Commission of the European Communities

industrial health and safety

Health and safety protection in industry: Participation and information of employers and workers

Report

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Health and safety protection in industry: Participation and information of employers and workers

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Preface

This report is the result of a study conducted on behalf of the Commission of the European Communities during the period October 1984 - October 1985.
The subject-matter of the study - involvement of employers and workers in occupational safety and health - is directly related to the second programme of action of the European Communities on safety and health at work, in particular to an action relating to the elaboration of principles for participation by employees and their representatives in the improvement of health and safety measures at the workplace.
The study consists of two parts. The first deals with the involvement of representative organisations of employers and workers at the national level in the development and implementation of policies and legislation in the field of health and safety at work. The second and most extensive part of the study deals with worker participation in health and safety at the workplace. Both parts contain a survey of the arrangements adopted at the national level, a comparative analysis of these arrangements and a discussion of the desirability of and scope for Community action.

The present study entailed the following:
- collection of documents, legislation, reports and other publications on the situation in the Member States;
- studying of the collected information, after which the Member States were requested to provide additional information on specific points;
- drawing up a draft report on each Member State which was subsequently discussed with a representative of the Member State concerned;
- comparative analysis of the various national systems;

- elaborating recommendations to be used at Community level, taking into account existing Community instruments in the field of occupational health and safety and the Conventions and Recommendations adopted by the International Labour Organisation.

Describing the arrangements existing in ten different countries is a hazardous undertaking. Without the assistance of many persons who were willing to advise me, it would have been difficult to conduct the study. Without mentioning all of them, I wish to thank in particular Mr. Birden (Luxembourg), M. Boisnel (Paris), M. Dryburgh (London), A. Fredella (Rome), B. Neville (Dublin), R. Nuyts (Brussels), R. Opfermann (Bonn), K. Overgaerd-Hansen (Copenhagen), E. Siccama (The Hague) and Ch. Vasilopoulos (Athens).
Since Spain and Portugal had not yet joined the Community when the present study was carried out, information concerning the arrangements existing in those two countries has not been included in the surveys presented in both parts of the report.

Amsterdam, October 1985.

On January 1st 1986, Spain and Portugal entered the EC. In May and June 1986, a study has been conducted on the arrangements relating to participation in health and safety matters in both countries. The results are laid down in an Annex to this report.
I am grateful for the help I received in Lisbon and Madrid while collecting the required information.

Amsterdam, July 1986.

CONTENTS

Part. 1.

Involvement of representative organisations of employers and workers in the formulation and application of a national policy and legislation on safety and health at work.

1.1. Introduction

Traditionally, health and safety at work are a matter of state interference and legislation in all member countries of the Community. Whereas during the nineteenth century the state limited itself to policing the most dangerous workplaces and protecting workers from the hazards arising there, in the first half of the twentieth century health and safety legislation developed into a complex and extensive body of regulations, covering a wide variety of hazards and work activities. During the last few decades, there has been a shift of emphasis in many industrial countries from national legislation to regulation at enterprise level: the individual undertaking has to formulate its own health and safety policy and devise the protective measures it deems best, taking into account the nature of the health hazards in the undertaking and the concrete possibilities of reducing them. This development, however, does not mean that the State is gradually withdrawing from the field of occupational safety, but rather that its role and responsibilities are in the process of being redefined. Although over the last 15 years national systems of health protection at work have changed considerably in most of the Member States, in all of them the State continues to ensure the effective exercise of the right to safe and healthy working conditions (laid down - inter alia - in the European Social Charter), and continues - at least to a certain extent - to issue health and safety regulations and to provide for the enforcement of regulations. State action with a view to protecting employees from the hazards of their work is not only justified for its own sake, it is also justified with a view to avoiding the

considerable costs arising from employment injury and disability, which costs, due to the expansion of social security arrangements, often have to be shouldered by society at large.

Whereas for these reasons some degree of state interference in the workplace is generally accepted, there is also a strong consensus that the two sides of industry have an important role to play in the development and implementation of national policy and legislation. This consensus is based on recognition of the fact that not only labour and management are directly affected by State action in this area and that involvement of both parties may make the interference of public authorities more legitimate and acceptable, but also that through their specific knowledge and experience employers and workers can contribute substantially to its quality and effectiveness.

Cooperation in the promotion of health and safety between employers' and workers' organisations with each other and with the State has always been considered a crucial factor in developing a sound national policy and practice. Already in its Recommendation No.31 on the prevention of industrial accidents of 1929, the International Labour Organisation strongly advocated such cooperation. The need for close association of both sides of industry with the formulation and application of national policies and laws is explicitly acknowledged in the two Action Programmes of the EC on Health and Safety at Work, adopted by the Council on 29 June 1978 and 27 February 1984. At Community level, the establishment in 1974 of the Advisory Committee on Safety, Hygiene and Health Protection at Work bears witness to the Community's commitment to design its own actions and instruments in close cooperation with labour and management representatives.

