public intervention in the form of statutory short-time work schemes directly or indirectly prompted the relevant negotiations in some countries. The role of the sectoral agreements in triggering further negotiations at company level was also apparent. Such company-level

agreements were required to implement: the short-time work scheme introduced by the agreement in Swedish manufacturing; the new models

of compensation introduced by the agreements on short-time work in German metalworking; the employee leasing scheme agreed in German

metalworking; and the company-level measures assisting redundant workers in the Italian pharmaceuticals sector.

### Box 3.10: The response to the crisis of European-level workers' representatives in multinational companies

Given the scale of company restructuring caused or accelerated by the economic crisis over 2008–09, it would be surprising if most of the 900 or so multinational companies with a European works council (EWC) were not affected. As transnational restructuring is an essential part of the remit of EWCs, a high volume of information and consultation (I & C) on the issue might be expected during the crisis. However, as there is no systematic monitoring of the day-to-day activities of EWCs, information tends to emerge only when some notable agreement or dispute arises, rather than on less dramatic I & C exercises. Bearing this caveat in mind, information from the sources listed in Box 3.1 and from the websites of various trade union European industry federations (EIFs) provides some indication of the response to the crisis of EWCs and European-level union bodies in multinational companies.

#### Information and consultation

The information available provides numerous examples of I & C over crisis-related restructuring, at both ordinary and extraordinary EWC meetings. A notable proactive initiative in this regard occurred in the finance sector where, in September 2008, UNI europa Finance called for immediate meetings of all 51 EWCs in banking and insurance multinationals to discuss the impact of the crisis in the industry. There were, however, many cases where EWCs complained of inadequate I & C over restructuring, for example at Alcoa (USA, aluminium), Cytec (USA, chemicals), Hewlett Packard/EDS (USA, information technology), PPR (France, retail), Saint Gobain (France, glass) and Schering Plough (USA, pharmaceuticals). Many of the protests organised by EWCs and/or EIFs (see below) included demands for proper I & C.

Faced with company restructuring plans, a relatively common response of EWCs was to adopt a statement or opinion setting out their concerns, opposition or counter-proposals. For example:

- the Schering Plough EWC issued a statement to management in April 2009 requesting better information and proper consultation on the transfer of production from an Irish site to plants in other European countries and over a forthcoming merger with Merck and planned job losses;
- the Deutsche Post DHL (Germany, postal services and logistics) EWC agreed in June 2009 a statement calling on management to focus on employee interests during restructuring, for example by avoiding redundancies and involving the EWC and national representative bodies at an early stage in planning;
- faced with restructuring at ThyssenKrupp (Germany, steel), the EWC, the German IG Metall unions and national works councils issued a joint statement in April 2009 calling for no compulsory redundancies, no pay cuts and maintenance of co-determination; and
- the EWCs of Hewlett Packard and EDS, which were in the process of merging, adopted a joint resolution in March 2009 opposing pay cuts proposed by management.

#### Protests

In a number of multinationals, opposition to restructuring plans and job cuts led to EWCs and/or EIFs calling European 'days of action' in protest. Examples included the following.

- Alcatel-Lucent (France, telecoms equipment). In November 2009, the EWC called a European day of action to support the maintenance of employment levels during restructuring.
- ArcelorMittal (Luxembourg, steel). The EWC and EMF organised a European action day over planned job cuts in February 2009.
- Areva (France, nuclear power). The EWC and unions organised a day of action in eight European countries in September 2009 against the planned sale of the energy transmission and distribution division.
- Bosch brakes division (Germany, auto parts). In February 2009, the EMF coordinated a European action day, involving workers in France, Spain, Italy, Portugal and Germany, demanding reassurances and dialogue over the future of the division.
- Continental (Germany, tyres). In protest at a French plant closure and job losses in Germany, the EWC organised a demonstration by French and German workers at the annual shareholders meeting in April 2009.
- E.ON (Germany, energy). The EPSU supported an action day against a company cost-reduction and outsourcing programme organised by German unions in June 2009, and union representatives from E.ON companies in the UK, the Netherlands, France, Belgium, Italy, Hungary and Romania participated.
- General Motors/Opel (USA, automotive). The EWC and EMF helped organise a demonstration in September 2009 against the closure of an Opel plant in Belgium, involving workers and union representatives from Germany, the UK, Spain, Poland, the Netherlands, Austria and Hungary.
- Hewlett Packard/EDS. The Hewlett Packard and EDS EWCs and unions organised action days in November 2008 and January 2009 over post-merger job cuts and a pay freeze.

- Saint Gobain. The EMCEF and member unions, with EWC support, organised a demonstration at company headquarters in May 2009 in protest at restructuring and job cuts.
- Siemens (Germany, electrical). In May 2009, the EMF organised a meeting of EWC and union representatives to coordinate opposition to the company's planned worldwide job cuts and demand more I & C. The meeting called for Europe-wide protests in support of a German demonstration and strike.
- ThyssenKrupp (Germany, steel). In April 2009, the EMF called a Europe-wide demonstration, supporting a German union initiative, to oppose job losses and closures.
- Valeo (France, auto parts). The EWC organised Europe-wide protests, including brief stoppages in some countries (Germany, Czech Republic, Italy, Spain) in September 2008, against a restructuring plan and the partial closure of a German site.

#### *EWC intervention at national level*

There was some evidence of EWCs intervening in national restructuring cases. For example:

- following the announcement of the merger of Polish subsidiaries of EDF (France, energy), with job losses, the EWC was consulted and delivered a negative opinion in October 2009. It decided to follow up the implementation of the merger and its impact on employees, including in health and safety terms;
- in response to threats of relocation of production from Spanish to French plants, in February 2009 the EWC at Renault (France, automotive) expressed support for the Spanish workforce and stated that production sites must not be played off against each other, calling for a 'level playing-field' approach for all plants;
- at Federal Mogul (USA, auto parts), the EWC expressed opposition to a plant closure in Italy and called for national I & C and negotiations; and
- at an extraordinary meeting held to discuss a French restructuring plan, including job losses, in March 2009 the PPR EWC adopted an opinion rejecting the plan and called on employees in Europe to mobilise against it.

These interventions sometimes had positive outcomes. For instance:

- after the announcement by Whirlpool (USA, domestic appliances) of redundancies across Europe, in October 2008 the EWC and European trade union representatives called on management not to begin unilateral collective procedures for the planned redundancies, but rather to engage in talks in the countries concerned in order to find non-traumatic solutions. Whirlpool reportedly responded positively to the request and accepted the approach proposed. An agreement was reached in December to accompany redundancies in Italy;
- at Mahle (Germany, auto parts), following the announcement of the closure of an Italian plant, local management was reportedly unwilling to negotiate a severance plan. Following EWC intervention, a social plan avoiding compulsory redundancies was signed in December 2009, and it was agreed that the EWC would monitor any further similar procedures; and
- following an announcement by Corus (Netherlands/UK, steel) in December 2009 that it would mothball a UK steelworks, the EWC (which had criticised the fact that no alternative plans had been discussed) reportedly contributed to a decision to set up a joint management-union taskforce in UK to examine alternative solutions.

At British Airways (UK, civil aviation), the EWC agreed with management in July 2009 on principles to guide I & C on national-level business reorganisation. These allow the EWC's select committee to attend local meetings with staff in European countries subject to restructuring. The EWC representatives have an advisory role, in order to seek to mitigate the impact of any foreseen redundancies. The aim was to safeguard workers' I & C and representation rights in those countries where BA has only small numbers of employees, who are often not represented by works councils or trade unions.

#### *Evaluation*

Dealing with transnational restructuring is, or should be, one of the central roles of EWCs. The economic crisis has tested their ability to function as forums for meaningful I & C on restructuring and as a significant actor in defence of employees' interests in such circumstances. The patchy nature of the data means that it is not yet possible to assess the extent to which they have measured up to this test. However, a number of observations can be made on the basis of the information that is available.

The perennial complaint that many EWCs are not provided with full and timely I & C — an issue addressed in the framing of the 2009 recast EWCs directive (see Chapter 7) — was underlined in a number of cases (and was the subject of several court cases, notably at Continental and Dunlop in France). However, irrespective of the quality of I & C, there are indications that many EWCs have been taking on a more active role. There seems to have been a tendency for more EWCs to adopt joint positions on restructuring and, in particular, to organise or coordinate (often in conjunction with EIFs) Europe-wide protests and actions. Further, a number of EWCs have shown an increased capacity to intervene at national level, especially in terms of promoting I & C and negotiation over restructuring.

What has clearly not occurred to any significant degree is the negotiation of European-level agreements dealing with crisis-related restructuring. The only known examples are the agreements between ArcelorMittal and the EMF and between General Motors Europe and its EWC — see Box 3.9 for details.

Finally, the vast majority of known cases of EWCs taking on an active role in response to restructuring come from the manufacturing sector and within manufacturing predominantly from metalworking. The services sector is very weakly represented.

There was considerably more evidence of agreed crisis response actions at company and establishment level (though little at the European level in multinational companies). Of the company agreements identified, the EU-15 predominate, accounting for around 90 % of the agreements, with Spain and the UK prominent as well as the eight countries in which sector agreements are also found (notably Germany, Italy and France). Around 85 % of these agreements were in the metalworking (including steel) sector, and nearly half of these were in the automotive segment. The role of sector agreements in prompting further negotiation at company level is again apparent. There was a clear link between company agreements on short-time work and sectoral agreements on the topic in countries such as Belgium, Denmark, Germany, the Netherlands and Sweden. At company level, Zagelmeyer (2009) observes that where agreements cover operations at two or more sites, then central bargaining structures have been established for the first time, as at Carl Zeiss, or strengthened, as at Daimler and InBev.

A majority of the agreements related exclusively or in part to short-time work, either subsidised under state- or social partner-supported schemes or, less commonly, largely uncushioned (as in the UK cases). Such agreements were identified in many countries, but seemed particularly common in France, Germany and Italy. The second largest category of company agreements involved ‘concession bargaining’, with trade-offs under which employers provide some form of employment guarantee in return for employee sacrifices in terms of pay and conditions. This approach appeared particularly prominent in Germany, Spain and the UK. The next largest category, most frequent in France and Germany, covered other working time arrangements to prevent or

reduce redundancies, or avoid short-time work. Another substantial body of agreements — found largely in Italy, Germany and Spain — provided for measures to cushion the effects of planned workforce reductions and avoid compulsory redundancies. The fifth and smallest category of agreed actions was compensation and assistance for redundant workers.

### 3.3.3. Private services

#### 3.3.3.1. Sector level

Specific sectoral collective agreements intended to tackle the employment effects of the crisis were identified in two countries: Italy and the Netherlands — see Table 3.5. Both of the Italian agreements included provisions aimed at supporting redundant workers and those on short-time work or temporarily laid off because of the recession. The banking agreement related to an existing employer-funded sectoral ‘solidarity fund’, which finances benefits and training for workers temporarily laid off or on short-time working and early retirement for redundant workers. The accord increased benefits for workers on short time and added a new scheme to provide benefits to redundant workers not covered by the usual state income-support measures, along with training. The new benefits are co-financed by the fund and individual employers. In the event of a company recruiting the workers concerned, it is allocated the benefits. The retail agreement also provided for the possibility of a sectoral top-up to state benefits for workers temporarily laid off or on short-time working. However, it was essentially a procedural agreement, promoting initiatives aimed at preventing job losses, notably through the creation of special local committees and company/local bargaining on issues such as training and work organisation (adapting

the provisions on this issue set out in the sectoral collective agreement for retail). Further, the accord promotes timely information on emerging company problems and commits the parties to joint monitoring of the progress of the crisis.

The two Dutch agreements focus mainly on preventing or mitigating job losses. The agreement covering car dealerships focused on keeping vulnerable workers in employment during the crisis by deploying sectoral funds. If companies continued to employ older workers threatened by redundancy until they qualify for early retirement, they would receive a subsidy of EUR 10 000, along with EUR 5 000 as a contribution to their future pension. Further, the accord provided support for trainees threatened with losing their position before completing their training. In road haulage, the agreement sought to avoid compulsory redundancies among drivers in the face of reduced demand for labour during the recession. It provided for older workers faced with redundancy to be guaranteed access to early retirement, and allowed for greater working time flexibility and a right for employers to decide when days off are taken (these provisions required a company-level agreement for implementation). The parties also agreed to set up a ‘mobility centre’ to redeploy surplus drivers within the sector.

The inclusion of specific crisis response actions in regular collective agreements on pay and conditions featured in agreements was identified in just three sectors, one each in Belgium, Italy and Sweden — see Table 3.6. The Swedish case relates to two agreements, for white-collar and professional staff respectively, in engineering and architectural consultancies, which provide for flexibility and decentralisation in pay setting.

The one-year white-collar agreement provided for a general 2.3 % pay rise, but local agreements could reduce this increase in the light of company circumstances, while the accord (for the first time) provided no individual pay rise guarantee for employees. The two-year agreement for professional staff provided for the same pay provisions as the white-collar agreement in the first year, but left all pay bargaining to the company level in the second year, with no sectoral guideline. The agreement in Belgian banking, which along with others in private service sectors observed the pay moderation guidelines specified in the 2009–10 cross-sector agreement (see 3.2.1 above), introduced additional crisis response measures. It provided for: increased training activity, especially for older and vulnerable workers; outplacement support for all redundant workers (previously just those aged over 45); enhanced severance payments in cases where companies do not observe redundancy procedures; the maintenance of early retirement schemes; and a higher limit on the proportion of the workforce that can take a full or part-time career break. Further, reflecting the financial crisis, the agreement provides for the development of better information and consultation for works councils over banks' activities, especially those entailing risk. The relevant provisions of the agreement in Italian tourism (like the specific agreements in banking and retail) seek to support redundant workers and those on short-time work or temporarily laid off because of the recession, in this case using an existing national joint fund.

**Table 3.5: Specific sectoral crisis response agreements in private services**

Country	Sector	Date	Details
Italy	Banking	December 2009	Agreement on new fund to provide income support (with employer contribution) for redundant workers not entitled to state schemes, plus training, and changes to existing 'solidarity fund', including increased benefits for workers on short-time work or temporarily laid off.
Italy	Retail	June 2009	Agreement on a 'pact for work' to become part of the regular sectoral agreement. Provides for promotion of initiatives to prevent job losses, e.g. through the creation of special local committees, and the possible use of sectoral resources, in addition to those available at national level, to support short-time work and temporary lay-offs. Also promoted company and local bargaining to respond to recession, e.g. on work organisation and training, plus information on company problems and monitoring of situation.
Netherlands	Car dealerships	April 2009	Agreement on package of measures to keep vulnerable workers in employment during the crisis, through temporary measures financed by the sector, including incentives to retain older workers and training.
Netherlands	Goods haulage	2009	Agreement on avoiding compulsory redundancies through access to early retirement for some groups of older workers facing redundancy and working time organisation/flexibility. Also provided for future creation of a 'mobility centre' to promote redeployment of surplus staff.

Sources: See Box 3.1.

**Table 3.6: Crisis response measures in regular sectoral agreements in private services**

Country	Sector	Date	Details
Belgium	Banking	October 2009	Inclusion in 2009–10 agreement of provisions on employment security (e.g. higher severance payments where employers fail to observe redundancy procedures), outplacement, maintenance of early retirement schemes, training and information for works councils on financial risks.
Italy	Tourism	February 2010	Inclusion in 2010–13 agreement of a commitment for the sector's national joint employment fund to spend 30 % of its funds on supporting the income of workers in enterprises in financial difficulty or being restructured. Also a provision extending support during lay-offs and short-time work, or on redundancy, to seasonal workers.
Sweden	Engineering and architectural consultancies	September 2009	Inclusion in one-year 2009–10 agreement for white-collar staff of provision allowing downward divergence from sectoral pay increase by local agreement in firms facing difficulties, and omitting usual individual pay rise guarantee. The two-year agreement for professional staff contains same provisions in the first year, but leaves all pay increases to local negotiations in the second year.

Sources: See Box 3.1.

### 3.3.3.2. Company level

Table 3.7 provides summary information on 20 cases of specific crisis response agreements concluded at company or establishment level (fuller details are provided in Appendix, Table 3.A2). The measures used correspond largely to those in manufacturing (though there seems to be an absence of special working time arrangements to prevent or reduce redundancies, or avoid short-time work). Thus, there are cases of agreements that:

- provide for the use of a form of short-time work, as at Italtel and Telecom Italia in Italy (in both cases, to reduce planned job losses), Austrian Airlines (to cut costs), Brussels Airlines in Belgium, Lufthansa Cargo and TUI in Germany;
- trade sacrifices in pay and employment conditions for employment guarantees, as at TNT in the Netherlands, Loxam in France, G4S Cash Services in the UK, Arcandor and Deutsche Post in Germany (where guarantees on outsourcing were included in the employer side of the trade-off);
- mitigate planned job losses, avoiding compulsory redundancies through voluntary departures (as at Commerzbank in Germany, Italtel in Italy and TP in Poland), early retirement (as at Aer Lingus in Ireland and Commerzbank), redeployment (as at Telecom Italia and TP) or natural wastage (as at Austrian Airlines and Commerzbank); and
- provide assistance for redundant workers (as at Alitalia in Italy, Dublin Airport Authority and TP).

Seven of the agreements, all at airlines, provided for employee sacrifices aimed at cutting costs, and at ensuring the survival of the company, but without the 'trade-off' of an explicit employment guarantee. The sacrifices included: pay cuts at Alitalia, Austrian Airlines, British Airways, Czech Airlines, LOT and SAS; job losses at Aer Lingus, Alitalia, Austrian Airlines, British Airways and LOT; changes in terms and conditions of employment at Alitalia and Aer Lingus (for staff required to reapply for their jobs); increased working hours at British Airways; and short-time work at Austrian Airlines. An unusual agreement at Dublin Airport Authority provided that employees would be reimbursed for their pay sacrifices if various company recovery targets were met.

**Table 3.7: Company-level crisis response agreements in manufacturing**

Company	Country	Sector	Date	Short-time work (introduction/conditions)	Employee concessions (pay, hours, etc.)	Employment/production guarantees	Alternatives to compulsory redundancies	Redundancy assistance
Austrian Airlines	AT	Civil aviation	1-6/2009	X	X		X	
Brussels Airlines	BE	Civil aviation	10/2009	X				
Czech Airlines	CZ	Civil aviation	2009		X			
SAS	DK/NO/SE	Civil aviation	2009-10		X			
Loxam	FR	Machinery hire	12/2008		X	X	X	
Arcandor	DE	Tourism and retail	10/2008		X	X		
Commerzbank	DE	Banking	7/2009			X	X	
Deutsche Post	DE	Postal services	10/2009		X	X		
Lufthansa Cargo	DE	Civil aviation	2/2009	X				
TUI	DE	Travel	3/2009	X	X			
Aer Lingus	IE	Civil aviation	11/2008		X		X	
Dublin Airport Authority	IE	Civil aviation	2010		X	X		X
Alitalia	IT	Civil aviation	9/2008		X			X
Italtel	IT	Telecoms	6/2009	X		X	X	
Telecom Italia	IT	Telecoms	7/2009	X		X		
TNT	NL	Postal services	3/2009		X	X		
LOT	PL	Civil aviation	10/2009		X			
TP	PL	Telecoms	10/2008				X	X
British Airways	UK	Civil aviation	6/2009		X			
G4S Cash Services	UK	Cash transit	2009		X		X	

Sources: See Box 3.1 plus Zagelmeyer (2009) for Arcandor.

### 3.3.3.3. Disputes and unsuccessful negotiations

An example of an unsuccessful negotiation is provided by the French IT services sector, where employers and trade unions failed to agree in 2009 on the introduction of a sector-specific form of short-time work, owing to differences over issues such as remuneration for unworked hours and the circumstances in which the scheme could be used.

There was considerable conflict around many of the agreements at airlines, including Alitalia, Aer Lingus, British Airways, LOT and SAS. The agreements at British Airways and SAS cover some groups in the workforce only; negotiations over similar crisis response measures involving other groups were unsuccessful or remain unresolved. Agreement could not be reached at all in similar negotiations at Finnair, whilst at Olympic Airways government plans to restructure and privatise the company were the focus of extensive protest action by trade unions. In the postal sector, restructuring plans announced by Österreichische Post were the focus of trade union protest action and in the UK management plans to restructure the Royal Mail were the focus of rolling strike action in late 2009, with a negotiated settlement finally being concluded in March 2010.

In contrast to manufacturing, there is, however, little indication of novel forms of conflict becoming a feature in the private service sectors. Europe-wide protests organised by EWCs and/or European-level trade union federations were also little in evidence in private services (see Box 3.10).

### 3.3.3.4. Summary

The few instances of sector agreements identified as containing crisis response measures, either in the form

of additional, specific agreements or through changes or additions to regular collective agreements, were restricted to Belgium, Italy, the Netherlands and Sweden. Two of the agreements were in the banking sector.

The agreements in Italy dealt with similar themes, as did those in the Netherlands, but unlike manufacturing there was little evidence of any common cross-border themes. The one exception is the agreements in Swedish architectural and engineering consultancy, where the provision in the two-year agreement for professional staff to decentralise bargaining to company level resemble those in the Finnish technology sector (see Table 3.3). Procedural innovation was also in evidence with the Italian banking agreement, overhauling an existing bipartite fund, and the Italian retail agreement, with new joint monitoring activities of the initiatives involved. The agreements in Dutch road haulage required implementation through company agreements. The latter accord also provided for a new structure to redeploy surplus staff, whilst the Belgian banking agreement envisaged new information and consultation methods for works councils.

None of the agreements had any known link to EU-level social partner initiatives in the sector concerned. At national level, the Belgian banking agreement was expressly linked to the cross-sector agreement, but this was not the case with the two Dutch agreements. The Belgian, Italian (banking and retail) and Swedish agreements all entailed subsequent company-level negotiation for the measures envisaged to become effective.

At company level, crisis response agreements were mainly concentrated in the civil aviation and posts and telecommunications sectors. No relevant European-level agreements were

identified in multinational companies. Over a third of the agreements, all in civil aviation, related to company cost-reduction programmes and provided for a range of employee sacrifices — on jobs, pay, conditions and working time — without, it appears, employment guarantees in return. Half of the remaining agreements also provided for pay cuts or freezes, but in return for guarantees of employment. Other than employee concessions, the most common specific theme in the agreements was the avoidance of compulsory redundancies in planned workforce reductions through voluntary departures, early retirement, etc. Short-time work featured relatively little (and then mainly as a form of workforce reduction) perhaps because in many countries state schemes do not apply to, or are not appropriate for, the services sector (or white-collar workers). Measures to support redundant workers were rare.

### 3.3.4. Assessment

The cases examined here have been identified from a range of transnational secondary sources (see Box 3.1). The picture they present is of a fairly limited agreed response to the crisis at sector level, with few agreements reached and these mainly found in Belgium, France, Germany, Italy, the Netherlands and Sweden, and in the manufacturing industries (especially metalworking). Company-level agreements are more numerous, but again concentrated in a relatively small number of countries — principally Italy, Germany, France, Spain, Denmark, Sweden, the UK, Poland and the Netherlands — and in manufacturing (again, particularly metalworking). At both levels, there seem to have been few agreements in the Member States of central and south-eastern Europe or in some of the Mediterranean countries.

Is this picture an accurate reflection of the social partners' response to the crisis, or more a result of imbalances in the sources of data used? With regard to the scale of the response, there are indications from a number of countries that in reality there have been considerably more agreed crisis response actions than the specific cases identified above. At sector level, in Belgium, many of the sectoral collective agreements signed within the framework of the cross-sector agreement for 2009–10 included specific crisis-related provisions on matters such as short-time work and training, as well as following the cross-sector agreement's general 'anti-crisis' approach (e.g. in terms of pay moderation) (<http://www.eurofound.europa.eu/eiro/2009/10/articles/be0910019i.htm>). An analysis of the recent round of multiannual sector negotiations concluded in Denmark, finds that many mirror the innovative provisions in the manufacturing sector agreement (Table 3.2) (Due and Madsen, 2010). Many agreements signed in the Netherlands in 2009 included an increased focus on training, often in relation to short-time work. At the company level, there is evidence that crisis response agreements have been much more prevalent than indicated by the cases presented here, at least in some countries. For example, the findings of a representative survey of companies with 20 or more employees and a works council conducted by the Institute of Economic and Social Research (Wirtschafts- und Sozialwissenschaftliches Institut, WSI), published in November 2009, indicated a widespread use of crisis response measures in German firms, many of which require a works agreement. For instance, 30 % had used working time accounts to reduce effective working time, 20 % had introduced short-time work, 14 % had redeployed employees, 13 % had adjusted schemes for paid leave, 11 % had cut pay and 5 % had

cut benefits. As in Germany, short-time working schemes of various types require a company-level agreement for their introduction in countries such as Austria, Belgium, Denmark, Italy and Sweden: the generally high level of short-time work in these countries during 2009 implies a considerable number of such agreements. For example, in Sweden more than 170 new local agreements on temporary lay-offs were reported to have been reached within six weeks of the conclusion of the manufacturing sector short-time work scheme (Eurofound, 2009). Another potential source of agreements during the recession is the statutory requirement or encouragement in a number of countries, such as Austria, Finland, France, Germany, Italy, Poland, Spain and Sweden, to negotiate over 'social plans' or similar agreements on measures to accompany or mitigate planned collective redundancies. In addition, a number of company agreements concluded during the 2000s have addressed the anticipation and management of restructuring and change. Pre-existing agreements of this kind may have helped the companies concerned to deal with the crisis.

Overall, agreed crisis response actions are likely to have been somewhat more common than the cases presented above: at sector level in at least Belgium, Denmark, Germany, Italy and the Netherlands; and at company level in at least Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Spain, Sweden and the UK. However, there is little to suggest that there are significant numbers of agreements that have not been captured by the information sources consulted in most of the post-2004 Member States — which in many cases have low bargaining coverage and/or a narrow bargaining agenda — or in EU-15 Member States such as Greece and Portugal.

In accounting for differences across countries, two of the factors identified in Figure 3.1 are influential: the nature of industrial relations institutions; and the presence of specific public policy measures aimed at maintaining employment, in the form of short-time work schemes. The countries in which sector-bargaining arrangements have been mobilised include nearly all of those where there are procedural provisions which effectively frame and constrain subsequent company-level negotiations. Conversely, where tightly specified articulation provisions are not a feature of multi-employer bargaining, as in Spain, Greece and Portugal and some central and south-eastern Member States, sector-level arrangements have not been mobilised. The incidence of company-level agreements would appear to have been higher amongst countries with multi-employer bargaining arrangements than those with single-employer arrangements. One reason is that sector (or inter-sector) agreements may specifically promote, or even require, further negotiation at company level, as is the case with short-time work schemes in several countries. A second is that by providing a framework for negotiation at company level, the success or otherwise of a negotiation and the nature of the agreement concluded at company level becomes less dependent on specific power balances within the company (Glassner and Keune, 2010). Amongst those countries with single-employer bargaining arrangements it is noticeable that the incidence of agreements is highest in the UK, where collective bargaining coverage is also comparatively higher. Turning to the interaction between public policy measures and social partner actions, the role of short-time work schemes in prompting or requiring the conclusion of agreements has evidently been important, as noted above.

In sectoral terms, the considerable variations between, and within, the production and private service sectors are also attributable to the influence of a third factor, namely the economic situation (see Figure 3.1) in addition to that of industrial relations institution and of specific public policy measures. The impact of the crisis on manufacturing has been more severe than on private services, as Chapter 2 showed. Within manufacturing, metalworking and the automotive segment of the sector in particular, has been especially hard hit. So too, however, have the chemicals and textiles sectors, in both of which social partner actions at sector and company level seem less widespread than in metalworking. Given the considerable impact of the crisis on construction, the absence of agreements is noticeable and suggests that there have been few attempts to mitigate the employment consequences in the sector. Amongst the service sectors, transport — which accounts for the largest proportion of agreements — is amongst the hardest hit. Given, however, the impact of the crisis on financial services, and banking in particular, more activity might have been anticipated; likewise with retail distribution, which was also hard hit.

Turning to industrial relations institutions, collective bargaining coverage is generally higher, and trade union organisation stronger, in manufacturing than in services. These also help account for the variation evident within manufacturing and services, respectively. In services, for instance, transport and communications are sectors where collective bargaining coverage is comparatively high and trade union organisation strong. A further institutional consideration within manufacturing is the extent to which sector agreements in metalworking had already been progressively opened up to create scope for

company negotiations in the sector (Marginson and Sisson, 2004). In terms of public policy measures, the key crisis-management tool of short-time working, which has been an important impetus to negotiations, is largely a manufacturing-specific phenomenon; in many of the relevant countries, schemes do not extend to the service sectors.

Sector differences are evident in the issues dealt with by agreements at both sector and company levels. At sector level, agreements on short-time work, pay decentralisation/flexibility and employee leasing are mainly found in manufacturing, while most agreements on employment maintenance/security and redundancy support are found in private services. Training, however, is a frequent 'transversal' theme (e.g. for employees on short time, or redundant workers) in agreements in both broad sectors. At company level, there are wide differences between manufacturing and private services. Short-time work is dealt with by a majority of agreements in manufacturing, but by only a handful of those in private services reflecting the differential application of statutory short-time work schemes between the two (see above). In manufacturing, agreements on employee concessions are frequently accompanied by an employment guarantee of some description, including continued production at the site in question in some cases. Agreements which entail employee concessions, including short-time working, in return for employment guarantees are particularly prevalent in the automotive industry. This kind of trade-off suggests that the agreements concluded have an integrative dimension to the outcomes specified (Sisson, 2001). In services the picture is more mixed, with employment guarantees featuring in only a minority of agreements, mainly those concluded in banking,

post and telecommunications. In contrast, the agreements in civil aviation focus on cost-reduction measures entailing employee concessions, with no offsetting guarantee on employment, and seem designed to ensure the company's survival. The distributive dimension is predominant in these 'survival' agreements.

The counterpart of divergence in social partner actions between sectors is a measure of convergence across countries within them (Katz and Darbishire, 2000). The sectoral pattern of incidence and issues addressed simultaneously signify common tendencies across countries within sectors. For example, the company agreements concluded in the automotive industry and in civil aviation bear considerable similarity in the respective provisions they contain. Such convergence was particularly noticeable in the local agreements concluded in different countries in four multinational companies. From the information available, it is difficult to establish the extent and nature of any coordination between companies, the trade unions and works councils representing workforces, within industries. Most plausible would seem to be a form of pattern setting which reaches across borders<sup>3</sup>. The outcomes, if not the processes involved, are suggestive of a 'horizontal' Europeanisation of collective bargaining within particular industrial and service sectors.

The evidence of any 'vertical' Europeanisation of collective negotiations and social dialogue, in which national and local social partner actions are framed by European-level agreements, recommendations or guidelines, is mainly confined to company level. Just one instance was identified where national sector agreements (in two countries) have

<sup>3</sup> See Traxler and Brandl (2009) on cross-border pattern setting in wage determination.

a seeming link to an EU-level social partner initiative in the industry concerned, namely chemicals. Although there have been significant developments in institutional capacity and activity at European sector level in recent years (Pochet et al., 2009), this would not seem to (yet) extend to exercising an influence on the framing of agreements at national level. The three European-level agreements identified in multinational companies implied subsequent negotiations at national or local level to implement some of their provisions. Several cases in which EWCs had intervened in national-level developments were also identified. Links between the European and lower levels of industrial relations in multinationals were most evident in examples of EWCs (and/or European-level trade union federations) organising Europe-wide protests against restructuring.

At national level, amongst the countries with multi-employer bargaining arrangements, 'vertical' links between negotiations at cross-sector (where relevant), sector and company levels were apparent amongst those countries in which there are comprehensive provisions governing the relationship between negotiations at different levels. Between the cross-sector and sector levels, this was most apparent in Belgium but less so in the Netherlands, though the Dutch agreements could be argued to reflect the broad crisis response approach agreed in bipartite and tripartite national accords. Sector agreements in Finland, Germany, Italy, the Netherlands and Sweden required implementation by company-level agreements or promoted bargaining at company level. Of the company agreements identified, a number were clearly negotiated wholly or in part to implement short-time working schemes agreed at sector level, as in Swedish manufacturing, or to implement schemes

endorsed by the social partners at national level, as in Germany and several other countries.

### 3.4. Conclusion

Through the processes of social dialogue, concertation and collective negotiation, employers and trade unions have played a prominent role in addressing the impact of the crisis at the cross-sector, sector and company levels. The chapter has also found considerable cross-country and cross-sector variation in the incidence and nature of these negotiated and concerted responses. Conversely, this indicates that unilateral employer responses have most likely been widespread in a range of countries. These include most of the countries with single-employer bargaining arrangements, i.e. most of the central and east European Member States, Cyprus, Malta and the UK, and those countries whose multi-employer bargaining arrangements do not specify a clear link between the sector and company levels, such as Spain, Portugal, Greece, Bulgaria and Romania. Unilateral employer responses are almost certainly considerably more prevalent in private services than in the production sectors.

Towards accounting for the pattern of variation, the respective influence of the four sets of factors, identified at the outset (see Figure 3.1), framing the extent to which responses to the crisis have been negotiated or concerted can now be assessed. Overall, the economic situation at economy-wide level and the presence of institutionalised capacity for concertation and/or negotiation at cross-sector levels seem not to have exercised clear-cut influence. The influence of the economic situation between and within broad sectors, of public policy — in both the broad and specific aspects identified in Figure 3.1 — and of other industrial relations

institutions is, however, marked. That of the strategic choices of the social partners is — at sector and company levels in particular — difficult to determine, given the nature of the data on which the chapter has mainly drawn.

The magnitude of the crisis at economy-wide level does not appear to have conditioned whether the social partners have attempted to conclude bipartite or tripartite agreements at the cross-sector level. Neither does it seem to have greatly affected whether the outcome was successful or unsuccessful. Sectorally, the contrasting economic situation of the production and private service sectors, and of individual sectors within them, is, however, broadly consistent with the observed pattern of negotiated responses. Both aspects of public policy identified exercise a distinct influence on the pattern. Whether or not, and how far, governments have involved the social partners — or the social partners have sought to be involved — in the framing of anti-crisis measures acts as a necessary but not a sufficient condition for attempts at tripartite cross-sector agreements. Specific public policy measures, in the form of the massive intervention represented by the short-time work schemes implemented in many Member States (including some for the first time), have been both a focus for social partner involvement at national level and a trigger for negotiating activity at sector and company levels in manufacturing (although not services where they do not generally apply).

The first of the two public policy considerations also points to the role of strategic choices at cross-sector level, by governments and by the social partners. Further indication of the influence of the strategic choices exercised at this level by employers and trade unions is apparent in the instances, first, of those central and east European countries where agreements have not previously

been concluded and, second, those western European countries where agreements have not been concluded, even though institutional capacity to do so exists. At sector and company levels, the pattern of agreements suggests that social partner strategies have been shaped, although not determined, by institutional arrangements for industrial relations (see below) as well as by large-scale public policy intervention in the form of statutory short-time work schemes. Beyond this, the role of the strategic choices exercised by employers and trade unions is illustrated by the finding that company-level agreements can also be reasonably prominent in the absence of one or both of these supportive factors, as in Spain or the UK.

Of the institutional dimensions of industrial relations identified at the beginning of the chapter, the influence of one is not clear-cut whereas that of the other three is much more apparent. The first is the presence and nature of institutional arrangement for cross-sector arrangements for negotiation or concertation. As noted above, cross-sector accords have been concluded, or talks commenced but were unsuccessful, in some, but not all, EU-15 countries where such institutional capacity already existed. But they have also been concluded in some central and east European countries where there is little or no history of doing so. Second, the distinctions between multi-employer and single-employer arrangements and, third, the level of collective bargaining coverage (which is related) are both confirmed as salient. The workforce coverage of sector crisis response agreements, where they have been concluded, will have greatly exceeded those of the company agreements which have been the focus of activity in countries with single-employer arrangements. Moreover, sector (and cross-sector) agreements have had the

effect of prompting further negotiated actions at company level in several EU-15 countries. As a result, the incidence of company agreements seems to have been higher under multi-employer than under single-employer bargaining arrangements. Amongst the countries with single-employer bargaining arrangements, the UK — which has the highest level of collective bargaining coverage — stands out as having a comparatively higher incidence of negotiated response at company level. Fourth, as between countries with multi-employer arrangements, the presence of effective multi-level governance arrangements specifying the relationship between agreements concluded at different levels, emerges as crucial. Sector crisis response agreements are concentrated amongst those EU-15 countries where procedural provisions articulating the outcomes of collective negotiations at different levels are found. Where they are absent, as in Spain, Portugal and Greece and those central and south-eastern Member States where sector-level bargaining takes place, sector crisis response agreements are noticeable by their absence. The incidence of company agreements is also lower. The implication is that unilateral employer responses are correspondingly more widespread. The crucial institutional distinction may not be between multi-employer and single-employer bargaining arrangements per se, but between multi-employer bargaining arrangements which ‘organise’ bargaining at the different levels and those which do not — together with single-employer arrangements (Traxler et al., 2001; Nergaard et al., 2009).

A thorough assessment of the balance between the integrative and distributive elements of the crisis response agreements surveyed requires an analysis of greater depth than that undertaken here. Two main inferences can be drawn from the present

evidence. First, the package nature of most of the cross-sector accords is indicative of an agenda of sufficient scope to enable the parties to engage in the trade-offs which underpin the inclusion of integrative as well as distributive elements to the outcome of negotiations. Likewise, the majority of crisis response sector agreements also entail a package of measures. Second, there is nonetheless considerable variation in the mix between elements across sectors. A key indicator of an integrative element to the outcome of crisis response negotiations is the inclusion of some form of employment guarantee against cost-reduction measures. This was evident amongst the majority of agreements in the production sector, but not amongst those in private services — where in civil aviation in particular outcomes were more straightforwardly distributive. Variation in the mix is also apparent amongst companies concluding agreements within the same industrial sector.

Insofar as the crisis has invoked negotiated or concerted responses, where otherwise governments or employers might have acted alone, a final issue is the sustainability of recent developments. On this too it is difficult to reach a definitive answer. At cross-sector level, the most noticeable development has been the conclusion of accords in several central and east European countries where they were hitherto unknown. These accords are ad hoc; there is no indication at present that the parties intend further negotiations, or agreements, to follow. Yet, neither can the parties unlearn the process that they have for the first time successfully engaged in. Amongst the Visegrad countries at least, where social dialogue institutions are more robust than in the Baltic states (Meardi, 2010), the likelihood of their attempting to conclude an agreement again is greater than it

was before. At sector level, a striking feature in several of the crisis response agreements in Finland, Germany and Sweden is provisions which transfer to, or enhance, competence for wage setting at company level. In this respect, the crisis may prove to have further accelerated the long-running trend towards 'organised' decentralisation (Traxler et al., 2001). At sector and company levels, the expiry of the short-time work schemes is likely to have a marked effect, given

their impact in prompting further negotiation on measures to maintain employment. At company level, as the crisis prolongs, the successful renewal of agreements which have already been concluded cannot be assured. The basis for the trade-offs which they entail can be eroded: the economic situation may preclude the renewal of an employment guarantee, for example. Alternatively, a more rapid recovery in output than anticipated may lead the workforce to

press for agreements to be re-opened, so as to recuperate earlier sacrifices. Either way, the problem is likely to be less acute where company negotiations arise as a result of agreements at higher level than when they are free standing. The institutional security provided under organised decentralisation to company-level negotiators leaves them less exposed to asymmetric outcomes to such 'downside' and 'upside' risks than where single-employer bargaining prevails.

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## Appendix

Table 3.A1: Company-level crisis response agreements in manufacturing

Company	Country	Sector	Date	Details
DAF Trucks	Belgium	Automotive	June 2009	Agreement on use of state short-time working scheme, plus early retirement, along with partial guarantee on no redundancies.
Stomana Industry	Bulgaria	Steel	November 2008	Agreement on social package to accompany 300 redundancies, including: training; severance payments of four to 10 months' pay; additional financial support for redundant workers; and a commitment to rehire redundant workers if the company's situation improves.
Hyundai	Czech Republic	Automotive	January 2009	Agreement on application of state short-time working scheme at Nosovice plant, providing for higher than statutory pay compensation for employees.
Siemens	Czech Republic	Transport equipment	August 2008	Agreement on enhanced redundancy package in case of plant closure or special bonus payments in case of transfer of ownership.
Danfoss	Denmark	Engineering	February 2009	Agreement on introduction of short-time working ('work-sharing'), based on publicly funded scheme regulated by sectoral agreement.
Grundfos	Denmark	Pumps	March 2009	Agreement on introduction of short-time working ('work-sharing'), based on publicly funded scheme regulated by sectoral agreement.
Vestas	Denmark	Wind turbine manufacturing	2009	Agreement on three-week summer shutdown, with compulsory holiday and abolition of Sunday shifts, to deal with fall in orders.
Nokia	Finland	Mobile telephone manufacturing	February 2009	Scheme developed with unions and employee representatives to promote voluntary departures through financial incentives and avoid redundancies.
Airbus	France	Aerospace	December 2009	Agreement on using annual leave to avoid recourse to short-time work.
Bosch	France	Auto parts	November 2008	Agreement on reducing recourse to short-time work through use of accumulated time off, recalculation of annual leave and training.
Dassault Aviation	France	Aerospace	June 2009	Agreement on application of state short-time working scheme, dealing with pay guarantees (partly compensated through 'solidarity' contribution from unaffected employees) and training.
Michelin	France	Tyres	February 2009	Agreement on collective working time account, whereby workers were granted paid days off during period of low demand in 2009 and work off the days owed in future years, with short-time work only used if this scheme is insufficient.
PSA Peugeot Citroën	France	Automotive	September 2009	Agreement on application of state short-time working scheme, dealing with pay and training for the workers affected.
Renault	France	Automotive	April 2009	'Crisis social contract', which aims to maintain employment levels through the widespread use of short-time work, with guarantees on pay and training provision.
Renault Trucks	France	Automotive	February 2009	Agreement on application of state short-time working scheme, dealing with pay (partly compensated through employee 'solidarity' fund) and training for the workers affected.
Rhodia	France	Chemicals	April 2009	Agreement on pay during short-time work and flexibility measures to deal with crisis.
Snecma	France	Aerospace	November 2008	Agreement on employees taking accumulated time off and advance annual leave entitlement during period of low demand to avoid short-time work and loss of pay.
STMicroelectronics	France	Electronics	April 2009	Agreement on 'employment plan' to maintain job during crisis through measures including incentives to work part time, long-term training leave, sabbatical leave and external postings.
STX	France	Shipbuilding	February 2009	Agreement on application of state short-time working scheme, dealing with pay for the workers affected.
BASF	Germany	Chemicals	January 2009	Agreement on use of state short-time working scheme, with additional payments for employee on short time.
BMW	Germany	Automotive	January 2009	Agreement to secure jobs through use of short-time working, with additional payments for employees on short time.

Company	Country	Sector	Date	Details
Bosch	Germany	Auto parts	December 2009	Agreement providing for pay cuts of 1 % to 1.5 % in 2010 in exchange for employment guarantees, in context of extensive short-time working.
Carl Zeiss	Germany	Optical equipment	June 2009	Agreement on deferring wage increase and suspension of bonus payments in exchange for a no redundancy guarantee. [Zagelmeyer, 2009]
Coca-Cola Erfrischungsgetränke	Germany	Soft drinks	March 2010	Agreement providing guarantees of no compulsory redundancies before 2012, no enforced geographical mobility and an effective end to outsourcing, in return for working time flexibility and pay moderation.
Daimler	Germany	Automotive	April 2009	Agreement on cost-cutting package, with workers making concessions on working time and pay in return for a limited job guarantee.
Daimler	Germany (Sindelfingen plant only)	Automotive	December 2009	Agreement providing long-term guarantee of no compulsory redundancies in return for measures to improve plant's competitiveness and efficiency, such as internal transfers and job flexibility.
E.ON	Germany	Energy	August 2009	Agreement on implementation of cost-reduction programme, including guarantee of no compulsory redundancies with workforce reduction to be achieved through phased and full early retirement, non-renewal of fixed-term contracts, voluntary departures with compensation, natural wastage and redeployment. Also provided for maintenance of pay and conditions for employees in outsourced services, and contained measures on training and apprenticeships.
InBev	Germany	Beverages	June 2009	Agreement over enhanced severance terms in case of compulsory redundancy, increased compensation for short-time work, preceded by a moratorium on employment reductions. [Zagelmeyer, 2009]
MAN Nutzfahrzeuge	Germany	Automotive	January 2009	Job security agreement, introducing short-time work accompanied by moratorium on redundancies, additional payments and training (with incentives) for those on short time, plus sabbaticals and employee leasing.
Manz Automation	Germany	Automation technology	April 2009	Agreement on use of state short-time working scheme, with training during unworked hours.
Salzgitter Flachstahl	Germany	Steel	January 2009	Agreement on use of state short-time working scheme, with training during unworked hours and use of working time accounts to reduce income losses.
Schaeffler	Germany	Ball-bearings manufacturing	May 2009	Job security agreement preventing compulsory redundancies before 30 June 2010 (up to 4 500 job losses had been mooted) if personnel cost reductions of EUR 250 million can be achieved through a range of agreed measures. These included cuts in working hours and pay, expanded use of short-time work, voluntary redundancies, partial retirement, cuts in one-off payments and the establishment of 'transfer companies'.
Schott	Germany	Glass	2009	Agreement on use of state short-time working scheme, with additional payments and obligatory training during unworked hours.
Siemens	Germany	Electronics	February 2009	Agreement on use of state short-time working scheme, with additional payments for employee on short time, use of accumulated time off before resort to short time and internal transfers between plants.
ThyssenKrupp Nirosta	Germany	Stainless steel	September 2009	Agreement on 'future security' providing for pay freeze, mitigating job losses through partial early retirement and natural wastage, guarantees on apprenticeship and long-term time savings accounts.
ISD Dunaferri	Hungary	Steel	November 2008	Agreement on cuts in pay and benefits in exchange for no redundancies during 2009.
Opel	Hungary	Automotive	April 2009	Agreement on short-time working, with partial pay compensation.
Antonio Carraro	Italy	Tractor production	January 2010	'Solidarity agreement' providing for short-time work to prevent redundancies.
Ast ThyssenKrupp	Italy	Steel	April 2009	Agreement on wage and rights guarantees for employees affected by short-time work and temporary lay-offs.
Bosch	Italy (Modugno plant)	Auto parts	December 2009	Agreement guaranteeing employment levels (with temporary lay-offs and short-time work used where necessary) and production until end of 2011, despite the recession, and introducing pilot scheme to reduce CO2 emissions at the plant.
Case New Holland	Italy	Agricultural machinery	September 2009	Agreement on introduction of short-time working and future negotiations on restructuring.
Electrolux	Italy	Domestic appliances	September 2008	Agreement on cushioning effects of restructuring through rotating use of state income-support measures, incentives for voluntary redundancies and part-time working.