This part of the study, which deals with the degrees and way in which the member countries of the Community have embodied the principle of participation of the social partners in their national systems of health protection at work, focuses on the role played by the two sides of industry in the development of health and safety legislation. It deals with institutionalised participation only, i.e. with institutional arrangements adopted with a view to enabling the representative employers' and workers' organisations to partake in the formulation of national policy and its implementation in laws, regulations or other binding provisions. It does not include occasional consultations on an ad hoc basis. Furthermore this part of the study is limited to bodies operating at the national level (either for industry as a whole, or for particular branches of economic activity), which are directly associated with the process of formulating and reviewing national policies and legislation. A survey of the many different bodies which are only indirectly associated with this process (such as research and educational institutes) or of the machinery which may exist for consultative purposes at local or regional levels would exceed the scope of the study

Chapter 1.2. surveys the situation in the Member States as to the involvement of the two sides of industry in the design of policies and binding provisions.* In describing the main institutional arrangements developed for this purpose attention is paid to:

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*For a former survey, see Comparative Study of the Organisation concerned with Safety and Health at Work involving Participation by both Sides of Industry, Commission of the EC, Advisory Committee for Safety, Hygiene and Health Protection at Work, Working Party on Participation by both sides of Industry in Accident Prevention, Luxembourg, doc. 605/1/77. Part of the subject-matter is also covered by the report Health and Safety at Work in the EC, European Foundation for the Improvement of Living and Working Conditions, Dublin, 1982.

- their legal basis and origin;
- their composition, notably with respect to labour and management representation;
- their responsibilities and powers;
- the existence and composition of (sub)committees dealing with particular health hazards or particular trades.

Chapter 1.3. provides a comparative analysis of the machinery operating in the ten member countries; chapter 1.4. discusses the need for action at Community level to ensure participation of employers' and workers' organisations at the national level.

1.2. Arrangements at national level

1.2.1. Belgium

In Belgium, the central body through which representatives of employers and worker organisations can take part in the development of national policies and legislation concerning occupational safety and health, is the Conseil Supérieur de Securité, d'Hygiene et d'Embellissement des Lieux de Travail (Supreme Council for Safety, Health and the Improvement of Workplaces). The Conseil Supérieur was established under the Act of 10 June 1952 relating to employees' health and safety. The present provisions regulating its composition and functions are to be found in the Art. 844 and 855 of the Réglement Général pour la Protection du Travail (R.G.P.T.).
According to Art. 844 it is the Council's task to offer advice on all proposed regulations in the field of health and safety at work. It may also submit its own proposals to the government for the purpose of amending existing regulations or enacting new ones.
Furthermore, it studies all problems relating to the protection of health and safety and the improvement of

working conditions. It has to draw up an annual report on its activities.
The Council has a bipartite composition. Its chairman is the Directeur Général de l'Administration de la sécurité du travail. Its members are nominated by the most representatives employers' and workers' organisations. Both management and labour have twelve seats on the Council. Seven delegates of different ministries and public authorities attend meetings and take part in activities, as well as three civil engineers and three occupational health officers as permanent experts. Other experts may occasionally be consulted and associated with the Council's work in specific domains.
In addition to this central body, involvement of both sides of industry in health and safety legislation also takes place at a more decentral level through the nine Comités Professionels de Sécurité, d'Hygiene et d"Embellissement des Lieux de Travail (Trade Committees on Safety, Health and Improvement of Workplaces), set up under Art. 841-841 quinquies of the R.G.P.T., in pursuance of a Royal Decree of 31 March 1960.
Their duties include:

- submitting proposals to the Conseil Supérieur concerning the modification of existing health and safety legislation relating to their sector;
- the promotion of safety and health in enterprises which do not have a safety and health committee;
- monitoring the application of the statutory requirements concerning health and safety services as well as health and safety committees at the level of the enterprise, and offering advice to the labour inspectorate on such issues.

The Trade Committees consist of a chairman (a public official appointed by the Minister of Employment and Labour), four to twenty members and a maximum of six

experts, designated by the same minister. Labour and management have an equal number of seats on the committees. These members are appointed by the Minister of Employment and Labour from a list of persons elected by the representative organisations of workers and employers.
The nine Trade Committees which have been established so far cover the following: the building and construction trade; the diamond, glass, wood, ceramic, metallic construction, graphic and chemical industries; agriculture, horticulture and forestry.

1.2.2. Denmark

The association of both sides of industry with the development and implementation of national policies in the field of health protection at work has been a traditional feature of the Danish health and safety system. Workers and employer organisations were allowed to exert an influence as early as 1901. Under Denmark's framework Act concerning occupational safety - the Working Environment Act of 1975, which became operative on 1 July 1977 - the participation of management and labour in the drawing up of regulations and standards and in other activities at the national level, has been firmly institutionalised. According to the provisions of the Act it is the Working Environment Council which is to enable the social partners to influence the efforts to provide a safe and healthy working environment.
The Council consists of a chairman, twelve representatives of employees*, ten employers' representatives, one physician and one member of the scientific staff of the Technical University of Denmark. They are appointed

*One of the twelve employee representatives, however, represents the supervisors of departments or work sectors within undertakings and can hardly be considered an employee representative in the strict sense.

by the Minister of Labour. Out of the employee representatives, three represent industry and transport, two crafts, two agriculture, one commerce, one the technical employees, one the mercantile employees, and two the public employees. Out of the employer representatives, three represent industry and transport, two crafts, two agriculture, one commerce and two the public sector. Except for the physician, the university staff member and the chairman, all of them are nominated by the most representative organisations within each group. Representatives of the Ministry of Labour, the Labour Inspection Service, the Social Security Board and the Environment Board are entitled to attend the meetings of the Council without voting right.