Company	Country	Sector	Date	Details
Embraco	Italy	Compressor manufacturing	2009	'Solidarity agreement' providing for short-time work for half of workforce, with company organising training for employees during unworked hours, aimed at enhancing their multi-skilling.
Fincibec	Italy	Ceramics	April 2009	'Solidarity agreement' providing for short-time work to prevent redundancies.
Gima	Italy	Automation systems	April 2009	Agreement on additional payments to workers on short time or temporarily laid off, to compensate for the psychological/emotional/social problems caused.
Ilva	Italy	Steel	April 2009	Agreement on wage guarantees for employees affected by short-time work and temporary lay-offs.
IMER International	Italy	Construction machinery	February 2010	'Solidarity agreement' providing for short-time work to prevent redundancies.
Indesit	Italy	Domestic appliances	July 2009	Agreement (with involvement and support of regional authorities) on preventing planned plant closure through short-time working, mobility, training and early retirement.
Michelin	Italy	Tyres	December 2008	Framework agreement on restructuring of Italian sites, providing for internal or external redeployment of redundant workers, including re-employment in new operations, internal mobility (with financial assistance), plus income support, outplacement and help for workers to set up businesses.
Piaggio Aprilia	Italy	Automotive	January 2010	'Solidarity agreement' providing for short-time work to prevent redundancies, with skills maintenance.
Rimor	Italy	Automotive	September 2009	'Solidarity agreement' providing for short-time work to prevent redundancies.
Verlicchi	Italy	Automotive	April 2009	Agreement on additional payments to workers on short time or temporarily laid off, to compensate for the psychological/emotional/social problems caused.
Whirlpool	Italy	Domestic appliances	December 2008	Agreement on measures to mitigate planned job losses, through non-renewal of fixed-term contracts, incentives for voluntary redundancies and income support for redundant workers.
Villeroy & Boch	Luxembourg	Ceramics	July 2009	Agreement on 'employment maintenance plan' to accompany the closure of a plant. The plan involves training, guidance and re-employment assistance (externally and within the company), including the creation of a 'qualification centre', 'employment exchanges' and a 'professional coaching cell'.
Corus	Netherlands	Steel	April 2010	Agreement guaranteeing no compulsory redundancies before October 2012, in exchange for low pay increases in 2010 (increases for 2011 to be negotiated later).
DAF Trucks	Netherlands	Automotive	June 2009	Agreement on application of state short-time working scheme, dealing with issues such as maintenance of full pay (in return for giving up some holiday entitlement) and employment guarantees for workers involved.
E.ON	Netherlands	Energy	December 2009	Agreement on implementation of cost-reduction programme, including guarantee of no compulsory redundancies, with workforce reduction to be achieved by various alternative means including moving employees to sub-contractors. Maintenance of pay and conditions for employees in outsourced services for five years.
Lotos	Poland	Oil	February 2009	Agreement on anti-crisis cost-reduction plan, including pay freeze to help avoid job losses.
Alcatel-Lucent	Romania	Telecoms equipment	December 2009	Inclusion in company agreement (first at firm) of redundancy compensation scheme and specific payments for employees affected by restructuring.
Dacia-Renault	Romania	Automotive	2008	Inclusion in company agreement of provisions on pay guarantees during short-time working.
Ford	Spain	Automotive	October 2009	Inclusion in company agreement of measures to mitigate planned job losses at Almussafes plant, through voluntary redundancies (with possible re-employment) and retirements, plus moderate pay increases, with company guarantees on future production.
Michelin	Spain	Tyres	November 2008 and November 2009	Agreement in 2008 on avoiding redundancies during 2009, mainly through working time cuts and use of hours banks. Agreement in 2009 to implement planned workforce reduction in 2010 through early retirements with financial assistance.
Nissan	Spain	Automotive	February 2009	Agreement on a feasibility plan which entailed the termination of a substantial number of temporary workers' employment in exchange for the future allocation of production to the Catalan operation.

Company	Country	Sector	Date	Details
Opel	Spain	Automotive	March 2010	Agreements to implement 900 planned job losses (as part of Europe-wide restructuring plan) in a 'socially responsible' way, targeting them at workers on fixed-term contracts and providing re-employment opportunities for those who lose their jobs. Agreement also reached on moderate wage increases over four years and greater working time flexibility.
Renault	Spain	Automotive	September 2009	Four-year 'pact for employment and competitiveness' in Spanish operations, which provides for low pay increases, increased flexibility and mobility, and lower wages for new recruits, in exchange for the future allocation of production to the sites.
Seat	Spain	Automotive	March 2009	Agreement on two-year pay freeze aimed at guaranteeing employment by attracting new allocation of production.
Sony	Spain	Electronics	January 2009	Agreement on a two-year pay freeze and a 40-hour increase in annual working time, in return for company commitment to keeping the site open at least until the end of 2010, and cutting planned redundancies by two-thirds.
Sandvik	Sweden	Engineering	June 2009	Agreement to avoid planned redundancies through short-time working (applying national scheme), with some pay compensation.
Scania	Sweden	Automotive	March and December 2009	'Crisis' agreement to avoid redundancies through short-time working (applying national scheme), with some pay compensation (increased to full compensation by December agreement).
Sony Ericsson	Sweden	Electronics	September 2008	Agreement on social plan to accompany redundancies, including increased notice periods, time off to find new jobs, specific measures for older workers, outplacement support and priority recruitment.
Volvo	Sweden	Automotive	March 2009	Agreement to avoid redundancies through short-time working (applying national scheme).
Honda	UK	Automotive	May 2009	Agreement reducing pay for 10 months in return for a company guarantee preserving jobs.
Jaguar Land Rover	UK	Automotive	March 2009	Agreement on working time cuts and wage freeze to avoid redundancies.
JCB	UK	Construction equipment manufacturing	October 2008	Agreement on cutting working time and pay in order to prevent some two-thirds of planned job losses.
Toyota	UK	Automotive	March 2009	Agreement on cuts in working time and pay to save jobs.
Vauxhall	UK	Automotive	October 2009	Agreement on pay freeze and voluntary redundancies to secure future of plants.

**Table 3.A2: Company-level crisis response agreements in private services**

Company	Country	Sector	Date	Issues
Austrian Airlines	Austria	Civil aviation	January to June 2009	Series of agreements on cost-reduction measures aimed at enabling takeover by Lufthansa. Measures include job losses (mostly through outsourcing and natural wastage), pay cuts and short-time work.
Brussels Airlines	Belgium	Civil aviation	October 2009	Agreement on introduction of short-time working, with compensation based on sectoral scheme.
Czech Airlines	Czech Republic	Civil aviation	2009	Agreements on cost-reduction measures affecting various groups of staff, including cuts in pay.
SAS	Denmark/ Norway/ Sweden	Civil aviation	2009–10	Agreements on cost-reduction measures affecting various groups of staff, including pay cuts.
Loxam	France	Machinery hire	December 2008	Agreement on working time and pay cuts to maintain employment, plus incentives for voluntary departures.
Arcandor	Germany	Tourism and retail	October 2008	'Pact for the future', providing no-redundancy guarantee in return for cost-reduction programme, including cuts in bonuses and holiday pay. [Zagelmeyer 2009]
Commerzbank	Germany	Banking	July 2009	Agreement in July (post takeover of Dresdner Bank) providing guarantee of no compulsory redundancies before 2013, if sufficient workforce reduction achieved through voluntary departures (with incentives), phased early retirement and natural wastage.
Deutsche Post	Germany	Postal services	October 2009	Inclusion in regular agreement of pay freeze in exchange for guarantees on outsourcing and redundancies.
Lufthansa Cargo	Germany	Civil aviation	February 2009	Agreement on introduction of short-time working for ground staff, with partial pay compensation.
TUI	Germany	Travel	March 2009	Agreement on introduction of short-time working, with partial pay compensation, and senior staff not affected by short time taking 'solidarity' pay cut.
Aer Lingus	Ireland	Civil aviation	November 2008	Agreement on cost-reduction measures, including workforce reduction through early retirement or voluntary redundancy, while half of ground operations staff had to leave the company and reapply for positions on lower terms and conditions.
Dublin Airport Authority	Ireland	Civil aviation	2010	Agreement on pay cuts averaging 5.5 % (except for low-paid staff) and reductions in benefits, plus job cuts (with enhanced severance payments) as part of company recovery plan. Pay cuts will be restored in future if recovery targets are met.
Alitalia	Italy	Civil aviation	September 2008	Agreements on post-takeover restructuring plan, including state financial support for redundant workers, changes in terms and conditions of employment, and reductions in pay for some groups of staff.
Italtel	Italy	Telecoms	June 2009	Agreement to avoid a number of planned redundancies through the use of short-time work (partly based on 'solidarity agreements') and temporary lay-offs, plus incentives for voluntary departures.
Telecom Italia	Italy	Telecoms	July 2009	Agreement to avoid a number of planned redundancies through redeployment, training and the use of short-time work (based on 'solidarity agreements') with pay and service guarantees.
TNT	Netherlands	Postal services	March 2009	Agreement providing for pay cuts for some grades in exchange for three-year guarantee of no compulsory redundancies.
LOT	Poland	Civil aviation	October 2009	Agreement on cost-reduction measures, including cuts in bonuses and job losses.
TP	Poland	Telecoms	November 2008	Inclusion in regular 'social pact' for 2009–11 of incentives for voluntary departures (with outplacement assistance), plus internal mobility measures.
British Airways	UK	Civil aviation	June 2009	Agreement on cost-reduction measures affecting pilots, including cuts in pay and allowances, increased working time and a number of job losses.
G4S Cash Services	UK	Cash transit	2009	Agreement on reduced pay rise in return for redundancy mitigation measures.



## CHAPTER 4: Wage flexibilisation and the minimum wage

*Setting wages is one of the key functions of industrial relations systems. In the context of the economic crisis and the debate about wage flexibility, the decentralisation of collective wage bargaining has continued to advance in most EU countries. At the same time, variable pay systems are providing an additional element of wage differentiation. In this environment, minimum wages could have an important role in providing a wage floor, yet the evidence shows that statutory minimum wages have had little effect on the incidence of low pay and growing wage inequality.*

*This chapter is based on a draft by Maarten Keune of the Amsterdam Institute for Advanced Labour Studies (AIAS, University of Amsterdam).*

### 4.1. Introduction

The context in which wages in Europe are negotiated has undergone important changes in the last decade. The ongoing globalisation of the economy, the deepening of the internal market and its expansion to the 12 new Member States that joined the EU between 2004 and 2007 have intensified competition in product and service markets and increased cross-border mobility. As a result, countries and workers are increasingly in competition with each other for jobs and investment, creating pressure on labour costs and modifying the power relations between employers and workers (Keune, 2008).

The European monetary union (EMU) was also deepened and expanded during the 2000s. By creating a common currency and common monetary policy EMU has created monetary stability in the euro area, evidenced during the present economic and financial crisis. However, it has also limited the range of adjustment mechanisms available to countries to adjust to asymmetric shocks, and placed increasing reliance on wage adjustments (Dyson, 2006). In addition, through its requirements as regards public expenditure and public debt criteria it creates pressure on wage levels, in particular in the public sector.

Concerning wage setting and its objectives, since the 1970s, solidaristic and productivity-oriented wage bargaining has gradually been replaced by competition-oriented wage bargaining (Schulzen, 2002; Marginson and Sisson, 2004). This has involved a shift of emphasis in wage bargaining from the pursuit of more egalitarian wage structures and the decoupling of wages from the specific circumstances of the individual company in favour of industrial and/or occupational solidarity, towards a stronger role for the market and for the competitive requirements of individual companies. It has also resulted in a widespread practice of wage moderation in which real wage growth is kept below productivity growth. Wage moderation has been a consistent feature of wage setting in the past two decades and, since its inception, in the euro area in particular (Keune, 2008; Ebbinghaus, 2004). One manifestation has been the continuous decline of the labour's share of total income in the EU. In the EU-15, the labour income share of GDP fell from 69.9 % in 1975 to 57.8 % in 2006; amongst the 12 new Member States, the labour income share has been on a downward trend since the mid-1990s, with the exceptions of the Czech Republic, Cyprus, Malta and Romania (European Commission, 2007). The decline of the labour income share

has been accompanied by growing wage inequality and the wages of the low skilled have been particularly affected (ibid.).

In this context, there has been ongoing debate in Europe over whether more wage flexibility is needed and/or desirable. Wage flexibility concerns the extent to which wages respond to market forces, that is the extent to which they can vary in response to changes in labour demand and supply, or according to individual, collective or firm performance, or following changes (shocks) in the macroeconomic environment. The degree of wage flexibility depends to a large extent on the prevailing wage-setting institutions, including the level and coverage of collective bargaining, the power relations between trade unions and employers, the presence and prominence of performance-related pay systems, the minimum wage, etc. These institutions may set limits to the influence of market forces, for example by compressing wage structures, constraining wage differentiation according to skills or to region, preventing downward wage adjustments, or reducing the responsiveness of wages to price and productivity developments.

It is often argued that wage-setting institutions in many European countries are too rigid, and that this results in insufficient wage differentiation, lower cost competitiveness for firms involved in global competition, lower workforce motivation and productivity, an in the end to higher unemployment (in particular for the low skilled by pricing them out of the labour market) and/or lower economic growth (e.g. OECD 2006; Arpaia and Pichelman 2007). Others, however, call for caution, pointing to the potential detrimental effects of

increased wage inequality on the quality of work and fairness, on collective wage-setting structures, on equality and social cohesion or on principles such as equal pay for equal work (e.g. Vaughan-Whitehead 2010; ILO 2008).

The ambition of the present chapter is not to settle the wage flexibility debate. Rather, the intention is to review developments concerning three important institutional aspects of wage setting that are closely related to the debate on wage flexibility: (i) the extent to which collective wage bargaining has been decentralised; (ii) the extent to which variable pay systems are used; and (iii) the role of the minimum wage.

The decentralisation of wage bargaining, from (inter-) sectoral, or multi-employer, level to company, or single-employer, level has for many years been proposed as one of the measures to increase the responsiveness of wages to local conditions, to strengthen the international competitiveness of firms and to improve macroeconomic performance (OECD 1994, 2006). The rationale for multi-employer bargaining has been questioned following the increase of international competition in particular, which, it is argued, makes it less feasible to take wages out of competition within the relevant product market (Arrow-smith and Marginson, 2008). At the same time, the evidence concerning the impact of collective bargaining structures on macroeconomic performance in general and on aggregate employment and unemployment in particular remains fragile and inconclusive (OECD, 2006; European Commission, 2006; Aidt and Tzannatos, 2005). Also, trade unions and in many cases employers' organisations and governments as well, are reluctant to

make radical changes to bargaining structures. They fear that the effect would be increased wage differentiation or that company bargaining would place too big a burden on small- and medium-sized companies. The chapter finds that in most countries where higher-level (sector and/or inter-sector) wage bargaining dominates there has been little change in bargaining arrangements for wages during the 2000s. Exceptions are Sweden, Finland, Denmark and Germany where decentralisation of wage bargaining arrangements has been a prominent feature. There has, however, been a more generalised decentralisation across the EU concerning negotiations over additional pay elements, including the (increasing) use of variable pay systems.

Variable pay systems (VPS) increase wage flexibility by linking wages more closely to individual, group or company performance. VPS are frequently expected to increase motivation, productivity and innovation, while for some they are an instrument to improve the redistribution of wealth and the strengthening of economic democracy. Although the evidence on these issues is mixed, this has not detracted from the interest in VPS. There are major differences in the incidence of VPS between countries and also between sectors and companies of different sizes. Whilst employers have tended to embrace VPS, the views of employee representatives and of trade unions towards them are mixed with differences apparent between and within countries. The use of VPS seems to be increasing over time, representing a specific form of flexibilisation of wage setting.

The minimum wage is a key factor that constrains wage flexibility by setting a wage floor in the

labour market. Depending on its level, the minimum wage can limit wage inequality as well as the incidence of low pay. This is especially relevant since trade union density and the level and coverage of collective agreements, factors that are negatively correlated with wage inequality (e.g. European Commission 2008, Chapter 3), are under pressure. The chapter establishes that low pay affects one out of every six workers in the EU and its incidence is higher in the countries where company bargaining dominates and coverage of collective agreements is low. Yet a statutory minimum wage is no guarantee against low pay: a further finding is that the countries with the highest level of low pay all have a statutory minimum wage. There are some possible connections and interactions between these three institutional aspects of wage setting. VPS almost always operate at company, or establishment, level and have hence added to the pressure to open up scope for company bargaining within sector agreements. The weakened capacity of sector-level collective bargaining arrangements in some countries, notably Germany, to provide comprehensive workforce coverage, together with the growing use of opening clauses in collective agreements in several countries, have heightened attention on the need for other e.g. statutory means to provide a minimum wage floor. This attention is further strengthened by the low and declining coverage of collective bargaining in countries with single-employer arrangements, a group that has been significantly augmented as a result of the 2004 and 2007 enlargements. The chapter concludes, however, that the capacity of statutory minimum wages to counter the effects of growing wage inequality and the problem of low pay is limited.

## 4.2. The level of collective wage bargaining: a trend towards decentralisation?

### 4.2.1. The importance of different bargaining levels

The main distinction that is generally made when considering the levels at which collective bargaining takes place is between single-employer bargaining at the company or local (establishment) level and higher-level, multi-employer bargaining, often at the level of a sector or branch. The two levels can also combine, when the multi-employer agreement sets out a framework that is further developed at company level, or when at company level derogations from higher-level standards are possible, for example in times of economic difficulties. Recent cross-country data charting the relative importance of the various bargaining levels come from the 2009 European Company Survey (ECS), a representative survey of establishments with 10 or more employees in 30 European countries (see Box 4.1)<sup>1</sup>. According to the ECS, of all employees in Europe covered by any type of agreement, 61 % fall under a higher (sector and/or inter-sector) level agreement (Chart 4.1). This includes 7 % where there is a company-level agreement as well as the higher one (so-called ‘two-tier bargaining’), and 5 % where the higher-level agreement contains scope for derogations at company level. For 38 % of employees, the company is the sole level of bargaining.

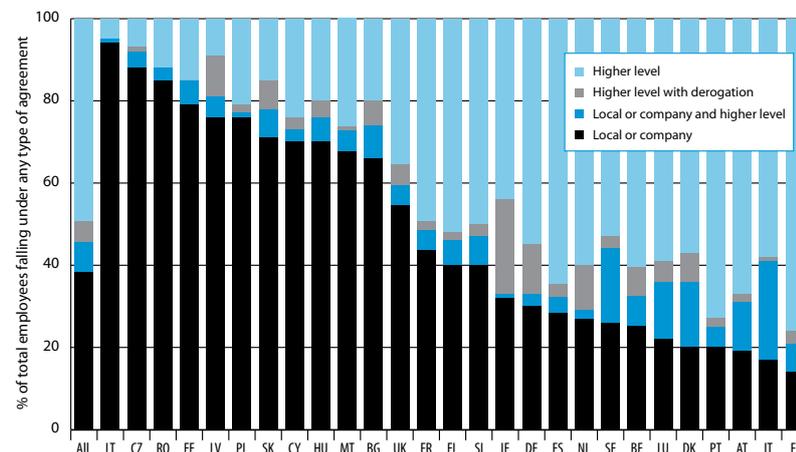
#### Box 4.1: The European Company Survey

The European Company Survey (ECS) is a large-scale establishment survey carried out by the European Foundation for the Improvement of Living and Working Conditions. The first ECS was carried out in 2004–05 and the second in 2009. The ECS 2009 covers 30 countries: the EU-27 plus Croatia, the former Yugoslav Republic of Macedonia and Turkey. The ECS is based on interviews with management and employee representatives in companies with 10 or more employees. In total, interviews were carried out in 27 160 establishments. The number of interviews per country ranges from almost 350 in Malta, the smallest EU economy, to around 1 500 in the EU’s larger economies. In all establishments, a management interview was carried out. In addition, an interview was sought with the chairperson of the employee representative body — if one existed. This resulted in 6 569 interviews, which represents about 50 % of all companies in the sample that had employee representatives. The survey data are representative of establishments with 10 or more employees from all sectors of activity, except for agriculture, fishing, activities of households and extraterritorial organisations. The survey covers organisations from both the private and public sectors.

The ECS 2009 covers different forms of working time flexibility (flexitime and working time account systems, part-time work, overtime work and work at unusual hours), the application of non-permanent employment contracts (external flexibility), aspects of wage flexibility as well as modes of enhancing the employability of staff for different tasks (functional flexibility). Moreover, the survey investigates the general structures and practices of collective bargaining and company-level employee representation in Europe, shedding light on the different channels of representation, on available resources and on the impact of social dialogue on company decisions in different areas. The findings provide a unique insight into company strategies as well as into workplace social dialogue structures and practices. The ECS is also a unique source of European-wide comparative company-level data on the use of variable pay systems (VPS).

Source: European Foundation for the Improvement of Living and Working Conditions (2010).

Chart 4.1: Employees falling under different levels of collective agreements, 2009 (establishments with 10 or more employees)



Source: J. Visser, ICTWSS Database 3.0, 2010; the averages for EU-27, EU-15 and EU-12 are weighted.

<sup>1</sup> Thanks to Gijs van Houten of the European Foundation for the Improvement of Living and Working Conditions for providing the ECS data used in this chapter.

**Table 4.1: Employees falling under different levels of collective agreements, private and public sector, 2009 (% of total employees covered by any type of agreement, establishments with 10 or more employees)**

	Local or company		Local or company and higher level		Higher level with derogation		Higher level	
	Private	Public	Private	Public	Private	Public	Private	Public
EU-27	44	26	6	8	6	5	44	62
AT	17	37	12	7	1	6	69	51
BE	29	11	8	7	9	2	55	80
BG	77	58	4	12	2	9	17	22
CY	76	56	3	4	1	7	20	33
CZ	86	90	5	2	1	1	7	7
DE	38	4	4	1	13	10	45	86
DK	31	5	21	9	6	8	42	78
EE	85	n.a.	0	n.a.	0	n.a.	14	n.a.
ES	28	27	4	5	4	1	63	67
FI	17	6	7	8	2	3	73	83
FR	52	23	5	5	1	2	42	69
EL	46	21	7	2	1	3	45	74
HU	72	67	6	6	2	6	20	21
IE	44	8	1	1	26	16	29	74
IT	18	15	19	40	1	1	63	44
LT	94	95	0	1	0	0	6	3
LU	28	3	17	3	5	4	51	90
LV	69	79	4	6	16	7	11	9
MT	82	n.a.	0	n.a.	1	n.a.	17	n.a.
NL	36	20	0	4	14	7	49	69
PL	95	55	0	3	1	2	3	40
PT	22	4	5	4	2	0	71	92
RO	91	71	2	4	0	1	6	25
SE	33	17	15	21	4	3	48	59
SI	55	10	10	3	4	1	32	86
SK	87	58	5	7	3	11	5	23
UK	69	26	4	7	4	5	23	62

Source: ECS 2009.

There is great diversity across Europe, however. Company-level bargaining is dominant (i.e. covers above 50 % of the total of employees covered by any type of agreement) in the UK and 11 of the 12 new Member States (the exception being Slovenia). Higher-level bargaining, including two-tier bargaining

and higher-level agreements with derogation clauses, is dominant in the EU-15 (except for the UK) and Slovenia. Two-tier bargaining features most prominently in terms of employees covered in Italy, Sweden and Denmark; while Ireland and Germany have the highest percentage of employees covered by higher-level

agreements which contain derogations (see also below) <sup>(2)</sup>.

<sup>2</sup> In Ireland, there are only few sectoral collective agreements and they do not tend to include derogations. However, in the survey respondents probably refer to the national social pacts which have included an inability-to-pay clause since 2003, which also includes key conciliation and dispute-settling functions for the Labour Relations Commission (LRC) and the Labour Court (van Klaveren forthcoming).

Important differences also emerge when comparing the public and the private sector, with bargaining being noticeably more decentralised in the latter (Table 4.1). On average, for the private sector, of those employees covered by any type of agreement, bargaining is exclusively at company or establishment level for 44 %. In contrast, this is the case for only 26 % in the public sector. In some countries, single-employer bargaining hardly features at all in the public sector; 5 % or less if public sector employees are covered by local agreements in Portugal, Denmark, Germany and Luxembourg. The main exceptions to the broad picture are Austria and Latvia where there is substantially more local bargaining in the public than in the private sector. Conversely, higher-level bargaining is much more widespread in the public sector than in the private sector: of all public sector employees covered by any type of agreement 75 % fall under a higher-level agreement as compared to 56 % of private sector employees.

The differences in the importance of the various bargaining levels between countries and between the public and private sector have important implications. Two issues are of major significance here. One is that higher-level bargaining leads to more equal wages and working conditions in the companies or organisations falling under such agreements, taking a number of standards out of competition in the respective sector. Conversely, company-level bargaining allows for the definition of wages and working conditions in line with the specific circumstances of the respective company or organisation, leaving more space for tailored competitive strategies, which foster wage inequalities.

The other is that there is a clear link between the dominant level of bargaining and the percentage

of employees covered by collective agreements. The coverage of collective bargaining in the countries where company-level bargaining is dominant is markedly below that of the countries where higher-level bargaining is dominant (the only exception being Romania). In the former group coverage falls between about 15 and 55 %, while in the second group it ranges from about 60 to 100 %. Multi-employer agreements by themselves already cover large numbers of companies or establishments that are directly part of the agreement. In addition, in a number of countries collective agreements can also be extended to cover entire sectors or branches, substantially increasing their coverage in this way (see Chapter 1).

#### 4.2.2. Developments over time and across countries

As discussed in Chapter 1, decentralisation has been an important feature of developments in industrial relations in Europe in recent decades. The most extreme form of decentralisation follows from a decline in the coverage of collective agreements, resulting in more individual bargaining between employer and employee or to the unilateral definition of wages and working conditions by employers. Chapter 1 showed, however, that across the EU collective bargaining coverage has been relatively stable over the 2000s, with only a slight decline. More commonly decentralisation takes the shape of a shift in emphasis between bargaining levels, with the importance of company- or local-level collective bargaining gaining at the expense of sectoral collective bargaining, or of sectoral bargaining gaining at the expense of inter-sectoral bargaining. Decentralisation of collective bargaining towards company level is seen as a way of flexibilising wage setting and

linking wages more closely to the competitive position and requirements of individual companies. In terms of the process involved, Traxler (1995) distinguishes between organised decentralisation — increased scope for company-level bargaining but within the framework of rules and standards set by higher-level agreements — and disorganised decentralisation, that is, the replacement of higher-level bargaining by company bargaining.

Amongst the EU-15, the UK underwent a process of disorganised decentralisation during the 1980s and 1990s, as sector-level, multi-employer agreements were almost entirely displaced by single-employer, company or local-level, bargaining arrangements in the private sector. As a result, bargaining coverage declined from 70 % in 1980 to 34.8 % in 2007. To some extent developments in the central and east European (CEE countries) Member States in the early 1990s can also be viewed as a rapid process of disorganised decentralisation. Although before 1990 sectoral bargaining never played an important role in most of CEE countries and collective bargaining has always taken place mainly at company level, the central state had an important influence on wage setting and coverage rates were high. After 1990, in most CEE countries central elements disappeared from the wage-setting process (with the important exception of the minimum wage) and coverage rates declined rapidly. The main exception was Slovenia, where a continuous series of inter-sector social pacts and extensive sectoral bargaining have played a key role in wage setting (Stanojevic, 2010) <sup>(3)</sup>.

<sup>3</sup> Sectoral bargaining plays a substantial role as well in Slovakia; however, its significance has been declining recently as the number of multi-employer agreements concluded declined from 53 in 2004 to 37 in 2008 and the number subject to legal extension fell from eight to two in the same period (Cziria 2008; 2010).

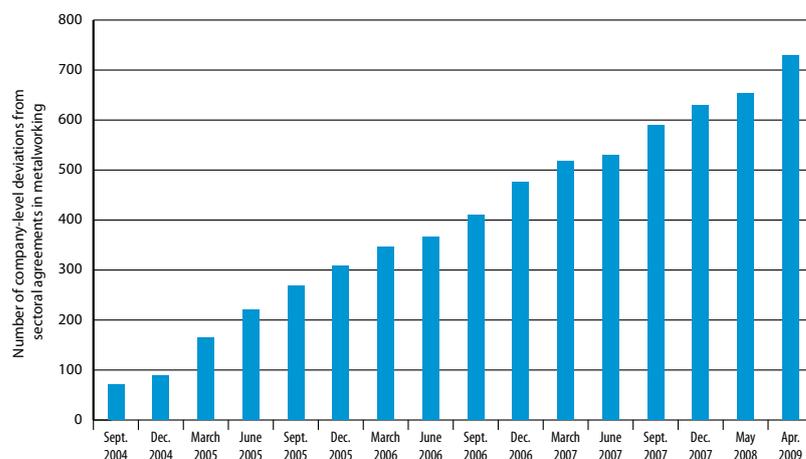
Organised decentralisation is largely an issue for the EU-15, where (inter) sectoral bargaining continues to play a major role. However, developments in the 2000s have not extended to all of these countries, and in those where a measure of (further) decentralisation has taken place, the extent of any change differs. Most profound has been the process of organised decentralisation of wage bargaining in the Nordic countries, and further organised decentralisation, but also the appearance of a disorganised dimension, in Germany. In Sweden, until the late 1980s private sector wage bargaining was undertaken at the central level, moving down to the sectoral level in the 1990s. In recent years, however, wage bargaining has continued to take place at the sector level in only a minority of sectors; more and more actual pay levels are determined at the local level within the context of sectoral guarantees concerning e.g. the minimum pay rise (Stokke, 2010). Similarly, in Denmark, following a process of decentralisation which started in the early 1990s, most employees are covered by sectoral agreements that now only set the sectoral minimum wage, leaving the rest up to local bargaining (Stokke, 2010; Ilsøe et al., 2007). In both countries wages can vary substantially between enterprises in the same sector. In Finland a tradition of 40 years of centralised wage agreements came to an end in 2007 as the Confederation of Finnish Industries decided not to participate further in central negotiations. As a result, wage bargaining moved down from the central level to the sectoral level. One of the key rationales for Finnish employers to press for such decentralisation was to enlarge the scope to introduce variable pay systems (Arrowsmith and Marginson, 2008). In Slovenia too, bargaining seems to be moving down from the inter-sector to sectoral level, with the

tradition of central agreement looking to have come to an end following the expiry of the most recent accord in 2009 (see Chapter 1).

Germany has also experienced a marked decentralisation of bargaining in the past decade, resulting in a significant shift of responsibilities from the sectoral level to the level of the company (Bispinck, 2008). The organised dimension to this process is driven by several mechanisms. First is the increased use of variable pay systems and in particular profit-related bonuses (see next section). Second is the increased use of opening and hardship clauses which allow company agreements to derogate from collectively agreed standards. Traditionally such clauses were designed for companies suffering from acute but temporary economic difficulties. In recent years, however, this has changed. The key agreement in this respect was the Pforzheim Agreement concluded in the metalworking and electrical industry in 2004, which allowed deviations from collectively agreed standards in certain cases in order to maintain and improve competitiveness, innovative capability

and investment (ibid.). Hence, opening clauses are now not only accessible for companies in acute economic difficulties but also for companies that more generally suffer from competitive pressures. As a result, the use of such clauses rapidly rose from 70 company-level derogation agreements in 2004 to 730 agreements in early 2009 (Chart 4.2); around 70 % of these agreements include derogations concerning wages (Bispinck and Schulten, forthcoming). Similarly in the chemical industry derogations concerning wages have been on the increase, from 6 in 1997 to 28 in 2003 to 115 in 2009 (ibid.). Thirdly, the number of sectoral collective agreements that have been legally extended has fallen steadily, from 408 in 1991 to 242 in 2005 (Bispinck, 2008). Fourthly, the coverage of collective agreements has fallen sharply since the mid-1990s also because of the growing propensity of employers to leave, or not join, employers' associations (see Chapter 1). In combination, these two factors have reduced the significance of the sectoral agreements and brought a disorganised element to the process of decentralisation in Germany.

**Chart 4.2: Number of company-level deviations from sectoral agreements in metalworking in Germany by quarter, 2004–09**



Source: Bispinck and Schulten (forthcoming).

In other EU-15 countries there has not been such a pronounced trend towards decentralisation of wage bargaining over the past decade. In Italy the picture has not changed much over the past 15 years. Since the conclusion of the July 1993 Pact, cost of living related wage increases have been negotiated at the sectoral level while company-level bargaining has dealt with additional pay elements linked to productivity, quality and competitiveness improvements, or company economic performance (Pedersini and Coletto, 2009). The incidence of such company bargaining has not, however, extended beyond 30 % of the private sector workforce and the take-up of the territorial alternative (potentially more attractive than company-specific negotiations to small- and medium-sized enterprises) has been low. This may change in the near future, however. In January 2009, a number of employers' organisations including the main Confindustria confederation, concluded the framework agreement for the reform of the collective bargaining system with two of the three main trade union organisations, UIL and CISL. The agreement was sponsored by the government which also signed it as the employer in the public sector. It promotes certain types of decentralisation of collective bargaining. Most importantly, it provides the possibility to introduce opening clauses permitting company-level collective bargaining — or territorial-level bargaining — to change in pejus the standards of sectoral agreements, including wages, in order to deal with situations of economic crisis and restructuring, or to promote economic and employment growth. The largest trade union confederation, CGIL, refused to sign the agreement considering that it would break the integrity of the national bargaining structure and weaken workers' protection (Pedersini, 2009). For the moment it is not yet clear if the agreement will

indeed lead to more decentralisation of collective bargaining, as the opposition of the largest trade union may prove to be a major obstacle to its implementation.

In France, the so-called 2004 Fillon law enacted a reform intended to further the decentralisation of collective bargaining. The law reversed the traditional favourability principle, which stated that lower-level collective agreements could not deviate from higher-level agreements to the detriment of the employee. It provides that lower-level agreements can deviate from higher-level agreements unless this is specifically forbidden. In doing so, it explicitly aims to promote company-level bargaining. Nonetheless, under the Fillon law the favourability principle remains in force in respect of four themes which are exempted from derogation at company level: minimum wages; job classifications; supplementary social protection measures; and multi-company and cross-sector vocational training funds (Ramos Martin, forthcoming). As a result, the possible effects of on wage bargaining are limited to additional wage elements which are not exempted, such as performance-related pay, shift allowances child-birth allowances, seniority payments, etc., the basic features of which have been commonly agreed at sectoral level. An evaluation of the impact of the reform published by the Ministry of Labour Social Relations and Solidarity in 2008 finds that there have been no notable changes in the levels at which bargaining takes place and that employers and trade unions continue to follow well-established practices (Dufour, 2008).

In Austria the sector level remains firmly established and decentralisation is limited. Some wage flexibility

is provided by the so-called 'distribution option', part of the metalworking collective agreement since 1997 (Adam, 2009a). Under this provision, the works council and the employer can redistribute a certain amount of the total wage bill at company level. For example, in 2007, 0.3 % of the actual wage increase could be distributed flexibly, in line with certain criteria (e.g. compensation for especially low incomes or high performance, reduction of the gender-related pay gap, etc.) to be agreed upon by the parties to the works agreement. More recently, an obligatory 'distribution pot' (Verteilungstopf) was included in the metalworking collective agreement, effective as of 2010, under which the employer is obliged to distribute a fixed amount of the total wage bill among the employees based on three criteria: work performance (including social skills); improvements of the company's pay structure in favour of low pay; and equal treatment of female and male workers (ibid.). Compared to the Nordic countries and Germany, however, this amounts to a highly limited form of decentralisation; the basic wage is still firmly set at the sectoral level. Similarly, in Belgium, the Netherlands and Spain decentralisation has hardly affected the predominant role of sector and intersectoral wage bargaining in determining the basic wage.

This does not mean, however, that in the latter countries no decentralisation of wage setting has taken place. As discussed in the following section, variable pay systems regulating additional pay elements related to individual or company performance are growing in importance across Europe. Similarly, in a number of countries cafeteria-type arrangements under which employees can exchange a defined part of their wages for additional free time or additional pension

contributions play an increasing role at the company level. The basic features of such types of flexible wage setting may still be defined in sectoral collective agreements, but their actual outcomes depend on the performance of companies or individuals and in the case of cafeteria plans also on the preferences of the latter.

The present economic and financial crisis has intensified the debate on the decentralisation of wage bargaining in some countries (see Chapter 3). The fact that the impact of the crisis differs strongly between companies even within the same sector has brought current sector wage-setting arrangements under renewed pressure, as in Austria for example (see Box 4.2). In the Nordic countries and Germany there are a number of examples of crisis-induced organised decentralisation, with sectoral agreements providing for additional opt out possibilities related to the crisis (see Chapter 3; also Glassner and Keune 2010). In Ireland, a long tradition of national-level pay agreements has come to an end as government, unions and employers' organisations could not come to agreement on wage policy during the crisis (see Chapter 3). For the moment voluntary coordination of wage bargaining between unions and employers governs wage setting, which may point to a return to centralised pay agreements at some point in the future. Elsewhere amongst the EU-15, however, the crisis does not seem to have led to, or created pressure for, further decentralisation of wage bargaining.

### 4.3. Variable pay systems

A second issue which is of paramount importance for wage flexibility is that of variable pay systems (VPS). Under variable pay systems, on top

#### Box 4.2: The Austrian wage bargaining system under strain because of the crisis

In Austria, the Federation of Austrian Industry (Industriellenvereinigung, IV) recently called for Austria's common practice of multi-employer agreements to be replaced by company-level settlements. Such a change would signify a breach of Austria's traditional system of annual sectoral collective bargaining. IV argued that any wage increases concluded at sectoral level would substantively threaten those enterprises currently operating at a loss due to the economic crisis. IV's demand was strongly rejected by the trade unions, which called for the conclusion of sector agreements providing for decent increases in wages as a means of sustaining domestic purchasing power and therefore economic activity (at a time of sharp decline in exports and investment expenditure). After a series of unsuccessful negotiating rounds in several sectors of the economy during April and May 2009, the trade unions accused the employers of apparently adopting a concerted strategy of obstructing wage negotiations. As of mid-May, talks in about 10 sectors employing some 400 000 workers were deadlocked, including electronics, textiles, road haulage, paper, chemicals, information technologies and graphic design. Five of the strongest trade unions organised a demonstration on 13 May, involving some 25 000 participants, with the aim of pressurising the employer side to return to the negotiating table.

For the moment, it seems that the Austrian system of sectoral wage bargaining will survive this crisis. In November 2009 the pattern-setting metalworking industry concluded a new sectoral agreement, after protracted negotiations. The agreement sets a real wage increase for the sector of about 1 %, similar to previous years. It also includes a commitment from the side of the trade unions to enter into negotiations with the employer side on working time flexibility and to present proposals on how to render working time more flexible in the sector.

*Source: Adam (2009b, 2010).*

of the basic wage, workers receive performance-related variable pay elements that are dependent on the performance of the company as a whole, of the team to which a worker belongs, or of the individual worker. VPS have for many years been a hotly debated issue. The classical economics questions in this debate are to what extent monetary incentives can improve firm performance and workers' productivity, skills, motivation and involvement in process and product innovation, and what the role of such incentives is in attracting and retaining core staff (e.g. Lazear, 2000; Blinder, 1990; Cox, 2005; Robinson and Wilson, 2006; Marsden and French, 1998). Closely related is the question to what extent VPS are an instrument of flexibilisation in terms of adjusting wage costs to firm performance and in particular in reducing wage costs in times of economic hardship. An alternative to these efficiency-based approaches are those dealing with the contribution of profit sharing and employee share

ownership to the redistribution of wealth and the strengthening of economic democracy (e.g. Gold, 2003; Standing, 1999). Finally, there are an increasing number of studies trying to map and explain the emergence of VPS from a more institutionalist perspective and to understand the respective roles of public policy, workers' representatives and management (Pendleton et al., 2002; Nergaard et al., 2009; Kabst et al., 2006; Vaughan-Whitehead et al., 1995).

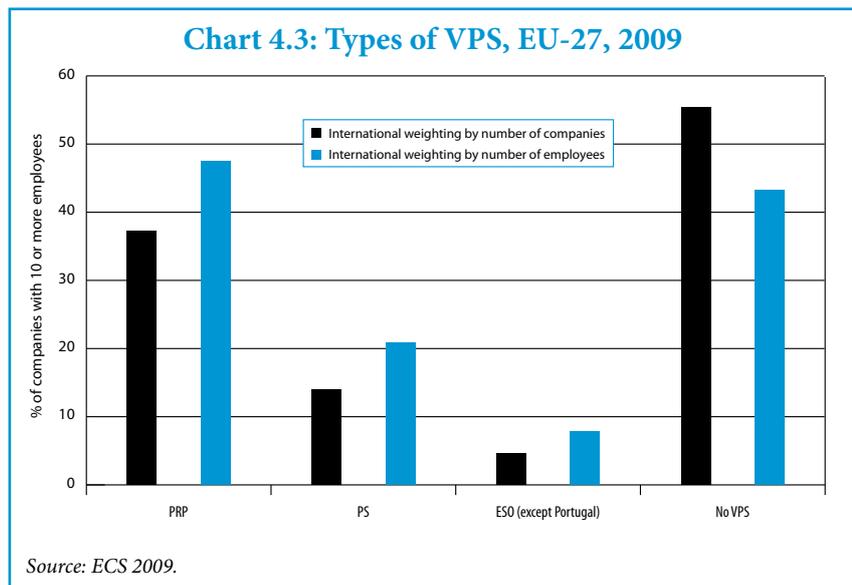
The debates on variable pay, and in particular on the efficiency-based approaches, are rather inconclusive: whereas many studies point to a positive relationship between VPS and productivity or firm performance, others shed doubt on these results, finding that there is no or even a negative relationship, whilst yet others identify factors conditioning any relationship. There is also a lack of comprehensive comparative data and research.

This section draws on new comparative data from the European Company Survey (ECS) on the use of various types of VPS in Europe across the EU. It identifies differences between countries, sectors and enterprises of different sizes and considers some of the factors which might account for cross-country differences in particular. The ECS data also throw light on the motives management has for implementing VPS and on the respective position of employee representatives towards these schemes. The focus is on the use of three major types of VPS: individual and team-based performance-related pay (PRP), profit sharing (PS) and employee share ownership (ESO) (4). Since the ECS provides data only for one point in time, reference will be made to other sources to gain some indication of developments over time in the use of VPS. The discussion is largely confined to the private sector since PS and ESO, with Box 2.1 briefly comparing the situation in the public sector.

### 4.3.1. The incidence of VPS in the private sector

Variable pay systems (VPS) are a widespread, although far from universal, feature of contemporary pay systems in the EU. Across the EU-27, one of more types of VPS are found in 44.5 % of companies with 10 or more employees, employing 56.6 % of employees. Conversely, this means that just over half of companies, employing just under half of the relevant workforce, do not use any form of VPS (Chart 4.3). Of the three types of VPS distinguished above, performance-related pay, based on individual or team performance,

4 Unfortunately, for performance-related pay, the ECS did not differentiate between traditional output-based schemes and more recent appraisal-based schemes.



is by far the most frequently used: Chart 4.3 shows that 37.2 % of companies employing 47.5 % of employees have some form of performance-related pay. This reflects the widespread belief that performance pay leads to higher productivity and improved company performance, even though, as noted above, there is no consensus on this relationship amongst the many studies undertaken. Much lower is the incidence of employee financial participation through profit sharing schemes (14.0 % of companies, employing 20.9 % of employees) and employee share ownership schemes (4.6 % of companies, employing 7.9 % of employees). Set against the initiatives from the European Commission to promote employee financial participation, these latter figures seem low (5).

The occurrence of VPS in the EU is closely related to three key factors:

5 As early as 1989, the European Commission included employee financial participation among the priority objectives of its action programme for the implementation of the Community Charter of Basic Social Rights of Workers, followed by a Commission recommendation on this issue (1992) and a Commission 'Framework for promoting employee financial participation' in 2003 (Lowitzsch 2006).

country, sector and size (a fourth factor concerns the public-private sector divide, see Box 4.3). Large differences in the use of VPS can be observed between countries (Chart 4.4). For example, while in the Czech Republic as many as 71 % of companies use PRP schemes, in Hungary only 19.8 % of companies do so. Similarly, profit sharing is used in 35 % of French companies but only in 2.9 % of Italian companies, whilst employee share ownership is found in 12.9 % of Danish companies but only in 0.9 % of Lithuanian ones. The main factor explaining these differences may concern different institutional contexts, i.e. different rules and regulations that govern the use of VPS. For example, the high level of PRP in the Czech Republic is likely to be linked to the fact that the Czech Labour Code, unique in the EU in this respect, specifically encourages performance pay. Indeed, it stipulates that 'wages and pay shall be provided according to the complexity, responsibility and strenuousness of work; according to the difficulty of working conditions; according to work performance and achieved work results' (Arrowsmith and Marginson, 2008: 20). It also

provides for binding rules regarding extra pay and personal bonuses whereby consistently high levels of performance may be rewarded with an individual bonus of up to 50 % of the pay tariff of the highest wage level in the particular pay grade (ibid.). In Slovenia, where the incidence of PRP schemes is also high, it is the social agreement between the national social partners for the period 2007–09 that advocated relat-

ing wages to productivity (ibid.). Similarly, the high level of profit sharing in French companies results from the fact that the country has a mandatory profit sharing scheme for companies with a workforce of over 50 since the 1960s. This scheme requires companies to set aside a statutorily defined percentage of their profits for distribution to employees (van het Kaar and Grünell, 2001). In Denmark, multiple options and tax

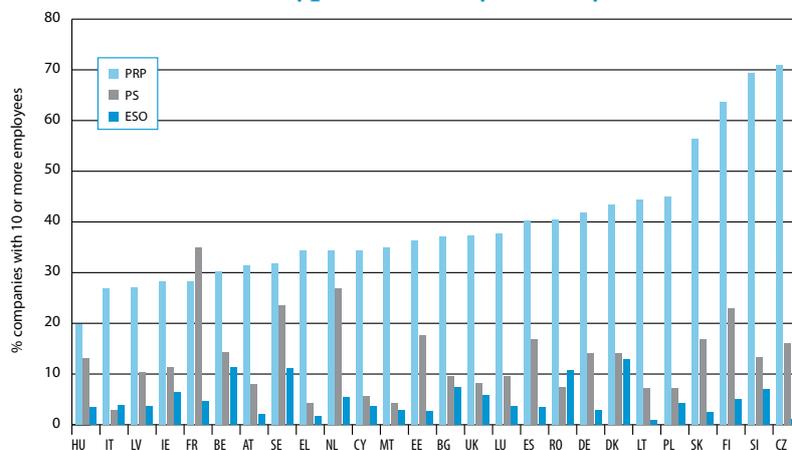
benefits serve to promote employee share ownership and ESO schemes are increasingly subject of collective bargaining. Through such statutory or collectively agreed regulations and promotional measures the state and the social partners can play a decisive role in promoting the use of VPS.

There are also clear differences in the use of variable pay schemes between sectors (Chart 4.5). The three types of VPS are most prevalent in financial intermediation followed by real estate and business services, and by trade and repair. Conversely, in health and social work, public administration and defense, and education, only limited use of VPS is evident. The sectors with a high incidence of VPS often have a long tradition of individual and collective financial incentives.

In addition, financial intermediation and business services have faced a tight labour market for highly educated labour in many countries in recent years, leading to the use of bonuses to attract employees and rewards improvements in education and training (van het Kaar and Grünell, 2001).

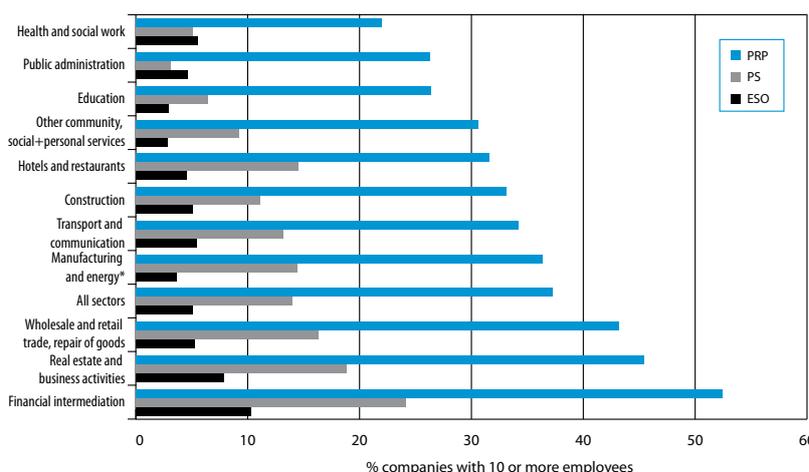
Turning to size, the use of all three types of VPS increases continuously with the employment size of establishments (Chart 4.6). Comparing companies with 10-19 employees to those with 500 or more employees, the incidence of PRP schemes in the largest establishments is twice that in the smallest. For PS and ESO schemes, the respective differences are 2.3 and 3.6 times. Amongst enterprises with 250 or more employees, over 60 % apply PRP schemes, some 27 % use PS schemes and some 13 % have ESO schemes, all far above average. This is not surprising: designing and implementing VPS schemes often requires substantial management

Chart 4.4: Types of VPS by country, 2009



Source: ECS 2009.

Chart 4.5: VPS by sector, 2009



Note: 0.4% (or 69) of companies reported being classified to NACE sector public administration and defence. \* This might be a misclassification (the manufacture of defence equipment is classified elsewhere) or the companies might provide support services.

Source: ECS 2009.

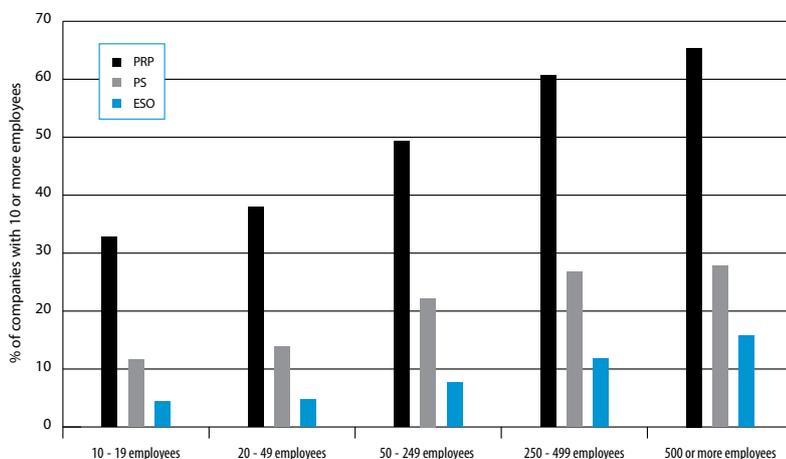
**Box 4.3: comparing VPS in the public and private sector**

VPS are by no means the prerogative of the private sector. In the public sector more than one-third (36 %) of establishments use at least one type of VPS. This is well below the respective figure for the private sector (44.6 %) but still important. The major difference from the private sector is that VPS in the public sector is largely confined to performance related pay (PRP). PRP schemes are used in 33 % of public sector establishments, close to the 37.2 % figure for the private sector. Forms of financial participation by employees are scarce, reflecting the different ownership and non-profit status of many public sector organisations. Even so, almost 6% of public sector establishments reported profit sharing (PS) schemes and 2 % employee share ownership (ESO) schemes.

**VPS in public and private establishments, EU-27, 2009 (% establishments)**

	Public	Private
PRP	33.0	37.2
PS	5.7	14.0
SO	2.0	4.6
No VPS	63.9	55.4

Source: ECS 2009.

**Chart 4.6: VPS by company size, EU-27, 2009**

Source: ECS 2009.

involvement, administrative capacity, expertise in HRM techniques, etc. (Cox, 2005). Larger companies are more likely to have these resources than smaller ones. This is also consistent with findings that multinational companies have, in many countries, been among the main promoters of variable pay schemes (Marginson and Meardi, 2009).

These differences by size also point to the fact that the percentage of companies using such schemes says little about the percentage of employees covered by them. Because VPS are more widespread amongst larger companies, the percentage of employees covered is consistently higher than the percentage of companies (as shown in Chart 4.3).

**4.3.2. Management motives and employee representatives' attitudes**

The ECS gives some insight into the motives management has for the introduction of VPS. In particular it has identified the reasons why managements decide to introduce such schemes. Chart 4.7 reports the findings for profit sharing schemes (6). The most important management motive for the use of profit sharing is to increase staff motivation: more than 60 % of managers see this objective playing a large role in the decision to adopt profit sharing schemes and over 20 % see it playing at least some role in this respect. Between 40 and 50 % of managers see profit sharing as an important instrument to boost employee productivity, improve employee involvement in process and product improvements, and attract and keep well-qualified staff. Another 20 to 30 % see these three objectives play some role in adopting profit sharing schemes. Cost containment does not emerge as a salient rationale: some 60 % of managers say that the reduction of wage costs in periods when economic activity slackens plays little role in adopting profit sharing schemes. Hence, from the perspective of management, such schemes are primarily oriented towards improving the functioning of human resources and assuring the continued availability of personnel of the appropriate quality.

Trade unions have varying positions on VPS, both between and within countries. Concerning between-country differences, in some countries (e.g. Ireland or Italy) unions see VPS as a way to give employees a share in favourable company results, with the Irish unions seeing variable pay also as a way of broadening

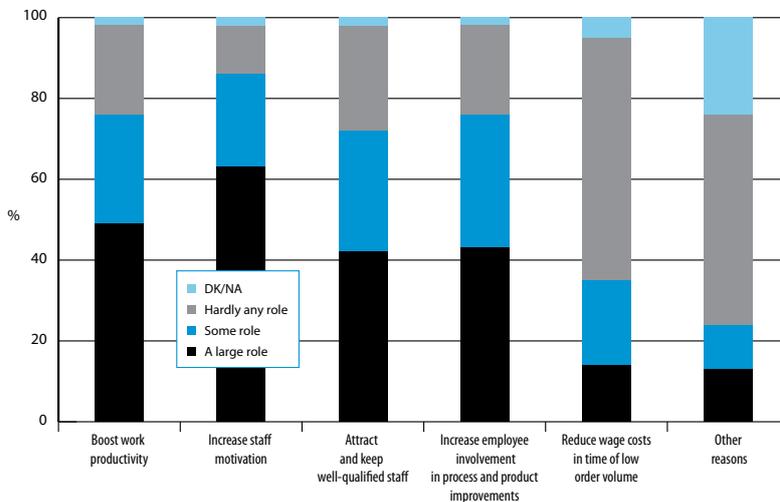
6 Comparable data on the other two types of VPS were not available.

employee ‘stakeholding’ in the enterprise; while in others (e.g. Belgium and France), unions believe that workers should not have to shoulder the burden of corporate risk through variable pay (van het Kaar and Grünell, 2001). Trade unions also fear that VPS may affect basic wages, lead to greater wage inequality and potentially undermine solidarity and principles like equal pay for equal work. In most central and

east European Member States trade unions accept VPS elements as long as long as they are paid on top of collectively agreed wages; although in the Czech Republic (where the incidence of PRP schemes is the highest in the EU) the policy of the main trade union confederation, ČMKOS, is to increase base wages as a proportion of earnings and thereby to reduce the variable proportion (Arrowsmith and Marginson, 2008).

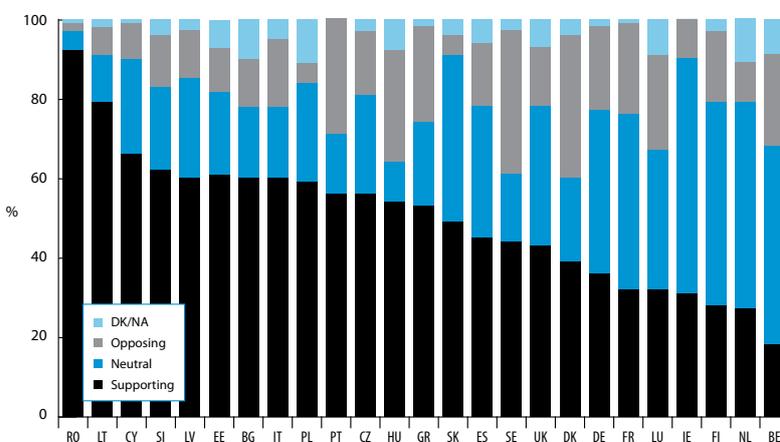
The position of company-level employee representatives varies both across and within countries, with responses ranging from cautious cooperation to confrontation with management, depending on the type of VPS in question, the institutional context and the local power relations (Nergaard et al., 2009). As Chart 4.8 shows, in the central and east European Member States 50 % or more of company-level employee representatives are supportive of VPS, while — with the exception of Hungary — the percentages opposing VPS are low (7). At the other end of the spectrum, in the Netherlands, Belgium and Finland the percentage of employee representatives supporting VPS is below 30, while in particular in Sweden and Denmark the positions of employee representatives are rather polarised with a substantial share supporting and a substantial share opposing VPS.

**Chart 4.7: Management’s motives for introducing profit sharing schemes**



Source: ECS 2009.

**Chart 4.8: Attitude of company-level employee representatives towards VPS, by country, 2009**



Source: ECS 2009.

**4.3.3. Developments over time**

The ECS presents a picture of the situation concerning VPS at one moment in time and does not allow for comparisons over time. The consensus in the literature is that the use of VPS has been increasing in recent years (Arrowsmith and Marginson, 2008; Kersley et al. 2004; Welz and Fernández-Macías 2008), including appraisal-based forms of PRP and forms of profit sharing and profit-related pay. Not all types of VPS are, however, on the rise; in particular, the use of piecework, one of the most traditional forms of performance pay, is in decline. This follows changes in job requirements, which increasingly emphasise quality, flexibility and teamwork (Arrowsmith and Marginson, 2008).

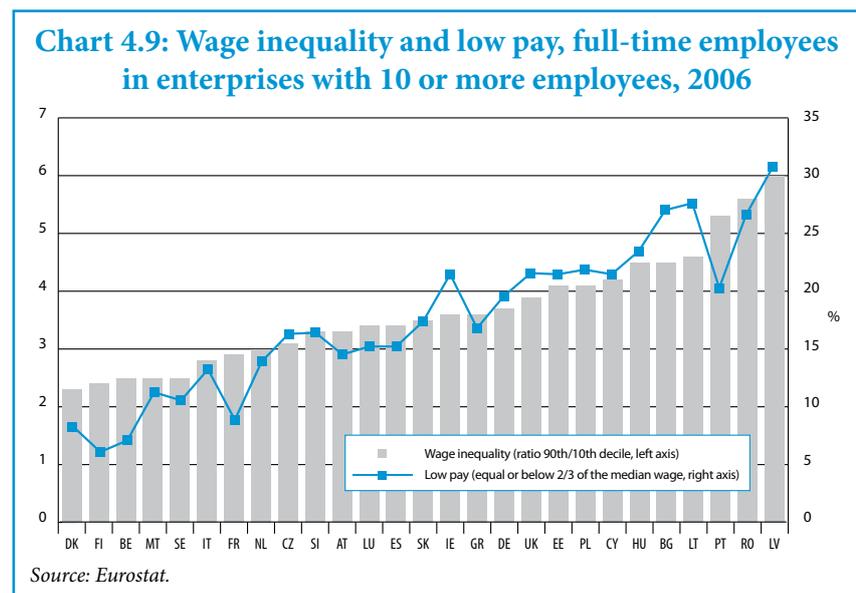
7 The data available did not allow a differentiation according to the different types of VPS.

Growth in the use of VPS reflects the growing interest in variable pay arrangements on the part of employers (see above). In some countries, institutional factors have also been important, as indicated earlier. The growth of VPS has prompted, and been facilitated by, the decentralisation of pay setting. As Arrowsmith and Marginson (2008) show, VPS are only to a limited extent regulated by multi-employer agreements, through general recommendations or procedures, and are more usually left to company-level negotiation or determination. The result, the authors argue, has been unilateral implementation of schemes by companies, more marked in some countries than others, as well as their introduction through negotiations with local trade unions or works councils. The increasing use of variable pay may then undermine the relevance of sector-wide collective agreements, while also contributing to the further individualisation of employment relations.

## 4.4. The minimum wage

### 4.4.1. Low pay and wage inequality

The minimum wage is relevant to the issue of wage flexibility as it sets limits to wage flexibility by establishing a wage floor in the labour market. Depending on the level at which the minimum wage is set it may also play an important role in containing wage inequality and low pay. The generalised decline of trade union density across Europe, combined in some countries with a declining coverage of collective wage bargaining and/or the decentralisation of wage bargaining, factors that are negatively correlated with wage inequality (European Commission,



2008, Chapter 3), make the minimum wage all the more relevant in this respect. Other factors too are leading to increasing concern about wage inequality and low pay, including the rise of non-standard flexible employment contracts and the growing use opening clauses in collective agreements in certain countries, in particular Germany (see above). Worries concerning low pay are further strengthened by the increased mobility of labour within the EU (Vaughan-Whitehead, 2008). In countries receiving migrants from central and eastern Europe, it is often feared that these workers will be forced to accept low pay and that, in turn, this will result in downward wage pressure for domestic workers. In sending countries, low pay is seen (or this was the case at least until the onset of the crisis) as a motive for outward migration, resulting in shortages of workers and skills.

The incidence of low pay and the extent of wage inequality vary substantially across the EU, as Chart 4.9 shows. The chart also shows a clear positive correlation between the two indicators. In the countries where

wage inequality is highest, low pay is also most widespread. Low pay, here referring to full-time employees in enterprises with 10 or more employees who are paid at, or below, two-thirds of the median wage, averages 17.2 % for the EU-27. This represents one out of every six employees. If part-time employees and employees in small enterprises were to be included in the calculation, this percentage would most likely be substantially higher. Low pay affects more than a quarter of employees in four countries: Bulgaria, Romania, Lithuania and Latvia, reaching 30.9 % in the latter. The proportion affected is below 15 % in the Nordic countries, Belgium, France, Austria, the Netherlands and Italy, all countries where multi-employer bargaining dominates and/or extensions of collective agreements by the state play a crucial role. With only a few exceptions low pay and wage inequality are higher in countries where company-level bargaining dominates and coverage of collective agreements is low, while both are lower in countries where higher-level bargaining dominates and coverage rates are high. The most

striking exception here is Germany where, at 19.6 %, low pay is above the EU average and only just below the level in some of the countries where company bargaining dominates, including the UK and Poland. This may well result from the disorganised element that has emerged in Germany where collective bargaining has been further decentralised (see the first main section).

Wage inequality, here defined as the ratio between the 90th and the 10th decile in the distribution of wages, is lowest in Denmark (ratio of 2.3) and highest in Latvia (ratio of 6.0). Again, wage inequality tends to be greatest where company bargaining dominates and collective bargaining coverage is lower. Conversely, it is lowest where higher-level bargaining dominates and collective bargaining coverage is higher. In contrasting ways, the Czech Republic and Portugal would seem to be the main exceptions to this pattern (see Chart 4.9).

#### 4.4.2. The statutory minimum wage

Minimum wages can be set by law or by collective agreements. Statutory minimum wages are the most common mechanism. Twenty out of 27 Member States have a statutory minimum wage and in some of the other seven there is debate over the desirability of introducing a statutory minimum wage or devising, or strengthening, functional equivalents.

The presence of a statutory minimum wage does not, however, necessarily lead to a lower incidence of low pay: the seven countries with the highest level of low pay all have a statutory minimum wage. The absolute level of the statutory minimum wage, its relative value as compared to the average wage and its enforcement are the key

**Table 4.2: The statutory minimum wage in 20 EU countries, per hour, 2002–09 (euro)**

	2002	2009	Growth	Real growth
BG	0.3	0.71	1.37	0.52
RO	0.19	0.83	3.37	1.12
LT	0.71	1.4	0.97	0.47
HU	1.03	1.47	0.43	- 0.03
LV	0.49	1.47	2	0.86
PL	1.02	1.7	0.67	0.43
SK	0.88	1.7	0.93	0.47
EE	0.7	1.73	1.47	0.8
CZ	1.28	1.82	0.42	0.19
PT	2.1	2.71	0.29	0.14
SI	2.28	3.41	0.5	0.11
MT	3	3.67	0.22	0.05
ES	2.68	3.78	0.41	0.14
EL	2.83	4.05	0.43	0.18
UK	4.6	6.43	0.4	0.2
BE	7.05	8.41	0.19	0.02
NL	7.4	8.47	0.14	0
IE	5.97	8.65	0.45	0.19
FR	6.67	8.71	0.31	0.15
LU	7.46	9.49	0.27	0.06

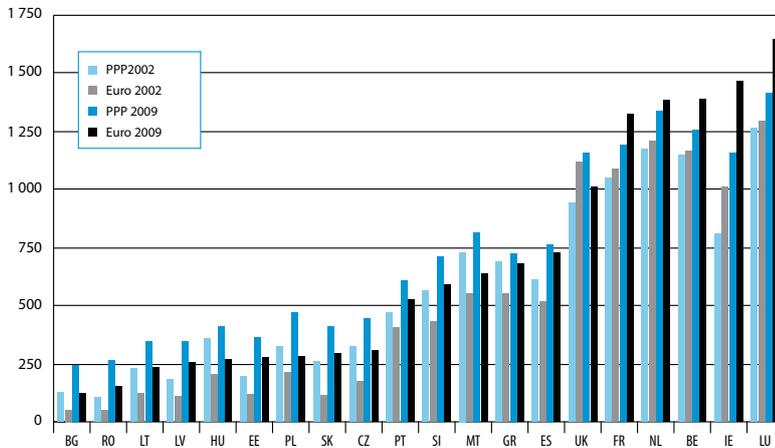
Source: ECS.

The hourly minimum wage is calculated in different ways, depending on the country. In the countries where it exists, the statutory hourly minimum wage for adults is used. Where this is not available, the statutory monthly minimum wage for adults and the average collectively agreed weekly working time provided by the European Industrial Relations Observatory is used to calculate the hourly minimum wage (see <http://www.eurofound.europa.eu/eiro/studies/tn1004039s/tn1004039s.htm#hd1>). In case the latter is not available the statutory working week is used. For further details see: [http://www.boeckler.de/pdf/ta\\_mindestlohn datenbank.pdf](http://www.boeckler.de/pdf/ta_mindestlohn datenbank.pdf).

factors determining the extent to which minimum wages provide an effective floor in the labour market. Table 4.2 and Chart 4.10 respectively show the levels of the hourly and monthly minimum wages for the 20 EU countries with a statutory minimum wage for the years 2002 and 2009. The large differences in the level of the minimum wage across countries are striking, with the highest minimum wage in euro terms (both hourly and monthly) being more than 10 times higher than the

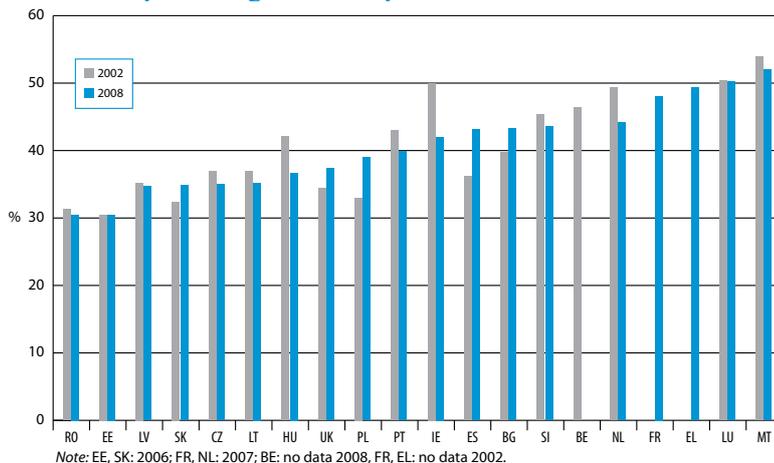
lowest. In 2009, the hourly minimum wage ranged from EUR 0.71 in Bulgaria and EUR 0.83 in Romania to EUR 8.71 in France and EUR 9.49 in Luxembourg. Monthly minimum wages, range from EUR 122.7 in Bulgaria, to EUR 1 641.7 in Luxembourg. In purchasing power parity the range becomes smaller because of price differences but the highest monthly minimum wage is still almost six times as high as the lowest minimum wage. The repercussions are important: the six countries

**Chart 4.10: Monthly minimum wage in 20 EU counties, 2002 and 2009 (euro and PPP)**



Source: Eurostat.

**Chart 4.11: Monthly minimum wage as a percentage of average monthly earnings, industry and services, 2002 and 2008**



Note: EE, SK: 2006; FR, NL: 2007; BE: no data 2008, FR, EL: no data 2002.

Source: Eurostat.

with the lowest hourly minimum wage are also the six that have the highest incidence of low pay and they are among the eight countries where wage inequality is highest.

In general the central and east European Member States have lower minimum wages than the EU-15, with Slovenia being somewhat of an exception. Nonetheless, the two groups of Member States should not be considered as internally homog-

enous. Amongst the EU-15, the Portuguese minimum wage of 2009 amounts to only 28.6 % of that of Luxembourg, whilst amongst the central and east European Member States the Romanian minimum wage amounts to only 24.3 % of the Slovenian one. When observing the growth over time of the minimum wage, a clearer difference emerges between the two groups of Member States in the pattern of growth over time. Both in nominal and in

real terms minimum wage growth is higher in central and east European Member States than in the EU-15. Over the period 2002–09, the real minimum wage per hour increased by 80 % in Estonia, by 86 % in Latvia and by 112 % in Romania. The exception was Hungary, where real growth over this seven-year period was just below zero. Amongst the EU-15 the highest real growth over this period was in the UK (20 %), well below that in most of central and eastern Europe, while in Belgium, Luxembourg and the Netherlands there was hardly any growth. Over time, then, the gap between the two groups of Member States has been reducing, albeit slowly.

Following the onset of the crisis, this trend would seem, however, to have come to a halt. It might have been expected that the real value of statutory minimum wages would have been maintained or even increased so that they could effectively perform their protective function in particular in the countries with the lowest minimum wages (and where low pay is most widespread). However, data from WSI's minimum wage database show that in 2009 the hourly minimum wage saw its real value decline in nine countries. In some cases this decline was quite substantial (e.g. 5.6 % in Romania and 4.2 % in Lithuania). These countries include eight of the central and east European Member States (the exceptions being Slovenia and Slovakia), whilst the ninth is the UK. With the exception of the Czech Republic, these are all countries where low pay is already relatively high.

Turning to the relationship between the statutory minimum wage and average wages, in 2008 the level of the statutory minimum exceeded 50 % of the average wage only in Luxembourg and Malta, whereas in 10 countries it amounted to less than

40 % of the average wage (Chart 4.11). This underlines that in a significant group of countries the level at which the statutory minimum is set most likely means that it has only a limited impact on low pay. Moreover, the minimum wage seems unable to keep up with average wage developments in the labour market. Between 2002 and 2008 the minimum wage lost some terrain to the average wage in 11 countries, most strongly in Ireland (a decline of 8 percentage points), Hungary (- 5.4 percentage points) and the Netherlands (- 5.1 percentage points). Conversely, the minimum wage increased by more than the average wage in only five countries, in particular in Spain (6.9 percentage points) and Poland (6.1 percentage points). Recent reductions in the real value of the statutory minimum wages in some countries (see above) suggest that the dominant tendency for minimum wages to fall behind average wages may be further spurred by the present crisis. As a result, in a number of countries the statutory minimum wage may see its key role as a protective floor in the labour market decline, or cease to be of significance at all, with all the associated consequences for low pay and wage inequality.

#### 4.4.3. Minimum wages through collective agreements

In Germany, Italy, Denmark, Austria, Sweden, Finland and Cyprus there is no general statutory minimum wage. In Cyprus, a statutory minimum wage exists for a limited number of occupations only (sales staff, clerical workers, auxiliary healthcare staff and auxiliary staff in nursery schools, crèches and schools). Elsewhere, the setting of minimum wages has traditionally been left largely to trade unions and employers who define

#### Box 4.4: A European minimum wage policy to guarantee decent wages?

In recent years there has been a growing debate on whether or not minimum wages should also become a focus of EU-level policy (Schulten, 2008, Vaughan-Whitehead, 2010). Several prominent EU policymakers, such as Luxembourg Prime Minister and President of the Eurogroup, Jean-Claude Juncker and the former European Commission President Jacques Delors have called for a European minimum wage policy, according to which every employee should be entitled to a decent wage.

The idea of a European minimum wage policy was discussed for the first time in the 1970s when the Council of Europe tried to define the 'right to a fair remuneration' which was laid down in the Council's European Social Charter from 1961. At that time the Council proposed a definition according to which a fair wage had to be at least 68 % of the national average gross wage. The Council developed a new threshold in the 1990s which determined that a fair wage has to be at least 60 % of the national average net wage.

At EU level the first debate on a European minimum wage policy came with the adoption in 1989 of the Community Charter of Fundamental Social Rights for Workers. This states that 'workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living'. In 1993 the European Commission published an 'opinion on an equitable wage' in which it demanded the Member States to 'take appropriate measures to ensure that the right to an equitable wage is protected.' It emphasised that 'the problem of low pay is an issue in all countries of the European Community' and that 'the persistence of very low wage levels causes problems of equity and social cohesion, which could be harmful to the effectiveness of the economy in the long term' (European Commission, 1993). In reaction to the Commission's activities the European Parliament demanded more binding European guidelines for national minimum wages and encouraged all Member States 'to establish a minimum wage that amounts to a certain proportion of the national average wage' (European Parliament, 1993). More recently, the European Parliament returned to the issue in 2008 and called 'on the Council to agree an EU target for minimum wages ... to provide for remuneration of at least 60 % of the relevant ... average wage' (European Parliament, 2008).

Considering the large differences in the absolute value of the minimum wages, a European minimum wage policy is not about the harmonisation of minimum wages towards a single European rate. Instead it aims to set up common standards at EU level, which, for example, might guarantee that national minimum wages are not fixed below a certain percentage of national average wages. As noted by the European Parliament, in many EU countries 'the minimum wage is set very low or at below subsistence level' (European Parliament, 2007: 469), as relative minimum levels wage are often well below 50 % of average wages. There is also growing awareness in many Member States of the problem of low pay, and several have started to develop strategies for more substantial increases of minimum wages in a mid-term perspective. A European minimum wage policy might be able to support such policies in order to make sure that all employees in Europe receive a decent wage.

*This box was contributed by Thorsten Schulten, Institute of Economic and Social Research (WSI) in the Hans-Böckler Foundation*

minimum wages in collective agreements, mainly at the sectoral level. In Germany the Minister for Labour, under the Arbeitnehmer-Entsendegesetz (Postal Workers Law), can make a collectively agreed minimum wage binding on all employment in a sector, irrespective of whether or not the employer is directly bound

by a sectoral collective agreement. Such minimum wages exist now for a limited number of sectors, including construction, but remain controversial as shown by the case of the postal sector. Collectively agreed minimum wages for the postal sector, set in a collective agreement between Ver.di and the Postal Services Employers'

Association (in which Deutsche Post is the largest and most influential member), were legally extended by the government to the entire sector in late 2007. However, the competitors of Deutsche Post challenged the sectoral minimum wage in court. The court ruled against the government's action, on the grounds that parties to other collective agreements in the sector had not had access to the procedure adopted, leaving the sector without a generally applicable minimum wage (Vogel, 2010).

One consequence of collectively agreed instead of statutory minimum wages is that minimum wages may not be uniform, but differ by sector and possibly also by type of job or by region. For example, in Germany, in 2009, the relevant collective agreement set a minimum wage of EUR 863 for a salesperson without experience in the bakery sector in eastern Germany, while agreement concerned set a minimum of EUR 1 844 for a skilled steelworker without experience in both eastern and western Germany (WSI, 2010). And in sectors where trade unions are weak, collectively agreed minimum wages may be low as compared to similar countries with a statutory minimum. For example, the minimum wage of EUR 863 in the bakery sector in eastern Germany is well below the statutory minimum wages of more than EUR 1 300 in France, Belgium and the Netherlands. Moreover, those parts of the labour market not covered by collective agreements may lack any minimum standard.

Nonetheless, collective agreement would seem to be an effective mechanism for establishing minimum wages in most of the countries concerned. Compared to the EU average, the incidence of low pay is low in five of these seven countries

(Chart 4.9). The Nordic countries have among the lowest levels of low pay in the EU and in Italy and Austria low pay is also below the EU average. High trade union membership, combined with extensive coverage of collective agreements, results in relatively low level of wage inequality and discourages the emergence of very low wages. The major exception is Germany where, as discussed above, the incidence of low pay and wage inequality are above the EU average. In response, German trade unions have been campaigning for a national, cross-sectoral statutory minimum wage of EUR 7.50 intended to provide workers not covered by collective agreements with a decent minimum wage level, which would also set a floor for sectoral minimum wage negotiations (Bispinck, 2008). The minimum wage has been a concern elsewhere too. In Austria unions and employers have been concerned that a substantial group of the employed workforce had a gross wage below EUR 1 000 per month, with estimates varying from 20 000 to 100 000 employees (Hofbauer and Adam, 2009). To tackle this problem, the Austrian Trade Union Federation and the Austrian Federal Economic Chamber concluded an agreement which establishes a minimum wage of EUR 1 000 as of 1 January 2009, and which covers almost the entire private sector. The number of private sector employees earning below EUR 1 000 is reported to have fallen to a few hundred as a consequence (*ibid.*). The minimum wage has been an issue of debate in Sweden as a direct result of the ruling of the Court of Justice (CJEU) in the Laval case. Finally, and going beyond the divide between statutory and collectively agreed minimum wages, in recent years there has been a lively debate about the possibility to introduce a European minimum wage policy (see Box 4.4).

## 4.5. Conclusions

Wage flexibility and the role of wage-setting institutions in fostering or limiting such flexibility have been at the core of the European economic and labour market debate for some time. This chapter has reviewed three types of wage-setting institutions that are important in determining the extent of wage flexibility: the level at which collective wage bargaining takes place and the extent to which it has been decentralised over the last decade; the use of variable pay systems (VPS); and the minimum wage and its relation to low pay and wage inequality.

Company-level bargaining dominates in the UK and the new Member States which entered the EU between 2004 and 2007, with the exception of Slovenia. Higher-level bargaining dominates in the EU-15 (except the UK) and Slovenia. Amongst the countries where higher-level bargaining dominates, the 2000s have seen significant decentralisation of wage-setting arrangements in Sweden, Finland, Denmark and Germany. In Finland, the main development concerns a move from central-level bargaining to sector-level bargaining, while in the other three countries the scope for company bargaining has been enhanced at the expense of the sector level. This decentralisation has largely been 'organised' since the increased role for company-level bargaining remains within a framework of rules and minimum standards set at the sectoral level. However, in Germany elements of disorganised decentralisation are also present, as the coverage of collective agreements declines with falling level of employers' association membership and decreased use of extension arrangements. The process of decentralisation in these countries seems to have been

accelerated during the present economic and financial crisis.

In most other countries where higher-level wage bargaining dominates, little change can be observed in the bargaining arrangements for basic wages over the 2000s. In these countries the social partners would seem to prefer stability in collective bargaining systems and to continue with practices that have proven their value. In some of them, such as Italy and France, changes have been made to the regulations governing collective bargaining with the aim of promoting decentralisation, but as yet this has not led to significant changes to wage bargaining in practice. An exception is Ireland, where the long tradition of national-level pay agreements has been broken as the government, unions and employers' organisations could not come to agreement on wage policy in the face of the crisis (see Chapter 3). The above concerns the setting of basic wages. There has, however, been more generalised decentralisation across the EU in negotiations concerning additional pay elements, including the various types of VPS.

Today, more than half of the EU workforce falls under some form of VPS. The most frequently used type of VPS is performance-related pay, with profit sharing and employee share ownership schemes being substantially less widespread. There are large differences in the incidence of VPS schemes between countries, in part according to country-specific rules and regulations promoting VPS through specific provisions in labour legislation, tax regulations or agreements between social partners. VPS are utilised more widely in certain sectors (financial intermediation, business services, wholesale and retail) than in others (health and social work, education). They are also more widespread amongst larger than smaller enterprises.

The use of VPS seems to be increasing over time, representing a specific form of flexibilisation of wage setting. For managers, VPS schemes are attractive as a means to improve the functioning of human resources and to attract and retain good quality personnel. Employee representatives have mixed opinions about VPS, differing strongly across countries. In the central and east European Member States a majority of employee representatives supports VPS, while in some of the EU-15 less than one third do so.

Low pay remains a serious problem in the EU and affects one out of every six workers in enterprises with 10 or more employees. The level of low pay is closely related to the level of wage inequality. In general, both are higher in the countries where company bargaining dominates and coverage of collective agreements is low; they are both lower in countries where higher-level bargaining dominates and coverage rates are high. The most noticeable exception to this is Germany.

In 20 of the 27 Member States a statutory minimum wage exists, with its value in 2009 ranging from EUR 122.7 in Bulgaria to EUR 1 641.7 in Luxembourg. A statutory minimum wage is, however, no guarantee against low pay: the countries with the highest level of low pay all have a statutory minimum wage. It is the level of the minimum wage that determines the extent to which it constitutes an effective wage floor in the labour market. In particular in a number of the new Member States its level is too low to perform this function. While in the long run, the level of the minimum wage in the central and east European Member States is slowly getting closer to that of the EU-15, in 2009, in the midst of the crisis, the real value of the minimum wage declined in many of these countries. More generally, in over half of the countries concerned, the statutory minimum wage lost

value compared to the average wage during the 2000s. This suggests a declining capacity to prevent low pay from emerging.

In the seven countries without a general statutory minimum wage, minimum wages are largely set in sectoral collective agreements. Amongst these countries low pay is not widespread, with the important exception of Germany. Here, in certain sectors, the minimum wage is set at comparatively low levels and decline in the coverage of collective agreements is leaving large groups of workers without the protection of a minimum wage. As a result, the desirability of a statutory minimum wage has become the subject of considerable debate.

Finally, although major differences between countries exist, the general tendency across countries is towards wage-setting arrangements that provide for more wage flexibility. Where change takes place in bargaining systems it results almost invariably in further decentralisation of wage bargaining. There is a marked tendency towards flexibilisation of wage systems through more extensive use of VPS. At the same time, there has been a parallel tendency for the incidence of low pay to increase, partly as a result of declining collective bargaining coverage. The efficacy of statutory minimum wages — and in Germany collectively agreed sectoral minima — to counteract this tendency has been shown to be in doubt. While these developments may have certain advantages from an efficiency point of view, they may also lead to undesirable social consequences. Searching for the right balance between, on the one hand, efficiency and, on the other hand, equity and solidarity is one of the core dilemmas of the European social model.

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# CHAPTER 5: Industrial relations and the transition to a low-carbon economy

*The transition to a low-carbon economy is likely to involve structural changes across the whole economy. Social consensus and coordinated strategies will be crucial to grasp the opportunities and alleviate the potential social costs in some sectors or regions. Social dialogue plays an important role in this and — despite large differences between countries — the transition to a low-carbon economy is coming onto the agenda of social partners at national and EU level. They draw attention to the business and employment consequences of policy choices and they have often pushed for a green recovery from the crisis. Workplace social dialogue on low-carbon economy issues is spreading although collective bargaining addressing such issues remains rare. Finally, social partners themselves contribute to the transition through training initiatives, campaigns, research and innovation, and the promotion of quality and environmental labels.*

## 5.1. Introduction

The Europe 2020 strategy confirms that the reduction of greenhouse gas emissions, the increase in the share of renewables in final energy consumption and energy efficiency are among the key policy priorities of the EU. More and more, the move to a low-carbon economy has been recognised as an environmental, social and economic necessity. The whole economy faces far-reaching changes, and policies and restructuring related to climate change will impact on employment, skills composition and working conditions. Therefore, they have come onto the agenda of social partners across Europe. This chapter will review how social partners at national and EU level are addressing employment and social issues related to climate change through their different roles in policymaking: influencing policy, autonomous regulation and promoting implementation.

It will show that climate change policies and the transition to a low-carbon economy not only represent new topics for social dialogue, but that they cannot be readily compared to dialogue over traditional employment issues. Nonetheless, they are increasingly being taken into account in social partners' core activity, in particular concerning restructuring and professional skills development. In addition, social partners not only try to influence policymaking, but can also contribute directly to the transition required

through autonomous social dialogue, in particular at company level, and through concrete initiatives involving training, campaigns or research and innovation projects.

The chapter focuses on social partners' activities concerning policies on, and contributing to, greenhouse gas emission reduction, renewable energies and energy efficiency, i.e. measures that are directly linked to the de-carbonisation of the economy and which are likely to have a very big impact on the economy in the years to come. However, social partners do not always distinguish between environmental protection, general resource efficiency and climate change mitigation measures. In reality they are intertwined. In addition, the challenges posed by the adaptation to the changing climate are important for policymakers and social partners alike. For example, workplaces will have to be adapted to changing climate conditions and working practices in some sectors, for example agriculture, will undergo significant change. Green jobs are also high on the political agenda and many new companies and jobs are being created. The chapter is concerned with the broader process of greening the economy that involves important shifts in the economy and the labour market. Activities aimed at mitigation and the industrial relations of green jobs — for example whether they are covered by social dialogue and collective agreements — are, however, beyond the scope of the chapter.

This chapter will start with an overview of the most important EU climate change policy developments and research on their consequences on employment and skills. The second section will introduce the conceptual framework for analysing social partners' roles in policymaking in order to lay the ground for a review of their activities at national and European level, in section three and four respectively. Given the emphasis on the EU level, the chapter also provides an overview of the positions taken by European social partners on climate change policies.

## 5.2. Policies for a low-carbon economy and their employment consequences

### 5.2.1. EU climate change policies

Climate change represents one of the greatest environmental, social and economic threats facing the planet. The European Union is working actively for a global agreement to control climate change and is taking domestic action to achieve substantial reductions in its own contribution since the early 1990s. It is also developing a European strategy for adapting to climate change. The European Union has long been at the forefront of international efforts to combat climate change and was instrumental in the development of the two United Nations climate treaties, the 1992 UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, agreed in 1997.

In 2000 the European Commission launched the European climate change programme (ECCP) which has led to

the adoption of a wide range of new policies and measures. Each Member State has also put in place its own domestic actions. Countries develop their own mix of policies, through a combination of regulation, taxation and other national policy. The programme's pioneering instrument is the EU Emissions Trading System (EU ETS). The EU ETS is a 'cap and trade' system that helps to reduce greenhouse gas emissions in a cost-effective way. Allowing participating companies to

buy or sell emission allowances puts a price on emissions and ensures that cuts can be achieved at least cost.

In 2007 the European Council endorsed an integrated approach to climate and energy policy. EU leaders set a series of demanding climate and energy targets to be met by 2020, which are known as the 20/20/20 targets: (1) a reduction in EU greenhouse gas emissions of at least 20 % below 1990 levels; (2) 20 % of EU energy consumption to come

from renewable resources; (3) a 20 % reduction in primary energy use, to be achieved by improving energy efficiency. This commitment is being implemented primarily through the EU climate and energy package of 2008, which comprises a revised EU ETS, a framework for national actions in the sectors not covered by the ETS and binding targets for renewable energies (see Box 5.1).

The EU has also offered to increase its emissions reduction to 30 % by 2020, on condition that other major emitting countries in the developed and developing worlds commit to do their fair share under a future global climate agreement. This agreement should take effect at the start of 2013 when the Kyoto Protocol's first commitment period will have expired. The Copenhagen Accord reached in December 2009 represents only a step towards such an agreement. The EU is pressing for a global deal that is ambitious, comprehensive and legally binding.

With Europe 2020, the EU's strategy for jobs and smart, sustainable and inclusive growth for 2010 to 2020, the European Council confirmed the EU's commitment to a low-carbon economy. Europe 2020 is a framework for the EU to mobilise all of its instruments and policies and for the Member States to take enhanced coordinated action. In particular the up-coming flagship initiative 'resource efficient Europe' will support the shift towards a resource efficient and low-carbon economy through the EU 2050 roadmap for a low-carbon economy, EU financial instruments, a framework for the use of market-based instruments, a series of EU initiatives mainly in the energy and transport field, and recommendations for coordinated national measures. It will highlight a more efficient use of resources including raw materials such as fuels, minerals and metals but also food, soil, water, air, biomass and ecosystems, which has to be addressed coherently.

### Box 5.1: EU climate and energy package 2008

In January 2008 the European Commission proposed binding legislation to implement the 20/20/20 targets. This 'climate and energy package' was agreed by the European Parliament and Council in December 2008 and became law in June 2009. The core of the package comprises four pieces of complementary legislation.

1. A revision and strengthening of the Emissions Trading System (EU ETS): a single EU-wide cap on emission allowances will apply from 2013 and will be cut annually, reducing the number of allowances available to businesses to 21 % below the 2005 level in 2020. The free allocation of allowances will be progressively replaced by auctioning, and the sectors and gases covered by the system will be somewhat expanded.
2. An 'Effort Sharing Decision' governing emissions from sectors not covered by the EU ETS, such as transport (except aviation, which will join ETS in 2012), farming, waste and housing: under the decision each Member State has agreed to a binding national emissions limitation target for 2020 that reflects its relative wealth.
3. Binding national targets for renewable energy which together will lift the average renewable share to 20 % by 2020 (more than double the 2006 level of 9.2 %): at least 10 % of transport fuel must be renewable (biofuels, hydrogen, 'green' electricity, etc.). Biofuels must meet agreed sustainability criteria.
4. A legal framework to promote the development and safe use of carbon capture and storage (CCS): CCS is a promising family of technologies that capture the carbon dioxide emitted by industrial processes and store it in underground geological formations where it cannot contribute to global warming. The technical and economic viability of its use as an integrated system has, however, yet to be shown. The EU therefore plans to set up a network of CCS demonstration plants by 2015 to test its viability, with the aim of commercial uptake of CCS by around 2020.

#### Further elements:

- a regulation requiring a reduction in CO<sub>2</sub> emissions from new cars to an average of 120g per km, to be phased in between 2012 and 2015 and further to 95g per km in 2020; and a Regulation requiring a reduction in CO<sub>2</sub> emissions from vans.
- revised EU guidelines on state aid for environmental protection.
- A decision to fund the large-scale demonstration of low carbon energy technologies from the sale of 300 million emission allowances held in the New Entrants Reserve (NER) of the EU Emissions Trading System.

#### Energy efficiency

The climate and energy package creates pressure to improve energy efficiency but does not address it directly. This is being done through the EU's Energy Efficiency Action Plan 2007–12. It provides for the adoption of measures to improve the energy performance of products (eco-design), buildings and services, to improve the yield of energy production and distribution, to reduce the impact of transport on energy consumption, to facilitate financing and investments in the sector, and to change behaviour.

### 5.2.2. Employment and climate change

There is much talk about green jobs. Indeed, jobs that contribute to preserving and restoring the quality of the environment are both necessary for the sustainable development of the planet and promising in terms of employment potential. Defining such jobs is difficult (see for example *Employment in Europe*, 2009, p. 109f; Box 5.2 on UNEP/ILO definition).

More widely the transition to a low-carbon economy is likely to involve structural change across the whole economy. There are four main employment shifts: new jobs will be created, for example in manufacturing pollution-control devices; some jobs will be substituted, for example in shifting from fossil fuels to renewable sources, or waste incineration to recycling; some jobs may be eliminated without replacement; and a large share of jobs, such as plumbers, electricians, construction workers, will evolve (UNEP et al., 2008: 43). In addition, not all jobs that contribute to the low-carbon economy would be considered as green in the first place, for example in upstream supplier industries. Even in the case of new industries and technologies, such as wind and solar power generation,

the supply chain consists largely of traditional industries like iron and steel and manufacturing of installations.

The overall employment balance will depend on how many jobs are created and lost in a wider range of sectors, such as energy, transport or construction, agriculture, manufacturing and services (direct effect), the balance of jobs in sectors contributing inputs to these sectors (indirect effect) and on employment gained or lost throughout the economy from higher or lower consumer spending (relative price effect) and from productivity gains related to lifting barriers to innovation or to investments (macro-economic effect).

The *Employment in Europe* 2009 report provides an overview of research on climate change and employment (European Commission 2009, Chapter 3). It concludes that economic modelling shows that the transition to a low-carbon economy should have no, or a slight positive, impact on the overall employment level (at least in the long run). It will, however, have different effects across economic sectors, skill types and regions. In addition, the transition to a low carbon economy is likely to stimulate innovation, boost employment in fast developing “green technology” sectors and open up new export opportunities.

The Commission’s impact assessment on its proposal for the climate change package estimated net employment effects of 0.05 % (creation of 110 000 jobs) to – 0.09 (loss of 200 000 jobs) by 2020 (European Commission, 2008a). The most complete study on renewable energies for the EU predicts that reaching the 20 % target for the deployment of renewable energies will have a net employment impact — depending on the model used — of either 400 000 additional jobs until 2020 and 545 000 to 656 000 until 2030, or more than 400 000 in 2020 and just 59 000 to 128 000 until 2030 under a model that makes a conservative assumption about the reaction to increased energy cost (European Commission, 2009a). An ETUC-led study demonstrates how impacts differ depending on the sector. For example, it estimates that reaching the 20/20/20 targets will mean that 175 000 jobs will be lost in the steel sector by 2020, but that net employment in the machinery and electrical equipment sector could rise by up to 670 000 and by about 250 000 in its supplier industries (ETUC, 2009a).

Therefore, the important question about the future of employment is less the gross creation of new, green jobs, but the incremental and broad greening of the whole economy including the transformation of many professions that will need a new skills composition. This is a complex affair and available research provides too little information on the likely distribution of employment effects. But in contrast to other structural drivers of change some anticipation is feasible since climate change related policies result from political decisions. More knowledge needs to be built up in understanding the dynamics. In particular, there will be specific consequences for each sector which makes the sector the prime level of intervention.

#### Box 5.2: Green jobs description by UNEP and ILO

‘Green jobs reduce the environmental impact of enterprises and economic sectors, ultimately to levels that are sustainable. (...) ‘Green jobs’ (means) work in agriculture, industry, services and administration that contributes to preserving or restoring the quality of the environment. Green jobs are found in many sectors of the economy from energy supply to recycling and from agriculture and construction to transportation. They help to cut the consumption of energy, raw materials and water through high-efficiency strategies, to de-carbonise the economy and reduce greenhouse gas emissions, to minimise or avoid altogether all forms of waste and pollution, to protect and restore ecosystems and biodiversity. Green jobs play a crucial role in reducing the environmental footprint of economic activity. This reduction is gradual and the different jobs contribute to different degrees. Workers manufacturing fuel-efficient or hybrid cars, for example, contribute less to reducing emissions from transport than those working in public transport systems. Moreover, what is considered fuel-efficient today will no longer qualify in 10 years’ time. The notion of a green job is thus not absolute, but there are ‘shades’ of green and the notion will evolve over time.’

UNEP et al. (2008a), *Green jobs: Towards decent work in a sustainable, low-carbon world — Policy messages and main findings for decision-makers.*

Policymakers and social partners have turned their attention to the role of skills in the low-carbon transition. In fact, skills shortages could become bottlenecks impeding the rolling out of new technologies and the ‘first mover’ advantage that this could bring. A mismatch of existing skills and new demand could cost both firms and workers dearly. There is a considerable debate about how job profiles will change (Ecorys 2008; Cedefop 2009; GHK, 2009). Most likely some skills will become obsolete, for example utility meter reading services due to ‘smart’ household meters that automatically relay data to utility companies. Many occupations will see their skills mix change, for example learning to use new, sustainable materials, installing new materials and devices in construction, or learning to assess the environmental impact or the ‘carbon-footprint’ in production processes. Lastly, new occupations will also emerge, such as solar energy technician, eco-designer or biofuels technician. Often these ‘green-collar’ occupations require higher levels of qualification, particularly related to STEM subjects (science, technology, engineering and mathematics). The shortage of these skills and the general decline in take-up of training in technical areas in the EU is of great concern.

The European Commission launched in 2008 a joint policy initiative, ‘New Skills for New Jobs’, that offers support to EU Member States, regions and social partners to develop more effective ways to analyse and predict which skills will be required in tomorrow’s labour markets and, with this knowledge, develop and adapt education and training so that workers gain the skills required. It provides the opportunity for countries to learn from each other and share solutions by pooling their efforts at the European level, as well as with other international organisations on the themes related to skills

upgrading, matching and anticipation. One element will be the networking of so-called sector skills councils or observatories through which the actors on the ground (national and regional authorities, social partners and education and training institutions) try to anticipate skills needs developments. Bottom-up initiatives will provide particularly important responses to the need for adjustments such as filling skills gaps. Social dialogue is a key element in the development of these initiatives (Medhurst, 2010).

### 5.3. The roles of social partners in labour market governance — the analytical framework

Social partners play an important role in the economy as a whole and in labour market governance in particular. They have also demonstrated that they have the capability to engage with new policy issues. The Industrial Relations in Europe 2008 report showed how high-quality industrial relations provided a key resource for the Lisbon Strategy over the last decade by adding flexibility to its implementation and by mobilising support for bottom-up solutions in several areas: active labour market policies, training and the entry of young people in the labour market, lifelong learning, working hours and time flexibility, reconciliation of work and private life and working conditions. It concluded that these issues have become part of the social partners’ agenda at various level and that various instruments, often based on an interaction between collective bargaining and law, but also information exchange, best-practice diffusion, benchmarking or joint administration and fund management were being utilised. In

comparison with the recent Lisbon-related entries on the social dialogue agenda, and even more so with the traditional bargaining issues of pay and working time, the shift to a low-carbon economy is of a different nature.

Social partners act first and foremost where they have direct competences, i.e. the distributions of benefits, rights and obligations of workers and employees. They can directly influence them by committing their members to certain actions. The issues concerned relate directly to the functioning of the labour market. Trade unions and employers organisations are the main actors on some issues and interact strongly with the state on further issues such as labour market policy and social security.

In contrast, the transition to a low-carbon economy concerns the impact of the economy (and of society as a whole) on the climate. Policies are mostly driven from outside the workplace and industrial relations but impact on them. In some respects, it is about the distribution of benefits and costs between conventional economic growth and the current generation, on the one side, and the global climate and future generations, on the other. The state is the main actor involved and mobilises regulatory, market-based and financial instruments. The whole of society is directly affected by this policy field, which is thus characterised by a larger number of actors, including environmental NGOs amongst others. It is in the management of the employment consequences where industrial relations play a prime role.