The Working Environment Council has the following functions:

- to discuss matters which it considers of importance to the working environment and to communicate its opinions on such matters to the Minister of Labour and the Labour Inspection;
- to express its opinion on and submit proposals for new rules and amendments of existing rules, and to advise on specific matters referred to it by ministry or inspectorate;
- to participate - through representatives appointed by the Council - in the drafting of rules under the Working Environment Act, the Council's opinion being obtained prior to enactment of such rules;
- to give its opinion on the granting of exemptions, on decisions in connection with appeals and on the approval of Trade Safety Councils (see below).

The Council has to submit an annual report to the Minister of Labour on developments within the field of the working environment and on any improvements considered desirable. It may set up working committees and

appoint members for such committees, also from outside the Council itself. Furthermore, it is the Council's statutory duty to supervise and coordinate the activities of the Trade Safety Councils.
The establishment of Trade Safety Councils is related to the growing cooperation between management and labour at industry level as a result of the development initiated under the Working Environment Act. Section 14 of the Act empowers the Minister of Labour to approve representative Trade Safety Councils established for the purpose of participating in the solution of safety and health problems in one or more trades. Until now, twelve bodies of this kind have been approved for the following sectors: iron and metal-working industry; building and construction; graphic industries; transport and wholesale trading; general industry; office and administration; retailing; public and other services; food, drink and tobacco industry; agriculture, forestry and horticulture; social and health sectors; education. The Councils have twelve to eighteen members. Workers' organisations on the one hand, and organisations of employers and supervisors on the other, are represented by an equal number of members for the trades involved in the Councils.
The duties of the Trade Safety Councils include the following:

- surveying the industry's specific working environment problems;
- assisting the industry in the resolution of working environment problems;
- cooperation with and appointment of representatives of labour and management for the preparation of industry-oriented sets of rules;
- preparation - in cooperation with the Directorate of the Labour Inspectorate Service - of guidelines with

a view to improving work on safety and health within the trade.

Before expressing views on rules which apply to specific trades, the Working Environment Council has to submit the rules to the approved Trade Safety Council of the appropriate sector for its opinion.

The Minister of Labour may grant financial aid to an approved Trade Safety Council for an advisory service directly affiliated to the council or to one or more of the organisations represented through the Trade Safety Council.

Finally, there are several committees with an advisory function regarding the adoption of legislation in specific domains, such as the Committee on Occupational Health Services, which is responsible for reviewing new regulation proposals and proposals for amendments of existing rules, and the Committee on Substances and Materials, responsible for working out regulations and amendments of threshold limit values. The committees, with an equal representation of both sides of industry, exert influence on the policy to be pursued but, formally, the committees have only an advisory status vis-à-vis the Working Environment Council.

1.2.3. Federal Republic of Germany

A notable feature of the German system of accident prevention and health protection at work is the co-existence and cooperation of two different subsystems, each with its own supervisory and legislative capacities.

Besides statutory legislation adopted at the national federal level (and to some extent also at the regional state level), which is enforced by the labour inspectorate, also the 'Berufsgenossenschaften' can draw up binding regulations ('Unfallverhütungsvorschriften') and monitor their application through technical inspectors.

There are 36 'Berufsgenossenschaften' for different branches of industrial activity; furthermore 19 agricultural 'Berufsgenossenschaften' exist, which operate on a regional basis. The Berufsgenossenschaften are professional associations, covering all companies belonging to a particular trade or sector. These associations do not only administer insurance funds for an industrial sector: their primary task is to prevent employment injury and professional diseases. For this purpose, they may enact accident prevention regulations which are legally binding for member undertakings and insured persons, if approved by the Federal Minister of Labour. Accident prevention regulations are adopted by the general assembly of a Berufsgenossenschaft; labour and management have an equal number of representatives in such an assembly. In addition to drawing up health and safety provisions, the Berufsgenossenschaften carry out many other activities in the field of accident prevention and health protection. Their tasks have been substantially enlarged by the Arbeitssicherheitsgesetz of 1973 relating to the employment of health and safety experts within undertakings, the implementation of that act being a responsibility of Berufsgenossenschaften.

In this way employers and workers are very closely associated with the process of policy formulation and implementation in the field of occupational safety and health, in particular since, whenever feasible, the regulation is left to the professional associations, which are in a better position to take into account the particular needs and circumstances prevailing in their own branch.

As far as federal legislation is concerned, there is no national advisory council like the ones in Belgium, Denmark, France or the Netherlands. This is not to say, that the representative organisations of employers and

workers may not be consulted by the public authorities on an ad hoc basis.

1.2.4. France

As in the Federal Republic of Germany, the involvement of both sides of industry with the elaboration and implementation of national policies regarding health, safety and the working environment is organised in two different ways, in accordance with the existing two-track system for the prevention of occupational accidents, the protection of health at work, and the improvement of working conditions.
First of all, labour and management are consulted by the state authorities responsible for safety and health at work; for this purpose the 'Conseil Supérieur de la Prévention des Risques Professionels' is the main channel of participation. Secondly the promotion of health and safety at work is a responsibility of social security agencies, notably the 'Caisse Nationale d'Assurance Maladies' and the ' Caisses Régionales d'Assurance Maladies';the Caisses Régionales have a specialised branch dealing with occupational accidents and diseases. Both sides of industry are represented not only on the boards of the national and regional funds, but also on their advisory committees.
The 'Conseil Supérieur de la Prévention des Risques Professionels' (Supreme Council for the Prevention of Occupational Hazards) was set up in pursuance of Act nr. 76-1106 of 6 December 1976 (Act relating to the Development of the Prevention of Occupational Accidents). A Decree of 28 September 1984 (No. 84-874) reconstitued the Supreme Council to make it function more flexibly and to facilitate the intervention of experts of the representative organisations of employers and workers. The competence of the Council does not extend to the

agricultural sector, for which a specific advisory body exists.

The Council is chaired by the Minister of Labour. It consists of

- 14 members representing government department and national agencies;
- 10 employee representatives, designated on the nomination of representative worker organisations;
- 10 employer representatives, designated on the nomination of representative employer organisations (two of them represent the public sector);
- 15 experts, including experts in the area of occupational medicine.

The Council is to advise the Minster of Labour on national policies concerning occupational safety and health. It must be consulted on all proposed legislation and regulations in this field. Furthermore, it can monitor the implementation of the policies adopted and advise the Minister of Labour on the application of statutory arrangements.

Every year, the Minister of Labour must submit an annual report to the Council on the general situation and developments concerning the prevention of occupational hazards and the working environment. In addition to a central, permanent committee, the Council has five specialised committees. According to the Order of 3 October 1984 a specialised committee must be set up for:

- information, training and organisation;
- the prevention of chemical and biological risks and the hazards resulting from the physical environment;
- the prevention of physical, mechanical and electricity hazards;
- professional diseases;
- occupational medicine.

Through their participation in the administration of the national and regional sickness insurance funds, the representative organisations of employers and workers have another means of exerting influence in the area of accident prevention and health promotion.
Mention should be made in particular of the power of the 'Caisses Régionales d"Assurance Maladies' to adopt - at the recommendation of their joint technical committees - general regulations ('dispositions générales'). The 'Caisses Régionales' can ask the 'Caisse Nationale' to make these standards mandatory at a national level. Such an extension, which requires a ministerial decree, will not take place before the relevant national technical committee or committees have been consulted. At present, about 16 joint national committees of this kind have been set up, most of them for a specific sector or trade. Finally, employer and worker representatives also have seats on the Governing Body of the National Safety Research Institute, which has a membership of several hundred research workers and is financed by industrial accident insurance contributions.

1.2.5. Greece

In Greece, there is no special machinery for the involvement of representative organisations of employers and workers in the formulation and implementation of national policies on safety and health at work, although both sides of industry are enabled to give their opinion on proposed legislation on an ad hoc basis. For instance, at present the central organisations of management and labour - i.e. the Federation of Greek Industries and the General Confederation of Labour of Greece - have been consulted on the draft legislation concerning working conditions, which also provides for the appointment of health and safety committees and representatives within

the enterprise (see 2.2.5.2.). However, presidential decrees have to be approved by the Supreme Labour Council (Conseil Superieur du Travail) on which the representative organisations of workers and employers have a seat.* The new law on safety and health at work requires the establishment of a Labour Protection Council which will form a section under the Supreme Labour Council. Among its member are government officials, experts and a representative of both employers' and workers' organisations. The draft law also provides for the involvement of the two sides at district level: at the level of the 'prefectures' occupational health and safety committees must be set up, chaired by the 'prefect' or his representative; their members include a labour inspector, an employee and an employer representative.

1.2.6. Ireland

In Ireland, four bodies have been set up which enable representatives of employers and workers to give advice on the implementation of existing health and safety legislation, and which offer an opportunity for commentary on draft legislation. Such "Advisory Councils" have been established under the Factories Act (first meeting 1955), the Office Premises Act (1958), the Mines and Quarries Act (1966) and the Dangerous Substances Act (1981). Their principal function is to consider, and advise the Minister of Labour on any matters arising on or in relation to the execution of the Acts, including the need for regulations.The Advisory Councils comprise an equal number of employer

*On the arrangements for tripartite consultation in Greece, see Rapport au Gouvernement de la Grèce sur les travaux de la mission multidisciplinaire du PIACT, BIT, Geneva, September 1978, p. 63-66.

and worker representatives. From the labour side, the Irish Congress of Trade Unions is represented on the various councils, from the management side, it is the Federated Union of Employers.

The Barrington Report* is rather critical of this consultative structure. "The main problem has been their terms of reference ... these Councils found themselves confined to reviewing items within the scope of the Act and prevented from undertaking broad assessments of the system outside the Act. It is difficult to avoid the conclusion that Advisory Councils have failed to give to employer' and workers' organisations the feeling of being directly involved in policy-making and in the overall control of the system" (p. 83).