Nonetheless, in analysing the role of social partners, the Industrial Relations in Europe 2008 report provides a useful starting point with its three-fold schema of the broad functions of social partners (<sup>1</sup>).

<sup>1</sup> Based on a scheme by Jelle Visser, Amsterdam Institute for Labour Studies.

1. Social partners can act, alone or jointly, as special interest groups and influence policymaking through lobbying activities, responses to consultations, exercising political influence or entering into negotiations with the government. One specific form of influencing policy is the conclusion of a social pact, i.e. a tripartite agreement between government and the social partners.
2. Trade unions and employers can regulate employment relations themselves either through binding agreements or 'softer' guidelines. This can happen at company, sector, or national level. This is well established in the domain of wages, working hours and working conditions, but has also expanded to other areas. There is also interaction between collective bargaining and public policy which can take different forms: (a) autonomous agreements/guidelines implemented without interference of public authorities; (b) sponsored agreements the implementation of which depends on the support and intervention of the government or legislator; (c) dependent (implementation) agreements which follow, and implement, a particular law, reform, government policy, or higher-level agreement/guidelines.
3. Trade unions and employers (organisations) can be involved, alone or jointly, in the implementation of policies. This may happen through the co-management of policies with public authorities, by joining labour market boards, training councils or insurance funds under public supervision. This involvement may also take an advisory character, without assuming the responsibility for the adopted decisions and their execution.

Activities concerning the low-carbon economy might not fit neatly into this schema. In particular, the findings presented below suggest that, as institutions comparable to labour market boards do either not exist in the climate change policy field, or that social partners have no specific role to play in them, the third category should be recast as 'activities promoting implementation' through which the social partners contribute to the implementation of policies or the achievement of objectives of public interest (e.g. energy efficiency improvements), for example by organising training or campaigns. These activities may be developed in an autonomous way or in cooperation with public authorities.

Social dialogue has an important role to play: it helps to create consensus for climate change related policies that are often unavoidable, but which can create opposition. A stable and reliable policy framework is essential for investment decisions and the preparation of the workforce. In addition, a shared analysis of employment opportunities and challenges by social partners can contribute greatly to a well-managed and socially just transition.

Anticipating and managing restructuring processes and skills development have already become an important part of industrial relations in Europe. The challenge arising from the transition to a low-carbon economy is to 'mainstream' it into restructuring and skills policies. Social partners also have the possibility to facilitate innovation and negotiate solutions for change which are to the benefit of workers and businesses. The transition to a low-carbon economy also raises questions about social justice between those who benefit and those who might lose out in the short term.

## 5.4. Social partners' activities related to the transition to a low-carbon economy at national level

This section provides an overview of how social partners address the transition to a low-carbon economy according to the three-way schema of the roles of social partners in economic and social governance. It is based on reports<sup>(2)</sup> from all Member States (and Norway) for a comparative analytical report of the European Foundation for the Improvement of Living and Working Conditions on the industrial relations implications of the greening of the economy (Eurofound, 2009) and on other sources, including the first seminar of the cross-industry European social partners' project on the employment consequences of climate change policies (see Section 4.2.1.). The comprehensiveness of the available information varies from country to country. Accordingly, this section identifies the main trends up to 2009 and provides examples, rather than giving an exhaustive pan-European account or mounting a comparative analysis.

Given the nature of the issue of climate change in relation to industrial relations, it is not surprising that lobbying is an important part of social partners' work, and that self-regulation remains rare, except for the company level. However, social partners initiated, and contributed to, a wide range of activities in support of the transition to a low-carbon economy, including training and counselling, campaigns, research, environmental labels and others.

<sup>2</sup> The study aimed to not only map social partners' activities and climate change related policies, but also national policies and institutions, also on environmental policy in general.

### 5.4.1. Influencing policy

In almost all countries social partners deal with low-carbon economy issues at the stage of policy formulation where they express their positions on policy proposals either through institutionalised tripartite bodies or ‘multipartite’ bodies dealing with sustainable development, or by direct lobbying on draft legislation. Examples of own-initiative policy proposals economy can also be found and in particular trade unions have driven the debate on a green recovery from the crisis. Various forms of lobbying were reported in all Member States with the exception of Cyprus, Greece, Latvia, Lithuania and Malta.

It is difficult to draw general conclusions on the content of lobbying as it differs depending on the country and also on the sector. Employer representatives are, in principal, in favour of policies aimed at a low-carbon economy, but they insist on cost-effective policy options, investment in infrastructure, the promotion of green technology exports, a level playing field internationally, voluntary commitments, CSR, or incentive measures. In some Member States, such as Poland, employers’ organisations ask government to intensify domestic climate change policies and better coordinate them in a coherent strategy. There are also examples of opposition due to fears of cost increases and competitive disadvantages, for example, expressed by the Confederation of Portuguese Industry (CIP) in its criticism of governmental measures for renewable energies and energy efficiency (Naumann, 2009).

The same problems of generalisation apply to the views of trade unions. These range from a strong commitment to the low-carbon economy to rather indifferent approaches, common amongst the new Member States,

to opposition, as in the case of trade unions in Poland’s coalmining and power sectors. In general, trade unions insist on a just transition that includes dialogue, skills adaptation and investment in green job creation and infrastructure. Most trade union lobbying initiatives support policies for a low-carbon economy unless there is a risk of job losses. On several occasions, trade unions went further than their employers’ counterparts, for example the German metal workers union, IG Metall, issued a joint statement with the Federal Ministry of Environment in 2008 calling for an ambitious regulation on CO<sub>2</sub> emissions from new cars and recently Spanish trade unions supported the adoption of a more ambitious EU emission reduction target of 30 %. Trade unions often prefer regulation and are wary of ‘greenwashing’ (Eurofound, 2009: 11).

Observers of some Member States draw attention to the fact that, both within the employer and trade union camps, some divergence of position can be found, in particular between sectors. At one extreme are groups with an interest in an accelerated transition towards a low-carbon economy (e.g. renewable energy technologies or technologies improving energy efficiency). At the other end are energy

intensive sectors and those producing traditional sources of energy that often find themselves in opposition to climate change mitigation policies, unless there are compensating measures. Social partners in services sectors are much less vocal, except maybe in the IT sector, although an impact can also be expected there (Dupres-soir, 2009).

Joint lobbying activity by social partner organisations is the exception rather than the rule and was reported only in Germany and Austria. Many elements of the Austrian environmental and economic action plans originate from joint social partner proposals, such as the implementation of the Masterplan Sustainable Energy and the Energy and Climate Protection Fund. The Confederation of German Trade Unions (DGB) and the Federation of German Industries (BDI, the interest organisation of German business) issued a joint declaration on energy policy in 2006 in which they noted their disagreement on nuclear energy policy, but declared a common interest in strengthening a national energy mix policy, promoting the export of renewable energy technology and of investments in power stations and energy networks. In 2008 they issued a joint call for an EU climate change

**Table 5.1: Examples of collective lobbying activities**

Employers’ organisations	Bulgaria: in a 2009 joint declaration of five (out of six) nationally representative employer associations. Alternative energy is considered to be the key priority of the economy and must be part of the future social agreement.
Trade unions	Denmark: the United Federation of Danish Workers (3F) and the Danish Metalworkers Union (Dansk Metal) appealed to government to invest in alternative energy, collective transport, or renovation of old public buildings in order to reduce the impacts of the crisis. Italy: the General Confederation of Italian Workers (CGIL) and Legambiente — a joint document putting forward proposals on how to cope with the crisis, by using the employment potential of the green economy (2009). The Netherlands: the Dutch Trade Union Federation (FNV), Christian Trade Union Federation (CNV) and Federation for Managerial and Professional Staff (MHP) published a Social and Green Investment Plan to cope with the crisis. Economy should be stimulated by investments among others in greener production, reduction of energy use, increase in wind energy, green VAT rates, etc.

package that balances climate and industrial policy consideration.

Unilateral lobbying is far more widespread; with individual or sectoral initiatives outnumbering those involving coalitions of different employers' organisations or of trade unions. Individual lobbying initiatives of employers' associations outnumber those by trade unions. The economic crisis has driven the majority of recent lobbying initiatives (see Table 5.1 for examples). Trade unions, especially, called for more green investments as a part of anti-crisis measures. In many social partner anti-crisis action plans some green proposals can be found even if the main focus of the document is not 'green', e.g. the 10-point action plan of the Irish Congress of Trade Unions (ICTU). Another goal of collective lobbying was to shift green issues higher on the agenda. For instance five of the six Bulgarian employers' associations signed a joint declaration in 2009 that alternative energy is an issue which should become part of the future social agreement.

Several organisations formulated their own proposals on the transition to a low-carbon economy. The Confederation of British Industry (CBI) has recently taken a proactive stance in favour of a fast transition to the low-carbon economy. It set up a Climate Change Task Force consisting of senior figures in British industry, has published reports dealing with climate change issues and has actively promoted renewable energy (Broughton, 2009). Another issue of concern to both sides of industry is the need to invest in the right skills for a low-carbon economy. For example, the CBI also made recommendations on how to improve the supply of STEM skills (Eurofound, 2009: 11). The Employer Confederation of Romanian Industry (Conpirom) also made a number of proposals e.g. to deter imports of second-hand vehicles, which are polluting, to renew the motor vehicle fleet

and to grant subsidised interest loans for renewable energy investments (Ciutacu, 2009). The Slovenian Chamber of Commerce and Industry included the low-carbon economy as part of its white paper on competitiveness in 2008.

Trade unions also developed their green policy proposals, with unions in Scandinavian countries being particularly active. For instance, the Swedish Trade Union Confederation (LO Sweden) has been promoting investments in CO<sub>2</sub> reduction and supporting green investments mainly in technology development for a long time and formulated its own energy policy programme in 2007. The Swedish Confederation of Professional Employees (TCO) did likewise (Olsson, 2009). In the Netherlands, in February 2009, three Dutch trade union federations published an investment plan to boost both employment and sustainability. With regard to economy greening, they proposed a number of relevant measures and drew attention to the need for labour market measures, schooling and subsidies for R & D in the context of economy greening. Importantly, the plan contains both greening and labour market measures (European Commission, 2010). The Spanish CCOO has developed a national action plan for renewable energies. One of the few examples of tripartite concertation in Germany is the Alliance for Work and the Environment, which started as a partnership between the government, construction employers, trade unions and non-governmental organisations during a recession in the building sector in 2001. The idea of creating jobs through energy-saving investment in buildings was first proposed by the DGB. The subsequent programme helped to retrofit apartments through subsidised loans, while creating sustainable jobs and improving social conditions. Sectoral trade unions accompanied the programme with information campaigns on energy-saving home improvements.

During the recent economic crisis, the government granted additional resources (Kraemer, 2009).

Crisis-driven initiatives more often featured on the lobbying agenda of trade unions than employers' organisations. In many countries, social partners called for public investment to be channelled into energy saving, green technology promotion and renewable energies in order to stimulate employment (see also Table 5.1). For example, of the Spanish trade union confederation CCOO's proposals for a stimulus package, a EUR 500 million fund for incentives for eco-efficient building renovation was taken up by the government (Nikolova, 2009: 4). The Belgian recovery plan took up a proposal from the ABVV/FGTB trade union confederation for an 'alliance work-employment' (including the social partners, the building sector and public authorities) to develop measures to stimulate the green economy in the long term (van Gyes, 2009). This initiative is being followed up at regional level. Czech and Slovak trade unions in the construction sector have called for similar initiatives (in line with the EU-level social dialogue; see Section 4.1.2).

A specific means of lobbying in the field of climate change is the cooperation that social partner organisations, and especially trade unions, have developed with environmental NGOs in several Member States. For example, in Belgium and Spain trade unions and environmental NGOs advocate jointly agreed solutions, also cooperate in campaigns or 'to take the streets'.

#### Cooperation in tripartite and 'multipartite' institutions

It appears that the standard tripartite social dialogue bodies have addressed the employment consequences of the low-carbon economy in a few Member States. Issues related to the

low-carbon economy are addressed in tripartite structures when social partner competences are at stake, i.e. restructuring of skills needs stemming from climate change policies. But from the evidence available, there is little sign of the ‘mainstreaming’ of the low-carbon economy into ‘standard’ industrial relations. In the majority of cases, then, climate change issues are tackled in an ad hoc and somewhat marginally fashion, in tripartite structures.

There are, however, exceptions. For instance, sustainable development and environmental policy are amongst the themes regularly covered by advisory reports of the Dutch Social and Economic Council (see Box 5.3). The Belgian Central Business Council and National Labour

Council (CRB-CCE/NAR-CNT) has responded to a request from the Employment Minister for a joint analysis on ‘green jobs’ in 2009/10 (state of affairs and shared views). Spain has seen the establishment of a tripartite climate change table, established in 2005 in order to jointly monitor the National Allocation Plan (NAP) under the first round of the EU ETS, and to develop proposals on how to manage the changes that it would bring about. It is complemented by round tables in seven ETS sectors and by one non-ETS sector round table. According to trade unions, the round tables have improved transparency and communication, and also synergies between industrial, climate change and energy policies, although discussions have not always been sufficiently followed up.

In contrast, the participation of social partners in “multipartite bodies” is much more widespread, being reported in half of all Member States (see Table 5.2). These are mostly Sustainable Development Councils or Environmental Councils, or advisory bodies of governments or parliaments. Their voice is mostly advisory; however, the scope of the issues they address is broad as they often participate in drafting various national environmental and/or sustainable development programmes and strategies (see Box 5.4 on the Finnish example). Members are usually representatives of state authorities and social partner organisations, environmental NGOs, and individual researchers and experts. Less often there are also representatives of consumers’ organisations, churches or the media. This underlines that governments consider a wider range of actors as having legitimate interest in this policy field.

There are also ad hoc multipartite structures in some Member States convened at different times to help create a consensus around sustainable development measures. In France, in 2008, the social partners agreed together with the government, local authorities and environmental NGOs in the *Grenelle environnement* on a series of measures, including greenhouse gas emission cuts and energy efficiency. The follow-up included two legislative packages, and the sustainable development council was transformed into the National Committee for Sustainable Development and the follow-up of the *Grenelle environnement*. The forum also resulted in negotiations to enlarge the competences of Workplace Health and Safety Committees (CHSCT) to include sustainable development issues (see Section 3.2).

### Box 5.3: Social and Economic Council of the Netherlands (SEC)

SEC is the main statutory tripartite body in the Netherlands. It consists of equal numbers of employee representatives, employer representatives and independent members appointed by the government. Its main function is to advise the Dutch government and parliament on social and economic issues. In the last decade, the Council formulated extensive position papers on energy policy, agriculture, sustainable development and consumption, and globalisation. Two recent advisory reports deal explicitly with climate change and sustainable energy: *Towards a sustainable energy policy* (2006) and *Advice on nuclear energy and sustainable energy* (2008). The SEC also expressed its position on the European climate policy, as part of the 2009 consultation on the Europe 2020 Strategy. The Council believes that better coordination of environmental, climate and energy policy, as well as rooting them in the Lisbon Strategy, would promote ecological innovations. The biggest challenge — global warming — requires a solution on the global level. Europe should therefore support extension of the ETS.

### Box 5.4: Finnish National Commission on Sustainable Development (FNCSO)

The Finnish National Commission on Sustainable Development was established in 1993 by the government in order to coordinate and promote sustainable development. It acts as an important forum where different stakeholders present their ideas, goals and programmes. Various issues are on the agenda of FNCSO — climate change, renewable energy and eco-efficiency, global poverty and population growth. The commission has played an active role in the preparation of different sustainable development programmes and strategies, including the National Strategy for Sustainable Development launched in 2006.

Various social actors participate both in the definition of the contents and implementation of the measures, in what is sometimes referred to as the ‘Finnish model’ that combines broad-based, multi-stakeholder participation with high-level political leadership. The commission is chaired by the Prime Minister and consists of representatives from all sectors of Finnish society, i.e. the parliament, public administration including local authorities, social partners, NGOs, interest groups representing different sectors of society and the media. (Jokivuori, 2009)

**Table 5.2: 'Multipartite' bodies in EU Member States**

Austria	Climate summits
Belgium	Federal Sustainable Development Council
Czech Republic	Council of the Government for Sustainable Development
Germany	Council on Sustainable Development
Denmark	Environmental Economic Council
Finland	Finnish National Commission on Sustainable Development
France	National Committee for Sustainable Development and the follow-up of the <i>Grenelle environnement</i>
Hungary	National Sustainable Development Council
Portugal	National Sustainable Development Council
Slovenia	Council for Sustainable Development at the Government Office for Growth
Spain	National Climate Change Council

The management of employment consequences plays a role in the Forum for a Just Transition that the UK government established in December 2009. Its remit is to 'advise and provide oversight on the rapid economic and social transition to a low-carbon future.' It was one of four strands of the government's low-carbon industry strategy, adopted in July 2009, which brings stakeholders together to promote new industrial opportunities across the UK regions and devolved administrations. Representatives from industry, the Energy Intensive Users Group, trades unions, education and skills groups, and consumers sit on the forum organised by the Department for Business, Innovation and Skills <sup>(3)</sup>.

#### 5.4.2. Autonomous regulation

Collective bargaining on issues related to climate change is unusual. But social dialogue at the company level on issues like energy efficiency and emission cuts seems to be slowly spreading.

Exceptions come from Spain and Belgium. In Spain, mobility plans and energy efficiency were included in the national negotiation guidelines for lower level bargainers for 2010 to 2012.

<sup>3</sup> <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=408630&NewsAreaID=2>

Although the recommendation is one of the weaker ones in the guidelines it is the first time that such issues were included on the agenda. The Belgian National Labour Council concluded, in 2009, a sponsored agreement, i.e. depending on a decision by the state for full implementation, on the introduction of *ecocheques* as a form of pay increase in the context of the economic crisis. The *ecocheque* is a wage premium, which has been exempted from social security contributions, for the purchase of environmentally-friendly and sustainable consumer goods. The basis was the 2009–2010 cross-industry agreement that was adopted in conjunction with the government's plan to relaunch the country's economy and maintain workers' purchasing power at the end of 2008. However, the scheme's impact in environmental terms does not seem to be positive and it created administrative costs. This experience demonstrates the limits of isolated measures and the advantages of environmental tax reforms that shift fiscal burden from labour to energy on the large scale.

At company level, trade union and/or works council delegates, in some Member States, have information, consultation and negotiation rights on the company's energy and environment policy, often via the extension of

the competence of health and safety committees. e.g. in Belgium (Dupres-soir, 2009: 23) and France (see above). This constitutes an example of bipartite regulation of questions related to the low-carbon economy at the workplace level.

In Germany, company agreements between management and works council on environmental issues appeared as early as the late 1980s. Since then trade unions and companies have more systematically concluded sectoral collective agreements that enlarged the information, consultation and co-determination rights of works councils in respect of the corporate environmental management decisions. This rule was generalised by the 2001 revision of the Works Constitution Act. The German IG Metall argues that works council members can rebalance cost-cutting approaches with a one-sided focus on labour costs in favour of cost-cutting on energy and resource expenses (Kristof et al., 2009). Because employees and their representatives know their workplace, the processes and the products, they can contribute specific knowledge to management's efforts to increase resource efficiency.

A 2006 agreement in the Italian chemical industry provides a rare example of a collective agreement which extends workplace social dialogue to environmental issues. The agreement enhanced the competences of the representative for safety already established and regulated by law, extending the scope of these to environmental issues. The representative is informed and consulted on the objectives for environmental improvement and the level and nature of investments, on various initiatives (for site reclamation, on energy savings and improving environmental performance, on corporate monitoring systems and management systems certification)

### Box 5.5: The UK TUC 'Green Workplaces' project and 'green reps'

From 2006 to 2008, the TUC ran two 'Green Workplaces' projects which focused on energy saving and reduction of emissions in the workplace and on raising awareness of climate change. The TUC was also exploring 'how environmental action at work could contribute to the potential for a "transformational change" in the organisational efficiency or effectiveness of unions' (TUC, 2010a: 29).

Initially, case studies were carried out in various companies and organisations where trade unions took steps to make the workplaces 'greener'. Trade unions carried out staff surveys and organised, together with environmental organisations, open days and events for the public. Training for environmental employees' representatives, (so-called 'green reps') was one of the most important parts of the project. Green reps learned how to build new workplace structures (e.g. joint environment committees), to negotiate formal agreements and to conduct own workplace energy audits. During the project, green reps were also supported to negotiate green matters with management (TUC, Carbon Trust, 2008). Well over one thousand green reps have been trained and a more or less formalised company-level social dialogue established in a range of organisations. For example, trade union green reps signed an agreement with their employers at Bristol City Council about delivering green policies leading to reduction of CO<sub>2</sub> emissions of the organisation<sup>(1)</sup>.

According to the final report (TUC, 2010a), the projects involved were effective in building capacity of the trade unions to address this agenda. Furthermore, communication between trade unions and managements improved. Best practices identified in the projects indicate that whilst a joint and consistent union approach towards management is important in order to build good industrial relations, the engagement and support of senior management is crucial for the success of green initiatives. In cases where formal structures of union involvement (e.g. environmental committees) were established and time-off for representatives' activities granted, progress was faster.

1 <http://www.greenworkplacessouthwest.org.uk/?p=705>

and on management of health, safety and environmental aspects throughout the product life cycle (Auriemma, D'Ercole, 2008: 66f, 97f).

The British TUC has introduced environmental employee representatives, so-called 'green reps'. One of the goals of its Green Workplaces project was the establishment of new representation structures which could work towards energy saving and emission cuts in the enterprise. The most important part of the project was training for environmental employees' representatives. Amongst the companies where 'green reps' were trained, social dialogue and collective bargaining dealing with energy efficiency has developed (see Box 5.5).

Indeed, the value of employee involvement in company's environmental management is widely shared, which is

demonstrated by the fact that the British employers' organisation CBI itself produced a guide for companies looking to set up employee engagement programmes focused on sustainable development. It provides practical tips and case studies in order to inspire company specific schemes (CBI, 2009).

#### 5.4.3. Promoting implementation of policies

Institutions where social partners' competences are needed in order to implement decisions — either for co-management or advice — exist for labour market policy (labour market boards), or training (sector councils). Climate change related policies do not rely on the shared appreciation of the issue by employers and trade unions. But public authorities look to enlist specialist knowledge that is mostly held

by companies and their sectoral organisations. It can therefore be expected that employers' organisations are represented in bodies that define technical specifications related to climate change and environmental policy. This is illustrated in Section 4.1.3 for the case of the implementation of the EU ETS at the European level.

The active contribution of the social partners to implementation takes other forms and these can be divided into three groups: (1) training and counselling; (2) awareness raising; (3) other promotional activities, where social partners promote research, environmental labels or technical solutions.

Over the last few years, at least one of these activities was identified in virtually every Member State. Activities are mainly observed in those countries where green issues are well established and trade unions and employers perceive the transition to a low-carbon economy as both a challenge and an opportunity for business and employment. These social partner activities often involve cooperation with, or are financially supported by, public authorities, as reported in about one third of Member States.

##### 5.4.3.1. Training and counselling

When it comes to a smooth transition on the labour market, an adaptable labour market, vocational education and training (VET) and skills forecasting play an important role. VET has traditionally been part of industrial relations in the Nordic countries, Germany, Belgium Luxembourg, Austria and the Netherlands. In addition, social partners' involvement in the occupational training system in an advisory or delivery role has spread in the last years all over the EU (see European Commission, 2009: 58–63). Initial analysis of the European cross-industry

social partners' members survey (see Section 4.2.1) shows that the skills dimension of the low-carbon economy has entered all activities of guidance to workers, training curricula and anticipation of skills needs in many countries. The most active sectors are construction and renewable energies and this work is mostly being done in cooperation with public authorities. This means that the transition to a low-carbon economy has made its way into this traditional field of activity of social partners. For example, the Belgian region Wallonia has established a dedicated environmental training centre with social partners' involvement that includes energy management and renewable energy and has started to include environmental aspects in the curricula of all training centres (<http://www.formation-environnement.be>). However, this aspect has not been further researched for this report.

Training for workers and their representatives on issues like energy and resource efficiency, pollution prevention, new green technologies and green skills is a well-established social partner measure in Member States where the issue has been already high on their agenda, e.g. in Denmark, Belgium or Germany, but also Spain. Elsewhere, it is in the initial stage of development. While training activities are provided more often by trade union organisations, advisory services are a domain of employer associations. They are usually organised unilaterally by individual social partner organisations targeted to specific sectors or types of enterprise.

For example, the DGB and the German Ministry of the Environment, Nature Conservation and Nuclear Safety (BMU) have been running a project called 'resource efficiency in firms' since 2008. Members of work councils and employees are trained to recognise and implement ways to improve energy

efficiency. The training is part of a programme leading to a certified degree as 'efficiency expert'. The concept established in the pilot project is expected to be suitable for application in other areas (Kraemer, 2009). Training for 'green reps' in the UK is also supported by government grants (see Box 5.5). In some countries, trade unions take care of further training of their members. For instance, the Danish Metalworkers Union (Dansk Metal) includes in its educational programmes skills that are needed in 'green tech' (Jorgensen, 2009). The Swedish Association of Scientist (Naturvetarna) organises coaching for members to be able to sell new green skills on the job market (Olsson, 2009). Employer associations often offer training programmes and counselling related to climate change, energy savings, green technologies, environmental protection and related legal matters. Employers' associations which provide training courses on energy savings for members include the Austrian Federal Economic Chamber (WKÖ) or Hungarian Association of Craftsmen's Corporations (IPOSZ). Educational as well as advisory services are provided for members by others, including Belgium's FEB (<http://www.energyefficiency.be>), the CBI, Ireland's IBEC, the Swedish SN and GZS Slovenia.

#### 5.4.3.2. Awareness raising

Social partners often collaborate with public authorities on various awareness-raising campaigns, including conferences and workshops, publishing brochures and leaflets or creating special websites. Employers' organisations and trade unions seem to be equally active and some initiatives are taken jointly. These campaigns are primarily targeted at members but often also the public at large.

The United Federation of Danish Workers (3F) advocates 'energy

strategies in enterprises — based on worker involvement'. It published a brochure to encourage bottom-up initiatives. The aim is to motivate workers to propose energy-saving initiatives at their workplace. Advice to workers includes how to identify areas where energy efficiency can be improved, how to communicate and present new ideas to management, define common targets, prepare action plans, implement and evaluate strategies. The TUC has launched monthly online newsletter and organises an annual climate change conference (Broughton, 2009b). Spanish unions collaborate with national and regional authorities and NGOs on the promotion of renewable energy sources which includes a general awareness campaign, the promotion of the national renewable energy research and development plan and efforts to increase workers' awareness on the use of renewables (ETUC, 2005: 42). As early as 1990, the German Mining, Chemical and Energy Trade Union (IGBCE) established the first union environmental foundation in Europe, the Foundation Work and Environment. The foundation has been committed to the promotion of humane workplaces and environmental and living conditions in an advanced industrial society. Since its inception, it has supported projects, studies, training and consulting, events and a regular environmental award to implement these goals (Kraemer, 2009).

Agoria, one of Belgium's largest sectoral employers' organisations (metalworking and technology industries) has set up a 'green companies' campaign in order to highlight the job potential of 'green' technology (Van Gyes, 2009). In order to inform member companies about climate policy and eco-innovations, the German Association of the Automotive Industry (VDA) published a brochure on 'environmental management in the supply chain of the automotive sector' (Kraemer, 2009).

Employers' organisations campaigns are often linked to the promotion of the environmental side of Corporate Social Responsibility (CSR). For example, the Confederation of Finish Industries (EK) coordinates a business network to disseminate business practices and it has also published a company guide on how to self-evaluate CSR performance (Jokivuori, 2009). FEDIS, the Belgian commerce employers' organisation, was the first sector organisation which reached an agreement in 2009 with the Federal Minister for Climate and Energy to organise a campaign on environmentally friendly consumption. (Van Gyes, 2009)

#### 5.4.3.3. *Research, environmental labels and other promotional activities*

In addition to training and campaigning there is a large range of concrete actions that social partner organisations in Europe take to facilitate the shift to a low-carbon economy, including research, and quality and environmental labels. German social partners appear to be particularly active in research. In order to promote technological innovations and research, in 2009 German BDI together with the Federal Ministry BMU launched an award for technological innovation in climate and environmental protection (Kraemer, 2009). This type of activity can be found also in countries where the low-carbon economy is not high on the agenda. For example, the Federation of Greek Industries (SEV) runs the Sustainable Development Council which supports research and studies on environmental issues. The Spanish trade union confederation CCOO and its Institute for Work, Environment and health (ISTAS) set up a Reference Centre for Renewable Energies and Employment in 2006. Its purpose is the monitoring and analysis of developments concerning renewable energy,

employment creation and related skills (<http://www.istas.ccoo.es>).

The Swedish trade union LO and the Swedish National Society for Road Safety have jointly set up the organisation QIII 'Quality of road transport contracts' which has developed a procurement tool and awards the QIII quality certificate that assesses the supply chain of heavy road transport providers according to three criteria: the working environment; safety and; the environment. Currently used by more than 100 manufacturing and retail companies, the scheme's assessment determines which companies may or may not be awarded freight contracts (<http://www.q3.se>; Dupressoir 2009). The Swedish Confederation of Professional Employees (TCO) incorporates a company called 'TCO Development' (<http://www.tcodevelopment.com>) which is responsible for the TCO certification system. It certifies IT equipment that has been designed for the benefit of both the user and the environment (Olsson, 2009).

The Danish social partners organise a so-called 'Energy camp' which brings together social partners, researchers and company managers. Participants develop concrete climate change initiatives to the benefit not only of the participants but also as recommendations to national policymakers, such as a regional-level roadmap for biofuels in local public transport (Jorgensen, 2009). Spanish trade unions (UGT-Aragon) surveyed the way workers came to work in industrial sites in the region in order propose to local and regional authorities to adapt public transport to the benefit of workers and the climate.

#### 5.4.4. Conclusions

The considerable variation in the nature and extent of social partner

activities on climate change, evident from this review of recent initiatives, can be related to a number of influences. First of all, the number of years that climate change policies have enjoyed the attention of social partners, government and the public seems to correlate with the approach taken. While in many EU15 Member States environmental protection and climate change have been high on the agenda for many years and social partners have been reflecting green issues in their activities for a long time, in other countries the issue is still rather new. This is mostly the case in the EU12 and also some of the southern European countries.

Second, while some EU Member States and their social partners are pioneers in environmental protection and climate change mitigation policies and actions, EU policy has also been important in stimulating the creation of national policies and consequently on actions of social partners. The Spanish social dialogue tables on climate change, and the lobbying by social partners in almost all Member States in relation to the EU's 2008 climate change package, illustrate this. EU climate change policy and its consequences are important drivers for shifting the issue higher on the agenda in the majority of EU Member States.

Third, how national social partners deal with the issue depends also on national industrial relations regimes. Only in Member States where social partner organisations have a certain degree of operational capacity do their activities regularly reach beyond reactive lobbying. National traditions are also reflected in this policy area. For example, in Germany, a concrete and intense company-level social dialogue is facilitated by numerous, rather disconnected sectoral initiatives. National, cross-industry dialogue and coordination are, however,

not prominent. In the Netherlands, environmental and energy policy feature high on the agenda of the SEC. Conversely, bipartite and unilateral lobbying initiatives are far less important; social partners usually refer to SEC positions. Similarly, in Belgium, the search for consensus and tripartite cooperation has enabled all actors to address the employment consequences of climate change policies in the tripartite social dialogue. In the UK, the work of green representatives is particularly prominent in the public sector and in utility companies where trade union density is strong compared with most of the private sector.

An interesting aspect of trade union involvement with the transition to a low-carbon economy is that it sometimes forms part of a trade union renewal strategy. This is most prominent in the case of the green trade union representatives of British trade unions and, in several countries, the cooperation with environmental NGOs that can attract the interest of employees that might otherwise not become active, or indeed members. This is consistent with the embrace of 'social movement unionism' by some trade unions towards achieving renewal. Under this approach trade unions expand their objectives to include non-work issues (e.g. race, ethnicity, gender and environment) and advance positions as independent stakeholder representing larger social interests in democratic politics (European Commission, 2006: 30f).

Despite the many examples cited in this section, in the majority of Member States the low-carbon economy and its employment consequences appear to remain marginal items on the agenda of social partners. This reflects two things. First, national authorities are dominant actors in this field, i.e. they are either addressed through lobbying or they cooperate

with or fund social partner organisations in informational and awareness-raising activities. Second, unilateral action prevails, which may be due to the fact that social dialogue has not yet established a consensus on areas of common interest and has not yet established procedures and instruments to jointly regulate or promote steps to a low-carbon economy.

## 5.5. European social partners' activities related to the transition to a low-carbon economy

In parallel with the national level, influencing policymaking is the most dominant activity of the social partners at EU level. The European social partners in six sectors have issued joint opinions and some have started to study the consequences of the transition to a low-carbon economy and related best practices in their autonomous bipartite dialogue. As yet, there are no instances of bipartite autonomous regulation at European level. At the company level, however, there are a few transnational agreements which address climate related issues.

### 5.5.1. Influencing policy

#### 5.5.1.1. Unilateral activities

##### Cross-industry European social partners

The ETUC made the issue of climate change a priority of its sustainable development strategy in 2002. It drew up a first 'union proposal for a European policy on climate change' in 2004 (ETUC, 2004), followed by the adoption of positions on proposed EU climate change legislation, including

the Green Paper on energy efficiency (2005), revision of the EU Emissions trading directive (2007), the climate change and energy package, and its proposal concerning CO<sub>2</sub> emissions from new passenger cars (2008). It contributed position papers to several Conferences of Parties (COP) of the Kyoto Protocol, in which it called for the addition of a labour and social dimension to the international climate change regime.

In parallel with some national trade unions, the ETUC joined a civil society coalition, as of 2001, with the European Environmental Bureau (EEB) and the Platform of European Social NGOs (Social Platform). Each year, the three organisations issue common recommendations for a social and sustainable development of Europe to the EU Council's Spring Summit. Their 2008 contribution focused on the social and environmental dimension of the energy and climate package. In 2009, these organisations created the Spring Alliance, a broad civil society network that adopted a manifesto on the Europe 2020 Strategy, which included the call for green and quality jobs.

The climate change package was also the occasion, in 2008, for a joint declaration with one of the cross-industry European employers' organisation, CEEP. The ETUC and CEEP warmly welcomed the package, in particular the announced involvement of the social partners, and expressed their willingness to contribute to the expected transition with their experience, their organisational structures and their ability to find solutions for undertakings and workers via social dialogue in order to anticipate and avoid negative effects or at least to mitigate them. The two social partners also called for a coordinated initiative by Member States on skills for a low-carbon economy.

The ETUC's position is summed up in its resolution ahead of the Copenhagen climate summit (ETUC, 2009) as 'there is (...) an urgent need to launch the third European industrial revolution based on green, sustainable and

decent jobs and massive investment in low-carbon technologies'. It advocates an ambitious, binding and comprehensive international agreement, but insists on strong provisions to safeguard European companies' interna-

tional competitiveness so as to ensure that businesses in countries without a strong emissions programme do not receive an unfair advantage. It also sets out 'just transition' principles: tripartite social dialogue, green and decent

### Box 5.6: European social partners' positions on climate change policies–ETUC

'The ETUC demands that workers and their representatives be considered as crucial players with whom the European Union must engage in a dialogue and negotiate the transition to a low-carbon economy that will provide sustainable jobs and social progress.

*Therefore, in summary, the ETUC demands:*

- an ambitious, binding and comprehensive international agreement aiming to limit the global rise in temperatures to maximum 2°C, in accordance with the scenarios laid down by the IPCC, reducing at least 25 % to 40 % by developed countries, by 2020, below 1990 levels;
- an enhanced European contribution to finance the global mitigation of climate change;
- to improve European governance, support the ambition of the European recovery, specifically by implementing stronger Community policies in the industrial and research fields;
- climate change legislation must contain strong provisions dealing with international competitiveness in order to ensure that nations that lack a strong emissions programme do not receive an unfair advantage;
- free allocations of quotas to energy intensive industries exposed to international competition, provided that they are based on the best available technologies and are complementary and not alternative to a border compensation mechanism to be activated from 2013 if global distortion of competition is not corrected; the introduction of genuine carbon traceability (...). The search for international sectoral agreements is the main solution, but carbon traceability constitutes a technical condition for their establishment and a powerful incentive for their implementation;
- to create a European agency charged with setting the benchmarks and the generalised carbon traceability of all products. This agency should be open to social partners;
- to fix clear rules for the carbon market with appropriate legislative instruments, in order to avoid speculations on rates and excessively erratic fluctuations, and to forge ties between the European market and the other regional markets; (...)
- to promote global and coordinated R & D initiatives; (...)
- a European low-carbon industrial policy based on a dynamic of Community industrial coordination that will transcend intra-European divisions and the damaging effects of the demands for short-term profitability from industrial investments.

#### *Just transition and high-quality jobs*

A European low-carbon transition strategy must be based on 'just transition' principles: dialogue between government, industry and trade unions and others on the economic and industrial changes involved; green and decent jobs; investment in low-carbon technologies; new green skills.

- National, regional and sectoral studies on the policies linked to climate change and their impact on employment and labour markets need to be systematically conducted.
- At European level the creation of a permanent instrument to ensure the anticipation of socioeconomic transition is urgently needed, to coordinate existing instruments such as sectoral councils and reinforce dialogue between the social partners and public authorities. In this framework the EU must commit itself to the challenges of industrial restructuring with which the new Member States are confronted.
- This coordinating instrument would receive sustainable development impact studies and will be able to participate in the definition of the specification of legislation as well as the implementation and follow-up.
- European technology platforms developing low-carbon technological products and processes should ensure the participation of trade unions in their governance systems (...).
- The creation of an international fund and of a European fund to facilitate the development of technologies producing low-carbon emissions and of technologies based on energy efficiency and renewable energies in the developing countries, as well as to develop employment policies based on social protection, the promotion of decent work and public services.
- (...)

Skills monitoring and matching policies should be reoriented towards the anticipation of these changes.

- A fair transition guaranteeing the creation of bridges designed to help workers in shrinking sectors to find jobs in expanding sectors, while protecting their wages, their working conditions and their trade union organisations.

'Every workplace can be a green workplace. There is mounting evidence that unions are taking action to tackle climate change. Therefore, we ask for new and extended rights relating to the protection of health and of the environment at work, and for the provision of training and skills related.'

*ETUC (2009), Climate change, new industrial policies and exiting the crisis, Brussels.*

jobs, investment, new green skills, with an emphasis on anticipation and management of change, and new and extended rights relating to the protection of health and of the environment at work (see Box 5.6). Following the onset of the financial and economic crisis, the ETUC linked recovery measures to a green industrial policy and called for more support for workers that are negatively affected by a shift to a low-carbon economy (a 'low-carbon economy adaptation' fund).

BusinessEurope has always given detailed input on all aspects of EU climate and energy policy at political and technical level. It broadly supports the EU climate change objectives, but insists that industry's international competitiveness and energy security should not be harmed by unilateral EU action. It is of the view that Europe has the potential to position its economy to take advantage of the global shift to a low-carbon economy, but that it also faces major challenges.

In the field of climate change, BusinessEurope acts within the Alliance for a Competitive European Industry together with three sectoral European employers' organisations (Euralex, Eurelectric, Eurofer) and eight other industry associations. The declared objective of this alliance is 'to promote the competitiveness of European industry on a global scale and to help address Europe's radical transformation towards a sustainable and low-carbon future'. The Alliance regularly addresses technical positions to the EU Institutions and Member States representatives.

BusinessEurope's positions on the ECCP and international climate negotiations (see Box 5.7) are to a large extent similar to those of the ETUC. However, it does not advocate border compensation mechanisms, such as a carbon tax on imports, and insists on

### Box 5.7: European social partners' positions on climate change policies — BusinessEurope

In the view of BusinessEurope, for companies it is essential to operate in a predictable EU policy framework which integrates climate protection, energy security as well as competitiveness concerns. The EU policy agenda should include in particular:

- implementation of the revised EU Emissions Trading System (ETS), ensuring that it does not hurt the competitiveness of European industry;
- fostering a truly global and balanced climate agreement, including the world's major emitters;
- development of an overarching EU energy policy, creating the clear strategic framework needed for definition of a coherent and effective climate policy;
- strengthening of EU research and capabilities in low-carbon technologies;
- full exploitation of the cost-effective energy efficiency possibilities that fall within the ambit of business, consumers and the public sector;
- facilitation, reform and expansion of the Kyoto Protocol's flexible mechanisms (clean development mechanism and joint implementation) to make a contribution to climate protection.

'The fight against climate change will remain at the highest level of priorities. European business has made great efforts to reduce CO<sub>2</sub> emissions under the Kyoto protocol rules. It is committed to continue doing so. Climate change will not be solved by EU unilateral actions and cannot be driven only by rules. If the European Union wants to lead in the fight against climate change, it should put a much greater emphasis on technology. European Companies have a lot to offer! But much more could be done with appropriate policies to address obstacles to innovation, skills shortages, lack of venture capital, and under-development of entrepreneurship. (...) Renewable energies, nuclear power, carbon capture and storage and other new technologies are essential to meet the challenges of security of supply and climate change.'

*BusinessEurope (2009), 'Go for growth — An agenda for the EU for 2010-14', Brussels.*

the maximum amount of free allowances permitted in the revised ETS Directive from 2013 oriented towards a realistically achievable benchmark<sup>(4)</sup>. BusinessEurope argues that European businesses have already implemented expensive CO<sub>2</sub> emission cuts and that Europe cannot provide the solution alone. This has to include all sectors and regions in the world through multilateral agreements in order to avoid carbon leakage. It insists on a transparent comitology procedure, i.e. discussions with Member States' administrations on technical implementing measures, with close consultation with stakeholders.

<sup>4</sup> Under the ETS an exception is made for installations in sectors that are found to be exposed to a significant risk of 'carbon leakage', i.e. the risk of increased emissions if companies relocated production to areas outside the EU that are not subject to comparable emission constraints. Installations in these sectors receive 100 % of their share in the annually declining total quantity of allowances for free, but will be benchmarked against the best achievers in their (sub-)sector.

In terms of employment, BusinessEurope opposes a division between 'green jobs' with growth potential on the one hand and 'brown jobs' on the other hand. Instead, the interconnection between sectors and a wider process of the greening of jobs, has to be taken into account. 'Conventional industries enable green sectors to develop environmentally friendly products whereas 'green sectors' facilitate adoption of new innovative technologies in the production processes of conventional industries'. It argues for employment and social policy measures aimed at improving flexibility accompanied by efficient public employment services, active labour market policies and training. Companies and workers must be able to adapt quickly to new markets, production processes and job opportunities. It warns of a fast developing skills mismatch and observes that European Companies are already struggling

with shortages in particular of STEM skills, for example electrical engineers in the renewable energy sector. VET and life-long learning policies should be oriented towards adapting mid-level qualifications to the low-carbon economy, for example in the building sector. In order to improve anticipation, closer collaboration between higher education institutions, schools and businesses should be fostered (BusinessEurope, 2010).

CEEP commented on the Commission's initial proposal for the energy and climate package on just one occasion. However, it regularly takes positions on transport and energy policy. In 2006, it also issued a joint statement with the ETUC on climate change policy and its consequences for social partners (see above).

UEAPME is also less prominent in the public discussion on climate change, but is very active in influencing policies with direct relevance for SMEs like energy market regulation, energy and eco-efficiency, or energy performance of buildings. It also contributed to the stakeholder consultations in the run-up to the ETS review and issued a position paper for the Copenhagen climate summit that also insisted on ambitious and clear commitments from other industrialised but also from emerging and developing countries. In 2009, UEAPME adopted a position paper on the impact of climate change on employment. In its view, SMEs are rarely directly affected by the main instrument, the ETS Directive, but indirectly through demand and electricity price effects. However, SME dominated sectors like building or renewables have employment growth potential, in contrast for example to road transport. In order to realise these transitions, measures for the management of change and its social consequences — as also elaborated by the European social partners

(see Chapter 6) — should take the low-carbon dimension into account. Problematic sectors need to be identified and measures to facilitate transitions, training and support services to business and innovation put in place. Public authorities should inform companies and workers about the consequences of climate change in order to enable them to prepare and adapt. Adopting the flexicurity principles should make workers and businesses fit for transitions. Skills shortages are identified as likely barriers for SMEs investing in expanding activities.

### Sectors

European organisations representing workers and employers in different industry sectors are prominent in trying to influence climate change related policies at EU level. Most of this lobbying is individual or in coalitions of business organisations and trade unions respectively. On the employer side, the activities of the Alliance for a Competitive European Industry have been mentioned above. On the trade union side, the European Metalworkers' Federation (EMF) and the European Mine, Energy and Chemical Workers' Federation (EMCEF) are particularly vocal. On the whole, European trade union organisations tend to be less involved in technical working groups in the European climate change programme than their employer counterparts and have rarely replied to consultations on specific legislation.

Sector specific trade union policy positions are often similar to industry organisations, as demonstrated through the joint statements outlined in Section 5.4.1.3 below. But in addition, Europe's trade unions stress the need for a just transition that includes dialogue with government and public authorities, investing in green technologies, and anticipation of skills

needs and related training. For example, in particular the EMF advocates the establishment of European sectoral skills councils in order to make skills forecasting more specific for the needs of specific sectors, in particular regarding skills needs for the low-carbon economy.

#### *5.5.1.2. Structured social partners' input in the EU climate change policymaking at technical and political level*

As explained in Section 3.3, climate change related policy itself relies rather on technical expertise of business associations than on a dialogue with and among social partners. The ECCP established the practice of technical working groups for the involvement of stakeholders in the preparation and implementation of legislation and policies. This included a working group on the ETS review and — following the adoption of the climate change package — several working groups on implementing measures that are to be taken by the Commission after agreement of the Council (comitology), like auctioning of emission allowances, or the allocation of free allowances and the definition of benchmarks. The concerned sectoral business organisations, but also BusinessEurope, take an active part in these working groups, whereas trade unions are hardly engaged in this process. However, different Commission services regularly consult both sides of industry in their European sectoral social dialogue committees on climate change, energy, transport and other policies.

The Commission acknowledged in its communication proposing the climate change package that 'the process of change to a low-carbon economy will also need to be accompanied by the appropriate involvement of social partners, in particular at sectoral level'

(European Commission, 2008b). The ETUC (once jointly with CEEP), UEAPME and the European Social Dialogue Committees for the Steel, Gas and Chemicals Sectors have asked the Commission to establish a dedicated consultation mechanism in different statements so that the employment situation can be monitored and exchanges facilitated with all concerned services of the Commission. The European cross-industry social partners requested jointly to be systematically consulted by the Commission on the employment consequences of climate change related policies at the Tripartite Social Summit in October 2008. The Commission currently works with them on practical options for a dedicated consultation mechanism that adds value to consultation processes already available under the ECCP, the European sectoral social dialogue and other sector-specific stakeholder groups.

### 5.5.1.3. Joint opinions of European sectoral social dialogue committees

European social partners in eight sectors have agreed on joint positions linked to the transition to a low-carbon economy in their official European social dialogue (see Table 5.3). The proposal for the EU climate and energy package was instrumental in triggering the European social dialogue in this field.

In 2008, the European social partners in the steel, chemicals and extractive industries sectors adopted joint positions on the climate and energy package and, in particular, on the ETS Directive, thus adding weight to the largely converging positions they had taken individually on different occasions. Each of these statements points out the specificity of energy-intensive industries and insists on an ambitious, comprehensive and

binding international agreement, and on the immediate identification of sectors at risk of carbon leakage so as to avoid prolonged uncertainty for investment. Other European sectoral social dialogue committees drew the attention of EU institutions to sector specific concerns. The construction industry pointed out the significance of energy efficiency of buildings and lobbied for measures that will stimulate the necessary investment. Social partners in the wood sector warned of the consequences of preferential treatment of the use of woody biomass for energy production as against its use as a raw material for wood based products. The European social partners in the railway sector jointly called on the Commission to speed up its work on a review of the Eurovignette Directive that should ensure the internalisation of external costs to the environment and health caused by road freight transport.

**Table 5.3: Joint opinions of European sectoral social dialogue committees**

<p>Steel — EMF and Eurofer</p> <ul style="list-style-type: none"> <li>• Commission proposal for the revision of the EU Emissions Trading System (EU ETS) (26.6.2008)</li> <li>• EU climate change policy (25.5.2010)</li> </ul> <p>EMF and Eurofer called upon the decision-makers in the European Parliament, the Council and the Commission to improve the proposal on the revision of the EU ETS so as to ensure a fair balance between climate change measures and competitiveness and high-quality jobs. They highlighted eight points, which reflect the general stance of industry, for example the immediate identification of sectors at risk of carbon leakage so as to avoid prolonged uncertainty for investments, as well as a few steel industry specific considerations.</p> <p>In the follow-up to the Copenhagen climate summit, EMF and Eurofer warned of a unilateral EU energy reduction target of 30 % and put the focus on an international global verification and monitoring methodology. EU financial support should be conditional on third countries' participation in monitoring. They also call for border adjustment or other measures as the <i>ultima ratio</i> and increased corporate and private investment. For the first time, both sides of industry call for 'accompanying measures to manage the social consequences of the EU ETS'. There was a 'need for a sectoral strategy, developed in concert with the social partners as well as public authorities, to maintain employment and promote training and skills development for workers'.</p>
<p>Chemical industry — EMCEF and ECEG</p> <ul style="list-style-type: none"> <li>• European Union Emissions Trading System (EU ETS) (29.9.2008)</li> </ul> <p>The European Chemical Employers Group (ECEG) and the European Mine, Energy and Chemical Workers' Federation (EMCEF) draw attention to the specificity of the chemical industry, insisted on the risks for energy intensive industries and on the necessity to identify immediately the sectors at risk of carbon leakage. They also state that 'in case of compensation measures at EU borders, the complexity of most of value chains prevents efficient protection against competitive distortion for all downstream products'. Finally, they also 'urge the Commission to create a tripartite European body (Administration/Trade Union/Employers) for dialogue and regular monitoring of sectoral evolution and contribution to energy policy'.</p>

<p>Extractive industries — EMCEF and Euromines, Eurocoal, IMA Europe, APEP</p> <ul style="list-style-type: none"> <li>• COP 15 and its impact on EU extractive industries (19.11.2009)</li> <li>• EU Commission's climate package of 23 January 2008 (21.5.2008)</li> </ul>
<p>The extractive industry social partners argued that location of industry within Europe depends on realistic, achievable and internationally agreed targets and instruments (international agreement), a reliable framework of industrial innovations and investment (speedy identification of sectors at risk of carbon leakage and free allocation based on sector specific benchmarks; no restrictions to joint implementation and clean development mechanism; special treatment of efficient existing installations) as well as competitive prices (measures for electricity prices). Given that European power plant technology is a world leader in efficiency the steady replacement of old coal fired power plants by new ones should not be put at risk.</p> <p>In their joint position on COP 15 the social partners insisted that the goals and objectives of climate policy must also live up to social and economic realities and requirements, as they could otherwise not be achieved. The European extractive industry expressed deep concern about the EU adopting climate change measures unilaterally. They recalled the European extractive industry's economic, social and environmental contributions and insisted on an EU negotiation position that would help to maintain industry ensure international competitiveness through an international emissions trading system and on transitional measures for European energy intensive industries.</p>
<p>Wood — EFBWW and CEI-Bois</p> <ul style="list-style-type: none"> <li>• European Commission's proposal for a directive on renewable energy sources (10.6.2008)</li> <li>• Recognition of wood-based products as carbon stores with a positive contribution to climate change (24.10.2006)</li> </ul>
<p>The first time that a European social dialogue committee made a joint contribution related to the low-carbon economy was a joint statement advocating the recognition of wood-based products like furniture and elements of construction as carbon stores by European Federation of Building and Woodworkers and the European Confederation of Woodworking Industries in 2006. They call for an end of subsidies to energy installations using woody biomass under national biomass action programmes as this would distort the wood raw materials market and jeopardise wood-based industries. The same conflict between the use of woody biomass for energy production and its use as raw material products triggered the latest statement on the Renewables Directive in the EU energy and climate package. The social partners suggested a promotion scheme for products made of renewable materials and speak out in favour of sustainability criteria for biomass, which would be sustainable forest management in the case of woody biomass.</p>
<p>Construction industry — EFBWW and FIEC</p> <ul style="list-style-type: none"> <li>• The global economic crisis and its consequences for the European construction industry</li> <li>• Emerging from the crisis: Fostering growth and jobs for a sustainable construction industry (29.1.2010)</li> </ul>
<p>Call for quick actions to channel public investment into sustainable construction and support the prompt revision of the framework regulations of the cohesion policy, which allows raising the ceiling of how much Member States can spend from the Regional Development Fund on energy-efficiency improvements in buildings. EFBWW and FIEC encourage the drive towards zero-energy new buildings and underline the need for the emphasis for existing buildings to be put on insulation, heating equipment and the control of heating and air-conditioning systems. They request that the discussion on the Energy-Efficiency of Buildings Directive and the objective of zero-energy should be extended to all existing buildings. In their joint opinion on the crisis they insisted that the construction industry has a major role in reducing CO<sub>2</sub> emissions as buildings being currently responsible for 42 % of EU final energy consumption and producing about 35 % of all greenhouse emissions. They give their full support to the EU's climate change package and insist on proper implementation through the necessary regulatory and application through financial instruments.</p>
<p>Rail transport — ETF and CER, EIM</p> <ul style="list-style-type: none"> <li>• Internalisation of external cost in transport for an acceleration of Community activities (17.4.2007)</li> </ul>
<p>Call on the Commission to speed up its work on a review of the Eurovignette Directive that should ensure the internalisation of external costs to the environment and health caused by road freight transport. In the view of the European Transport Workers' Federation (ETF), the Community of European Railway and Infrastructure Companies (CER) and the European Rail Infrastructure Managers (ERM) the Directive does not ensure a level-playing field with rail transport and hampers its development at the expense of social welfare and the environment. During the revision in 2009, the European social partners have not reacted jointly.</p>
<p>Gas — EPSU, EMCEF and Eurogas</p> <ul style="list-style-type: none"> <li>• Joint submission to consultation on: 'Towards a new energy strategy for Europe 2011–20' (2010)</li> </ul>
<p>A joint response on the employment and social dimension of future energy policy. The Commission should devote more attention to this dimension and indicate likely employment consequences of different scenarios. The emerging skills and competency problems should be urgently addressed and the social partners should be involved in Commission impact assessments. While the social partners appreciate information given at their social dialogue committee meetings, they consider that the upcoming challenges require more structured consultation.</p>
<p>Electricity — EPSU, EMCEF and Eurelectric</p> <ul style="list-style-type: none"> <li>• Joint response to public consultation: 'Towards a new energy strategy for Europe 2011–20' (23.6.2010)</li> </ul>
<p>A joint response on the employment and social dimension of future energy policy. The Energy DG and social partners should explore ways to cooperate in addressing the social dimension of future energy policies based on the latter's toolkits on restructuring and age management. The Commission should also define a process to involve social partners in the impact assessment of new policy measures. Based on their current study on job skills needs and a just transition to a low-carbon economy the social partners want the Energy DG to work together to identify measures to tackle job skills and needs.</p>

### 5.5.2. Autonomous European social dialogue initiatives concerning the low-carbon economy

In addition to their activity aimed at influencing policy, European social partners have started to explore an autonomous sphere of action through their social dialogue or projects related to the low-carbon economy, i.e. they develop their own social dialogue agenda around the issue.

#### 5.5.2.1. European cross-industry social partners

The ETUC, BusinessEurope, CEEP and UEAPME included climate change in their work programme for 2009–10. They have launched joint research on the employment dimension of climate change related policies (including ‘green’ jobs and impact on skills) and intend to develop a common view on this topic. The objective is to help the European social partner organisations to better understand the impact of climate change policies on labour markets and to assess what the role of the social partners at national level is or could be in this area. The idea is to identify positive examples of how companies and/or social partners approach the issue across a range of industries, sectors and/or regions. In addition, they aim to reach conclusions on the consequences for employment (policies) and general and/or specific skills development, which would contribute to the EU’s ‘New Skills for New Jobs’ initiative. Based on this project the European social partners intend to develop ‘a joint approach to the social and employment aspects and consequences of climate change policies with a view to maximising opportunities and minimising negative effects and to identify possible joint actions’ (European social partners’ autonomous work programme for 2009–10).

#### 5.5.2.2. European sectoral social partners

Low-carbon economy issues now feature on the work programme of eight out of 40 European social dialogue committees (agriculture, chemicals, construction, electricity, extractive industries, steel, furniture and wood), compared to only one in 2006 (steel). For example, the social partners in the postal services sector agreed to put ‘environmental issues and impact on jobs’ on the work programme of their European social dialogue committee for the first time in 2010. Employers in particular had argued for the importance of the topic within the social dialogue committee. The social partners’ objective is to discuss green solutions as part of the environmental pillar of CSR. There is an increasing demand for green solutions in areas such as the reduction of CO<sub>2</sub> emissions in operations, the reduction of energy consumption, responsible paper use, or the depletion of natural resources. An overarching question is how ‘green employment’ in the sector will impact on current jobs. The committee will subsequently share best practices among companies and trade unions based on a survey. Eurelectric and EMCEF are preparing a toolkit on how employers and unions can ensure a just transition through the project ‘Climate change, employment impact and just employment transition principles for the European electricity sector’ (2010/11). The toolkit will be developed from a report analysing the impact of measures to address climate change in the sector on jobs, skills and qualifications.

Trade unions in particular seem to use projects to lay the ground for a more substantial social dialogue on the transition to a low-carbon future. For example, a transnational partnership of mining trade unions around the Trade Union of Mining and Energy Workers of Hungary explores the

‘future of miners and the role of social partners — climate change and their impact for employment in the mining industry’ (2009/10). The EMF aims to improve transnational exchange among employees’ representatives and trade unions in the European wind energy industry sector through its project ‘Stronger workers’ representation in the European wind energy sector’. It wants to organise workers, create European trade union networks and improve transnational information, cooperation and participation of employees. The project was initiated by the German IG Metall and is executed together with trade unions from France, Spain and Denmark. The European social partners in agriculture, EFFAT and GEOPA-COPA explore the economic, environmental and social consequences of climate change in agriculture, in particular in the Alpine regions and with regard to water supply in Europe (2009/10).

The low-carbon economy has thus entered the European social dialogue over the last five years, even if it remains largely restricted to the influencing of policymaking. As mentioned in Part 2, a low-carbon economy implies transitions in all sectors, but in some they are more immediate than in others. Of those that are likely to be affected, only the European social partners in the transport sectors have so far not made the low-carbon economy a topic of their social dialogue.

#### 5.5.2.3. European company level

A small number of transnational texts negotiated by trade unions and management at company level include provisions on environmental protection and climate change. In the period from mid-2007 to late 2009 such provisions are found in eight out of the 49 joint texts concluded worldwide (Commission calculation). These provisions,

which are usually one aspect among others addressed in the texts, commonly refer to the reduction of the environmental impact of the company's operations at large. For example, Statoil Hydro and ICEM/Industri Energi (International Federation of Chemical, Energy, Mine and General Workers' Unions and its Norwegian member) agreed measures to 'cooperate to ensure that StatoilHydro activities are carried out with the fullest possible regard for the environment' as early as 1998. The text also addressed human rights, industrial relations and health and safety questions. Union delegates from countries where Statoil Hydro has operations receive 'appropriate training in health, safety and environmental best practices'. Other examples are the texts concluded at Enel, Arcelor Mittal, Lafarge, SCA, or Freudenberg (non-exhaustive list).

The 2009 international framework agreement concerning the social responsibility of the EDF Group addresses also environmental protection, but furthermore includes explicitly 'exemplary actions by EDF Group companies and employees in the area of the environment, in particular in the fight against climate change and the preservation of biodiversity' as well as 'the promotion of energy eco-efficiency for clients and within the companies of the Group'.

## 5.6. Conclusions

The transition to a low-carbon economy is both a necessity and an opportunity for business, employment and the quality of life. It will have a profound impact on large parts of the labour market and throughout a wide range of sectors, in terms of employment structures and skills needs, and needs to be well-managed. A European Employment Observatory Review

concluded recently that most countries lack a strategic direction and an operational set of instruments to fulfil this task (European Commission, 2010). Social partners have demonstrated that they can contribute to this transition and they certainly have an important role to play in the management of the employment consequences.

Drawing on the conceptual framework used in the 2008 Industrial Relations Report to analyse the role of the social partners under the Lisbon Strategy, the chapter has distinguished, and reviewed, three main forms of social partner intervention on climate change issues: influencing policy and lobbying; regulation through agreements and 'softer' guidelines; and activities to support implementation of climate change policies and practices. Social partner initiatives have largely focused on the first and third of these, with as yet relatively few examples of the second.

The state remains the main actor providing the framework through policies in the areas of climate changes, energy efficiency, transport, state subsidies, taxes, etc. Therefore, first and foremost, social partners have drawn attention to the expected business and employment impact of policy initiatives and try to shape them. Employers' organisations appear to provide more regular and specific input, including of a technical nature. Trade unions tend to concentrate on the main policy issues and insist on the anticipation and management of employment impacts. The transition to a low-carbon economy differs, however, from sector to sector and it is noticeable that in many sectors both sides of industry often reach joint positions which identify their specific concerns. The transition creates winners, losers and pressure on many sectors and/or professions. Therefore, tensions and conflicts can arise not just between management and labour but between

sectors or between the social partners and the legislator. This raises the particular challenge for employer and trade union confederations of closing the ranks between 'greener' and 'traditional' sectors. The organisational density of employers' and trade unions is stronger in 'traditional' industries and energy intensive sectors, and fears of job loss combined with concerns over a loss of international competitiveness may lead to resistance to climate change initiatives. In contrast, the ongoing change is seeing the emergence of new companies, and even new sectors, and raises the challenge of organising firms and workers and establishing social dialogue in these companies and sectors.

What distinguishes social partners from other interest groups is their capacity to enter into agreements and commit their members to implementing them. Although collective agreements addressing climate change issues are as yet rare, workplace and company social dialogue on energy efficiency and saving as well as other green issues is spreading, including through some transnational agreements. To date also, climate change tends to be addressed as one amongst a range of issues within relevant agreements.

High-quality industrial relations, characterised by representative organisations with strong capacities and expertise, wide coverage of collective bargaining and social dialogue, strong employee participation at the workplace and relationships based on trust and mutual respect can contribute to resolving a range of problems, including restructuring, employment transitions and skills mismatches. From this perspective, the challenges thrown up by climate change adaptation and mitigation are similar to those arising under other structural changes in the economy, which social partners have successfully addressed over the recent

period. In this context, the recent examples from Belgium, Spain and the UK of tripartite or ‘multipartite’ dialogue on the anticipation of the opportunities and challenges that the low-carbon economy entails signal a proactive and coherent orientation to the transition.

In terms of activities to support the implementation of low-carbon policies and practices, in many Member States the social partners are making an impressive contribution through training initiatives, campaigns, research and promotion of quality

and environmental labels. In this respect, trade unions and employers’ organisations act as partners for public authorities and also for civil society organisations. The extent to which they play this role depends clearly on their administrative capacities.

The commitment expressed at the EU level to dialogue over the economic and employment consequences and implications of climate change is striking. European social partners at cross-industry level and in a number of sectors have started to study these issues and to address them in their

autonomous dialogue and in joint statements to the EU institutions. At national level, large differences remain between the social partners’ positions and actions in different Member States. For many the low-carbon economy is not yet a priority. Which role social partners play continues to depend on the economic and social framework conditions in the country and on the organisation of industrial relations. Nonetheless, there is a clear trend towards paying increased attention to the transition to a low-carbon economy in industrial relations in Europe.

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## CHAPTER 6: European social dialogue developments 2008–10

*European social dialogue continued to deliver tangible outcomes for workers and employers across Europe in the past two years, with a record number of binding agreements being signed and implemented. The economic crisis was at the forefront of discussions between social partners, leading to a number of joint actions but also to disagreements. With the creation of several new committees, the trend towards increasing coverage of the economy by sectoral social dialogue has continued unabated, showing that the interest among European social partners in this instrument remains high.*

### 6.1. Introduction

The dialogue between the representatives of management and labour is one of the fundamental pillars of the European social model and its promotion is enshrined in the Treaty on the Functioning of the European Union as an objective of the EU's social policy. To this end, autonomous dialogue at the level of the EU between the social partners — trade unions and employers' organisations — takes place within the framework of social dialogue committees. These committees are the place where both sides of industry are consulted on relevant EU policy initiatives and impact assessments, and where they can discuss issues of common interest, launch joint actions or negotiate binding agreements that could become EU legislation. The cross-industry social dialogue committee is the forum for discussing topics that affect workers and employers across the entire economy, while issues concerning specific sectors of the economy are on the agenda of the 40 sectoral social dialogue committees in existence today. These sectoral committees cover more than three quarters of the European workforce, so that almost 145 million employees throughout the EU come under their remit. Taken together, the cross-industry and sectoral social dialogue committees are vital components of the EU's governance structure in employment and social policy.

The past two years have seen a continuation of the trend towards

#### Box 6.1: Principles of European social dialogue

The important role of the social partners as representatives of management and labour in the governance of the European Union and in the European social model is recognised in the Treaty on the Functioning of the EU (Lisbon Treaty), complementing national social dialogue and industrial relations systems. The new Article 152 at the beginning of the Treaty's social policy title makes it incumbent on the European Union as a whole to promote the role of social partners and to facilitate their dialogue. The role of the Tripartite Social Summit, which regularly brings together the cross-industry social partners with the European Commission and the Council Presidency at the highest levels, is also acknowledged in the Treaty. In addition, according to Article 154 (ex Article 138 TEC), the European Commission has a specific duty to promote the consultation of the social partners and to take measures to support social dialogue. In this context, the Commission must consult the social partners twice on each legislative proposal in the social policy field: first on the possible direction of EU action, and in a second stage on the content of the Commission's proposal. At each of these stages, in addition to submitting joint or separate opinions and recommendations, the social partners have the option to inform the Commission that they wish to start formal negotiations on the matter under consultation. The social partners then have nine months to reach an agreement, during which time the Commission cannot proceed with its own proposal.

The process of negotiating binding agreements at EU level is laid down in Article 155 of the Treaty (ex Article 139). The cross-industry and sectoral social partners are free to conclude agreements either in response to a Commission consultation or of their own initiative, and once a text is adopted at the level of the European social partners, the Treaty foresees two possibilities for implementation. First, agreements can be implemented in accordance with the procedures and practices specific to management and labour and the Member States, which means that the responsibility for implementation falls primarily on the national social partners (autonomous agreements). The European social partners play a primary role in monitoring the implementation of such autonomous agreements. Second, the social partners can make a joint request to the Commission to submit their agreement to the Council for a decision. In practice, this procedure results in a Council directive containing the social partner agreement and the European Parliament is informed. Just like any other directive, it is then the obligation of the Member States to ensure the implementation of the agreement's provisions, and the Commission will monitor the corresponding transposition. As an alternative to national transposing legislation, Article 153 of the Treaty (ex Article 137) permits a Member State to entrust national social partners with the implementation of a directive's provisions. While the European social partners are not prevented from concluding autonomous agreements on any subject matter of their interest, the option of implementation by Council directive is only possible for agreements in the social policy field as defined in Article 153 of the Treaty (ex Article 137).

increasing coverage of the economy by sectoral social dialogue committees. Three new committees have been launched during 2010 at the

joint request of the respective European social partners. 2010 has thus seen the first meetings of the European social dialogue committees

### Box 6.2: Commission staff working document on the functioning of European sectoral social dialogue

After more than a decade of experience with European sectoral social dialogue, the European Commission published a staff working document in mid-2010, assessing the functioning of the sectoral social dialogue committees and proposing possible improvements (SEC(2010) 964).

The European sectoral social dialogue committees were set up by the Commission on the basis of the Commission decision of 20 May 1998 in order to strengthen the sectoral dimension of European social dialogue, in accordance with Articles 154 and 155 of the Treaty (ex Articles 138 and 139). Since 1998, the Commission has created 40 sectoral social dialogue committees, which cover 145 million workers in Europe and sectors of crucial importance (such as transport, energy, agriculture, fisheries, maritime policy, public services, etc.). These committees have issued around 500 texts of varying legal status — going from joint opinions and responses to consultations, to agreements that have been implemented through European directives and have thus become part of EU legislation. Despite the overall success of these committees, there is still room for improvement. Through this document, the Commission intends to encourage the European and national sectoral social partners to fully use their area of negotiation, reinforce their administrative capacity and create synergies between sectors. Within this framework, the European Commission also encourages the integration of new players as well as better participation of representatives from the new Member States.

The full text of the Commission staff working document on the functioning and potential of European sectoral social dialogue is available online (<http://ec.europa.eu/social/BlobServlet?docId=5591&langId=en>).

in the metal, paper and education sectors, while the European social dialogue for central (government) administrations may soon be formalised following a two-year test phase. Furthermore, social partners in the agro-food industry and sports sector are currently respectively exploring the possibility of a sectoral social dialogue committee.

This chapter reports on the main developments in European social dialogue during the past two years. These were anything but 'business as usual' as a result of the economic crisis. European social dialogue commonly deals with a wide variety of topics, ranging from skills development to health at work and gender equality. In the last two years, however, the economic crisis has forced its way onto the agenda of the

European social partners and into many a discussion around the dialogue table. The present chapter will therefore first review the activities of the cross-industry and sectoral social dialogue committees in response to the crisis and the related topics of restructuring, training and skills. The second section then summarises the activities of the committees in other fields, such as health and safety, corporate social responsibility, sustainable development, gender equality and the reconciliation of personal and professional life. Further information on recent developments in European sectoral social dialogue is available in the publication 'European sectoral social dialogue: recent developments — 2010 edition', which contains detailed summaries for each of the sectors engaged in social dialogue at European level <sup>(1)</sup>.

<sup>1</sup> Available online at <http://ec.europa.eu/social/BlobServlet?docId=6008&langId=en>

## 6.2. The crisis and European social dialogue

The activities of the European social dialogue committees that are related to the economic crisis can be broadly classified into two categories. First, brought about by the urgency and severity of the recession, some social partners undertook immediate joint actions that specifically addressed the crisis. Second, in many committees, much ongoing activity assumed particular relevance in light of the crisis, such as joint actions in the fields of restructuring, change management, labour market and employment issues, training, skills development and flexibility. Besides the activities of the European social dialogue committees analysed in this chapter, further activity, and measures, to address the crisis at a European level were taken by the social partners within multinational companies through European works councils (see Box 6.3 and Boxes 3.9 and 3.10 in Chapter 3).

### 6.2.1. Joint action on the crisis

The most severe economic crisis in the history of European integration has become a topic for discussion in all of the social dialogue committees, although some of the sectors were less affected than others and the impacts differ greatly between industries, as Chapter 2 shows. Accordingly, the way in which social partners addressed the crisis at the level of European social dialogue has varied widely since 2008. Some committees decided that there was no added value to be gained from attempting to undertake joint actions or analysis in response to the crisis. Despite intensive efforts, in March 2009 the cross-industry social dialogue committee failed to agree on a joint declaration

### Box 6.3: European social dialogue at the company level

In addition to European social dialogue at cross-industry and sectoral level, dialogue between the representatives of management and labour also takes place at the level of transnational companies, including through European works councils. Since 2000, a rapidly increasing number of texts have been concluded between the management of a company and workers' representatives on a variety of issues and cover establishments and/or undertakings located in several countries. The Commission's services have recorded about 200 joint transnational texts in 100 companies employing together 9.8 million employees. The conclusion of transnational company agreements is a key factor in the development of the European actors' future capacity to conduct a social dialogue in keeping with the increasingly transnational nature of company organisation, and the need to anticipate change and have strategies to deal with it.

The 200 or so texts include worldwide international framework agreements on fundamental rights and social responsibility as well as texts addressing specific European issues such as anticipation of change and management of restructuring, development of joint health and safety standards, common strategies on equal opportunities, mechanism for transnational financial participation, rules on cross-border data protection, joint principles on human resources policy, training or mobility. In general, the conclusion of transnational texts appears to be a European-driven process, as the vast majority of companies that have concluded such agreements are headquartered in Europe. European works councils play a key role in concluding these texts, as almost all transnational agreements relating to Europe bear their signatures (see Chapter 7 for legal details and developments regarding the European Works Council Directive).

Of the transnational texts addressing specific European issues, the anticipation of change and management of restructuring has not only been prominent but also the focus of innovative measures. Some agreements have addressed concrete restructuring proposals and plans. For example, the series of agreements concluded at General Motors Europe have been instrumental in avoiding plant closures, mitigating redundancies and distributing them more evenly. In the event that closures and redundancies take place, other agreements have provided measures for internal or external employment redeployment and/or guarantees over terms and conditions for employees being transferred. A recent example is the 2010 agreement between the European Metalworkers' Federation (EMF) and Alstom and Schneider Electric concerning the consequences of the takeover of Areva's transmission and distribution businesses.

Further agreements elaborate a framework of principles for handling, and a range of measures to address, any restructuring that might occur. The broader objective is to realise restructuring in a socially responsible manner. An example is the 2009 agreement between EMF and ArcelorMittal, which also envisages a role for social dialogue in anticipating potential restructuring. An anticipatory dimension is foremost amongst another group of agreements, whose objective is to anticipate change and its likely impact on jobs and skills across companies' European operations. For example, the 2010 agreement between the European Public Services Union (EPSU) and GDFSuez provides, through observatories and social dialogue, for forward-looking management of jobs and skills in every European subsidiary of the group.

Against the background of an increasing internationalisation of corporate activity, and given the particular responsibilities of the EU in this regard, there is a need to promote and support the further development of transnational company agreements as a means to anticipate and manage change in a socially responsible manner. Given the absence of any framework for transnational agreements, questions have been raised concerning in particular the transparency of the texts concluded, the actors involved, the legal nature, the effects and the dispute settlement of such agreements, whenever they go beyond the status of general declarations of principle.

An expert group was set up in 2009 by the Commission, bringing together representatives of the social partners and Member States, with the aim to look into the questions raised by the development of transnational company agreements and design actions that might help to promote and support further development in this area. Practical, legal and political questions related to the discrepancies between the transnational scope of the agreements and the national norms and references are amongst the questions being considered by this group. The European Commission also commissioned a study on international private law aspects and dispute settlement related to transnational company agreements and launched a study on the legal effects of company agreements. The Commission also provides financial support to related projects by the social partners. In addition, a searchable online database on transnational company agreements is under development.

Further information on transnational company agreements can be found online (<http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>).

on actions to address the crisis. This was due to fundamental differences about the causes of the economic crisis, which resulted in equally incompatible positions with respect to the immediate measures to be adopted. Within the context of the more medium-term and forward-looking Europe 2020 strategy, however, the

social partners achieved consensus around a joint statement in June 2010 (see Box 6.4).

At the same time, a number of sectoral social dialogue committees decided that joint action was indeed warranted. As a result, agreement was reached on joint statements or declarations in

the chemical industry, construction, road transport, commerce, live performance and regional and local government sectoral social dialogue committees, each addressing the crisis and measures to mitigate its effects and taking account of the specificities of the sectors. In addition, the social partners in the banking sector have

initiated an exchange on the impact of the financial crisis in an extraordinary meeting between the social partners in early 2009.

In chemicals, the European Chemical Employers' Group and EMCEF adopted a joint declaration on the global economic crisis in May 2009. This highlighted the severe effect of the crisis on the chemicals sector and called for a series of measures to maintain and restore activity, competitiveness and employment in the sector. These included: support for companies and employees in facilitating short-time working and temporary lay-offs, so as to avoid permanent job loss; facilitating the use of such 'downtime' for training aimed at enhancing workforce capabilities and adaptiveness; ensuring access to adequate credit and finance; stimulating economic activity through investment in public infrastructure, support for innovation consistent with sustainable development and investment in education and skills; implementation of health and safety (REACH) regulations, and energy and climate change mitigation policies, in ways which accord greater prominence to the competitiveness of the sector than hitherto; securing long-term access to energy supplies at predictable prices; further investment in logistical infrastructures across Europe; ensuring the effective functioning of the single market and combating protectionist tendencies amongst Member States and internationally.

The social partners in construction, FIEC and EFBWW, adopted a joint declaration on the global economic crisis and its consequences for the sector in June 2009. Noting that the direct and indirect (amongst supplier industries) effects of the recession in construction activity threatened the jobs of 26 million workers, the statement called for the public authorities

at European, national and regional levels to adopt a number of concrete measures to sustain the sector. These included: accelerating public investment plans, including those in infrastructure projects; boosting funding to speed up investment in energy-efficient new building and improvements in existing buildings; ensuring access to loans and mortgages for house purchase and renovation; boosting provision of social housing; putting in place temporary unemployment schemes aimed at maintaining workers' income levels and facilitating training; and restoring stability to the financial system and bringing it under an effective regulatory system. In January 2010, FIEC and EFBWW followed up their earlier declaration with a 'joint appeal' to the EU and Member States, ahead of the Spring European Council, to step up action to foster the development of a sustainable construction industry. They argued that current economic recovery and stimulus programmes were insufficient and did not provide the long-term flow of public investment needed for the sustainable development of construction. The social partners therefore called for priority investments in: energy-saving and -energy-efficient buildings and systems, and green public infrastructure; enhanced vocational training facilities for the construction sector; R & D and innovation; and access to credit for companies and individuals.

In road transport, the social partners — IRU and ETF — concluded a joint statement on the impact of the crisis on the sector in May 2009. This drew attention to the sharp decline in activity, up to 50 % in some segments of the sector, and associated loss of employment involving an estimated 140 000 temporary or permanent lay-offs across the EU. The statement proposed a six-point recovery plan for the sector, including measures to

ensure access to credit, implementation of employment-preserving schemes such as short-time working arrangements in all Member States, incentives for additional training, investment in clean vehicle technologies and investment in the road transport infrastructure.

In a 'joint reaction' to the economic crisis formulated in December 2008, EuroCommerce and UNI europa — the social partners in the commerce sector — called for action to sustain consumer purchasing power, and thereby economic activity in the retail and wholesale distribution sectors, and to provide access to credit at affordable cost for companies. They also called for measures aimed at preserving employment and improving the skills base in the sector through boosting training. In May 2009, the social partners in the live performance sector — Pearle and EAEA — concluded a joint statement that highlighted the growing impact of the crisis on the level of activity in the sector, first through a reduction in public demand for live events and second via increasing indications that EU Member States are contemplating reductions in the public financing of culture as part of austerity measures. The statement also expressed concern at the negative impact on mobility of performers and performances across borders within the EU. Pearle and EAEA called for measures to restore consumer confidence, improve access to finance and credit for the many SMEs operating in the sector, sustain public funding support for the performing arts and facilitate renewed mobility across borders.

In the public services, CEMR-EP and EPSU — the social partners for regional and local government — addressed a joint message to the Spring European Council meeting

in March 2009. Their statement drew attention to the social effects of the crisis, which increasingly confront regional and local government, as well as to the need to support local economies and business activity. These increased demands came alongside deterioration in the finances of regional and local government as a result of business closures and difficulties. The statement called for adequate financial resources to be made available so that regional and local government could meet these heightened demands, and stressed the importance of maintaining employment in the sector. CEMR-EP and EPSU sent a further joint statement to the European Council in February 2010, reiterating their 2009 message and calling on the Member States to take a long-term perspective when coordinating their responses to the crisis and to reflect in their recovery plans sustainable development in all its dimensions. They underlined that it was unacceptable that many local and regional governments were confronted with decreasing revenue at a time when demands were increasing, and called for sustainable financing through socially just taxation and other revenue streams, sufficient to allow local and regional governments to make long-term investment, including the capacity to maintain and develop competent and motivated staff.

As the crisis deepened and spread throughout 2009, a further number of social dialogue committees decided to address the issue. The social partners in the woodworking sector issued a joint declaration on the economic situation in their industry in late 2009, welcoming concrete measures taken in some Member States such as reduced VAT rates for construction and renovation. In addition, they called for the advantages of wood products to be

recognised in international negotiations on climate change. In November of the same year the Committee in the Furniture Sector approved a joint declaration about the difficult economic environment, in which the social partners called upon European and national authorities to take measures improving access to credit and credit insurance particularly for SMEs and stimulating demand. They also asked the authorities to avoid placing unnecessary burdens on the furniture industry and to improve and restore the international competitiveness of the EU furniture industry by imposing the same social, environmental, health and safety requirements on imported furniture as those that apply to the sector in the EU.

The social partners in the inland waterway transport sector agreed upon a joint sectoral contribution to the Commission's consultation on the future of transport in November 2009, where they took the opportunity to highlight the challenges faced by the sector in the context of the economic and financial crisis. The amount of freight transported had dropped to an alarmingly low level, with some commodities seeing their volumes drop by 70 %. The impact of the crisis was doubled because many new ships were ordered well in advance to meet the projected increase in demand and were now being delivered at a moment of over-capacity. The result has been a race to the bottom in freight rates.

In a similar vein, the social partners in the contract catering sector decided to act in late 2008 after it became clear that the impact of the economic crisis on the sector was higher than originally expected. EFFAT and FERCO, the European social partner organisation, agreed to exchange information and to look

for common points and solutions in the spirit of the 'Guide to the economically most advantageous offer in contract catering' (2006). This guide promotes the integration of social considerations in public procurement in order to avoid that competition based on costs only has detrimental impacts on employment, training provision and working conditions in the sector (2).

In November 2009, the social partners in the audiovisual sector issued a joint opinion on protecting creativity, innovation and jobs. The text stresses the huge potential of the internet as a source of growth — and jobs — for the audiovisual sector. However, in order to preserve this potential, the audiovisual industry needs adequate protection against internet piracy. The social partners therefore called upon the Commission to: undertake a survey quantifying the economic effects of misappropriation of protected works and performances via the internet; formally adopt a strong stance against unauthorised file sharing and of protected works and performances; and acknowledge the need for effective enforcement of creator's rights.

In some committees, discussion is still ongoing with a view to reaching agreement on joint texts. The social partners in the textile and clothing, tanning and leather and footwear social dialogue committees are preparing a joint, multi-sector declaration on industrial policy. They wish to highlight that employment in these sectors had been hit disproportionately hard by the

2 Similar guides on social considerations in public procurement had been produced by the social partners in private security (1999), cleaning services (2002) and textile and clothing (2005). Their experience was relevant for the work of the European Commission, which published a comprehensive guidance document to 'Buying social: a guide to taking account of social considerations in public procurement' (SEC(2010) 1258).

financial crisis, even if the decline in production no greater than the average for the wider economy. The social partners plan to underline that the social and employment situation in these three sectors remains

in a critical situation and requires urgent action.

Finally, a number of projects are currently being carried out by the social partners in various Member States

and sectors with a view to developing strategies to address the crisis and its social and employment consequences and prepare an exit towards a new era of sustainable growth and development.

#### Box 6.4: Social partner contributions to the Europe 2020 strategy

On 24 November 2009, the European Commission launched a public consultation on Europe 2020, a strategy for smart, sustainable and inclusive growth for the years 2011 through 2020. During the consultation period, around 1 400 contributions from interested parties were received, including many European and national social partners at both cross-industry and sectoral level. In general, social partners stressed the need to invest in innovation and upgrade the skills base of the European economy while calling for a broader perspective than that of the consultation document. They recalled in particular that quality education is a public responsibility and that education is not only a tool for the economy, but also has a vital role for social cohesion, equality, active citizenship and cultural diversity. They moreover called upon the Commission to make the exit from the current economic and financial crisis the EU's number one priority, accompanied by a better regulation of financial markets, a stronger growth-oriented policy coordination, a stronger focus on the qualitative dimension of employment, increased access to finance, reduction of administrative burdens, modernisation of social protection systems, a sound immigration policy, and a more effective fight against increasing inequalities, poverty and social exclusion.

More specifically, the ETUC felt that the Commission's perception of the sustainable dimension of growth is focused on climate change and energy rather than on the labour market. According to the ETUC, the strategy fails to address today's major concern (making our economy sustainable) and does not address immediate priorities, but rather builds a strategy on a too distant time-frame. In view of the spring meeting of the European Council, the ETUC issued a 'message to the EU and Heads of Government' on 18 March 2010, calling upon the summit to address immediate priorities such as a new EU recovery plan with an emphasis on growth, a programme to support Greece, strengthening financial regulation and the social dimension of the EU strategy. BusinessEurope shared the ETUC's view that 2020 is too long-term focused and calls for a reinforced focus on the urgency of a strategy. Their comprehensive analysis can be found in the 'Go for growth' publication available on their website (<http://www.busineurope.eu>).

Under the 2009–10 work programme of the cross-industry social dialogue committee, the European cross-industry social partners are targeting such issues as active inclusion, the employment dimension of climate change related policies and a joint contribution to the Europe 2020 strategy, which they presented on 4 June 2010.

In their joint document, the European social partners agreed that a rapid return to more and better jobs should be Europe's first short-term objective. They believe the following objectives will be crucial for a successful recovery on a long-term: reforming the global financial system, restoring and improving growth dynamics to create more and better jobs, promoting skills and entrepreneurship, revitalising the single market, developing an integrated EU industrial policy, supporting new means of financing for investment, combating poverty and inequality. They identify social cohesion as a precondition for a dynamic and sustainable economy.

As regards employment and social policies, social partners believe that the Europe 2020 strategy should therefore strike the right balance between measures to address the employment impact of the crisis and reforms aimed at addressing Europe's medium- and long-term labour market challenges. In concrete terms, an increase in EU growth rate to an average of at least 2 % should be the aim in coming years.

The European cross-industry social partners called upon Member States to implement the right mix of policy measures addressing flexibility and security dimensions (labour law and contractual arrangements, effective and high-quality active labour market policies, lifelong learning policies, efficient and sustainable social protection systems, social dialogue) and to review, and if necessary adjust, the design of labour law, job protection systems and collective bargaining practice, in cooperation with social partners. They also called for a supportive public environment and access to high-quality, affordable and effective public services as a prerequisite of business development and people's welfare and once more called for the application of the European Small Business Act, including the commitment to the 'think small first' principles.

With respect to governance issues, they called for a sense of collective responsibility and an appropriate European framework enabling the Europe 2020 strategy to be implemented in a coordinated and consistent way, and for benchmarking in order to pin down structural weaknesses at national level. They called for a stronger involvement of the social partners at all levels (European, national, regional and local levels) in the design and in the monitoring of both European and national reforms strategies and for support in developing their capacity where needed. In particular, social partners must actively contribute to the design and implementation of policy measures addressing the flexibility and security dimensions.

### 6.2.2. Restructuring and change management

No matter what the macroeconomic circumstances, restructuring and the anticipation of change have often featured prominently on the agenda of European social dialogue committees. In times of crisis, change is accelerated and the pressure to restructure increases for companies and workers alike. These topics therefore acquire additional urgency, as the representatives of management and labour bring first-hand experience of the effects of the crisis to the dialogue table.

In this context, between 2005 and 2009 the cross-industry social partners carried out a project in 26 Member States, which specifically looked at the role of the social partners at the national, sectoral, regional and enterprise levels in economic restructuring. The first phase of the project undertaken in 2005 and 2006 covered the 2004 accession countries of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. During this phase, the role of the social partners in restructuring was examined against the background of the enormous transition from command to market economies and subsequent job growth in certain sectors resulting from the direct and indirect effects of increased foreign direct investment.

The second phase of the project (2007–08) involved 10 more Member States: Austria, Denmark, France, Greece, Ireland, Italy, the Netherlands, Spain, Sweden and the United Kingdom. The restructuring that took place in many sectors in most of these countries reflected the growing importance of services and a parallel reduction of employment in manufacturing associated with attaining world competitiveness. Although job reductions took place, the overall background to

restructuring was one of economic and employment growth, with Europe as a whole adding 7 million new jobs over the period 2000 to 2005. The burden of job loss did not, however, fall evenly between sectors and regions and there were often sharp distinctions between those who gained and those who did not.

The third phase of the project took place against the background of the financial and economic crisis that took hold toward the end of 2008. Work during 2009 with the social partners in Belgium, Germany, Finland, Luxembourg, Portugal and Romania was dominated by the impact of the crisis and the design and adoption of anti-crisis measures, to the exclusion of virtually all other issues. A final seminar was held in January 2010 in Brussels, where a synthesis report of the five-year project was presented by the project consultant. The results showed that the active engagement of the social partners in the management of change consistently improved performance in restructuring outcomes. There were practical examples of excellence in each case, whatever the national system of employment relations.

A project on restructuring was also carried out by the sectoral social dialogue committee for the chemical industry. Many different types of restructuring were identified, such as relocation, delocalisation, closures, offshoring, expansions, mergers, outsourcing, etc. All these types of restructuring are becoming more complex and different viewpoints on how to respond were expressed by the social partners. Contrary to initial intentions, it was not therefore possible to prepare general guidelines on restructuring in the sector. Separately, the committee issued joint statements by the social partners criticising some EU policies on

chemicals and on climate change, since they feared that these initiatives could potentially threaten the competitiveness of the EU chemical industry. In their response to the consultation on the Europe 2020 strategy they in particular underlined the sector's leading role in innovation and research, as well as its key contribution to the provision of high-quality employment and training.

To help employers and trade unions better manage restructuring processes, the European social partners in the electricity sector published a toolkit for socially responsible restructuring, including a best practice guide. This toolkit analyses the context of the restructuring in the industry (liberalisation, technological change), the importance of social dialogue and the transparency of the process. It addresses the questions of outsourcing, training needs, offshoring, lifelong learning and health and psychosocial issues. It offers a practical checklist for the design of a restructuring strategy and presents in-depth case studies.

In postal services, the crisis has compounded the ongoing decline in mail volumes due to electronic substitution and the opening of the market to create additional pressure on established postal operators. Accordingly, the social partners in the sector treated the crisis as an integral part of their work on the evolution of the sector, discussing how postal services are regulated with respect to their employment and social dimension in different Member States, and working towards an up-to-date mapping of this social regulation across the entire European Union.

In similar work, the social partners in the railway sector published a joint report in February 2009 on the impact of European rail freight restructuring on employment. The fundamental

objective of this report was to provide input for social dialogue, achieved by the organisation of seminars and visits to freight sites in six Member States. This was the first time that the social partners have addressed the subject of rail freight restructuring and its impact on employment on a European scale. The social partners concluded that staff numbers in the sector have been cut substantially due to insufficient productivity improvements and a decline in the market share. Railway companies have, with some exceptions, introduced social support measures. Restructuring has taken place, new job configurations have emerged and training has fostered enhanced competencies. Outright dismissals have been avoided through redeployment and early retirement. In addition to these changes, the sectoral trade union federation ETF emphasised the spread of job insecurity, the increase in geographical mobility and in working time in certain Member States and the coexistence of different contractual status for workers within the same company. Employers placed their emphasis on the survival of their companies, performance improvements and cost control, notably through greater flexibility in order to respond to demand more effectively and to withstand the impact of cyclical economic changes, and on efforts to find solutions for employees. The social partners' joint objective is to use social dialogue to strike a balance that will be acceptable for both parties, notably between the economic and the social perspectives, occupational and family life, etc. However, they fear that the pressure of lower transport prices in general and for rail transport in particular may make certain developments more difficult.

In the civil aviation social dialogue committee, the development of functional airspace blocks was a key topic in the context of the major sectoral

restructuring affecting air traffic management (the 'Single European sky'). The corresponding working group of the committee issued a joint statement within the framework of the European conference on functional airspace blocks, where the social partners agreed to assess once a year the progress made by their members as regards the consultation of workers. To this end the social partners jointly drafted a first questionnaire to assess the consultation process concerning functional airspace blocks during the feasibility study. In their assessment, the social partners pointed out that more precise and joint definitions on involvement levels are needed, although in general an information process had been activated. Social dialogue needed to be reinforced in the implementation phases. The trade unions felt informed and involved but not always sufficiently consulted nor treated as real partners, leading to dissatisfaction with the way the views of the employees were considered. On the other side, the providers were of the view that the levels of involvement of staff representatives was adequate, since no decisions had yet been taken, and that further consultations were foreseen on the possible social consequences of the development of functional airspace blocks. Based on these results, the social partners suggested discussing possible joint recommendations in the social dialogue committee.

In a related development, the Air Traffic Controllers European Unions Coordination (ATCEUC) and the European Transport Workers' Federation (ETF) signed a cooperation agreement on 18 June 2009 to set up the modalities of cooperation between the two workers' organisations. ATCEUC and ETF mutually recognise each other as social partners in the air traffic management (ATM) field and as organisations that represent air traffic controllers at

European level. ATCEUC recognises ETF as the organisation that represents all other ATM personnel at European level. This agreement will ensure ATCEUC's involvement in the sector's social dialogue structures, which is extremely relevant with regard to the social partners' role in the ambitious 'Single European sky' initiative to reform the architecture of European air traffic control.

In September 2009, the social partners in the live performance sector presented a joint statement on Creativity, innovation and the role of the cultural sector. While appreciating that the European Agenda on Culture places artists and their work at the centre of creativity and wealth creation within a knowledge society, they called upon the EU to take account of the particularities of the sector and the way it functions. The EU and Member States should embrace policies that allow the performing arts to develop and expand and make them a more attractive sector in which to work, including: by assuring the sustainability of the sector through its inclusion in economic recovery plans designed to stimulate investment and create jobs; by addressing employment and social protection issues in the sector in the context of mobility.

### 6.2.3. Labour market and employment

In October 2008, the European cross-industry social partners started negotiations on an agreement on inclusive labour markets, which were successfully concluded in December 2009. The framework agreement on inclusive labour markets was presented on 25 March 2010 on the occasion of the Tripartite Social Summit. It represents their fourth European autonomous agreement signed in the last seven years. The agreement

provides an important input for the European Commission's own agenda on inclusive labour markets and for the Europe 2020 strategy. The social partners see the agreement as providing practical tools that may be useful at national level.

The aim of the framework agreement is to make full use of Europe's labour force potential, improve job quality and increase employment rates in the face of demographic ageing (see Box 6.5 summarising the agreement's main features). It covers persons who encounter difficulties in entering, returning to or integrating into the

labour market as well as those who, although in employment, are at risk of losing their job, but does not target specific groups. The framework agreement recognises that achieving inclusive labour markets is a key concern involving the shared responsibilities of employers, individuals, workers and their representatives.

As an autonomous framework agreement, implementation will be the responsibility of national social partners, who have three years to do so. Yearly tables summarising the ongoing implementation of the agreement will be prepared by the cross-industry

social dialogue committee. A full report on the implementation actions taken will be prepared by the social dialogue committee and adopted by the European social partners in 2014.

Also addressing the topic of employment, the social partners in the construction sector signed a joint opinion on self-employment and bogus self-employment in February 2010. The text recognises the joint responsibility of social partners to prevent and combat bogus self-employment practices, including through: preventive measures (awareness raising; social considerations in public procurement; improved administrative cooperation; simplified administrative procedures); promotion of supply chain responsibility; and efficient punitive measures. European, national and regional authorities are urged to develop a set of common criteria for guidelines to determine the nature of individuals' employment status and thereby to prevent and combat bogus self-employment. In similar vein, the social partners in the hospitality sector are monitoring the extent of undeclared and illegal working practices in the sector and the various ways of addressing the problem at the national level (best practices). They aim to agree on a joint opinion concerning undeclared work.

#### Box 6.5: Main features of the autonomous agreement on inclusive labour markets

With their agreement, the social partners commit to take concrete actions to help disadvantaged people to enter, remain and develop in the labour market. To this end, the agreement includes a number of specific measures to be taken by the social partners, among which are:

- awareness-raising campaigns;
- dissemination of information about availability of jobs and training schemes;
- cooperation with the 'third sector' to support those who encounter particular difficulties in relation to the labour market;
- cooperation with education and training systems in order to better match the needs of the individual and those of the labour market;
- promoting vocational education and training and measures to ease the transition between education and the labour market;
- introducing individual competence development plans (in line with the framework of actions for the lifelong development of competences and qualifications) jointly elaborated by the employer and the worker, taking into account the specific situation of each employer, particularly SMEs and worker;
- promoting the development of means of recognition and validation of competences;
- improving the transferability of qualifications to ensure transitions to employment;
- promoting more and better apprenticeship and traineeship contracts.

The agreement also contains a list of recommendations to public authorities and other actors, including:

- development or upgrading of skills through tailored education and training;
- equal access to health, education, housing and social security services as well as access to the basic utilities that play an important role in alleviating and addressing the impact of social exclusion;
- effective use of existing financial instruments, including the European Social Fund, to promote and fund policies aimed at the integration of disadvantaged people in employment;
- improvement of the availability and quality of adequate training offers for individuals and employers, in particular taking into account the needs of SMEs and of people with the least qualifications;
- reinforcement of an active participation of adults in further education and training, independent of their previous educational attainments.