In its Report, the Barrington Commission proposes the establishment of a National Authority for Occupational Safety and Health. "A modern approach to occupational safety and health will not emerge from piecemeal changes or minor adjustments (within the Department of Labour). A new organisation ... with a clear, identifiable and undisputed responsibility for safety and health at all places of work is needed" (p. 7-8). It should be a body distinct from a civil service department. Either an executive agency or a state sponsored body, it would act under the Minister for Labour as the body having overall responsibility for occupational safety and health. As the new body must be responsive to the needs of employers and workers at the workplace, employers and workers and their organisations should be associated as closely as

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*Report of the Commission of Inquiry on Safety, Health and Welfare at Work (Chairman - Mr. Justice Barrington), presented to the Minister for Labour on 14 July 1983, Stationery Office, Dublin 1983. On the basis of this Report, proposals are being prepared to amend the Safety in Industry Acts 1955 and 1980.

possible with the national policies and programmes of the body. In order te meet this primary consideration of more effective involvement of employers' and workers' organisations, the new Authority should have a board charged with the responsibility of developing the national policies on safety and health, and for seeing that these policies are carried out. Beside a chairman, appointed by the Minister for Labour, it should have about ten members, also appointed by the Minister on the nomination of various representative organisations. Apart from representation of various departments and of local authorities and health boards, there should be an equal number of employer and worker representatives, for instance three of each.

1.2.7. Italy

In Italy the representative organisations of employers and of employees are involved in the process of policy formulation and legislation concerning occupational safety and health at the national level in different ways.
The machinery set up to provide a channel for consultation and advice includes bodies with broad terms of reference, such as the 'Consiglio Nazionale dell' Economia e del Lavoro' (Italy's social and economic council), as well as bodies with a much more specific task, like the 'Instituto superiore per la prevenzione e la sicurezza del lavoro', which was created by Presidential Decree on 31 July 1980 on the basis of the Law on the Reform of the Health System. Of course, in addition to institutional participation, both sides of industry may also be consulted on an ad hoc basis. In addition to these two bodies, several others exist, such as the National Research Council (C.N.R.) and the National Labour Accident Insurance Institute (I.N.A.I.L.).

Among the existing bodies with consultative functions regarding work health and safety, special mention should be made of the Standing Consultative Committee ('Commissione consultiva permanente') established under Art. 393 and 394 of the Presidential Decree of 27 April 1955, nr. 547 (Norme per la prevenzione degli infortuni sul lavoro). This committee is entitled to examine all general questions relating to occupational hygiene and the prevention of work-related accidents, and to give its opinion on such questions. Furthermore, it may submit proposals for the further development and improvement of existing health and safety legislation.
The committee, which is chaired by the Minister of Labour and Social Security, comprises a large number of members representing different government departments and other public institutions as well as six members representing management (3) and labour (3), which are nominated by the representative organisations of employers and by the trade union organisations. All members are appointed by the Minister of Labour for a period of three years.

1.2.8. Luxembourg

In Luxembourg, both sides of industry may be associated with the formulation and implementation of national policies concerning health and safety at the workplace in the Economic and Social Council (CES). This national body brings together nominated representatives of employer and worker organisations, as well as individuals representing outside interests nominated by the Government. It is the Council's task to study, either at the request of the Government or on its own initiative, the economic and social problems affecting more than one sector of the economy. The Government must consult the Council on general measures for which the enactment of

laws or regulations is envisaged.
Health and safety at work are not only the subject-matter of statutory regulation, but also of regulation by the national Accident Insurance Association (Association d'Assurance contre les Accidents). In addition to its functions in the domain of insurance and compensation, Luxembourg social security legislation has given the Association an important role as far as accident prevention is concerned. It is empowered,among other things, to issue its own accident prevention provisions which are binding on its members when approved by the Government.
The Association is divided into two sections, one dealing with agriculture and forestry, the other with other industries. The system of insurance is compulsory for all enterprises belonging to these sectors. Each of the two sections is administered by a general assembly and a board. Labour is represented on the board, not in the assembly. The number of labour representatives on the board is half that of management representatives. However, for the purpose of drawing up accident prevention provisions both sides of industry are represented to an equal extent.
In 1981, the Association has instituted a joint-representation committee to deal with all questions concerning accident prevention.

1.2.9. The Netherlands

In the Netherlands, employer and worker organisations are associated with the development and implementation of national policies relating to health and safety at work in two different ways.
In the first place the said organisations are represented on the Social and Economic Council ('Sociaal

Economische Raad'), which came into existence in 1950. The Social and Economic Council has a tripartite composition: 15 of its members are nominated by the representative employer associations, 15 by the trade union associations; the other 15 members, independent experts in the areas of law, social affairs, economics and public finance, are directly appointed by the Crown. It is one of the Council's primary functions to advise the Government on social and economic problems, including questions of law and policy in the domain of occupational health and safety. Most of the Council's reports in this area are drawn up by its standing Committee for Labour Legislation, which is also composed of representatives of employee and employer organisations as well as independent members. Since the establishment of the "Arboraad" (see below), it is intended that the Council's role concerning health and safety will be restricted to advice on general policies and on all measures with considerable social or economic impact.