#### 6.2.4. Training and skills development

The development of skills and training opportunities for workers is a key strategy to address the challenges resulting from industrial change and restructuring, to improve employability and to facilitate mobility, all of which become even more pressing during an economic recession. European social dialogue committees have therefore continued their work on these issues.

In this context, in 2009 the social partners in the personal services sector reached an autonomous agreement introducing European Hairdressing Certificates. These certificates will attest the skills and competencies of hairdressers and salon managers on a European level and will be entirely compatible with the European Qualifications Framework (EQF). To this end, the European social partners have set up a joint secretariat to check national training standards against the competencies required for obtaining the European certificate and to administer the overall certification system. The certificates will be issued to individuals through the national social partner organisations in the hairdressing sector.

In agriculture, the social partners agreed on two general templates concerning 'plant grower' and 'livestock breeder' to be integrated into the taxonomy on European skills, competencies and occupations, which is currently being developed. This initiative of the European Commission, outlined in its 'New skills for new jobs' communication of December 2008, will link skills and competencies to occupations in order to enhance the quality and transparency of vacancy information to improve matching between job seekers and vacancies.

In the hospitality sector, the European social partners are aiming to implement the European Qualification and Skills Passport by elaborating the list of skills and identifying countries interested in participating in the experimentation phase. The social partner would also like to continue cooperation with other sectors working on skills and qualifications and to ensure compatibility with other passports/systems (Europass, EURES, EQF).

Skills development is also a priority issue for the European social partners

in the commerce sector. In 2008 and 2009 they have translated and disseminated — with the financial support of the EU — the interactive European Commerce Competence e-learning tool. Six qualification modules teach core competences that are common across Europe. Successful completion could be certified by competent bodies in the Member States, provided further efforts in this area. The certification could supplement national qualifications and should be particularly useful in those countries that have no elaborate sectoral vocational training system as yet. It should thus increase mobility and make qualifications more transparent.

In contract catering, the social partners are working on a training tool for food hygiene in the framework of a joint project. The tool is being created in electronic form (internet based), although a printable version will also be made available. Addressed to workers, it would contain a test to check that individuals have progressed through the training manual. It is planned that the tool also contains visual elements and consists of different levels of training. This multilingual tool will remain on a basic and simple level, with additional specifications for further in-depth training on particular issues possible in the Member States.

In 2008, the European social partners for the temporary agency work sector carried out a joint project on training opportunities for agency workers. The main objective of the project was to assess the role temporary-work agencies may play in facilitating transitions in the European labour market by promoting vocational training opportunities for temporary agency workers. It also aimed to identify good practices that could be used to improve and increase opportunities for training in the sector. In the follow-up, social

partners adopted a joint declaration in December 2009 on training for temporary agency workers, highlighting the key role played by social partners in facilitating skills upgrading.

In 2009 and 2010, the social partners in the construction sector jointly worked on two projects related to skills and training. The first of these aimed at having discussions, collecting information and comparing the qualifications framework in the Member States at different levels. The aim is to make qualifications more transparent at the European level. The second project aimed to compare the different qualifications systems of eight Member States and possibly find a common definition of the term 'bricklayer'.

In 2009, in a context of substantial instability due to restructuring, the social partners in the sugar sector focused on the need to improve employability in their industry. To this end they organised a conference on employability in October 2009 in Brussels in the framework of a project co-financed by the European Commission. This project resulted in a definition of the concept of employability, highlighted good practices in the sugar and the agro-food industry as well as from outside these sectors, made recommendations concerning success and employability factors, listed skills that should be developed and that are required in the sugar sector, gave an overview of European and national financing possibilities in 20 sugar producing countries, and provided a practical dictionary defining concepts connected with employability. This information is presented in the form of an interactive computer-based tool, allowing the content to be progressively enriched by new contributions. The tool is available in multiple languages on the website of the sugar social dialogue committee (<http://www.eurosugar.org>).

In the railways sector, the social partners organised a conference on employability in 2008, designed to implement the joint recommendations on the concept within a rail context that they had approved in late 2007. This conference allowed employers, trade unions, experts and other stakeholders to exchange views on the current status of and progress in the implementation of the recommendations. With the help of specific examples of good practice, participants discussed the significance of the employability approach for the European railway companies and their employees. The European social dialogue committee continues to work on this issue and to closely support and promote the process of implementing the strategy of employability in the various national contexts.

Through the ground handling working group of the civil aviation social dialogue committee, the European social partners jointly organised a conference on best practices on training and qualifications in this part of the sector in Granada in 2008. The conference highlighted the evolution of the European ground handling sector and the link between training, safety and the quality of service. Following the conference, the European social partners acknowledged that the development of staff skills is an essential factor to deliver safe and qualitative services. A priority is to recognise the proficiency of employees, thereby improving their employability and facilitating the adaptation of the companies, which are confronted by new challenges in an international economy. The European social partners generally agree that it is vitally important to their industry that workers have the necessary skills and qualifications to meet the challenges of a sustainable aviation market. They have therefore decided to examine several examples of good practice in a study conducted in 2008.

As a result, the social partners signed a joint declaration in 2009, outlining their common understanding and examining joint initiatives.

The public urban transport working group of the road transport sectoral social dialogue committee carried out a project on service quality and new career paths for drivers in European public urban transport. In this framework, the social partners discussed a future-oriented competence profile for European urban transport drivers. Such a competence profile should make it possible to adapt the structures of work organisation and qualifications to the requirements of a high service quality in public urban transport and to improve professional development possibilities for the employees of urban transport enterprises, especially for the driving staff. The social partners are working towards a common statement on recommendations and the next steps for their ongoing social dialogue in this field.

In September 2009, the social partners of the maritime transport sector together with the Universities of London, Nantes and Groningen launched projects addressing the training and recruitment of seafarers. The aim of these projects is to identify training needs, to enhance the image and attractiveness of the sector, to promote quality working and living conditions at sea and to develop the career path of seafarers.

In October 2008, the social partners in the audiovisual sector decided to step up their work on training and mandated a sub-working group to examine the professions of journalism and sound technician focused on: the training needs in the two professions; the current availability of training at national level, including the establishment of an inventory of the studies and work already available; and the

likely developments in the two professions. The group would then use the review of the two professions to consider how the sectoral social dialogue committee could make a contribution enhancing training provision within the audiovisual sector.

Also in 2008, the European social partners in the live performance sector set out a project on theatre technical training in the European Union. A consortium of experts undertook a survey and produced a comprehensive report that was presented and discussed at a training forum that took place in March 2009. Taking up the conclusions of the report and the forum, the social partners adopted a training action plan which contains a series of joint actions social partners engage to carry out in the area of training. Two key priorities are the building of a communication platform on theatre technical training and the realisation of a road show visiting different parts of Europe to inform stakeholders on training opportunities and ways to develop training in the sector.

Faced with increasing globalisation, the social partners in the textile and clothing sector agreed on the crucial importance of early anticipation employment trends and training requirements to optimise the management of jobs and skills of European workers and thereby the performance of companies. In 2009, in the context of the European Commission's proposal to establish sector councils for jobs and skills, they finalised a project studying good practices on the matter and the feasibility of establishing a network of currently existing skills observatories. In the follow-up, the social dialogue committee has started to explore the set-up and working arrangements of a possible sector council. Similarly, the education, commerce, postal services and tanning and leather sectoral social dialogue committees have also

expressed interest in becoming pilot sectors for the proposed European skills councils.

When setting up the new European sectoral social dialogue committee for the metal industry in January 2010, social partners agreed to focus the committee's work in two dedicated working groups: one on training and skills and one on international competitiveness and employment. Finally, the new European sectoral social dialogue committee for the education sector, launched in June 2010, underlines the implications of increasing attention to education, training and human resources development in EU policymaking in general.

### 6.2.5. Flexicurity

Flexicurity, bringing together flexibility and security, stands for a combination of reliable and flexible contractual working arrangements, adequate and sustainable social protection systems, lifelong learning strategies and effective labour market policies. The European Council agreed on common principles on flexicurity in December 2007, and the onset of the crisis in 2008 has considerably enlivened the debate about the appropriate policy mix of flexibility and security in specific situations. In the context of the Europe 2020 strategy, the social partners play a key role in the definition and implementation of the second phase of the flexicurity agenda. The European social partners in the cross-industry social dialogue committed in their 2009–10 work programme to 'jointly monitor the implementation of the common principles of flexicurity, notably to evaluate the role and involvement of the social partners in the process and to draw joint lessons.'

The European social partners' commitment to monitor the implementation

of the EU common principles of flexicurity was also welcomed by the European Commission in its communication of 3 June 2009 on a 'shared commitment for employment'. On the basis of this commitment and the recommendations on flexicurity expressed in the joint labour market analysis, European social partners have decided to undertake joint work together with their national affiliates on the implementation of the flexicurity principles.

The main objective is to assess the role of social partners at different levels in the implementation of flexicurity. This project also aims to promote trust and mutual understanding between the social partners so as to facilitate the implementation of the flexicurity principles at national level. In undertaking this project, European social partners are building on their experience and results of the EU-wide joint study on restructuring that took place between 2005 and 2010 (see above). The full results of the project will be available in spring 2011.

## 6.3. Other themes in European social dialogue

Despite the economic crisis, the European social dialogue committees continued to work on a large number of other topics. Progress was achieved in a number of committees on issues of health and safety at work, freedom of movement in the EU single market, working conditions, corporate social responsibility and sustainable development, and gender equality and reconciliation of personal and professional life. The long-term question of demographic changes was also on the agenda of several sectors, as was the subject of capacity building of social partner organisations. Finally, a number

of committees have been involved in a multi-sectoral initiative to combat third-party violence and harassment.

### 6.3.1. Health and safety

Traditionally, the area of health and safety features at the top of the list of topics that the social partners address in the European social dialogue committees. Despite the urgency of the Economic crisis that developed in 2008 and 2009, the European social partners continued their ongoing work on this important policy area.

One issue that was successfully tackled by social partners during the reporting period concerned injuries in the hospitals sector. Injuries caused by needles and other sharp instruments are one of the most common and serious risks to healthcare workers in Europe and represent a high cost for health systems and society in general. On several occasions the European Parliament had expressed concern at the life-threatening risks to healthcare workers from contaminated sharp instruments, since the existing legislation, in practical terms, did not address the risk arising specifically from working with these. On 6 July 2006, Parliament adopted a resolution on protecting European healthcare workers from blood-borne infections due to needle-stick injuries, requesting the Commission to submit a legislative proposal for a directive.

Pursuant to Article 154 of the Treaty (ex Article 138), before submitting a proposal for legislation, the Commission launched in 2006 and 2007 a two-stage consultation of the European social partners. In a joint letter of 17 November 2008, EPSU and Hospeem, who are the European social partners in the hospitals and healthcare sector, informed the Commission of their intention of negotiating a framework

agreement on the prevention of sharp injuries in their sector.

Consequently, the Commission suspended the drafting of its legislative proposal, awaiting the result of the negotiation process. After five months of negotiations, on 17 July 2009 the European social partners signed an EU-wide agreement. The social partners' agreement aims to achieve the safest possible working environment for employees in the sector and protect workers at risk. Its goal is to prevent injuries to workers caused by all types of sharp medical objects (including needle sticks). For this purpose an integrated approach to assessing and preventing risks, as well as to training and informing workers, is envisaged.

Following the agreement's signature, the social partners requested the Commission to submit the agreement to the Council for a decision, in accordance with Article 155(2) TFEU (ex Article 139(2) TEC). On 26 October 2009, after verifying the representative status of the signatory parties, their mandate and the compliance of each clause with EU law, the Commission adopted the proposal for a Council directive, containing the full social partner agreement as an annex. On 11 February 2010 the European Parliament supported the proposed directive in a resolution, and on 8 March 2010 the Council reached political agreement on its adoption<sup>3</sup>. The directive is a fundamental step toward the improvement of health and safety of patients, workers and employers in the hospital and healthcare sector. When implemented, it will diminish the occurrence of accidents and infections. The use of foreseen risk assessment, prevention, protection and training procedures will help to

achieve this result. Member States must take the necessary measures to comply with this directive by 11 May 2013 at the latest.

In early 2009, the social partners in the personal services sector notified the Commission of their intention to enter into negotiations on a European framework agreement on the prevention of health risks in the hairdressing sector. Towards the end of 2009, the negotiating teams reached agreement on a first draft text, which foresees detailed provisions regarding the handling of materials, protection of the skin and respiratory tracts. It also aims to prevent musculoskeletal disorders, improve the working environment and work organisation, ensure maternity protection and deal with problems related to the mental load. The social partners have signalled their intention to ask the Commission to present their agreement to the Council for a decision, once the agreement has been ratified and signed by the European social partners. In this way the agreement would be implemented by EU legislation, according to Article 155(2) of the Treaty (ex Article 139(2)).

Given the importance of the issue for the sector, for some time, social partners in the live performance sector have been discussing possibilities for more concrete action in the area of health and safety at work. In March 2009, they decided to create a working group on risk assessment. It aims to: map tools and practices that already exist in the sector in various Member States; assess the possibility of developing a concrete risk assessment tool/guidelines tailored for the live performance sector on the basis of existing practices.

During 2010 the social partners in the telecommunications sector are carrying out a project to examine good practices in relation to the promotion

of mental well-being in their sector. By reviewing existing knowledge and practice and producing good-practice guidelines, they aim to prevent work-related mental health disorders and reinforce the link between good work and good health.

The social dialogue committee for postal services adopted a joint declaration on accident prevention in their sector in June 2009, highlighting the activities of the social partner's accident prevention working group and the results that were achieved through the collection and exchange of best practices at a conference in Budapest and a technical seminar in 2008 in Brussels. In the declaration the social partners commit to further work on the issue of accident prevention, including the ongoing dissemination of best practices and broadening the scope of the remit of the working group to include health issues related to occupational safety and accident prevention. The social partners express their conviction that accident prevention calls for a shared responsibility on the part of companies, employees and their unions, and they emphasise the importance of preventative systems to reduce risk situations and accidents, while promoting a safer working environment.

Four of the recognised social partners within the European social dialogue committee for civil aviation, AEA, ECA, ERA and ETF, jointly organised a conference in October 2008, addressing the concept of workplace health promotion (WHP) for air crew. The social partners agreed that prevention of work-related illness (including accidents at work, occupational diseases and stress) and increased well-being at the workplace are a benefit to both employers and employees in the civil aviation industry. The conference covered critical aspects of stress management for air crew, work-life

<sup>3</sup> Council Directive 2010/32/EU of 10 May 2010 implementing the framework agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by Hospeem and EPSU.

balance and air crew development and training and their impact on work health. The European social partners will continue to work together on the improvement of WHP in carriers operating within the European Union. They recognise their joint responsibility in matters concerning WHP and encourage their affiliates to engage in regular procedures of information and consultation of trade unions and staff representatives, including, where possible, negotiations on promoting work health for air crew.

A few months later, in March 2009, the social partners in the sector adopted a 'Charter and guidelines for a just culture in aviation' for continuous improvement in aviation safety. From the social partner perspective, there is a need to develop an atmosphere of trust in which professionals and organisations are encouraged to provide safety-related information. The charter and guidelines are a concrete tool for employers and employees to create such an atmosphere of trust and thereby advance aviation safety. The signatory parties hope that the forthcoming draft regulation by the Commission on civil aviation accidents and incidents investigation will strengthen 'just culture' principles.

In early 2010, social partners in the woodworking sector organised a conference on the reduction of formaldehyde exposure in their industry, which resulted in the publication of a booklet of best practices and a joint declaration

by the European social partners. A few weeks later, a conference on reducing dust was held, which also produced an overview of best practices and a joint declaration on the subject of working conditions and wood dust.

In a joint working group, the European social partners in the construction industry drafted a guide for a health and safety management system for the construction sector. Ten basic files with examples have been created for companies that don't yet have such a management system, as well as for those companies that have introduced one and would like to develop it further. The European social partners FIEC and EFBWW are also officially recognised as partners in the campaign of the European Agency for Health and Safety at Work (OSHA) on risk assessment. Despite the improvements observed in accident statistics over the last few years, the construction industry still records high levels of accidents and therefore health and safety is one of the highest priorities for the European social partners. In this context, they carried out a project on nanotechnologies in the European construction industry. Given the growing importance of nanotechnologies and their increasing use in the construction sector, the project aimed to address the health risks that may be associated with these technologies.

Similarly, the European social partners in agriculture actively took part in the OSHA campaign on musculoskeletal

disorders (MSDs). They insisted upon the necessity to install national observatories on MSDs, in order to collect data and to come to a common definition of MSDs. The European social partners were also involved in a project on the prevention of MSDs in agriculture, which resulted in the development of informational material.

Social partners in the extractive industries committee carried out a project analysing trends in the causes of accidents and promoting relevant guidelines and best practices. In addition to collecting existing information and relevant industry experience, an in-depth study of five countries was launched (Bulgaria, Hungary, Poland, Germany and Sweden) and to identify best practices. These will be disseminated among stakeholders, including young workers and subcontractors.

Other sectoral social dialogue committees also worked on problems of health and safety in their sectors. The social partners in the cleaning industry identified threats to the health and safety of workers arising from the obligation to clean a too large surface in insufficient time. In sea fisheries, risks to health and safety arise from the high age of fishing vessels, in a context where modernisation is constrained by the low income of fishermen. In maritime transport, the question of resources for investing in improvements which help to guarantee the health and safety of workers was also a subject for discussion.

### Box 6.6: Implementation of the European framework agreement on work-related stress

The cross-industry social partners presented their report on the implementation of the European framework agreement on work-related stress in December 2008. This marked the end of the implementation period of this autonomous agreement that was adopted on 8 October 2004. The agreement had followed a Commission consultation and was to be implemented by the European social partners' members in accordance with the procedures and practices of the industrial relations systems of the Member States, as specified under Article 155 (ex Article 139) of the EU Treaty.

The aims of the framework agreement are to 'increase the awareness and understanding of employers, workers and their representatives of work-related stress' and to 'provide employers and workers with a framework to identify and prevent or manage problems of work-related stress'. In this agreement, the EU's cross-sector social partners confirm that the rules of the Framework Directive on Safety

and Health at Work (89/391/EEC) also apply to stress as a risk factor. This means that the employer shall take the necessary measures to protect workers from work-related stress based on the general principles of prevention, including the provision of information and training. The agreement provides an action-oriented framework, with indications as to how stress-related problems can be detected, factors that have to be analysed in a risk assessment, and measures to prevent, eliminate or reduce stress problems at work.

National social partners implemented the framework agreement by national collective agreements or agreements on recommendations and guidance as well as complementary activities, such as the development of practical tools or surveys. This contributed to and took place in the context of increasing awareness about work-related stress, not only among management and workers, but also among public authorities, labour inspectorates, occupational health and safety agencies and health experts and practitioners. The initiatives taken by these actors — including legislation — interacted with those taken by social partners (see table).

At national level, the following results must be highlighted.

- The agreement triggered or substantially accelerated social dialogue and policy development in 12 Member States where work-related stress had mostly been an expert issue <sup>(1)</sup>.
- The agreement led to the creation and dissemination of practical guidance and tools in many Member States, including their adaptation across borders.
- Even in those countries where work-related stress had already been on the agenda, the framework agreement gave a boost to efforts to raise awareness and to agree on guidance.
- The agreement was followed by amendments to the regulatory framework in seven Member States <sup>(2)</sup>, bringing the number of Member States with a legal framework that explicitly addresses psychosocial risks and/or stress to 14.
- The agreement was implemented by binding national collective agreements in six countries <sup>(3)</sup>.

As a result a set of principles and rules is now enshrined in a majority of Member States (either through legislation or through binding collective agreements) <sup>(4)</sup>. In other Member States, social partners have concluded agreements that were not declared generally binding, or joint guidelines with a substantial, joint effort of awareness raising and follow-up <sup>(5)</sup>.

However, shortcomings remain. As regards coverage, the Agreement has not been implemented in all Member States <sup>(6)</sup>, and where social partners have chosen non-binding agreements and unilateral action, not all workers are covered (which is of particular relevance in Member States where psychosocial risks are not explicitly addressed in the legal framework, and where stress is not fully recognised as an occupational health risk by all parties). As regards impact, this report identified 12 Member States in which social partners do not seem to have used to the full the potential of the Agreement for improving awareness and understanding of work-related stress and the proposed solutions. <sup>(7)</sup> Substantial and joint efforts to improve awareness and understanding are essential, and may even offset the lack of a binding agreement and limited coverage. As regards the action-oriented framework, in some Member States, it is unclear whether workers and employers have easy access to a comprehensive action-oriented framework that covers all areas addressed in the Agreement (work organisation, working conditions, communication, and subjective social factors). <sup>(8)</sup> In addition, in many Member States, not all of the areas addressed in the Agreement are included in the national implementing measure.

This means that there are persistent discrepancies in the levels of protection available across Member States, and that it is not possible to conclude that a minimum level of protection has been established throughout the EU.

Worryingly, social partners in Bulgaria, Estonia, Greece, Italy, Lithuania, and Malta have not reported on the implementation of the Agreement. This gives rise to heightened concern, given that social partners in Bulgaria, Estonia, Lithuania and Malta did not report on the first European social partners' autonomous agreement on telework either. Follow-up and reporting on the implementation of autonomous agreements across the EU is a minimum requirement, in line with Article 155(2) of the TFEU.

When the Commission launched its consultation of social partners in 2002, its objective was to improve protection for all workers throughout the EU. The EU social partners' agreement's objective was to provide a framework for better addressing work-related stress at the workplace level. It has certainly contributed to raising awareness, promoting a set of principles and rules and building consensus within the EU about the structural nature of work-related stress and the need for concerted responses to it. However, there is room for improvement, both at national and EU level, as regards extending protection, and further developing adequate responses to the challenge. There is therefore scope for all stakeholders to consider further initiatives to ensure that the objective is reached.

1 Czech Republic, France, Italy, Cyprus, Latvia, Luxembourg, Poland, Portugal, Romania, Slovenia, Slovakia, Norway.

2 Belgium, Latvia, Lithuania, Hungary, Portugal, Slovakia, Italy.

3 Denmark, Greece, France, Italy, Romania, Iceland.

4 Netherlands, Finland, Sweden, Belgium, Denmark, UK, Iceland, Norway, Italy, France, Greece, Romania, Latvia, Hungary, Slovakia, Portugal, Lithuania, Bulgaria, Estonia.

5 Spain, Luxembourg, Austria, Ireland, Germany, Czech Republic.

6 In Malta, Cyprus, Poland and Slovenia social partners have not reported follow-up to their general declarations concerning the implementation of the Agreement, which would complement the general legal framework in these countries.

7 Bulgaria, Estonia, Greece, France, Italy, Hungary, Malta, Lithuania, Poland, Romania, Slovenia, and Slovakia.

8 Estonia, Malta, Poland, Portugal, Romania, Slovenia.

The framework agreement on work-related stress is the second ever European autonomous agreement. Like with the first autonomous agreement on telework, it was expected that implementation measures would vary from Member State to Member State, as the responsibilities of the actors and the legal framework differ. The comparison (see table) reveals that in many Member States the same instruments have been used.

The European social partners reported challenges linked to the national industrial relations systems and to the issue of work-related stress. First, 'in particular in the 12 new Member States, challenges were still encountered (...) due to the lack of experience with autonomous social partner negotiations and not fully developed social dialogue structures' (European social partners (2008)). It can be added that low coverage of social dialogue in some Member States can be a challenge for the autonomous implementation of European agreements, in particular where agreements are not extended and recommendations and complementary measures are used. In addition, some of the European social partners' member organisations have no direct responsibility in collective bargaining in Member States and/or have little authority over their affiliates that are active in sectors and companies (see Chapter 1). Second, discussions clarifying aspects like the distinction between work-related stress and stress emanating from outside the workplace, the distinction between individual and collective intervention, the difficulty of assessing stress levels and evaluating the work environment, the costs of risk assessments, or the need to raise awareness with the general public and also trade union officials and business leaders, complicated the implementation process.

### Instruments chosen to implement the framework agreements on telework and work-related stress

Instruments chosen		Telework	Stress
Collective agreements at national level	cross-industry	extended by decree/binding <i>erga omnes</i>	FR, BE, LU, EL <sup>(1)</sup> ( <sup>2</sup> )
		binding on signatory parties and their members	IT, IS
	sectoral	DK <sup>(3)</sup>	DK <sup>(9)</sup> , NL <sup>(10)</sup>
Agreements by social partners	recommendations to lower bargaining levels	FI and ES <sup>(2)</sup>	FI and ES
Guidelines, recommendations	addressed mainly to lower bargaining levels as well as companies and teleworkers	NL and SE <sup>(2)</sup>	LU, NL, NO, SE CZ <sup>(5)</sup> , DE <sup>(5)</sup>
	addressed mainly to individual companies and teleworkers	UK, IE <sup>(4)</sup> , AT <sup>(5)</sup> , LV <sup>(2)</sup> and NO <sup>(2)</sup>	
Model agreements proposed by social partners/jointly promoted stress tools		DE <sup>(5)</sup> and IE	IE, AT, UK
Legislation	based on agreement between social partners	PL	LV, IT, HU, SK, CZ <sup>(6)</sup> , PT
	after consultation of social partners	HU, SK and CZ <sup>(6)</sup>	
	no/little involvement of social partners	PT and SI <sup>(6)</sup>	
Mostly accompanying measures			PT, DE
Joint declarations		DE	CY, PL, SI
No implementation yet/no information		BG, CY, EE, LT, MT and RO	BG <sup>(8)</sup> , EE <sup>(8)</sup> , LT <sup>(8)</sup> , MT

NB: This table does not cover sector-specific or regional agreements reported by social partners which relate to a small number of sectors or regions only and which have sometimes been adopted prior to/without any reference to the telework framework agreement (e.g. DE, ES and AT). Furthermore, it does not cover individual company agreements. The existence of an explicit reference to stress of psychosocial risks in the national legal framework is not systematically taken into account. Incomplete or example-based reporting of individual instruments and the difficulty of identifying them in all Member States could distort the overall presentation.

1 Legal status not fully certain.

2 Mainly based on literal translation/translation in annex, i.e. little adaptation to national context.

3 Covers the industry, services, local, regional and national government sectors, is accompanied by guidelines and is supplemented by cross-industry agreement.

4 Implementation not finalised.

5 Unilateral instruments, i.e. not jointly adopted.

6 Partial implementation only.

7 1999, extended to public sector by legislation in 2007.

8 Explicit legal framework.

9 Local and regional administration, state sector.

10 Not a direct implementation measure.

### 6.3.2. Freedom of movement

On an invitation from Commissioner Špidla and the French Presidency of the European Union in October 2009, the European social partners of the cross-industry social dialogue committee agreed to carry out joint work on the consequences of the Court of Justice's rulings relating to economic freedoms and fundamental social rights of workers (the Viking, Laval, Ruffert and Luxembourg cases). The European social partners agreed that the impact of the four CJEU cases, which goes beyond the specific national situations which were at stake, called for a reflection at EU level.

The European social partners focused their work on the following issues: fair competition in the internal market; obstacles to be removed and/or conditions to be put in place for free movement of services and workers; transparency and legal certainty; the principle of non-discrimination, the role of public authorities. The document of 19 March 2010 summarising the conclusions of their joint work includes two sections: a first containing shared observations; and a second with separate contributions from, respectively, employers and trade unions. The social partners agreed on the following four points.

- The 'four freedoms' regarding the free movement of people, goods, services and capital need to be safeguarded and properly developed with a view to enabling higher levels of prosperity and social development in Europe. European social partners are committed to the full implementation of the free movement principles to the extent that this takes place in a context of fair competition. To that end, accompanying measures have to be in place both at national and at European level.

- The European social partners recall that the principle of non-discrimination and equal treatment is a key principle in the internal market, applying to workers and companies alike. The Treaty (Article 45 TFEU, ex Article 39 EC) provides that free movement of workers entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment.
- The Posting of Workers Directive provides for minimum standards which must be observed to ensure respect for the rights of workers and a climate of fair competition. Although the European social partners agree on this, they have different views on whether these aims are achieved by the Posting of Workers Directive following its interpretation by the European Court of Justice. Whilst both sides recognise the need to compel service providers to comply with a nucleus of rules as defined in the host country, they disagree on the definition of this nucleus as well as on the possibility for trade unions and/or Member States in the host country to go beyond this nucleus of rules.
- The European social partners recognise the importance of better monitoring and enforcement of the Posting Directive, but have different views about the degree to which this may solve the key problems arising from the CJEU cases.

The issue of the working environment and questions of mobility also figured on the agenda of several sectoral social dialogue committees. The social partners represented in the sectoral dialogue committee for inland waterways transport published a joint opinion in August 2009 expressing their worries about the implementation of the new rules on the coordination of social

security systems. They consider that the provisions of the 'Agreement concerning social security for Rhine boatmen' are those best suited to the needs of the industry and its employees and are convinced that the implementation of Regulation (EC) No 883/2004 in inland waterways transport will prove impracticable.

In September 2009, the European social partners in the construction industry presented their new website on posting of workers in the construction sector (<http://www.posting-workers.eu>). This website is the main outcome of a joint project co-financed by the European Commission, presenting information on the applicable working conditions in the construction industry in the EU Member States such as minimum wages, working time and health and safety provisions. On the one hand, the social partners clearly expressed their divergent opinions with regard to the need for a possible revision of the posting of workers directive. On the other hand, they agreed on the need to improve implementation of the directive, including through increased transparency, taking better account of the needs of SMEs and micro-enterprises as well as of the self-employed and through the strengthening of labour inspection. They see the website as a contribution to further developing the internal market and combating illegal practices. They also announced their joint commitment to develop an EU-wide social identity card for workers in the construction industry.

In 2008, the hospitals sector adopted a code of conduct and engaged in follow-up activity on ethical cross-border recruitment and retention. The European social partners in the sector, Hospeem for the employers and EPSU for the workers, recognise the inequalities and unnecessary burdens on healthcare systems, caused by

unethical recruitment practices in the EU. The aim of the code of conduct is to promote ethical and stop unethical practices in cross-border recruitment of health workers. To achieve this, the code specifies that employers and workers must cooperate and work with governments, regulatory and professional bodies and other relevant stakeholders at local, regional and national level in order to protect the rights of workers and ensure that employers get highly qualified staff. In 2010, Hospeem and EPSU entered into negotiations with a view to adopt a framework of actions on recruitment and retention.

In a project in the agriculture sector, the social partners gathered information concerning administrative formalities from a majority of Member States, especially concerning the housing of seasonal workers in the sector. The social partners in the private security sector found that the national provisions for their sector were not sufficiently harmonised, leading to problems of mobility for workers between different countries. They have therefore launched a project to facilitate transnational mobility and to prepare an informational toolkit for workers who would like to move between countries.

In order to analyse cross-border movement of temporary agency workers and the impact and implementation of the European directive on posting of workers and the new directive on temporary agency work, the social partners in the sector carried out a research project. They set up a European observatory on cross-border activities within temporary agency work that was officially launched in December 2009. The European observatory will equip the European social partners with a better understanding of the reality of cross-border activities within temporary agency work (with a special

focus on existing regulation), gather and analyse good and bad practices with regard to cross-border activities and support the preparation of practical information tools for temporary-work agencies and temporary agency workers wishing to work abroad.

### 6.3.3. Working conditions

The social dialogue committee in the sea fisheries sector intends to open negotiations on the implementation of certain standards under the 2006 ILO Fishing Convention into EU legislation. Such action would strengthen the labour standards that had already been agreed at international level in 2006 and make them mandatory for Europe. Working conditions and the image of the sea fisheries sector would be enhanced through this measure.

In the furniture sector, the social partners organised a conference in late 2008 on the improvement of the workplace environment and working conditions, which resulted in a booklet collecting several examples of best practices. A similar conference on enhancing the value of work in the sector in order to attract young people was held in 2009, also producing a brochure of best practices.

At the 2009 plenary meeting of the railways sectoral social dialogue committee, the signatory parties to the 2004 autonomous agreement on a European drivers' licence (CER and ETF) agreed on a joint declaration on the application of the agreement. As a number of provisions of this autonomous agreement are incorporated in Directive 2007/59/EC on the certification of train drivers, the declaration clarifies the modalities of application of the agreement. The declaration will act as a guideline for CER and the ETF members in the application of the agreement.

### 6.3.4. Corporate social responsibility (CSR) and sustainable development

Corporate social responsibility was again on the agenda of several social dialogue committees during the past two years. The social partners in the sugar sector adopted a report each year on the implementation of CSR in the sugar industry, which regularly contains several examples of good practices in fields such as health and safety, restructuring, employability or training. In the hospitality sector, the social partners are collecting instances of good practice amongst businesses in order to implement their joint initiative for improving CSR in the sector. In the same way, the social partners of the social dialogue committee for contract catering are implementing the agreement on CSR in their sector.

In 2009 the social partners in the electricity sector signed a joint position on the social aspects of CSR in their industry, referring to international standards of CSR. The social partners emphasised that any CSR policy must be fully integrated within the organisation. The social partners have closely followed the development of the Global Reporting Initiative's (GRI) electricity utility sector supplement to current reporting indicators, which would include additional benchmarks important to the industry. Reporting on the basis of these indicators will ensure that the electricity industry will continue to contribute to socially responsible and sustainable development, thereby promoting the well-being of citizens. European electricity companies are encouraged to take on board the indicators, since the European social partners recommended that they become a reference standard for the electricity industry in developing CSR policies.

The social partners in the tanning and leather sector adopted a framework

agreement on social and environmental reporting standards for their industry in 2008. The agreement contains guidelines that aim at providing companies in the sector (mostly SMEs) with the tools to report regularly on their social and environmental performance, including a template for such reports. Social partners have subsequently carried out a series of Commission-supported projects with the objective of translating the agreement into all relevant EU languages, achieving a wide dissemination of the agreement and promoting the use of the standard and the reporting template. Separately, in 2009 the social partners agreed on a joint declaration on the deforestation of the Amazon rainforest, in which they express their solidarity with the objective of preserving the environment and avoiding irresponsible harm to the rainforest, and called for increased transparency in the supply chain for hides and skins. In their declaration, the European social partners stress the importance of improving the traceability of raw materials in the supply chain in order to fulfil sustainability objectives and also to meet objectives related to animal welfare.

In the textiles and clothing sector, the social partners are implementing a Commission-supported project to promote social dialogue in companies within the sector through a joint implementation of REACH, the EU's regulation on chemicals and their safe use. The project is a response to social partners' concern about how SMEs, and particularly those in the new Member States and candidate countries, will adapt to REACH. The project intends to provide training to social partner representatives on the consequences of REACH and how to implement this regulation. It includes a toolbox to explain REACH to employers' and trade unions' representatives in SMEs and the results will be disseminated at a conference.

Furthermore, against the background of ongoing trade negotiations with countries/regions in Asia and Latin America in particular, the social dialogue committees of the textile and clothing, tanning and leather and footwear sectors held a joint meeting on trade negotiations and trade sustainability impact assessments. In this context, the social partners recalled that a level playing field, including the enforcement of intellectual property rights and social and environmental legislation, were a precondition for competitiveness and sustainable development. They stressed the need for fair and equal rules and accompanying policy measures to mitigate possible adverse effects and ensure a fair distribution of the benefits of trade. The social partners expressed their hope that existing social dialogue structures such as the sectoral social dialogue committees would continue to be regularly informed and consulted on trade policy issues, including both impact assessments and the follow-up and monitoring of trade agreements, notably the sustainable development chapter.

Similarly, the social partners in the shipyards sector began joint work on the feasibility of adopting common social standards for their sector. Their aim is to contribute to create a level playing field in global trade in the shipyards sector with respect to social standards.

### 6.3.5. Gender equality and reconciliation of personal and professional life

In June 2009, following nine months of negotiations, the European cross-industry social partners signed a revised EU framework agreement on parental leave, to be implemented by

a European directive. The resulting Parental Leave Directive (2010/18/EU), based on the social partners' agreement, was formally adopted by the Council on 18 March 2010. Member States have two years to transpose the new rights into national law.

The main provisions of the new agreement and directive are:

- longer leave — each parent will be able to take four months off per child (compared to three months previously). The extra month cannot be transferred from one parent to the other, thereby encouraging fathers to take their leave. In the past many working fathers have transferred their right to leave to the mother;
- temporary changes to work schedules — employees returning from parental leave will have the right to request changes to their working hours or patterns for a set period of time. In considering such requests, employers will be obliged to balance the needs of the employee as well as the company;
- work contracts — the new rights will apply to all workers, regardless of their type of contract (e.g. fixed-term, part-time, agency workers); however, the possibility of a qualification period of maximum one year is maintained;
- no discrimination — an employee applying for or taking parental leave will be protected not only against dismissal but also against less favourable treatment on grounds of taking parental leave.

The agreement also includes non-binding references to the following:

- importance of income in the take-up of parental leave;

- reference to the ‘increasing diversity of family structures’, while respecting national law and practice;
- encouragement for workers and employers to maintain contact during parental leave and to arrange reintegration measures in order to facilitate the return to work;
- assessing the need for additional measures for adoptive parents;
- adjusting conditions for parents of children with a disability or a long-term illness.

All matters regarding the income of workers during parental leave are left for Member States and/or national social partners to determine. Several Member States already have provisions on parental leave going beyond the previous EU minimum standard of three months. In any event, they will have to make sure they comply with the remaining provisions, such as on non-transferability, non-discrimination and return to work.

In 2009, the European social partners at cross-industry level have also concluded the final evaluation report of their five-year framework for action on gender equality. This framework targeted four priorities: addressing gender roles; promoting women in decision-making; supporting work-life balance; tackling the gender pay gap. This final report is based on annual national reports, which highlight the key features of their work to promote the four priorities from 2005 to 2009. The social partners intend to continue working on these priorities, use the good practice gathered in this process and build further on the joint work done.

Inspired by the experience of the cross-industry social partners, in December 2009 the social partners

in audiovisual services set up a working group on gender equality with a mandate to negotiate a framework for action on gender equality in the audiovisual sector in the EU for adoption by the sectoral social dialogue committee. This framework of action will focus on the following key areas: elimination of gender stereotypes; non-discrimination in recruitment; career development; training; equal pay and; reconciliation of private and professional life. In general, the working group’s objective is to further develop joint actions in this field and to enhance gender equality in the sector across the EU. The working group will: organise an exchange on existing policies on gender equality and highlight good practices; and identify tools and actions to enhance gender equality in the workplace applicable across countries.

In 2008, the social dialogue committee for local and regional governments adopted guidelines on drawing up equality action plans, which aim to support regional and local initiatives on equality, and to encourage a joint, long-term and sustained approach to equality by members of the European social partners EPSU (workers) and CEMR (employers). As such it provides a framework to develop best practice and to check progress. An appendix to the guidelines sets out an equality checklist that can be used to assess equality performance over time. Equality plans are also a useful tool to help better implement equality legislation or other equality objectives. A template for a gender equality plan is also proposed in an appendix to the guidelines.

### 6.3.6. Demographic change

The social dialogue committee in the electricity sector prepared a toolkit in 2008 on the promotion of age diversity

and age management strategies. This toolkit presented an analysis of the demographic challenge in the sector, and offered a set of tools for age management, focused on the recruitment and retention of older workers, the health and well-being of older workers, work-life balance and flexible working time, measures to recruit younger workers and preparation for exiting active working life and retirement. The toolkit underlined the role of social dialogue in the creation and implementation of age management strategies and the social partners’ conclusions were summarised in a 10-point plan for successful age management in the sector. The European social partners recommended this plan to their national affiliates as a starting point in creating effective age management strategies.

Similarly, in the insurance sector, the European social partners signed a joint declaration in 2010 on the demographic challenge, addressing a number of recommendations to the national level. National social partners were encouraged to develop policies promoting work-life balance and lifelong learning and to recognise the importance of health and safety at work in this context.

Securing continued access to a skilled workforce is of vital importance for the long-term competitiveness of the shipyards sector. Due to demographic change, many older employees are expected to retire in the coming years, taking with them a wealth of experience, knowledge and competence. As a result, the demand for highly qualified engineers but also for highly skilled blue-collar workers is mounting across Europe. The yards need to retain valuable and essential know-how, recruit young people and skilled professionals and retrain employees to maintain their skills base and safeguard their long-term prosperity. In line with an anticipatory approach,

the shipyards sectoral social dialogue committee developed and launched its third joint project with the financial support of the European Commission entitled 'demographic change and skills requirements' in 2008. The project comprised a research study and a subsequent workshop. The study analyses the present situation as well as the future changes in the workforce structure of European shipyards in order to assess the impact of the demographic change. It serves as a basis for establishing a strategy for future training and recruitment requirements. In

June 2008, the study was presented at a workshop in the Netherlands, during which the social partners discussed the results, exchanged experience on existing initiatives and reflected on potential solutions for the future.

In 2009 the social partners in the gas sector prepared a toolkit and a study on demographic change, age management and competencies in the gas industry in Europe. The toolkit aimed to raise awareness and point to ways in which the social partners can address the implications of demographic

change for the skills and competencies that are necessary to ensure the sector's future competitiveness. It demonstrates how companies can benefit from the skills and motivations of different age groups in the workforce and provide guidelines, information and good-practice approaches. The toolkit also contains several case studies, highlighting joint company — trade union approaches, including in the sector's major companies. The toolkit thus underlines the role of social dialogue in the management of demographic change.

### Box 6.7: Participation in sectoral social dialogue committee meetings — summary statistics

A maximum of 54 participants are invited to plenary meetings of sectoral social dialogue committees. This number is designed to permit the participation of one employer and one trade union representative per Member State, yet the actual composition of the delegations falls within the autonomy of the recognised European employers and trade union organisations on each social dialogue committee. As each participant in a social dialogue committee meeting represents the European social partner organisation rather than national social partners, there are no seats reserved for delegates of a particular Member State and the composition of the committees can change from meeting to meeting. In practice it is therefore uncommon to see delegations composed of exactly 27 members from each of the Member States.

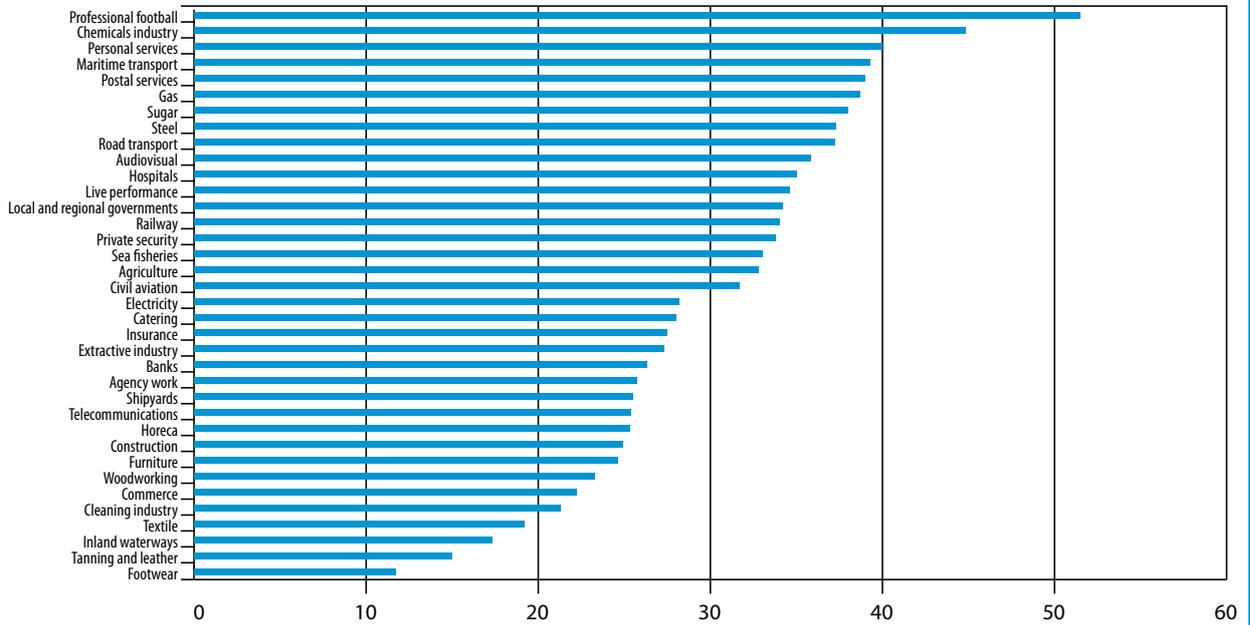
The actually observed average number of participants in the plenary sessions of the sectoral social dialogue committees in the period 2003–08 ranged between fewer than 20 participants in footwear, tanning and leather, inland navigation and textile and clothing — and less than 25 participants in the cleaning industry and in the commerce sector — to 40 or more in postal services, maritime transport, personal services, the chemical industry and professional football (the latter not being fully representative as only the launch event of the committee could be taken into account) (Chart 6.1). Low participation rates in some sectors reflects the limited presence of a sector amongst the EU Member States; this applies to the above four sectors with an average number of below 20 participants per plenary meeting. In other sectors which are present in all EU Member States, such as the commerce sector, however, the comparatively low participation rates could be a signal that the involvement of actors needs to be enhanced and/or the relevance of the agenda and work programme of the committee to be reviewed. The comparatively high participation rates in other sectors are indicative of, and go hand in hand with: the high relevance of the committee's work for the national social partners, e.g. with regard to the liberalisation and evolution of postal services or the EU legislation on chemical products (REACH); active negotiations of the social partners in maritime transport and personal services on agreements to be implemented in accordance with Article 155.

Similarly, the observed share of women among the participants of plenary meetings of the sectoral social dialogue committees reflects to a large extent the employment characteristics in the sector (Chart 6.2). It ranges from 10 % or less in woodworking, professional football, steel, shipyards and the sugar industry to 40–50 % in personal services, commerce, local and regional government and contract catering, and more than 70 % in hospitals and healthcare.

The observed share of participants from the new Member States that joined the EU in 2004 and 2007 respectively (12 new Member States) is an indicator not only of the importance of a sector in the new Member States and of social dialogue in it, but also of the successful integration of the social partners from the new Member States into the existing social dialogue structures. It ranges from less than 10 % in footwear, personal services, sea fisheries, the cleaning industry, shipyards, civil aviation, telecommunications, steel, insurance and banking to 25 % or more in tanning and leather, textile and clothing, furniture, railway, contract catering, the extractive industries and inland navigation (Chart 6.3). Social partners in some of the latter sectors, notably tanning and leather and textile and clothing, have carried out apparently successful, dedicated capacity-building projects to foster the integration of social partner representatives from the new Member States into European sectoral social dialogue structures.

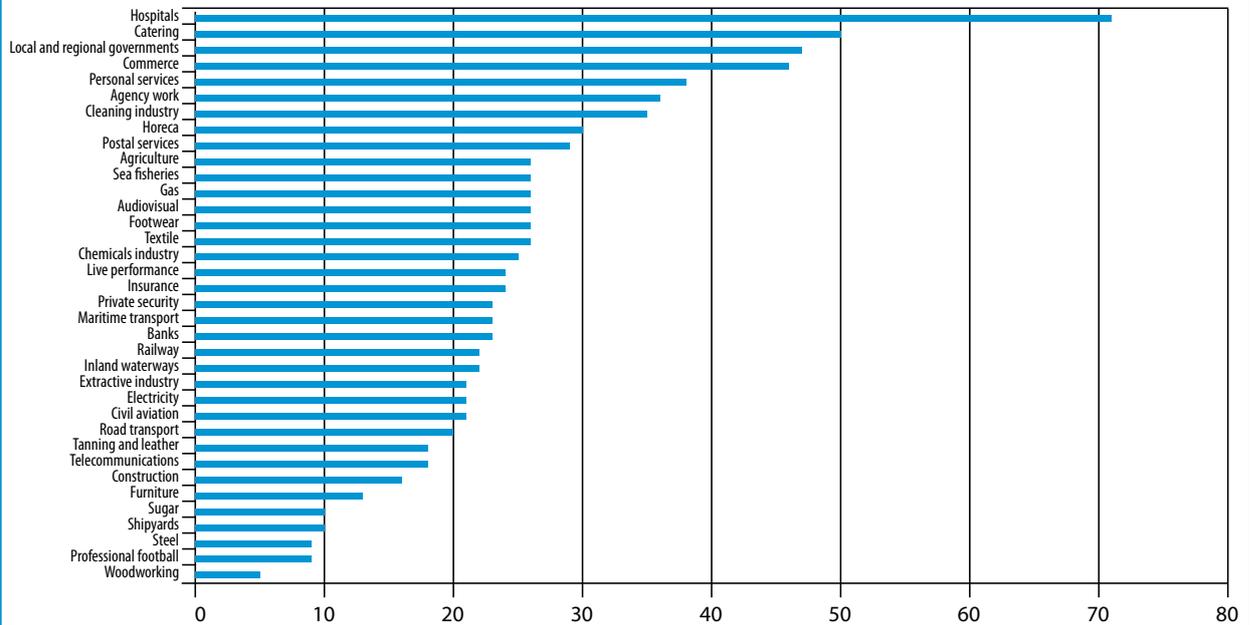
Finally, there is an important difference in the participation from employer and employee representatives across the various committees (Chart 6.4). This may reflect both diverging representativeness structures across sectors (with e.g. five or more employer organisations recognised as representative in sectors such as civil aviation, audiovisual services or extractive industries) as well as differences in the commitment and mobilisation of one or the other side of industry in a sectoral social dialogue committee. In construction and agriculture, the participation rates are biased significantly towards employer representatives (making up two-thirds or more of the participants in plenary meetings), while in civil aviation, textile and clothing, shipyards, gas and banking two-thirds or more of the participants are from trade unions.