The 'Arboraad' has been established under the Working Conditions Act of 1980 ('Arbeidsomstandighedenwet'), which came into force - at least partially - on 1 January 1983. The 'Arboraad' (Working Conditions Council) consists of eight members appointed by the employer organisations, eight members appointed by the trade union organisations and eight members who represent various departments, like the Ministries of Social Affairs and Employment, Domestic Affairs, Health and Environmental Protection. The officials who form the latter group have no voting right; the same holds for the independent chairman of the Council.

It is in the Council's terms of reference to submit proposals to the Minister of Social Affairs and Employment and to advise on all matters relating to the promotion of safety, health and well-being at work;

furthermore, the Council is to be consulted on the formulation and application of all regulations and other binding standards adopted for the purpose of implementing the Working Conditions Act. The Council has to assist employers, works councils and working conditions committees at their request. Finally, the Council - through its standing committees, such as the College of Assistance and Advice for Occupational Health Care - plays a role in the approval of expert services and the appointment of plant physicians or safety officers.
According to Section 45 of the Working Conditions Act, the Minister of Social Affairs and Employment appoints an Area Committee for Safety, Health and Wellbeing at Work in each of the labour inspectorate's ten administrative areas. Beside the chief inspector or his deputy, labour and management are equally represented on this committee. However, Section 45 has not yet come into force and it is expected that this provision will be removed from the Working Conditions Act in the near future, due to recent government decisions.

1.2.10. United Kindom

The most important form of participation of both sides of industry in the development of national health and safety policy and of statutory regulation is their representation on the Health and Safety Commission.
Under Section 11 of the Health and Safety at Work Act of 1974, the Health and Safety Commission has overall responsibility for occupational health and safety policy at national level. One of the Commission's primary functions is to advise the Secretary of State on the content of statutory regulations made under the law of 1974.
Further, the Commission has power to give certain legal significance to codes of practive. Section 13 (1)(d) of the Health and Safety at Work Act empowers the appoint-

ment of committees to provide the Commission with advice in connection with any of its functions.
The Act provides for the establishment of a Health and Safety Executive to act as the Commission's operational arm; the Executive is responsible for implementing the Commission's advisory functions and for enforcing the relevant statutory provisions. For the analysis of the nature and scale of a potential hazard, the Commission can call upon the accumulated expertise of the Executive enforcement officers and the other specialist bodies operating under it. Representatives of both sides of industry are involved in the process of evaluating the risk and deciding what measures can be adopted to reduce it. The role of the Health and Safety Commission is to reach acceptable solutions by securing agreement between the interest groups concerned.
Section 10(2) of the Health and Safety at Work Act specifies that the Commission shall consist of a chairman and not less than six or more than nine members all appointed by the Secretary of State. Pursuant to the provisions of Section 10(3) three members have been appointed following consultation with organisations representing employers, and three other members after consultation with organisations representing employees. Besides the three representatives nominated by the employers and three Trades Union Congress (T.U.C.) members, two representatives of local authorities have a seat on the Commission.
At present there are 17 Advisory Committees appointed by the Health and Safety Commission to advise on matters relating to specific industries or hazards. Advisory Committees are composed of employer and employee representatives as well as expert representatives in some instances. These committees usually operate under the chairmanship of a senior member of the Health and Safety Executive. Thus representatives of both sides of indus-

try participate in decisions at national level on a large number of health and safety issues, including specific hazards such as noise and asbestos.

1.3. Comparative analysis

From the preceding review it appears that all Member States of the Community have developed institutional arrangements enabling representatives of employers' and workers' organisations to be associated with the process of formulating and implementing national health and safety policy as well as with the review of existing legislation and the design of new provisions. However, among the systems adopted in the member states there is considerable variety as to the machinery existing for this purpose in terms of legal basis, composition, powers, and degree of specialisation with regard to particular trades or hazards.

First, the arrangements in question may have different legal bases. In the majority of member countries, the main body serving as a channel for labour and management participation is set up under the national occupational health and safety legislation, such as the Belgium Supreme Council for Safety, Hygiene and the Improvement of Workplaces (Act of 10 June 1952 relating to Employees' Health and Safety), the Danish Working Environment Council (Working Environment Act of 1975), the French Supreme Council for the Prevention of Occupational Hazards (Act relating to the Development of the Prevention of Occupational Accidents of 1976), the Advisory Council established under the Irish Factories Act 1955, the Dutch Working Conditions Council (Working Conditions Act 1980) and the British Health and Safety Commission (Health and Safety at

Work Act 1974).
In some countries the law dealing with safety, health protection at work and working conditions does not provide for the establishment of such an advisory council or authority, for instance in Luxembourg and the Federal Republic of Germany, where management and labour are involved in the making of accident prevention provisions through representation in social security associations (i.c. the German 'Berufsgenossenschaften' and the Luxembourg 'Association d'Assurance contre les Accidents').

This overall picture is complicated by the fact that in several Member States general councils with representation of both sides of industry have been set up, which operate in the broad field of social and economic affairs and which may also deal with issues of law and policy relating to health protection at work. In Greece, this is until now the only institutionalised form of labour and management representation at the national level in the field of industrial health and safety. In some other countries these 'social and economic councils' play a role alongside more specialised bodies, as in the Netherlands (Sociaal Economische Raad), Luxembourg (Conseil Economique et Social) and Italy (Consiglio Nazionale dell' Economia e del Lavoro).
A complicated system exists also in France, where organisations of employers and workers - in addition to being represented in the Supreme Council for the Prevention of Occupational Hazards - are represented on the boards of the 'Caisse Nationale' and 'Caisses Régionales d'Assurance Maladies', social security agencies which have responsibilities and powers concerning the prevention of industrial accidents and the promotion of health at work.

As to the second aspect to be considered - the composition of the councils, authorities or associations mentioned in chapter 1.2. - the disparities are less marked. In general, the two sides of industry are represented to an equal extent (i.e. with the same number of representatives) on these bodies. However, the principle of equal representation may be met in different ways.

First of all, the body may be completely bipartite and comprise only representatives of employers' and workers' organisations, such as the general assembly of the German 'Berufsgenossenschaften', which may adopt accident prevention provisions, and the committee of the Luxembourg 'Association d'Assurance contre les Accidents', which draws up similar provisions. Second, in addition to industry representatives, government representatives (mostly representing specific departments) and/or health and safety experts without voting rights may have a seat on the body (mostly a specialised council dealing only with occupational health and safety, such as the Dutch Working Conditions Council).Third, the body may have a more or less tripartite composition - such as the 'social and economic councils' mentioned above or the British Health and Safety Commission - and comprise full members not representing labour or management. Sometimes members designated by the two sides of industry are outnumbered by members designated by public agencies and government departments, as in the Standing Consultative Committee established under the Italian Accident Prevention Regulation (Decree No. 547 of 1955). In general the members of advisory councils and committees representing labour and management are appointed by the competent authority, notably the national Minister of Labour, on the nomination of the most rep-

resentative organisations of employers and workers.

As far as responsibilities and powers are concerned, a basic distinction must be made between social security associations and health and safety authorities with direct responsibility for health and safety policy and with powers to draw up health and safety provisions and/or to monitor their application on the one hand, and bodies with predominantly consultative functions on the other.
Direct participation of the two sides of industry in the making and application of accident prevention provisions can be found in those EC Member States, where social security agencies are empowered to draw up their own standards, which are mandatory once they have been approved or re-enacted by the competent authorities (the Government or the national or federal Minister of Labour). Basically, this system exists in Luxembourg, France and the Federal Republic of Germany, although in each country it has its specific and characteristic features.
In Britain, labour and management participate directly in the development and implementation of national policies through representation on a central authority with overall responsibility for occupational health and safety policy at a national level: the Health and Safety Commission. It should be noted that the Irish Commission of Inquiry on Safety, Health and Welfare at Work (the Barrington Commission which reported in 1983) has proposed the establishment of a central authority with similar responsibilites and also with representatives of both sides of industry on its board. The British Health and Safety Commission, besides advising the Secretary of State on the content of statutory regulations, has power to give certain legal significance to codes of practice. Moreover, the Commission's opera-

tional arm - the Health and Safety Executive - is responsible for enforcing the relevant statutory provisions.

In the other member countries of the Community, the participation of the social partners is limited to representation on advisory councils or committees, which have to be consulted on new legislation or amendments to existing legislation, and may offer advice on issues of law and policy in the area of health and safety at work.

Although the distinction between consultative and other bodies is a major one, it is not absolute. Health and safety provisions drawn up by the social partners must be approved by the competent authority; on the other hand, the opinion of advisory councils on proposed regulations often seems to have a decisive influence on their content. Furthermore, although consultative bodies are by their nature not responsible for the enforcement of health and safety standards, they may be involved in their application in different ways. In Belgium, for instance, the Trade Committees on Safety, Health and Improvement of Workplaces, set up to assist the Supreme Council, have the task of monitoring the application of the statutory requirements concerning health and safety services as well as health and safety committees at the level of the enterprise, and of advising the labour inspectorate on such issues. In Denmark and the Netherlands, the Working Environment and Working Conditions Council respectively are involved when a decision of the labour inspectorate is appealed to the Minister of Labour: before the Minister decides, he has to obtain the opinion of the Council.

In general, the laws regulating the functions and powers of the consultative bodies on which represen-

tatives of employers' and workers' organisations have a seat, provide for the establishment of (sub)committees or working parties dealing with specific hazards or with other specific issues, such as occupational medicine.

A potentially important feature of national health and safety systems is the extent to which involvement of the social partners is organised at the level of specific trades or branches of economic activity, thereby allowing management and labour to contribute directly to the solution of issues of policy and law which concern their own branch in particular.

Several of the member countries of the Community have set up trade-oriented bodies, mostly of a consultative nature, in addition to central councils or authorities with general advisory functions or overall responsibilities. Examples can be found in Belgium (Trade Committees on Safety, Health and the Improvement of Workplaces), Denmark (Trade Safety Councils), France (most of the national technical committees have been set up for a specific sector), and the United Kingdom (Industrial Advisory Committees). Labour and management are represented with equal numbers on these bodies. However, Dutch, Italian and Greek law does not provide for a system of branch-oriented committees as it exists in the countries mentioned above.