**Chart 6.1: Average number of participants per plenary session, 2003–08**



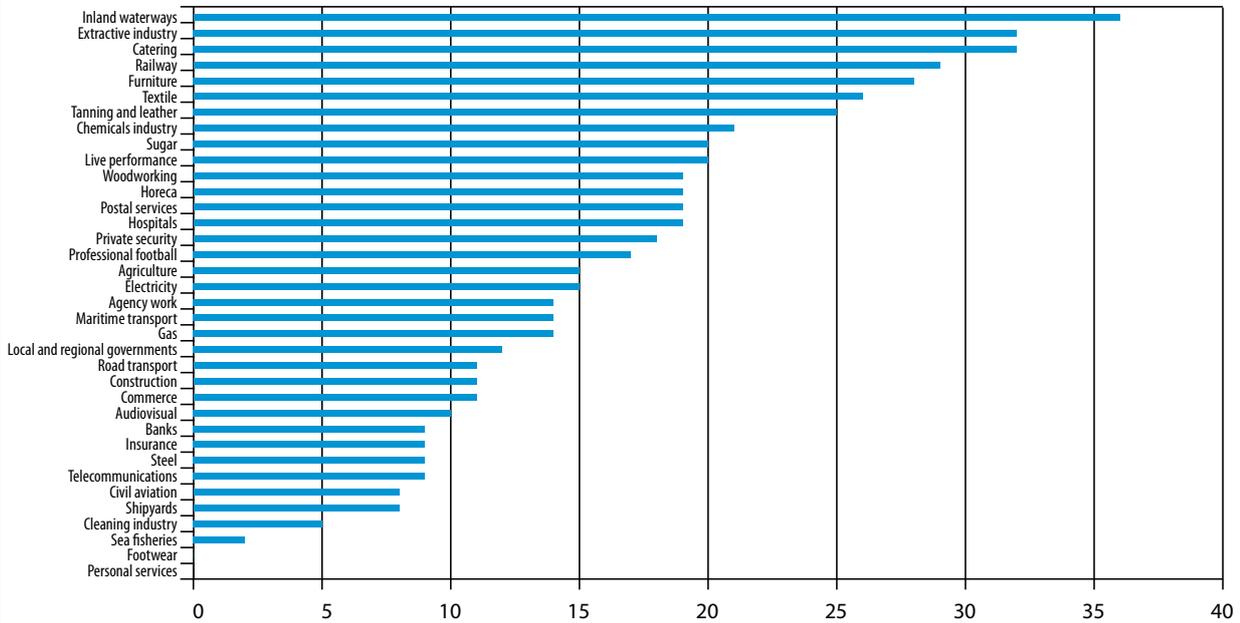
Source: European Commission.

**Chart 6.2: Share of women among the participants in plenary sessions, 2003–08**



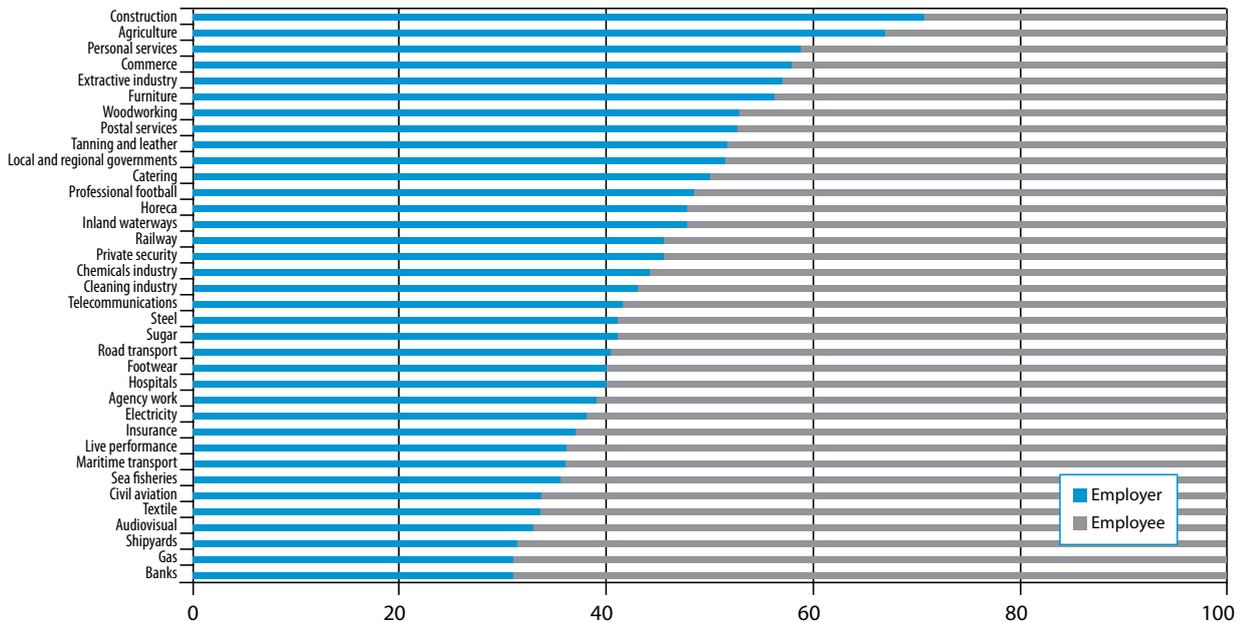
Source: European Commission.

**Chart 6.3: Share of representatives from the 12 new Members States among the participants in plenary sessions, 2003–08**



Source: European Commission.

**Chart 6.4: Share of employer/employee representatives among the participants of plenary meetings, 2003–08**



Source: European Commission.

### 6.3.7. Third-party violence and harassment

Following the signature of the cross-industry social partner framework agreement on harassment and violence at work in 2007, the European social partners in the hospitals, regional and local government, commerce and private security services sectors (EPSU, Hospeem, UNI europa, Eurocommerce, COESS and CEMR) have been jointly exploring how the autonomous agreement could be complemented by a multi-sectoral approach to the specific area of third-party violence. In support of these discussions, two projects were launched to investigate how the problem has been tackled by social partners across the EU and to

identify best practice. The results of these projects were presented at a conference on 22 October 2009, where the participating European social partners agreed on a draft commitment to develop a jointly agreed instrument that will set out the steps needed to prevent, identify and manage problems of third-party violence.

Since the conference, the European social partners, now joined by the education sector (ETUCE, EFEE), have developed multi-sectoral guidelines to tackle third-party violence and harassment related to work, which were signed on 30 September 2010. These guidelines, building upon existing best practice in the sectors, set out the practical steps that can be taken

by employers, workers and their representatives/trade unions to reduce, prevent and mitigate problems. The guidelines will be promoted within the Member States at all appropriate levels taking account of national practices, through joint and/or separate actions. The relevant sectoral European Social Dialogue Committees will prepare a joint progress report in 2012 and a final joint evaluation will be undertaken in 2013.

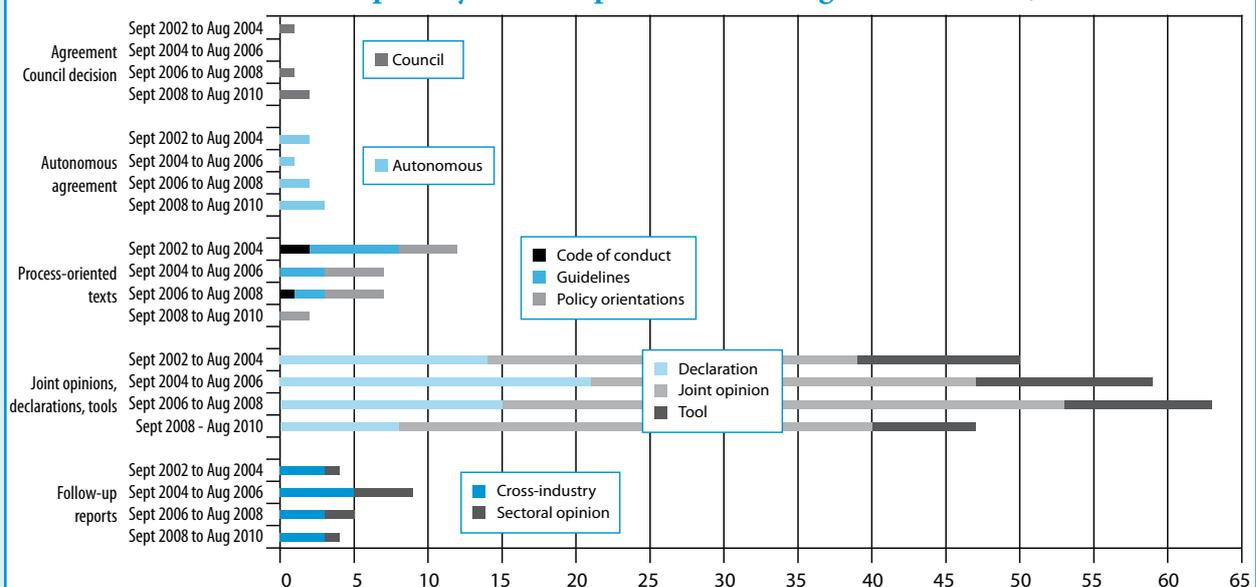
The European social partners in the commerce sector have developed a toolkit, 'STOP IT! — preventing third-party violence in commerce', aimed at directly helping employees and employers to improve safety in the workplace. It is based on best practice

#### Box 6.8: Texts adopted by the European social dialogue committees, 2002–10

The past two years have seen more binding agreements signed by European social partners than any previous two-year period and two of these agreements have been adopted as a Council directive in accordance with Article 155 of the Treaty (ex Article 139). At the same time, the past two years have seen a decline in the number of all other categories of non-binding documents, including process-oriented texts, joint opinions, declarations and tools. It should be noted, however, that the relatively small number of documents adopted in each two-year period in each category means that the comparisons across time should be treated with caution.

Overall, most of the outcomes of European social dialogue continue to be of a 'soft' nature, i.e. aim at raising awareness, disseminating good practice, helping to build consensus and confidence. Joint texts, presentations of good practices or common projects offer opportunities for social partners to learn from one another and build trust. There are a number of qualitative signs of a significant impact at national level, although it is not possible to document this with systematic quantitative data. The output and impact of European social dialogue should not, therefore, only be assessed by considering the number and type of texts.

Chart 6.5: Texts adopted by the European social dialogue committees, 2002–10



Source: European Commission.

from across Europe on how to deal with the issue of abusive behaviour and violence from customers in the workplace. It covers risk assessment, prevention, conflict management and stakeholder partnerships. It was presented to the public and national member organisations in October 2009. Eurocommerce, the European employers' organisation, had proposed to UNI europa commerce to jointly develop such a tool as an alternative to negotiating a binding autonomous agreement on the subject.

### 6.3.8. Capacity building and social partner organisations

Several sectoral social dialogue committees continued their efforts to enhance the participation of stakeholders from new Member States by supporting capacity building actions. In this context, in 2008 the social partners in the textile and clothing, footwear and tanning and leather sectors concluded an ambitious project on capacity building of their counterparts in the new Member States and also the candidate countries. This one-year project aimed at strengthening social dialogue in the sectors concerned with a view to encouraging the full participation of the sectoral social partners from new Member States and candidate countries in the European sectoral dialogue committees. The project's main goal was to support sectoral social partners in the implementation of their national action plans, agreed upon in the course of a previous capacity-building project that ended in 2007. Through this initiative, the European social partners lent their support not only to the development of national social partners' capacities but also to the promotion of sectoral social dialogue in the new Member States and candidate countries.

This was also the objective of the European social partners in the temporary agency sector in organising a round table in Sofia in December 2009 to promote the sectoral social dialogue on temporary agency work in Bulgaria. This was the third activity of this kind after similar round tables organised in Poland (2006) and Hungary (2007).

Starting in 2007, the social partners in the audiovisual sector undertook a project in the new Member States promoting social dialogue in the sector. They chose to adopt a step-by-step approach, providing information sessions and national roundtables for social partners from the Czech Republic, Hungary, Romania, Slovakia and Slovenia. It culminated in a regional seminar providing for an exchange on the structure and functioning of social dialogue in Prague in June 2008. Building on this experience, the European social partners wished to involve social partners from other new Member States in this capacity-building process and at the same time deepen the exchange of experience with a focus on industrial relations and collective bargaining. Actions under this new project again include national roundtables in order to mobilise social partner organisations.

After a capacity-building project targeting Bulgaria and Romania, the live performance sector launched a similar project in 2009 for the southern Europe region, including new Member States and candidate countries. The project aims to promote national social dialogue in the countries of the region concerned. Based on interviews carried out in 12 countries, a draft report on the state of social dialogue in the live performance sector was prepared and presented at a conference which took place in Croatia in February 2010. In their final declaration the European social partners called

on the EU to encourage governments to create favourable conditions for an autonomous bilateral social dialogue in the countries of southern Europe and urged national governments to allow and encourage management and labour to organise, including freelance/self-employed workers.

Furthermore, the ITC-ILO is currently carrying out a project to assess the evolution and implementation of European sectoral social dialogue in the new Member States and candidate countries, with a focus on achievements and challenges in postal services, telecommunications, construction, tourism, the chemical, energy, metal and textile industries. Transnational seminars involving local stakeholders from all new Member States and candidate countries took place in spring 2010, and the main results of the project will be disseminated at a social dialogue seminar at the end of 2010.

## 6.4. Conclusion

This review of the main activities of the European social dialogue committees during the period 2008–10 has shown the vitality of this instrument of European governance, highlighting the key role that social partners play in shaping EU social policy and defining European social standards. The ongoing interest of the European social partners in participating in European social dialogue, as evidenced by the continued creation of new sectoral social dialogue committees over the reporting period, is testament to their belief in the added value that social dialogue brings at the EU level, as a complement to national industrial relations systems.

The past two years have also shown that the social partners are increasingly making fuller use of the space for autonomous action and the

### Box 6.9: Financial support

The European Commission's promotion of European social dialogue includes financial support, mainly in the form of grants to social partners and other industrial relations stakeholders. On the basis of Article 154 of the Treaty on the Functioning of the European Union (Lisbon Treaty; ex Article 138), the most important financial programmes are the three headings in the EU budget earmarked for industrial relations and social dialogue, for information and training measures for worker's organisations and, for the information, consultation and participation of representatives of undertakings. Further details on these funding opportunities can be found on the following website (<http://ec.europa.eu/social/main.jsp?catId=86&langId=en>).

#### *Industrial relations and social dialogue*

This budget heading supports the European social partners and other organisations active in the field of industrial relations to address the overarching challenges facing European employment and social policy as set out in the Europe 2020 strategy and in connection with EU initiatives to address the consequences of the economic crisis.

Each year, through a call for proposals with two application deadlines, the Commission supports around 80 projects led by the social partners and other organisations active in the field of industrial relations. These projects cover activities linked to the work programmes of the European cross-industry and sectoral social dialogue committees and measures undertaken to strengthen the social partners' capacity, especially in the new Member States and candidate countries and which contribute to the development of European social dialogue (excluding national capacity-building activities which can be funded under the European Social Fund).

The total funding available under this budget heading in 2010 is EUR 16 million. Of this, EUR 14.15 million is awarded through the call for proposals. Other activities that are supported in 2010 include studies in the field of industrial relations and social dialogue and meetings of the European social partners, including the cross-industry and sectoral social dialogue committees.

#### *Information and training measures for workers' organisations*

This budget heading provides support for information and training measures for workers' organisations carried out by European, national and regional workers' organisations.

Each year, through a call for proposals with one application deadline, the Commission supports around 30 projects in this field.

This budget heading also provides support to the European Trade Union Institute (ETUI) and the European Centre for Workers' Questions (EZA), which are the major European institutions providing training and research for European workers' organisations. ETUI works with the European Trade Union Confederation (ETUC) and EZA works with the Christian workers' organisations, which are also members of the ETUC.

The total funding available under this budget heading in 2010 is EUR 16.4 million. Of this, EUR 3.216 million is awarded through the call for proposals.

#### *Information, consultation and participation of representatives of undertakings*

This budget heading provides support for operations to ensure the conditions for fostering the development of employee involvement in undertakings, by promoting the relevant EU legislation. This includes the directives on European works councils, on employee involvement in the European Company and European Cooperative Society, the directive establishing a general framework for informing and consulting employees in the European Community, the directive on cross-border mergers of limited liability and fostering transnational company agreements.

Each year, through a call for proposals with two application deadlines, the Commission supports around 45 projects in this field.

The total funding available under this budget heading in 2010 is EUR 7.3 million, all of which is to be awarded through the call for proposals.

possibilities for negotiation that have been conferred on them by virtue of the Treaty. This is demonstrated by the four binding agreements that have been reached since August 2008 <sup>(4)</sup>. The cross-industry social partners have successfully negotiated a revised agreement on parental leave, which

<sup>4</sup> A fifth text concerned the application of an autonomous agreement in the railways sector from 2004 on locomotive drivers' licences, clarifying that agreement's relationship to subsequent EU legislation (see section on 'working conditions' above).

has become an EU directive, while their recent agreement on inclusive labour markets will be implemented autonomously under the responsibility of the national social partners. The agreement on preventing sharps injuries in the hospitals sector became EU legislation through a decision of the Council, successfully contributing to improving the health and safety of healthcare workers in an area where the European Parliament had long called for action. The

autonomous agreement on the introduction of European hairdressing certificates in the personal services sector will improve the transparency and comparability of the sector's professional qualifications across the EU. In addition, two further sets of negotiations which may result in binding agreements are in progress.

While these positive examples indicate the potential of European social dialogue, the possibilities offered

by this framework have not yet been fully exploited in all cases. For instance, important sectors where large transnational companies are prevalent tend to pay less attention to the negotiation dimension of European sectoral social dialogue, as some of the social partners may prefer direct negotiation at company level, including with European works councils. Disagreements over substantive issues, such as in the assessment of the causes of the crisis by the cross-industry social partners and a

lack of trust between partners, have also prevented more progress from being made in some social dialogue committees.

Despite these difficulties in reaching a uniform assessment of European social dialogue over the past two years, the European social partners, both at the cross-industry as well as at the sectoral level, are the stakeholders that best know the conditions and problems that affect employers and workers in their

sphere of action. They are therefore often best-placed to address the corresponding social policy issues. When they reach agreements at a European level such as those documented here, their action embodies the principle of social subsidiarity enshrined in the social policy title of the Treaty on the Functioning of the European Union: in the social policy field, negotiated agreements resulting from social dialogue can be a valid and useful alternative to regular EU legislative action.

**Table 6.1: European social partner joint texts September 2008 to October 2010**

Title	Topic	European social dialogue committee	Type	Date
Statement on health and safety aboard fishing vessels: for new vessels of unrestricted sizes	Health and safety	Sea Fisheries	Joint opinion	8.9.2008
Joint statement on the European Union Emissions Trading System (EU ETS)	Economic and/or sectoral policies	Chemical Industry	Joint opinion	29.9.2008
Working in partnership through responsible care	Health and safety	Chemical Industry	Tool	29.9.2008
Joint statement on workplace health promotion for air crew	Health and safety	Civil Aviation	Declaration	17.10.2008
Framework of actions on gender equality — Third follow-up report 2008	Gender equality	Cross-Industry	Follow-up report	12.11.2008
Joint press release: social dialogue on logistics	Social dialogue	Road Transport	Declaration	2.12.2008
EFFAT-Hotrec joint statement on the continuation of their work on the 'European qualification and skills' passport'	Mobility	Horeca	Declaration	2.12.2008
Joint opinion on migration and mobility: challenges and opportunity for the EU education systems	Mobility	Commerce	Joint opinion	12.12.2008
Demographic change in the electricity industry in Europe. Toolkit on promoting age diversity and age management strategies	Ageing workforce	Electricity	Tool	15.12.2008
Restructuring in the electricity industry: a toolkit for socially responsible restructuring with a best practice guide	Restructuring	Electricity	Tool	15.12.2008
Economic crisis: joint reaction of the social partners for commerce	Economic and/or sectoral policies	Commerce	Joint opinion	18.12.2008
CEMR-EP/EPSU joint message to the Spring European Council 2009	Economic and/or sectoral policies	Local and Regional Government	Joint opinion	27.2.2009
Working group — Education, training and lifelong learning — Joint declaration	Employment	Chemical Industry	Joint opinion	2.3.2009
Charter and company guidelines on just culture	Working conditions	Civil Aviation	Tool	31.3.2009
Joint declaration on training and qualification in the ground-handling sector	Training/lifelong learning	Civil Aviation	Declaration	5.5.2009
The impact of the financial crisis in the live performance sector. Joint statement by the European sectoral social partners ahead of the Employment Summit 7 May 2009	Economic and/or sectoral policies	Live Performance	Joint opinion	6.5.2009
The social aspects of corporate social responsibility in the European electricity industry	CSR — Corporate social responsibility	Electricity	Policy orientations	7.5.2009

Title	Topic	European social dialogue committee	Type	Date
Joint opinion on the global economic crisis	Economic and/or sectoral policies	Chemical Industry	Joint opinion	13.5.2009
Statement on the economic crisis	Economic and/or sectoral policies	Road Transport	Joint opinion	14.5.2009
Joint declaration of the CER-ETF agreement on a European locomotive driver's licence	Working conditions	Railways	Autonomous agreement	10.6.2009
Joint declaration on accident prevention in the postal sector	Health and safety	Postal Services	Declaration	12.6.2009
Implementation of the ETUC/BusinessEurope/UEAPME/CEEP framework agreement on harassment and violence at work	Harassment	Cross-Industry	Follow-up report	16.6.2009
Cooperation agreement between ATCEUC and ETF	Social dialogue	Civil Aviation	Procedural text	18.6.2009
European agreement on the implementation of the European hairdressing certificates	Training/lifelong learning	Personal Services	Autonomous agreement	18.6.2009
Joint CANSO-ETF analysis of the ATM social dialogue FAB questionnaire	Restructuring	Civil Aviation	Tool	30.6.2009
The global economic crisis and its consequences for the European construction industry Positive measures and concerns of the European social partners EFBWW and FIEC	Economic and/or sectoral policies	Construction	Joint opinion	30.6.2009
Response to the second phase of consultation of the social partners under Article 138(2) of the EC Treaty on reassessing the regulatory social framework for more and better seafaring jobs in the EU	Working conditions	Sea Fisheries	Joint opinion	8.7.2009
Joint declaration concerning social security provisions in inland waterways transport	Mobility	Inland Waterways	Joint opinion	14.8.2009
Framework agreement on parental leave (revised)	Gender equality	Cross-Industry	Agreement Council decision	18.9.2009
Private security European sectoral social partners statement to expert group on cross-border transport of the euro cash	Social aspects of EU policies	Private Security	Joint opinion	28.9.2009
Creativity, innovation and the role of the cultural sector. A joint statement on behalf of the European sectoral social partners 'live performance' in the framework of the European Year of Creativity and Innovation 2009	Social aspects of EU policies	Live Performance	Joint opinion	30.9.2009
Toolkit. Demographic change, age management and competencies in the gas sector in Europe	Ageing workforce	Gas	Tool	15.10.2009
Preventing third-party violence in commerce — A toolkit	Harassment	Commerce	Tool	21.10.2009
Implementing the framework agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by Hospeem and EPSU	Health and safety	Hospitals	Agreement Council decision	26.10.2009
Framework of actions on gender	Gender equality	Cross-Industry	Follow-up report	13.11.2009
Joint declaration of the European social partners of the furniture industry, EFIC UEA and EFBWW calling on the European and national authorities to support the industry in its confrontation with the economic crisis	Economic and/or sectoral policies	Furniture	Joint opinion	18.11.2009
Joint position of the social dialogue Extractive industries on COP 15 and its impact on EU extractive industries	Economic and/or sectoral policies	Extractive Industry	Joint opinion	19.11.2009
Joint opinion on protecting creativity, innovation and jobs	Economic and/or sectoral policies	Audiovisual	Joint opinion	30.11.2009
Joint sectoral contribution to the Commission's consultation on the future of transport	Economic and/or sectoral policies	Inland Waterways	Joint opinion	30.11.2009

Title	Topic	European social dialogue committee	Type	Date
Training for temporary agency workers: joint actions developed by sectoral social partners play a key role in facilitating skills upgrading	Training/lifelong learning	Temporary Agency Work	Declaration	3.12.2009
Joint statement of the social partners of the European leather industry on the Greenpeace report on the deforestation of the Amazon rain forest	CSR — Corporate social responsibility	Tanning and Leather	Declaration	15.12.2009
Contribution of the social partners to the Sectoral Social Dialogue Committee on Sea Fisheries Contribution of the social partners to the European Commission Green Paper Reform of the common fisheries policy	Economic and/or sectoral policies	Sea Fisheries	Joint opinion	22.12.2009
Joint statement on demographical challenges of the insurance sector	Ageing workforce	Insurance	Policy orientations	26.1.2010
Emerging from the crisis	Economic and/or sectoral policies	Construction	Joint opinion	29.1.2010
Joint statement to the European Council meeting 11 February 2010 on the economic crisis	Economic and/or sectoral policies	Local and Regional Government	Joint opinion	4.2.2010
Employment and bogus self-employment	Economic and/or sectoral policies	Construction	Joint opinion	5.2.2010
Joint declaration of the social partners in the European woodworking industries	Health and safety	Woodworking	Declaration	10.2.2010
Social partners' statement on bluefin tuna	Economic and/or sectoral policies	Sea Fisheries	Joint opinion	9.3.2010
ATM social partners position on the implementing rules of the performance scheme	Economic and/or sectoral policies	Civil Aviation	Joint opinion	18.3.2010
Framework agreement on inclusivelabour markets	Employment	Cross-Industry	Autonomous agreement	25.3.2010
'Single European Sky II' implementation — Consultation of ATM social partners	Social dialogue	Civil Aviation	Joint opinion	30.4.2010
The new review of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time	Working time	Sea Fisheries	Joint opinion	21.6.2010
Eurelectric/EPSU/EMCEF joint response to the public consultation 'Towards a new energy strategy for Europe 2011–20'	Social aspects of EU policies	Electricity	Joint opinion	23.6.2010
Joint position paper of the European social partners in the construction industry on the findings of the high-level group (HLG) on the action programme for reducing administrative burdens in the European Union, COM(2007) 23 final	Working conditions	Construction	Joint opinion	30.6.2010
Opinion of the social partners on the potential unilateral increase of the EU GHG reduction target to – 30 %	Sustainable development	Extractive Industry	Joint opinion	2.7.2010
Joint recommendations for better representation and integration of women in the railway sector. Status and how to apply the joint recommendations	Gender equality	Railways	Follow-up report	12.7.2010
Common contribution of the social partners for commerce to some flagship initiatives of the 'EU 2020: a European strategy for a smart, sustainable and inclusive growth'	Training/lifelong learning	Commerce	Joint opinion	4.8.2010
Joint declaration of the European social partners in agriculture on the Commission's communication COM(2009) 591 final 'A better functioning food supply chain in Europe'	Economic and/or sectoral policies	Agriculture	Joint opinion	3.9.2010
Protecting workers' health against plant protection products/resolution	Health and safety	Agriculture	Joint opinion	3.9.2010
Joint declaration — European Union Association agreement — Euromed	Economic and/or sectoral policies	Agriculture	Joint opinion	3.9.2010
Towards a new European energy policy 2011–20 draft report of MEP Lena Kolarska-Bobinska	Social aspects of Community policies	Electricity	Joint opinion	13.10.2010

**Table 6.2: European social dialogue committees***Cross-industry social dialogue committees*

Organisations representing workers	Organisations representing employers	Date of creation
ETUC Liaison Committee Eurocadres and CEC	BusinessEurope CEEP UEAPME	1992

*Sectoral social dialogue committees*

Sectors	Organisations representing workers	Organisations representing employers	Date of creation
Agriculture	EFFAT	GEOPA/COPA	1999
Audiovisual	UNI-MEI, EFJ, FIA, FIM	EBU, ACT, AER, CEPI, FIAPF	2004
Banking	UNI europa	FBE, ESBG, EACB	1999
Central administrations	TUNED	EUPAN	2010
Chemical industry	EMCEF	ECEG	2004
Civil aviation	ECA, ETF	ACI-Europe, AEA CANSO, ERA, IACA, IAHA	2000
Cleaning industry	UNI europa	EFCI	1999
Commerce	UNI europa	EuroCommerce	1999
Contract catering	EFFAT	FERCO	2007
Construction	EFBWW	FIEC	1999
Education	ETUCE	EFEE	2010
Electricity	EPSU, EMCEF	Eurelectric	2000
Extractive industries (mines)	EMCEF	APEP, Eurocoal, Euromines	2002
Footwear	ETUF:TCL	CEC	1999
Furniture	EFBWW	UEA	2001
Gas	EMCEF, EPSU	Eurogas	2007
Horeca/tourism	EFFAT	Hotrec	1999
Hospitals	EPSU	Hospeem	2006
Inland waterways	ETF	EBU, ESO	1999
Insurance	UNI europa	CEA, BIPAR, ACME	1999
Live performance	EAEA	Pearle	1999
Local and regional governments	EPSU	CEMR	2004
Metal, engineering and technology-based industries	EMF	Ceemet	2010
Paper	EMCEF	CEPI	2010
Personal services	UNI europa	Coiffure EU	1999
Postal services	UNI europa	PostEurop	1999
Private security	UNI europa	CoESS	1999
Professional football	EPFL, ECA	FIFPro	2008
Railways	ETF	CER, EIM	1999
Road transport	ETF	IRU	2000
Sea fisheries	ETF	Europêche/Cogeca	1999
Sea transport	ETF	ECSA	1999
Shipbuilding	EMF	CESA	2003

Sectors	Organisations representing workers	Organisations representing employers	Date of creation
Steel	EMF	Eurofer	2006
Sugar	EFFAT	CEFS	1999
Tanning and leather	ETUF:TCL	Cotance	2001
Telecoms	UNI europa	ETNO	1999
Temporary agency work	UNI europa	Eurociett	1999
Textiles/clothing	ETUF:TCL	Euratex	1999
Woodworking	EFBWW	CEI-Bois	2000



## CHAPTER 7: Review of European legislation 2008–10

*The past two years resulted in a mixed picture with respect to the development of employment-related legislation at EU level. On the one hand, important advances were made with the adoption of directives on matters such as temporary agency work, the European works councils and the equal treatment of men and women in self-employment. Three directives resulted from social partner agreements: on parental leave (cross-industry), on the prevention of sharps injuries (hospitals and healthcare sector) and on the working conditions of seafarers (maritime transport sector). On the other hand, major difficulties were encountered, among them the failure of the revised working time directive and complications with the interpretation and enforcement of the posting of workers directive.*

### 7.1. Introduction

The development of European employment legislation over the period 2008–10 was punctuated by important breakthroughs as well as uncertainties and drawbacks. The political context continued to be characterised by sharp differences of approach, not only between social partners but also among the key institutional stakeholders. While the European Parliament has, in several instances, recommended to the Commission to initiate legislative action in order to cope with emerging problems in the functioning of labour markets, the Council, now extended to 27 Member States, has grown increasingly reticent to expand the legislative *acquis* in the employment area.

In line with the better regulation agenda, the Commission has been increasingly engaged in strengthening the evidence basis of its legislative proposals. Considerable resources have been invested in producing *ex ante* assessments of the social, economic and environmental impact of new legislation. The administrative burden arising from existing EU legislation and from national transposing rules has been estimated. In the same vein, further efforts have been devoted to the *ex post* evaluation of EU legislation in order to determine its economic and social impact and

identify any outstanding issues justifying review.

During the period, the Commission continued to deploy significant efforts in monitoring the correct transposition and application of EU law in the enlarged European Union. It issued guides, communications and reports, commissioned studies and related projects and set up expert committees. It also continued to provide appropriate technical assistance aiming at the correct transposition of the relevant EU legislation in the candidate countries.

In the area of labour law, a major breakthrough was the adoption on 19 November 2008 of a new directive on temporary agency work, which provides for a significant increase in the legal protection afforded to temporary workers while recognising the role of work agencies in bringing greater flexibility to the labour market and providing job opportunities. The adoption of Directive 2008/104/EC<sup>(1)</sup> put an end to a six-year deadlock in the Council which centred on the issue of duration of the grace period during which user undertakings can be exempted from applying the principle of equal treatment. The directive awards an important role to solutions framed via national social dialogue.

1 OJ L 327, 5.12.2008, p. 9.

Another important development was the proposal and swift adoption by the Council and Parliament of a recast European works councils directive strengthening the information and consultation rights of workers on transnational matters and clarifying a number of outstanding legal issues; in the context of the crisis, its importance is particularly evident<sup>(2)</sup>. The impetus for this proposal was given by the Commission's renewed social agenda of 2008<sup>(3)</sup>, which was built around three axes: opportunities, access and solidarity. This agenda identified the Commission's priorities and set out a series of concrete measures to attain them as well as the instruments to be used to this end.

In addition, following a consultation of the European social partners by the Commission the former decided to negotiate and subsequently agreed on the incorporation into the EU legislative *acquis* of a substantial number of provisions contained in the 2006 ILO Maritime Labour Convention<sup>(4)</sup>. The new directive (2009/13/EC) completes or amends existing EU provisions applying to the working conditions of seafarers, including working time. Furthermore, in the interests of clarity and rationality, the provisions regarding the protection of workers' rights in the case of employers' insolvency were consolidated in the insolvency directive (2008/94/EC).

A major setback was the withdrawal of the Commission proposal to amend the working time directive (2003/88/EC), after the failure of the Council and Parliament to agree

2 Directive 2009/38/EC of 6 May 2009 (OJ L 122, 16.5.2009, p. 28).

3 COM(2008) 412 final of 2.7.2008.

4 See Chapter 4 of the *Industrial Relations in Europe 2008* report for details.

on a compromise proposal during the final conciliation procedure in April 2009. Introduced in 2004, the proposal aimed to identify a solution to the difficulties in implementing CJEU rulings on the *SIMAP* and *Jaeger* cases, as well as addressing stakeholders' claims in respect to the extension of the reference period for averaging weekly working time and the individual opt-out. The Commission responded to the failed conciliation by launching a comprehensive review of the directive including an extensive evaluation exercise and a first consultation of the European social partners.

Another source of difficulties was the interpretation and enforcement of the posting of workers directive (96/71/EC). In the wake of the CJEU rulings on *Laval*, *Rueffert* and *Commission v Luxembourg* and, as a follow-up to the 2007 communication, the Commission decided to step up its efforts to facilitate administrative cooperation among Member States and promote debate with stakeholders. In order to face up to such difficulties, the Commission is reviewing the implementation and interpretation of the legal framework on posting of workers and has already launched several external studies on the legal and economic effects of the directive.

In the area of health and safety at work and in line with the commitments of the EU strategy for health and safety at work 2007–12, the developments during the period aimed to ensure a regulatory framework capable of continuously adapting to change while respecting the principle that legislation should be coherent, simple and effective and also meeting the objective of reducing the administrative burden on companies. An example of this concern was the adoption of a third

list of indicative occupational limit values for chemical agents (Directive 2009/161/EU), which shows the determination of the Commission to keep the EU health and safety at work acquis in line with the most recent scientific data available.

An important achievement was the adoption of Council Directive 2010/32/EU implementing the framework agreement on prevention of injuries from sharp instruments in the hospital and healthcare sector, concluded by Hospeem and EPSU. The incorporation into the EU legislative acquis of the agreement constitutes a significant contribution to realising the safest possible working environment in the sectors concerned.

Two important contributions to the improvement and clarity of the EU regulatory framework, in line with the key priorities of the Commission's better regulation agenda, were made through the adoption of two 'codification' Directives 2009/104/EC on work equipment and 2009/148/EC on asbestos. A special mention should be made in the context of better regulation to the development of guides of good practice aiming at facilitating and improving the practical application of certain health and safety at work directives such as noise, construction, artificial optical radiation.

Concerning the area of employment-related equality, the adoption of Council Directive 2010/18/EU implementing the 2009 framework agreement on parental leave concluded by the European social partners, demonstrated the capacity of the social partners — and the EU institutions — to build on the previous 1995 agreement (also implemented as a directive). The agreement strengthens and further clarifies the rights to leave of working parents (see Chapter 6 for details).

In another important development, the application of the principle of the right to equal treatment between men and women will be strengthened for those working in a self-employed capacity through Council Directive 2010/41/EU. This was adopted on 17 July 2010.

This chapter reviews the main developments concerning EU employment legislation between 2008 and 2010 in three sections: labour law, health and safety at work and employment-related equality legislation. In each section, measures with general application are reviewed first, followed by those which are sector specific. Attention then turns to issues of implementation, monitoring and inspection. The concluding section then presents some future perspectives for EU employment legislation, its further development and implementation.

## 7.2. Labour law

### 7.2.1. Temporary agency work

Temporary agency work has been growing steadily and currently accounts for about 1.7 % of total employment in the EU <sup>(5)</sup>. The phenomenon is particularly widespread in Member States such as the United Kingdom, France, Germany and the Netherlands. With the goal of improving the working conditions of the concerned workers, by application of the principle of equal treatment, Directive 2008/104/EC on temporary agency work <sup>(6)</sup> was adopted on 19 November 2008. It also aims to provide a suitable framework

5 Cf. "The agency work industry around the world", Ciett, 2010.

6 Cf. Note 1.

### Box 7.1: Main provisions of Directive 2008/104/EC on temporary agency work

#### Equal treatment

From the first day of the worker's assignment to a user undertaking, the basic working and employment conditions of the agency worker have to be at least those that would apply if he/she was recruited directly by that company to occupy the same job.

Equal treatment applies to pay, the duration of working time, overtime as well as to breaks, rest periods, night work, holidays and public holidays, to the extent that these conditions are considered to be binding for workers of the user company.

For pregnant women and nursing mothers, any rules in force in the user undertaking concerning their protection will also be applicable to agency workers. The same goes for the rules on equal treatment for men and women and on any action against discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation.

The directive allows for certain derogations from the principle of equal treatment, however, under strict conditions.

- In some Member States, temporary agency workers may be offered a permanent contract of employment with the agency and continue to be paid between assignments. In certain circumstances, Member States may provide for an exemption from the principle of equal pay.
- There are countries where agency work is regulated also or mainly by collective agreements between the social partners. After consulting them, Member States may give them the option of concluding collective agreements establishing arrangements which may differ from equal treatment. The overall protection of agency workers has to be upheld in all circumstances.
- Under stringent conditions and on the basis of an agreement concluded by the social partners, Member States may introduce derogations from the principle of equal treatment. In this context, they may establish a qualifying period for equal treatment.

#### Improved access to permanent employment, collective facilities and vocational training

Agency workers have to be informed of any vacant posts in the user undertaking. Temporary-work agencies cannot prevent agency workers from being hired by the user company once their assignment has terminated or charge the workers any fees on that occasion.

Agency workers have access to all collective facilities in the user undertaking, in particular any canteen, childcare facilities and transport services, under the same conditions as workers employed directly by the company, unless a difference in treatment is justified by objective reasons.

Member States have to take measures or promote social dialogue, in order to improve access to training for agency workers in the temporary-work agencies, even in the periods between assignments, as well as their access to training designed for the staff of user undertakings.

#### Representation of agency workers and information of workers' representatives

Temporary agency workers are considered to be workers of the agency, for the purpose of setting up workers' representatives bodies. However, Member States can also decide to take them into account as workers of the user enterprise.

The user enterprise must provide suitable information to its workers' representatives' body on the use of temporary agency workers when reporting on the employment situation in the undertaking.

#### Reduced prohibitions and restrictions on the use of temporary agency work

Prohibitions and restrictions on the use of temporary agency work are to be reviewed and suppressed unless they are justified on grounds of general interest. Such grounds relate in particular to the protection of agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.

for temporary agency work to better contribute to the creation of jobs and to the development of flexible forms of work in the EU.

The directive has to be transposed into national law by 5 December 2011 at the latest. An expert group has been set up, composed of representatives of national administrations, to facilitate the work of Member States' administrations in transposing the directive.

### 7.2.2. Working time

In 2004, the Commission had put forward a proposal (7) to amend the working time directive (2003/88/EC), following wide consultations. After four years of intense negotiations, the Council was able to adopt a common position. However, in April 2009, the Council and Parliament concluded that they could not reach agreement,

7 Original proposal COM(2004) 607; amended proposal COM(2005) 246.

despite two readings and a conciliation process. Several issues remained outstanding, the most intractable of all being the suppression of the possibility for individual workers to opt out from the weekly 48 hour limit.

Other difficult issues included the extension to 12 months of the reference period for averaging weekly working time and the handling of the timing of compensatory rest periods and of on-call time.

This negative outcome created a difficult situation for several Member States and for social partners at national level. The Commission considered this situation to be clearly unsatisfactory for governments, workers and businesses. In its view, it is necessary to review the working time rules in the EU on the basis of an impact assessment with a strong social dimension and a full-scale consultation of the social partners.

In this context, on 24 March 2010 it adopted a communication on reviewing the working time directive, seeking the views of the social partners at European Union level in accordance with Article 154 of the TFEU, on the possible direction of EU action on this issue<sup>(8)</sup>. At the same time, the Commission is conducting a comprehensive review of the directive, which includes a thorough evaluation of its provisions, in order to determine how they cope with the workplace realities of the early 21st century.

The Commission communication sets out the trends and prospects regarding working time, describes the current regulation in this area, announces the objectives of a comprehensive review of the EU directive and identifies the key issues arising in its application. Those concern in particular the following: (a) working hours; (b) on-call time; (c) flexibility on the averaging of weekly working hours; and (d) flexibility on the timing of minimum daily and weekly rest periods.

The communication contains a list of specific questions on which the Commission seeks the views of the European social partners. In parallel with this consultation, the Commission will carry out an extensive impact

<sup>8</sup> COM(2010) 106 final of 24.3.2010.

assessment, including an examination of the legal application of the directive in the Member States and a study of the social and economic aspects that are pertinent for a comprehensive review of the directive.

### 7.2.3. Directive 2008/94/EC on the protection of employees in the case of employers' insolvency

In times of crisis, when the number of insolvencies is increasing, European legislation on the subject becomes particularly relevant. In order to codify previous legislation in the interests of clarity and rationality, Directive 2008/94/EC on the protection of employees in the case of employer's insolvency was adopted on 22 October 2008, replacing the previous Directives 80/987/EEC and 2002/74/EC.

This legislation aims to ensure the protection of workers in case of insolvency of their employer by requiring Member States to establish institutions that guarantee the payment of unpaid salaries. The Commission plans to report on the implementation and application of the directive by the end of 2010. In addition, the Commission Green Paper on the future of pensions includes a question about the protection of workers' and pensioners' interests, covered by complementary occupational pensions, in the event of the employer's insolvency.

### 7.2.4. Posting of workers

Following on from its 2007 communication on the posting of workers, on 3 April 2008 the Commission adopted a recommendation on

reinforced cooperation in this area. The main elements of this recommendation were endorsed by the Council in June 2008, which invited the Commission to institutionalise the existing informal group on posting of workers, transforming it into a committee of experts. This was subsequently set up through Commission Decision 2009/17/EC of 19 December 2008; a separate subgroup was charged with developing an information exchange system. The expert committee has already started to address a number of difficulties in implementing and applying the posting of workers directive with the aim of clearing up outstanding issues and building consensus.

Furthermore, in order to discuss and exchange views on the consequences of the recent rulings by the Court of Justice in this area<sup>(9)</sup>, a forum on workers' rights and economic freedoms was organised on 9 October 2008, with wide participation from Member States, stakeholders and institutional actors. The forum fulfilled its objectives in that it contributed to clarifying the positions of the key political actors on the way forward for handling the consequences of the rulings at both national and EU levels. Following an invitation from the Commission and the French Presidency of the Council, in early 2010 the ETUC and BusinessEurope presented an analysis of the consequences of the rulings as seen from their respective perspectives<sup>(10)</sup>.

In 2009 the Commission launched several ex post evaluation studies<sup>(11)</sup>

<sup>9</sup> See *Industrial Relations 2008* report, Chapter 6, box on main judgments of the CJEU in the field of labour law in 2006–07, p. 140.

<sup>10</sup> Report of 19 March 2010 on 'Joint work of the European social partners on the CJEU rulings in the Viking, Laval, Ruffert and Luxembourg cases'.

<sup>11</sup> See <http://ec.europa.eu/social/main.jsp?catId=626&langId=en> under VT/2009/062 and VT/2009/062. See also pilot project VP/2009/015.

on the application of the posting of workers directive as part of a pilot project to investigate the actual working and living conditions of posted workers in all the Member States, including the social, economic and legal aspects. The project is focusing on sectors with higher numbers of posted workers. In addition, the Commission granted financial support for several projects for the exchange of information and good practice in this area among stakeholders (especially the social partners) in 2009. Further support will be provided for the same purpose in 2010.

As indicated in its Europe 2020 strategy for smart, sustainable and inclusive growth<sup>(12)</sup>, the Commission is currently working to adapt the legislative framework, wherever necessary, in line with ‘smart’ regulation principles, in the area of posting of workers. To this end, it will take into account, in particular, the findings of the aforementioned studies as well as European Parliament resolutions, European social partners’ analysis, the Monti report on re-launching the single market<sup>(13)</sup> and the outcome of public consultations.

### 7.2.5. Rome I regulation

The Rome I Regulation (EC) No 593/2008 on the law applicable to contractual obligations<sup>(14)</sup>, which was adopted on 17 June 2008, entered into force in its integrity on 17 December 2009 and applies to contracts concluded after that date. The regulation updates and modernises the previous Rome Convention

<sup>12</sup> COM(2010) 2020 of 3.3.2010.

<sup>13</sup> Cf. Report on ‘A new strategy for the single market’ submitted by Professor Mario Monti to President Barroso on 9 May 2010.

<sup>14</sup> OJ L 177, 4.7.2008.

## Box 7.2: Main provisions of the recast European works council directive (2009/38/EC)

### *The establishment of EWCs*

- Central and local managements are responsible for providing the information which allows negotiations to be opened.
- The Special Negotiating Body is composed of one representative per 10 % portion of the employees in a Member State. It has the right to meet alone before and after any meeting with the central management.
- The competent European trade union and employers’ organisations are to be informed of the start of negotiations. Trade unions are also among the experts on whom the SNB may call for assistance in the negotiations.

### *The operation of EWCs*

- The arrangements for informing and consulting employees have to be defined and implemented in such a way as to ensure their effectiveness and to enable the company to take decisions effectively.
- The transnational competence of EWCs is determined.
- The concepts of information and consultation are more precisely defined.
- The role of the select committee and the content of consultation are strengthened in the subsidiary requirements.
- Information and consultation at transnational (EWC) and national levels are to be linked together. Arrangements to that effect are to be defined primarily by agreement.
- Employees’ representatives have to be provided with training without loss of wages and shall have the means required to apply the rights arising from the directive.
- Employees’ representatives have to inform employees of the content and outcome of the information and consultation procedure.

### *Adaptation clause and window of opportunities*

- The recast directive provides for a mechanism to adapt existing EWCs, where the structure of the undertaking or group of undertakings changes significantly.
- Companies where agreements to establish new EWCs are concluded between 5 June 2009 and 5 June 2011 or where existing agreements are revised during this period are not bound by the new obligations introduced by Directive 2009/38/EC.

(international treaty), incorporating into EU legislation certain rules for determining the law that applies to contractual obligations in situations of a conflict of laws of different jurisdictions. The regulation includes a specific employment-related provision, namely Article 8 determining the law applicable to individual employment contracts. It incorporates important elements of the interpretation of the Rome Convention devised by the CJEU (the concept of habitual place of work and mandatory rules are particularly relevant in the context of employment contracts).

### 7.2.6. Employee involvement

#### 7.2.6.1. Recast European works councils directive

On 2 July 2008, the Commission presented a proposal for a recast European works council directive, which was adopted as Directive 2009/38/EC<sup>(15)</sup> on 6 May 2009. This recast directive clarifies and strengthens the previous legislation from 1994 in several respects (see Box 7.2). Its provisions have to be transposed into national law by 5 June 2011. The European Commission published a leaflet to

<sup>15</sup> OJ L 122, 16.5.2009, p. 28.

inform stakeholders <sup>(16)</sup> and set up an expert group with a view to assist Member States in their transposition of the new directive.

At the first stage consultation according to Article 154(4) TFEU (ex Article 138(4) of the EC Treaty), the European cross-industry social partners <sup>(17)</sup> did not commence negotiations, yet in August 2008 they adopted a joint position accepting the Commission's proposal <sup>(18)</sup> as the basis of the revision and suggesting a limited number of changes. Against this background, the European Parliament and the Council were able to arrive at a first-reading agreement as early as December 2008.

#### 7.2.6.2. *European Private Company Statute*

On 25 June 2008 the Commission adopted its proposal for a Council regulation on the statute for a European private company (or *Societas Privata Europaea* — SPE) <sup>(19)</sup>. The initiative creates a new European legal form intended to enhance the competitiveness of SMEs by facilitating their establishment and operation in the single market. The provisions on employee participation contained in the proposal can be summarised as follows: the principle is that the SPE is subject to the rules on employee participation, if any, applicable in the Member State in which it has its registered office, with two exceptions:

- (a) in case of a cross-border merger, the rules on employee participation in Regulation (EC) No 56/2005 apply;

- (b) in case of the transfer of registered office, specific rules apply: when the employees enjoyed participation rights in the home Member State (and not in the host Member State) and they represent one third of the total number of employees, negotiations should start (the rules on employee participation of the home Member State would apply if no agreement is reached).

On 10 March 2009 the European Parliament proposed a certain number of amendments including on the subject of employee participation. The Commission proposal is still pending before the Council.

#### 7.2.7. *Maritime sector*

##### 7.2.7.1. *Directive on Maritime Labour Convention*

In a pioneering development among sectors that are global in nature, the maritime shipping industry has seen considerable efforts to define and effectively enforce global minimum standards of employment and health and safety conditions of seafarers employed or working on board a seagoing vessel. The International Labour Organisation addressed this issue in the 2006 Maritime Labour Convention, and for its part the Council adopted Directive 2009/13/EC on 16 February 2009 <sup>(20)</sup>. It will enter into force simultaneously with the ILO Maritime Labour Convention (i.e. following ratification by 30 states accounting for at least 33 % of world tonnage). Given that the EU-27 dispose of 28 % of the world fleet, the European Union can play a crucial role in accelerating its entry into force.

This convention incorporates the various conventions and recommendations on maritime labour adopted by the ILO since 1919 into a single consolidated text to serve as a basis for the first universal maritime labour code. The Commission actively participated in the work leading to its conclusion in February 2006. Subsequently, on 7 June 2007 the Council adopted a decision (2007/431/EC) which, on the one hand, authorised Member States to ratify, in the interests of the European Community, the Maritime Labour Convention and, on the other hand, encouraged them to do so by 30 December 2010.

The European legislation currently in force already covers most of the topics regulated by the Maritime Labour Convention. In fact, in most instances the European legislation establishes higher standards in comparison with those of the convention. However, in a few cases the Maritime Labour Convention proposes a more specific regulation or working conditions which are more favourable for seafarers.

The social partners of the maritime transport sector were consulted by the Commission on whether the relevant provisions of the Maritime Labour Convention should be incorporated into Community law and were asked to consider entering into negotiations with the aim of reaching an agreement concerning certain of its provisions. The social partners decided to engage in negotiations and, on 19 May 2008 (in connection with the first Maritime Day), they signed a joint agreement on the 2006 Maritime Labour Convention <sup>(21)</sup>.

The social partners requested the EU to take the appropriate measures to implement their agreement as a Council decision, in accordance with

<sup>16</sup> <http://ec.europa.eu/social/main.jsp?catId=157&langId=en&pubId=348&type=2&furtherPubs=yes>

<sup>17</sup> ETUC, BusinessEurope, CEEP and UEAPME.

<sup>18</sup> COM(2008) 419 final of 2.7.2008.

<sup>19</sup> COM(2008) 396 final.

<sup>20</sup> OJ L 124, 20.5.2009, p. 30.

<sup>21</sup> See Chapter 4 of the Industrial Relations in Europe 2008 report for details.

Article 155 of the Treaty (ex Article 139). Following this request, on 2 July 2008 the Commission submitted a proposal for a directive. The Council reached political agreement regarding this proposal on 17 December 2008 and formally adopted Directive 2009/13/EC on 16 February 2009.

The incorporation of elements of the Maritime Labour Convention of 2006 into Community law by means of Directive 2009/13/EC will update the European legislation in force by the inclusion of those standards of the convention which are more favourable for seafarers. It is expected that the working conditions of seafarers will be improved, particularly as regards employment agreements, hours of work, repatriation, careers and skills development, accommodation and recreation facilities, food and catering, health and safety protection and medical care, and complaint procedures. At the same time the standards contained in the agreement of the social partners will be subject to the specific enforcement mechanisms of EU law.

Improvements to the health and safety protection and medical care of seafarers are the subject of specific provisions in Article 4 of the social partners' agreement. Regulation 4.3 of the agreement requires the Member States to ensure that seafarers are provided with occupational health protection and live, work and train on board in a safe and hygienic environment. Furthermore, national guidelines for the management of occupational safety and health on board ships shall be drawn up. Finally, each Member State shall adopt measures addressing, inter alia, the risk evaluation, training and instruction of seafarers, on-board programmes for the prevention of occupational accidents, injuries and diseases as well as requirements for inspecting, reporting and correcting unsafe

conditions and for investigating and reporting on-board occupational accidents. Regulation 4.1 and Standard A4.1 cover seafarers' entitlement to access medical care, including essential dental care, on board ship and ashore. Closely related to health and safety at work are provisions of Article 3 of the agreement providing minimum standards concerning accommodation, recreational facilities, food and catering for seafarers.

#### *7.2.7.2. Review of the regulatory social framework concerning seafarers — Exclusion of seafarers*

Several labour law directives either exclude seagoing workers from their scope or authorise the Member States to do so (cf. Directives 2008/94/EC, 94/45/EC, 2002/14/EC, 98/59/EC, 2001/23/EC and 96/71/EC). The existence of the exclusions was mainly justified by national circumstances which made it particularly difficult, at the time when they were adopted, to apply the relevant directives to seagoing workers.

The Commission reviewed the pertinent legislation in order to identify the exclusions or derogations affecting workers in maritime professions, the problems raised by practical application and the difficulties of interpretation of such legislation. It sought to determine to what extent action might be needed to improve legal protection for maritime professions in the EU. In view of the highly globalised context of most maritime sectors, it undertook such analysis against the background of the already extensive body of international conventions and standards.

The Commission concluded that the exclusion of seafaring workers from the scope of some directives might not

be entirely justified insofar as it did not appear to be accompanied by specific arrangements, more adapted to the concrete situation of such workers.

Following a first-stage consultation of the social partners in 2007<sup>(22)</sup> and an in-depth analysis of their positions, the Commission carried out a second stage consultation, in which it sought the opinions of the social partners on a number of concrete solutions which would provide the basis for reviewing the exclusions regarding seafaring workers contained in the aforementioned directives. The second stage consultation was concluded in December 2009. At the same time the Commission launched a study in order to gather empirical evidence relevant to an eventual legislative initiative and assess the impact of several options.

#### *7.2.7.3. Proposal of decision on ratification of ILO's 2007 Fishing Convention*

In line with the 2006 communication on decent work for all (COM(2006) 249), which included a Commission commitment to the promotion of up-to-date ILO conventions, the Commission adopted, on 27 May 2008, a proposal for a Council decision<sup>(23)</sup> authorising Member States to ratify, in the interests of the European Community, the Work in Fishing Convention concluded in 2007 by the International Labour Organisation (Convention 188). The decision also calls on the Member States to deploy efforts to ratify the convention as soon as possible, preferably before the end of 2012. Member States need the Council's authorisation prior to ratification, because the

<sup>22</sup> COM(2007) 591final 'Reassessing the regulatory social framework for more and better seafaring jobs in the EU'.

<sup>23</sup> COM(2008) 320 of 27 May 2008.

convention includes rules in areas which fall under exclusive Community competence, namely the coordination of social security schemes.

The convention will replace some older ILO standards and is expected to remedy the low rate of ratification of many conventions in the field of maritime labour. It sets minimum rules aiming at improving the working conditions on board fishing vessels in areas such as health and safety and medical care, rest periods, protection by a work agreement and social security. Thus, it is intended to help establishing a level playing field in one of the most global and dangerous occupations.

The European Parliament approved the proposal by legislative resolution of 14 January 2009. On 30 November 2009 the Council reached a political agreement on this issue.

## 7.2.8. Facilitation and monitoring of implementation in the Member States

### 7.2.8.1. Transposition/application reports

In 2008, the Commission prepared a number of reports concerning the transposition and/or implementation of certain directives in the area of EU labour law. In particular, the following documents were adopted:

- Report of 11 April 2008 on the implementation of Article 8 of Directive 80/987/EEC (complementary pension rights in the event of insolvency of the employer);
- Report of 17 September 2008 on the implementation of Directive 99/70/EC (fixed-term work) in new

10 Member States (staff working document — SEC(2008) 2485) <sup>(24)</sup>;

- Report of 12 December 2008 on the economic and social impact of Directive 2005/47/EC on working time of workers in the international rail sector.

In addition, the following reports are expected to be adopted in 2010:

- Report on the transposition and implementation of Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;
- Report on the transposition and implementation of Directive 94/33/EC of 22 June 1994 on the protection of young people at work;
- Report on the implementation of Directive 2003/88/EC on the organisation of working time.

In the area of information and consultation of employees <sup>(25)</sup>, on 30 September 2008 the Commission adopted a communication on the review of Directive 2001/86/EC on involvement of employees in the European Company (COM(2008) 591). The Commission, in agreement with the majority of Member States and the European social partners, concluded that there is a lack of practical experience regarding the application of the directive and that, therefore, it was too early to revise it.

<sup>24</sup> This complements the Commission staff working document of 11 August 2006 on the implementation of Directive 1999/70/EC in the EU-15.

<sup>25</sup> The Commission had adopted in 2008 a communication on the review of Directive 2002/14/EC (cf. Chapter 6 of 2008 IRR).

However, the Commission identified some issues that deserved further consideration, and envisages carrying out a full examination and assessing the appropriateness/scope of an eventual revision of the directive. Such an assessment will be carried out in parallel with the reflection on potential amendments to the SE Statute, which in turn will build on the report on the application of the Regulation on the Statute for a European Company published on 17 November 2010.<sup>(26)</sup>

As regards the European cooperative society, a report on the review of Council Directive 2003/72/EC of 22 July, supplementing the statute for a European cooperative society with regard to the involvement of employees, is expected to be adopted in 2010.

### 7.2.8.2. Monitoring of implementation of directives

Following the 2007 studies on the implementation of the EU labour law acquis in the enlarged European Union, the Commission commissioned new studies to cover the most recent countries which acceded to the EU, i.e. Romania and Bulgaria. These were finalised at the beginning of 2010.

In line with its communication on applying Community law <sup>(27)</sup>, the Commission continues to put great emphasis on monitoring the correct transposition and application of the labour law directives. Priority was accorded to dealing with three directives — Directive 99/70/EC on fixed-term work, Directive 97/81/EC on part-time work and Directive 2003/88/EC on the organisation of working time. Following complaints

<sup>26</sup> COM(2010) 676 of 17.11.2010.

<sup>27</sup> COM(2007) 502 of 5.9.2007.

or on the basis of its own findings and/or of the aforementioned studies, the Commission cooperated with the Member States concerned to resolve the issues that were raised. Where it was not possible to find a solution, it launched infringement proceedings for non-notification and/or incorrect implementation of EU legislation, which led in some cases to judgments by the Court of Justice.

### 7.2.9. Interpretation of directives

The Court of Justice had the opportunity to interpret a number of provisions of the EU directives in the field of labour law in several judgments rendered between May 2008 and February 2010. Most of these judgments were rendered following preliminary questions submitted to the CJEU by national courts. Some were the result of infringement proceedings launched by the Commission.

The CJEU rendered four judgments relating to Directive 2001/23/EC (transfer of undertakings). The aim of this directive is to protect employees in the event of a change of employer and, in particular, to safeguard their rights. In Case C-313/07<sup>(28)</sup> the Court clarified that the directive does not have effects on contracts other than employment contracts. In Case C-396/07<sup>(29)</sup>, the Court clarified the effects of the termination of an employment contract because the transfer of undertaking involved a substantial change of working conditions. In Case C-466/07<sup>(30)</sup>, the Court ruled that where the transfer

28 Judgment of the Court (Fourth Chamber) of 16 October 2008, *Kirtruna SL and Elisa Vigano v Red Elite de Electrodomésticos SA and Others*.

29 Judgment of the Court (Fourth Chamber) of 27 November 2008, *Mirja Juuri v Fazer Amica Oy*.

30 Judgment of the Court (Fourth Chamber) of 12 February 2009, *Dietmar Klarenberg v Ferrotron Technologies GmbH*.

only concerns part of an undertaking, for the directive to be applicable it is not required that this part retains organisational autonomy. In Case C-561/07<sup>(31)</sup>, the Court ruled that Italy had infringed the directive through its legislation on undertakings in critical difficulties which relieved these undertakings from certain obligations resulting from the directive.

Two judgments concerned Directive 80/987/EEC<sup>(32)</sup> (insolvency of the employer). This directive aims at the protection of workers in case of insolvency of the employer by requiring Member States to establish institutions that guarantee the payment of unpaid salaries. In Case C-310/07<sup>(33)</sup>, the Court clarified the conditions for the competence of the guarantee institution in a Member State in case the insolvent company had activities in more than one Member State. In Case C-69/08<sup>(34)</sup>, the Court clarified the conditions that national law can impose limitation periods for claiming the intervention of the guarantee institution.

As for Directive 2003/88/EC (working time), one judgment was issued by the CJEU. This directive lays down minimum general safety and health requirements for the organisation of working time. In Joined Cases C-350/06 and C-520/06<sup>(35)</sup>, the Court clarified the relationship between paid annual leave and sick leave.

31 Judgment of the Court (Second Chamber) of 11 June 2009, *Commission of the European Communities v Italian Republic*.

32 Directive 80/987/EEC has been repealed by Directive 2008/94/EC which codifies Directive 80/987/EEC as amended by Directive 2002/74/EC.

33 Judgment of the Court (Fourth Chamber) of 16 October 2008, *Svenska staten v Anders Holmqvist*.

34 Judgment of the Court (Second Chamber) of 16 July 2009, *Raffaello Visciano v Istituto nazionale della previdenza sociale (INPS)*.

35 Judgment of the Court (Grand Chamber) of 20 January 2009, *Gerhard Schultz-Hoff v Deutsche Rentenversicherung Bund (C-350/06) and Stringer and Others v Her Majesty's Revenue and Customs (C-520/06)*.

One judgment was delivered relating to Directive 97/81/EC (part-time work), one of the directives based on a European social partners' framework agreement. This directive ensures that workers employed part-time receive comparable treatment to full-time staff on open-ended contracts. In Joined Cases C-55/07 and C-56/07<sup>(36)</sup>, the CJEU ruled that it precludes national legislation which requires that copies of part-time employment contracts be sent to the authorities within 30 days of their signature.

The CJEU rendered one judgment concerning Directive 1999/70/EC (fixed-term work). This directive establishes minimum requirements relating to fixed-term work, in order to ensure equal treatment of workers and to prevent abuse arising from the use of successive employment contracts or relationships of this type. In Joined Cases C-378/07 to C-380/07<sup>(37)</sup> the Court clarified the conditions for allowing successive employment contracts.

As for Directive 96/71/EC (posting of workers) one judgment is worth mentioning. This directive aims to remove the uncertainties and obstacles impeding the free provision of services by increasing legal certainty and making it easier to identify the working conditions in the Member State to which the worker is posted which apply. In Case C-319/06<sup>(38)</sup> the CJEU considered that Luxembourg

36 Judgment of the Court (Third Chamber) of 24 April 2008, *Othmar Michaeler (C-55/07 and C-56/07), Subito GmbH (C-55/07 and C-56/07) and Ruth Volgger (C-56/07) v Amt für sozialen Arbeitsschutz und Autonome Provinz Bozen*.

37 Judgment of the Court (Third Chamber) of 23 April 2009, *Kiriaki Angelidaki and Others v Organismos Nomarchiakis Autodioikisis Rethymnis (C-378/07), Charikleia Giannoudi v Dimos Geropotamou (C-379/07) and Georgios Karabousanos and Sofoklis Michopoulos v Dimos Geropotamou (C-380/07)*.

38 Judgment of the Court (First Chamber) of 19 June 2008, *Commission of the European Communities v Grand Duchy of Luxembourg*.

### Box 7.3: Who should consult employees, and at what time, on collective dismissals in the case of a group of undertakings?

An important judgment in the field of collective dismissals was rendered in Case C-44/08. In this case the executive council of the parent company of a group decided to make a proposal to the board of that company for disengagement from the group's factory in Finland. A week later the board of directors decided to support the proposal, but no specific decision was taken in relation to that factory. On the same day, the subsidiary that owned the factory proposed consultations with the employees' representatives, which took place for several weeks. At the end of this period the subsidiary's board of directors took a decision to terminate the operations in Finland. The employees' representatives challenged in the national court the information and consultation procedure followed since they considered that the decision to close the factory had been adopted before the start of the consultation procedure. The Finnish Supreme Court put a preliminary question to the CJEU and stayed proceedings. In its judgment, the CJEU ruled that the adoption within a group of undertakings of strategic decisions or of changes in activities which compel the employer to contemplate or to plan for collective redundancies gives rise to an obligation on that employer to consult with workers' representatives. The CJEU considered that the consultation procedure must be started by the employer once a strategic or commercial decision compelling him to contemplate or to plan for collective redundancies has been taken. The CJEU also ruled that the obligation to start negotiations does not depend on whether the employer is already able to supply to the workers' representatives all the information required by the directive; the information can be provided during the consultations and not necessarily at the time when they start. Moreover, in the case of a group of undertakings consisting of a parent company and one or more subsidiaries, the obligation to hold consultations with the workers' representatives falls on the subsidiary which has the status of employer only once that subsidiary, within which collective redundancies may be made, has been identified. Finally, the CJEU ruled that in the context of a group of undertakings, a decision by the parent company which has the direct effect of compelling one of its subsidiaries to terminate the contracts of employees affected by the collective redundancies can be taken only on the conclusion of the consultation procedure within that subsidiary, failing which the subsidiary, as the employer, is liable for the consequences of failure to comply with that procedure.

had infringed the directive by imposing certain obligations on the employer which go beyond what is allowed by the directive.

One judgment was delivered concerning Directive 91/533/EEC (information on individual contract). This directive requires employers to inform employees in writing of the conditions applicable to the contract. In Case C-306/07<sup>(39)</sup> the Court clarified the meaning of temporary contract for the purposes of the directive.

As for Directive 98/59/EC (collective redundancies), the CJEU delivered three judgments. This directive requires employers to consult staff

representatives in the case of collective redundancies. It specifies the points which these consultations must cover and the useful information which the employer is required to provide during the consultations. In addition, the directive establishes the procedure and practical arrangements for collective redundancies. In Case C-12/08<sup>(40)</sup>, the Court clarified that the directive allows national legislation that subjects the exercise of the rights of individual workers to certain requirements. In Case C-323/08<sup>(41)</sup>, the Court clarified the scope of the directive in case of death

<sup>39</sup> Judgment of the Court (Fourth Chamber) of 16 July 2009, *Mono Car Styling SA*, in liquidation v *Dervis Odemis and Others*.

<sup>40</sup> Judgment of the Court (Fourth Chamber) of 10 December 2009, *Ovido Rodríguez Mayor and Others v Herencia yacente de Rafael de las Heras Dávila and Others*.

of the employer. For Case C-44/08<sup>(42)</sup>; see Box 7.3.

The CJEU delivered one judgment concerning Directive 2002/14/EC (information and consultation). This directive establishes a general framework for informing and consulting employees. In Case C-405/08<sup>(43)</sup>, the Court clarified the extent of the protection granted to employees' representative.

## 7.3. Health and safety of workers

### 7.3.1. Risks arising from physical agents

#### 7.3.1.1. Electromagnetic fields

On 20 May 2010, the second-stage consultation of the social partners on a possible amendment of Directive 2004/40/EC was launched by the Commission.

Directive 2008/46/EC, amending Directive 2004/40/EC on minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields), postpones by four years, until 30 April 2012, the deadline for the transposition of Directive 2004/40/EC to allow a full analysis of new information in this field. A first consultation of the social partners on possible new measures to be proposed was finalised in October 2009. This provided appropriate information for the preparation of the second stage consultation.

<sup>42</sup> Judgment of the Court (Fourth Chamber) of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK ry and Others v Fujitsu Siemens Computers Oy*.

<sup>43</sup> Judgment of the Court (Third Chamber) of 11 February 2010, *Ingeniørforeningen i Danmark v Dansk Arbejdsgiverforening*.

<sup>39</sup> Judgment of the Court (First Chamber) of 18 December 2008, *Ruben Andersen v Kommunernes Landsforening*.

Depending on the outcome of the second stage consultation, the Commission should be in a position to present a new proposal for a directive during 2010.

### 7.3.1.2. Artificial optical radiation

A guide to good practice for implementing Directive 2006/25/EC on minimum requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) has been published.

This non-binding guide, foreseen under Article 13 of Directive 2006/25/EC, aims to promote a good understanding of the provisions of the directive in order to ensure and maintain effective and sufficient conditions of protection for workers exposed to artificial optical radiation. Its purpose relates to the ascertainment and evaluation of risks, the correct selection and use of working equipment, the optimisation of methods and the introduction of protective measures (technical, organisational and of personal nature) according to the preceding risk analysis.

### 7.3.1.3. Noise

A guide to good practice for the application of Directive 2003/10/EC on the minimum safety and health requirements regarding the exposure of workers to the risks arising from physical agents (noise) has been published. This non-binding guide aims to facilitate the assessment of risks from noise exposure, thus reducing such exposure and promoting, for example, the purchase of quiet work equipment where possible. It assists companies, especially SMEs, with preventing occupational risks. It contains a number of good-practice examples.

## 7.3.2. Risks arising from chemical agents

### 7.3.2.1. Third list of limit values

On 17 December 2009, the Commission adopted Directive 2009/161/EU establishing a third list of indicative occupational exposure limit values for chemical agents.

Indicative occupational exposure limit values are health-based, non-binding values, derived from the most recent scientific data available and taking into account the availability of measurement techniques. They set threshold levels of exposure at such a level that, when repeated on a regular basis throughout a working life, the exposure will not lead to adverse effects on the health of exposed persons and/or their progeny at any time, as far as can be predicted from the contemporary state of knowledge.

The new directive includes in its Annex 19 chemical substances for which the Member States are now required to establish national occupational exposure limit values, taking into account the European Union values. Member States must comply with this by 18 December 2011 at the latest.

### 7.3.2.2. Classification, labelling and packaging of chemical substances

On 9 December 2009, the first-stage consultation of the social partners at EU level was launched on the need to adapt EU directives to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures. New requirements for the classification, labelling and packaging of chemicals arise from the adoption of Regulation (EC) No 1272/2008 which implements, within the European

Union, the United Nations Globally Harmonised System for Chemical Classification and Labelling.

Five EC directives on health and safety at work refer to chemical classification and labelling requirements. It is necessary to amend these five directives to ensure that the current level of worker protection is maintained. The directives are Directive 98/24/EC (chemical agents), Directive 2004/37/EC (carcinogens and mutagens), Directive 92/58/EEC (safety signs), Directive 92/85/EEC (pregnant workers) and Directive 94/33/EEC (young people at work). The second-stage consultation is foreseen in the course of 2010.

### 7.3.3. Exposure to asbestos

On 30 November 2009, the European Parliament and the Council adopted Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work (codified version)<sup>(44)</sup>. In the interests of clarity and rationality, Directive 2009/148/EC incorporates in one text the texts of Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work (second individual directive within the meaning of Article 8 of Directive 80/1107/EEC) and its amendments, i.e. Directives 91/382/EEC, 98/24/EC, 2003/18/EC and 2007/30/EC.

### 7.3.4. Musculoskeletal disorders

On the basis of the findings of a two-phase social partner consultation carried out under Article 154(4) TFEU (ex Article 138(4) of the EC Treaty) and, in the light of the results of a preparatory study on the social-economic impact of various policy options, the

<sup>44</sup> OJ L 330, 16.12.2009, pp. 28–36.

Commission is currently working on a proposal for new legislation to address all significant ergonomic risk factors at work and lay down minimum health and safety requirements for the protection of workers in all sectors of activity from work-related musculoskeletal disorders (WRMSDs) and display-screen vision problems.

WRMSDs are one of the major safety and health problems facing the European Union today. They affect both women and men and all sectors of activity across the European Union. According to information from Eurostat<sup>(45)</sup>, work-related MSDs are the main work-related health problem, accounting for 60 % of all work-related diseases in the EU-27.

### 7.3.5. Environmental tobacco smoke

On 10 December 2008, the Commission launched a first stage consultation of the social partners at EU level on the protection of workers from risks related to exposure to environmental tobacco smoke at the workplace. This consultation of the social partners regarded the possible direction of an EU legislative initiative. Following an analysis of the responses received from the social partner organisations, the second stage consultation of the social partners is under preparation.

### 7.3.6. Work equipment

On 16 September 2009, the European Parliament and the Council adopted Directive 2009/104/EC concerning the minimum safety and health requirements for the use of work equipment by workers (codified version)<sup>(46)</sup>.

<sup>45</sup> Eurostat 2007, European labour force survey, Ad hoc module on accidents at work and work-related health problems.

<sup>46</sup> OJ L 260, 3.10.2009, pp. 5–19.

In the interests of clarity and rationality, Directive 2009/104/EC incorporates in one text the texts of Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) and its amendments, i.e. Directives 95/63/EC, 2001/45/EC and 2007/30/EC.

### 7.3.7. Construction sector

#### 7.3.7.1. Practical implementation report

On 6 November 2008, the Commission adopted a communication on the practical implementation of two directives on health and safety in the construction sector, namely Directives 92/57/EEC (temporary and mobile sites) and 92/58/EEC (safety signs at work)<sup>(47)</sup>. This communication assesses the practical implementation of Directives 92/57/EEC and 92/58/EEC in the EU-15 countries and highlights issues where further action is needed for improvement, especially in the construction sector with its extremely high rate of accidents. As regards Directive 92/57/EEC, the communication addresses such issues as its transposition by the Member States, the main actors on a construction site, the documents required, the responsibility of the various players on the site and its enforcement. The main positive effects and the problems of implementation of the two directives are also addressed.

#### 7.3.7.2. Guide

A non-binding guide to help improve the practical application of Directive 92/57/EEC on the implementation

<sup>47</sup> COM(2008) 698 final.

of minimum safety and health requirements at temporary or mobile construction sites has been published.

### 7.3.8. Extractive industries

On 3 September 2009, the Commission adopted a report on the practical implementation of two directives on health and safety in the extractive industries, namely, Directives 92/91/EEC (mineral extraction through drilling) and 92/104/EEC (surface and underground mineral extraction)<sup>(48)</sup>. The report assesses the practical implementation of Directives 92/91/EEC and 92/104/EEC in the EU-15 Member States, and points to issues where further action is needed for improvement, especially since the extractive industries sector is a traditionally high risk sector. It addresses issues such as the directives' transposition and enforcement in the Member States, workers' qualifications, health surveillance, and accidents and their causes. It highlights the need for Member States to provide extra support to SMEs enabling them to put in place an effective health and safety policy.

### 7.3.9. Maritime sector

#### 7.3.9.1. Directive implementing social partners' agreement on Maritime Labour Convention

As reported at 2.7.1 above, the Council adopted on 16 February 2009 Directive 2009/13/EC implementing ECSA's and ETF's agreement on the 2006 Maritime Labour Convention<sup>(49)</sup>. The agreement aims in particular at improving the working conditions of seafarers in terms of, inter alia, health and safety protection and medical care (see above for details).

<sup>48</sup> COM(2009) 449 final.

<sup>49</sup> OJ L 124, 20.5.2009, p. 30.

### 7.3.9.2. Practical implementation report

On 29 October 2009, the Commission adopted a report on the practical implementation of health and safety at work Directives 93/103/EC (fishing vessels) and 92/29/EEC (medical treatment on board of vessels) <sup>(50)</sup>.

The report assesses the practical implementation of Directives 92/29/EEC and 93/103/EC in the EU-15 Member States and highlights issues where further action is needed for improvement, especially since the maritime sector is a high risk sector.

For Directive 92/29/EEC, the report addresses, among others, the issues of medical supplies, training and inspections. The report concludes that action will be taken with a view to a technical adaptation of the directive's Annexes in the light of technical progress.

As regards Directive 93/103/EC, it is stressed, among others, that whilst its scope covers solely vessels of 15 m in length and more, vessels of under 15 m in length account for a majority of the fleet and have higher accident rates. The report concludes that attention will be given to this issue by analysing options such as guidance for smaller vessels and the possibility of amending the directive in order to extend its scope to cover also vessels under 15 m in length.

## 7.3.10. Healthcare sector

### 7.3.10.1. Injuries from sharp instruments

On 10 May 2010, the Council adopted Directive 2010/32/EU implementing the framework agreement on

<sup>50</sup> COM(2009) 599 final.

### Box 7.4: Significant judgments of the Court of Justice in the field of health and safety at work in 2008–10

*Commission v France* <sup>(1)</sup>: In a ruling, the Court condemned France for not respecting certain provisions of the so-called framework directive (89/391/EEC) (safety and health of workers at work). It concerned firstly the fact that French legislation allowed for derogations for the French public transport company RATP, despite the fact that Article 2 of the directive defines its scope of application as covering all sectors of activity, both public and private. Furthermore, the Court condemned France as regards the public railway company SNCF, which had failed to include in its proper regulations certain provisions transposing the directive. These concerned Article 7 (protective and preventive services), Article 9(1) (c) (keeping of a list of occupational accidents) and Article 13(2) (workers' obligations). Thirdly, France had not correctly transposed Article 10(1) of the directive (information of workers on health and safety risks and on the protection measures), imposing this for example only in companies with more than 20 employees instead of in all companies as required by the directive. Finally, France had not transposed Article 12(3) and (4) (training of workers' representatives) in the mining sector.

*Commission v Italy* <sup>(2)</sup>: The Court declared that Italy did not correctly transpose Article 3(1) of Directive 92/57/EEC (construction sites). According to this provision, at construction sites with more than one company, a coordinator for health and safety matters has to be appointed in order to prevent accidents. Italy had transposed the directive in such a way that construction sites with less than 200 working days and those not comprising particular risks are exempted from this obligation. The Court ruled clearly that the directive does not allow for derogations to the obligation contained in Article 3(1). In fact, the risks are the same and accidents very often occur at small construction sites.

<sup>1</sup> Judgment of 5 June 2008 in Case C-226/06, European Court Reports 2008, p. I-00086.

<sup>2</sup> Judgment of 25 July 2008 in Case C-504/06, European Court Reports 2008, p. I-00118.

prevention of injuries from sharp instruments in the hospital and healthcare sector concluded by the sector's European social partners, Hospeem and EPSU <sup>(51)</sup> (see Chapter 6 for details of the agreement). Member States must take the necessary measures to comply with this directive by 11 May 2013 at the latest.

### 7.3.10.2. Guide

A non-binding guide on prevention and good practice with a view to improving the health and safety of workers in the hospitals and the healthcare sector has been published.

### 7.3.11. Statistics

On 16 December 2008, the European Parliament and the Council adopted

<sup>51</sup> OJ L 134, 1.6.2010, p. 66.

Regulation (EC) No 1338/2008 on Community statistics on public health and health and safety at work <sup>(52)</sup>. The regulation aims at establishing the framework for the systematic production of statistics in these two areas, in the form of a minimum data set, to be carried out by the European statistical system, i.e. Eurostat, the national statistical institutes and all other national authorities responsible for the provision of official statistics in these areas. It sets out the general principles and describes the main contents of the data to be collected.

### 7.3.12. Senior Labour Inspectors' Committee

On 22 October 2008, the Commission adopted a decision amending Decision 95/319/EC setting up a committee of senior labour inspectors (SLIC),

<sup>52</sup> OJ L 354, 31.12.2008, p. 70.

primarily to reduce the number of members per Member State from two to one <sup>(53)</sup>. Since the latest enlargements of the European Union effectively doubled the size of the SLIC, the plenary meetings have comprised 54 members. With a view to enable the SLIC to fulfil its tasks and allow the members of the committee to engage in a practical, interactive exchange of experience and opinion, which is not feasible with such a large Committee, the number of members per Member State was reduced from two to one, with effect from 1 January 2010. The Member States are allowed to appoint an alternate member to attend meetings where the full member cannot be present. The SLIC gives its opinion to the Commission on all problems relating to the enforcement by the Member States of EU law on health and safety at work.

## 7.4. Equality rights in employment

### 7.4.1. Directive on parental leave

The Council adopted, on 8 March 2010, the Council directive <sup>(54)</sup> implementing the revised framework agreement on parental leave concluded by BusinessEurope, UEAPME, CEEP and the ETUC. The new directive repeals and replaces Directive 96/34/EC, which put into effect the 1995 social partner framework agreement and established for the first time minimum standards on parental leave at EU level. These rights for working parents have now been strengthened and clarified. The provisions of the revised agreement are outlined in Chapter 6.

<sup>53</sup> OJ L 288, 30.10.2008, p. 5.

<sup>54</sup> Directive 2010/18/EU, OJ L 68, 18.3.2010, pp. 13–20.

Following their consultation by the Commission in 2006 and 2007, the European social partners (BusinessEurope, the ETUC, CEEP and UEAPME) entered into negotiations with a view to revising the 1995 agreement. On 18 June 2009, they signed the revised framework agreement and addressed a joint request to the Commission to submit a proposal for a Council decision implementing it. Following the adoption of the directive by the Council, Member States will have two years to transpose the new rights into national law.

### 7.4.2. Pregnant workers directive

In October 2008, the Commission presented a proposal to amend the current provisions of Directive 92/85/EEC on maternity protection. The aim of this proposal is to provide for better reconciliation of private, professional and family life and thus allow more women to enter or stay in the employment market if they have children.

The most important changes proposed are to:

- increase maternity leave from 14 to 18 weeks;
- allow the woman to take the main part of maternity leave only after the birth of the child;
- provide for an obligatory leave of six weeks after birth (currently there is a minimum of two weeks);
- improve protection against dismissal;
- allow the woman to ask for changes in her working conditions.

The legislative procedure is currently in the hands of the European Parliament and the Council.

### 7.4.3. Self-employed workers directive

In October 2008 the Commission presented a proposal for a directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity. This proposal has been adopted by the European Parliament and the Council on 15 July 2010 <sup>(55)</sup>. The directive lays down a framework for putting into effect in the Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards the aspects that are not covered by Directives 2006/54/EC and 79/7/EEC. It covers self-employed workers and assisting spouses and repeals Directive 86/613/EEC.

The main elements of the directive are as follows:

- Member States must provide that female self-employed women can, if they so request, benefit from a maternity allowance for a period of at least 14 weeks;
- Member States must ensure that, whenever there is a social protection system for self-employed workers, assisting spouses can, at their request, benefit from a social protection.

It should be noted that life partners, when and insofar as recognised by national law, are considered as spouses for the purpose of the directive.

<sup>55</sup> Directive 2010/41/EU, OJ L 180, 15.7.2010, pp. 1–6.

#### 7.4.4. Monitoring of equality and anti-discrimination legislation

The Commission continues to place great emphasis on the correct transposition and application of the relevant EU directives. This includes Council Directive 2000/78/EC, which established a general framework for equal treatment in employment and occupation across the EU. Apart from a few, where Member States did not communicate their national transposing measures, the Commission concluded its examination of the relevant directives' transposition across the EU. Following this thorough analysis, the Commission was in the position in several cases to close the infringement proceedings it had initiated against several Member States. However, in other cases it considered appropriate to pursue further its action on the basis of Article 157 TFEU (ex Article 226 TC) <sup>(56)</sup>.

### 7.5. Conclusion: future perspectives

As this chapter has shown, significant progress was achieved during the period 2008–10 in a number of areas where new rules create the conditions for improving working conditions in the EU, while contributing to the modernisation of the labour markets in line with the objectives of the Lisbon strategy and the Europe 2020 strategy. Examples of such advances were particularly evident in the areas of temporary agency work, European

works councils, maritime transport, protection against risks caused by chemical substances and injuries from sharp instruments, parental leave and protection of self-employed spouses. Difficulties also emerged, both in the enforcement or interpretation of specific provisions and in finding a compromise between co-legislators for the adoption of new legislation, as was the case with the proposed revisions to the working time directive.

Looking to the future, the European Union has to act within a significantly changed context. First, the EU currently faces a challenging period as a result of, on the one hand, the economic crisis — as shown in relation to industrial relations in

Chapters 2 and 3 — and, on the other hand, long-term challenges such as globalisation, demographic ageing, climate change and pressure on natural resources. Chapter 5 has provided an overview of what the shift to a low-carbon economy could mean for industrial relations systems.

Second, the entry into force of the Lisbon Treaty offers new possibilities and perspectives. Several changes may be of great significance to the further development of European social policy, in particular: the statement of EU values and objectives; the binding Charter of Fundamental Rights; the social clause of general application, the explicit recognition of the role of social dialogue.

#### Box 7.5: Significant judgments of the Court of Justice in the field of equality rights in employment (2008–10)

##### *Generalisations do not justify derogations in age discrimination laws*

Is there a conflict between the employment equality directive and national rules in the United Kingdom, which permit employers to forcibly retire employees aged 65 or over? This was in essence the question posed by the UK High Court to the Court of Justice, regarding a case brought by an NGO (the National Council on Ageing) against the UK government.

The CJEU observed <sup>(1)</sup> that the Member States enjoy broad discretion when choosing the means to achieve their social policy objectives, but not at the expense of frustrating the implementation of the principle of equality on grounds of age. Mere generalisations do not justify derogations. Certain differences in treatment on the grounds of age can be 'objectively and reasonably' justified by a legitimate aim, but Member States must establish to a high standard of proof the legitimacy of the aim relied on as a justification.

Case C-388/07, *National Council for Ageing*, judgment of 5 March 2009.

##### *Young workers must not be discriminated*

The Austrian Supreme Court asked the Court of Justice whether Directive 2000/78/EC was compatible with an Austrian law which excludes previous service from being taken into account for a pay raise, if such service was completed before the person reached the age of 18 years.

The Court of Justice accepted as legitimate the aim of avoiding putting persons who have pursued a general secondary education at a disadvantage as compared with persons with a vocational education, as well as that of avoiding making apprenticeships more costly for the public sector and thereby promoting the integration of young people who have pursued training of this type into the labour market.

However, the Court of Justice considered that the criterion of the age at which the vocational experience was acquired is not appropriate for achieving the envisaged legitimate aims.

Case C-88/08, *Hütter*, judgment of 18 June 2009.

1 <http://curia.europa.eu/> (Case C-388/07, Judgment of 5 March 2009).

56 In accordance with this provision, when the Commission considers that a Member State has failed to comply with its obligations under EU law, it may deliver a letter of formal notice, a reasoned opinion and eventually bring the matter before the CJEU.

Against this background, the Commission adopted its Europe 2020 strategy for smart, sustainable and inclusive growth<sup>(57)</sup>. This strategy sets out a vision of Europe's social market economy for the 21st century and puts forward the EU's priorities, targets and flagship initiatives in order to realise this vision. It outlines also the instruments to be mobilised to this effect. The strategy provides for further action to be taken to make full use of the problem-solving potential of social dialogue. Equality of treatment and the fight against discrimination will be further promoted. A second phase of the flexicurity agenda will be defined and implemented together with the European social partners.

As regards legislation, the Commission envisages working to adapt the

legislative framework, in line with 'smart' regulation principles, to evolving work patterns (e.g. working time). It also intends to adapt the existing framework to emerging risks for health and safety in the workplace (e.g. electromagnetic fields, musculoskeletal disorders, environmental tobacco smoke, nanomaterials, carcinogens and mutagens). Further, it will also act in order to clarify rules when these are not sufficiently clear to allow proper enforcement (e.g. posting of workers).

More generally, the Commission intends to undertake an evaluation of several existing directives in order to review their effects, to verify whether they meet their stated objectives, and to assess the benefits and costs generated, including the even-

tual administrative burden. Besides the work under way regarding the directives on posting of workers and on working time<sup>(58)</sup>, priority will be given to the directives regarding workers' information and consultation at national level<sup>(59)</sup>. Such evidence-based research is expected to inform the Commission's assessment of the effectiveness of the relevant *acquis* in the current crisis, in particular concerning the restructuring of companies.

The Commission will further pursue, in particular, its proposals which are currently pending before the EU legislature. It will continue to closely involve the European social partners. It will also pursue its efforts to monitor the effective implementation and enforcement of the *acquis*.

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57 COM(2010) 2020 of 3.3.2010.

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58 See Sections 2.2 and 2.4 above.

59 As part of the Commission's 2010 work programme, the Employment, Social Affairs and Inclusion DG has started to carry out a 'fitness check' of the following directives: Directive 98/59/EC on collective redundancies, Directive 2001/23/EC on transfers of undertakings and Directive 2002/14/EC establishing a general framework relating to information and consultation of workers in the EC.

## Annex: Transposition of European directives, October 2010

Directives	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
<b>1. Labour law</b>																											
<i>Directives in force</i>																											
91/383 — temporary employment	OK	OK	EX	OK	EX	OK	OK	OK	OK																		
91/533 — written statement	OK	OK	EX	OK	EX	OK	OK	OK																			
94/33 — protection young people at work	OK	OK	EX	OK	EX	OK	OK	OK																			
94/45 — European works councils (97/74 — UK)	OK	OK	EX	OK	EX	OK	OK	OK																			
96/71 — posting of workers	OK	OK	EX	OK	EX	OK	OK	OK																			
97/74 — extension 94/45 to UK	NA	NA	OK	NA																							
97/81 — part-time work (98/23 — UK)	OK	OK	EX	OK	EX	OK	OK	OK	NA																		
98/23 — extension 97/81 to UK	NA																										
98/59 — collective redundancies (codification)	OK	OK	EX	OK	EX	OK	OK	OK	OK																		
99/63 — working time of seafarers	OK	OK	EX	EX	EX	OK	OK	EX	OK	OK	OK	OK	EX	OK	OK	EX	OK	EX	EX	EX	OK	OK	EX	OK	EX	EX	OK
99/70 — fixed-term work	OK	OK	EX	OK	EX	OK	OK	OK	OK																		
00/79 — agreement on working time civil aviation	OK	OK	EX	OK	EX	OK	OK	OK	OK																		
01/23 — transfer of undertakings (codification 77/187 and 98/50)	OK	OK	EX	EX	OK	OK	OK	EX	OK	OK	OK	OK	EX	OK	OK	EX	OK	EX	EX	EX	OK	OK	EX	OK	EX	EX	OK
01/86 — involvement employees — statute European Company	EX	OK	EX	OK	EX	OK	EX	OK	OK	OK	OK	OK	EX	EX	OK	OK	EX	EX	OK	EX	OK						
02/14 — information and consultation of employees	OK	OK	EX	OK	EX	OK	EX	OK	OK	OK	OK																
03/72 — cooperative societies	OK	EX	OK	OK	OK	OK	OK	OK	EX	OK	EX	OK	OK	OK	OK	EX	EX	OK	OK	OK	OK						
03/88 — working time	OK	OK	EX	OK	EX	OK	OK	OK	OK																		
05/47 — European railways	CP	EX	OK	NA	CP	EX	OK	NC	EX	EX	EX	EX	EX	EX	NC	EX	CP	EX	NA	OK	OK	EX	OK	OK	OK	OK	CP
06/109 — European works council	NA	EX	EX	OK	EX	EX	EX	EX	OK	EX	EX	NA	EX	EX	OK	EX	EX	EX	NA	EX	EX	NA	EX	NA	EX	EX	EX
08/94 — insolvency employer (codification 80/987)	OK																										

Directives	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<i>Directives whose implementation deadline has not yet expired</i>																												
08/104 — temporary agency work (deadline: 5.12.2011)																												
09/13 — agreement Maritime Labour Convention (amending 99/63)																												
09/38 — European works council (deadline 5.6.2011)																												
<b>Directives</b>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>2. Equal treatment men and women</b>																												
<b>Directives in force</b>																												
79/7 — social security																												
86/613 — self-employed women (to be repealed 5.8.2012)	OK																											
92/85 — pregnant workers	OK																											
96/34 — parental leave (97/75 — UK) (to be repealed 8.3.2012)	OK	NA																										
97/75 — extension 96/34 UK	NA	OK																										
04/113 — equal access goods/services	OK	CP																										
06/54 — equal opportunities employment	CP	OK	CP																									
<i>Directives whose implementation deadline has not yet expired</i>																												
10/18 — parental leave (deadline: 8.3.2012)																												
10/41 — self-employed (deadline: 5.8.2012)																												

Directives	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>3. Equal Treatment</b> Article 13 EC																												
<i>Directives in force</i>																												
00/43 — race	OK																											
00/78 — equal treatment employment	OK																											
<b>Directives</b>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>4. Free movement of workers</b>																												
<i>Directives in force</i>																												
98/49 — supplementary pensions rights	OK																											
<b>Directives</b>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
<b>5. Health and safety at work</b>																												
<i>Directives in force</i>																												
83/477 — asbestos (to be repealed 4.1.2011)	OK	OK	OK	NA	NA	OK	OK	NA	OK	OK	OK	OK	NA	OK	OK	NA	OK	NA	NA	OK	NA	OK	OK	OK	OK	NA	NA	OK
89/391 — framework directive health and safety at workplace	OK																											
89/654 — workplaces	OK																											
89/656 — personal protective equipment	OK																											
90/269 — manual handling of loads	OK																											
90/270 — display screen equipment	OK																											
91/322 — chemical, physical and biological agents	OK	NA	NA	OK	NA	OK	NA	OK	NA	OK	OK	OK	OK	OK	OK													
91/382 — asbestos (amending 83/477) (to be repealed 4.1.2011)	OK																											
92/104 — mining	OK																											

Directives	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
92/29 — medical assistance on board of vessels	OK																										
92/57 — construction	OK																										
92/58 — health and safety signs	OK																										
92/91 — drilling	OK																										
93/103 — work on board fishing vessels	NA	OK	OK	OK	NA	OK	NA	OK	NA	OK																	
98/24 — chemical agents 5	OK																										
99/92 — explosive atmospheres	OK																										
00/39 — chemical agents	OK																										
00/54 — biological agents	OK																										
02/44 — vibration	OK																										
03/10 — noise	OK																										
03/18 — asbestos (amending 83/477) (to be repealed 4.1.2011)	OK																										
04/37 — carcinogens	OK																										
06/15 — occupational exposure (deadline: 1.9.2007)	CP	OK																									
07/30 — practical implementation reports	OK																										
06/25 — physical agents (deadline: 27.4.2010)	CP	OK	OK	OK	OK	OK	CP	OK	EX	OK	CP	OK	OK	OK	OK	OK	CP										
08/46 — amending 04/40 electromagnetic fields	OK																										

Directives	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
<b>Directives whose implementation deadline has not yet expired</b>																											
04/40 — electromagnetic fields (deadline: 30.4.2012)																											
09/104 — work equipment (codification 89/655) (no time limit for transposition)																											
09/148 — asbestos (no time limit for transposition)																											
09/161 — third list exposure limit values (deadline 18.12.2011)																											

CP = Partial communication; EX = Notification ongoing, examination by the service responsible; NA = Not applicable to the Member State; NC = No communication of national legislation; OK = Communication complete.



European Commission

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