In the Federal Republic of Germany, involvement of both sides of industry with the formulation and application of health and safety policies and standards takes place predominantly at trade level, as the Berufsgenossenschaften are operating for more than thirty different sectors of economic activities. In Luxembourg, on the other hand, the national Accident Insurance Association has only two sectors, one for agriculture and forestry, the other for all other industries. In Ireland, separate councils have been established for office premises (1958)

and mines and quarries (1966) in addition to the Advisory Council set up under the Factories Act 1955.

1.4. Action at Community level

The disparities between the various arrangements developed within the member countries to provide a channel of representation for the two sides of industry raise the question whether Community action in this field is desirable and feasible. Can a Community instrument increase the involvement of the social partners in the formulation and implementation of national policy and law, and if so, should it be adopted?

First of all, one should realise that the need for involvement of the social partners is acknowledged in all Member States, not only because industry participation is considered instrumental in promoting health and safety and improving working conditions, but also for its own sake. If the national arrangements adopted for this purpose diverge, this is not primarily due to a basic difference in principles, but rather to traditional differences in fields such as labour relations and public administration and - most of all - to structural differences in national health and safety systems, notably the question whether (as in Germany and Luxembourg) social security agencies are entitled to standard setting and enforcement, or whether a central authority distinct from a civil service department has been set up (such as that existing in Britain or proposed in Ireland).

Against this background, it is hard to see how Community action imposing a particular model for participation of labour and management could be justified, as a single model appropriate for all Member States would not seem to exist, and there is no compelling reason, why the same objective - involvement of the social partners - may not be reached by different institutional arrangements.

If there is little scope for adopting,at Community level, a particular model for participation of the social partners, it may still be argued, that the Community could at least ensure the right of both labour and management to be associated as closely as possible with national policies and programmes, for instance by laying down the right of each of the parties to be consulted on all proposed laws and regulations, either at the national level or at the level of the branch or trade which is affected by the new provisions.

This more moderate approach would seem to avoid eliciting the objections mentioned before.

On the other hand, it is doubtful whether such a right to be consulted on national programmes and legislation needs to be ensured at Community level, because it has already been laid down in several international legal instruments.

Mention should be made, in particular, of the European Social Charter, adopted in 1961, and the I.L.O. Occupational Safety and Health Convention, adopted in 1981. Art. 3. of the European Social Charter obliges the contracting parties "to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health". Art. 4 of the Occupational Health and Safety Convention prescribes consultation with the most representative organisations of employers and workers in formulating, implementing and reviewing national policies. Moreover, according to Art. 8, Member States must consult the same organisations when adopting laws, regulations or other provisions on occupational safety, health or the working environment.

Moreover, to a certain extent all Member States have taken steps to apply this principle in practice and have developed machinery for participation of both sides of industry.

Part. 2.

Worker participation in health and safety at the workplace.

2.1. Introduction

As the survey of the situation in the Member States in Chapter 2.2. shows, almost all the EEC countries have enacted legislation relating to worker participation in health and safety. Even in some countries with a voluntaristic tradition as regards industrial relations, such as the United Kingdom, Denmark and Ireland, statutory arrangements have been adopted. Why is employee involvement in safety and health matters deemed so important? Several arguments for this have been put forward:

- workers can contribute to the prevention of employment injury by keeping an eye on potential hazards and giving notice of imminent dangers (this was the idea underlying the oldest statutory regulations concerning workers involvement in safety, i.e. nineteenth-century mining laws which provided for the election of workers' safety delegates);
- worker involvement is regarded as a valuable means of ensuring worker cooperation in the promotion of safety;*
- the ideas, knowledge and experience of workers are regarded as a useful contribution to the definition and solution of health and safety problems.
- the right of workers to have a say in decisions affecting them; as safety and health issues affect vital and personal interests, health protection may be considered not only a matter for consultation, but also

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* See e.g. the Protection of Workers' Health Recommendation (ILO, Recommendation No. 97, 1953), according to which "consultation with workers on measures to be taken should be recognised as an important means of ensuring their cooperation".

for negotiation or joint regulation*; according to this last view employee involvement is not only instrumental in the protection of health at work, but also appropriate as a matter of worker rights

The case for employee involvement has gained much strength from the recent reforms in industrial safety legislation which have taken place in most of the Member States over the last 15 years. In the majority of EEC countries, the objectives of legislation have been extended from the prevention of accidents and occupational diseases to the protection of health in the broad sense, and in some instances even to the promotion of "well-being".** It is obvious that these wider aims cannot be achieved if the workers' own experience and their evaluation of the working environment are not taken into account. Furthermore, the general duties of an employer to provide a safe working environment - laid down in several of the new laws - must be given concrete form at enterprise level. As it will be impossible for public authorities to supervise this process continuously in all undertakings, the objectives of any safety and health legislation will stand a better chance of being attained if the workforce is closely involved in the elaboration and application of protective measures.

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* To a certain extent, this is also reflected in the Occupational Safety and Health Recommendation (ILO, Recommendation No. 164, 1981), which states that worker representatives should be able to contribute "to the decision-making process at the level of the undertaking regarding matters of safety and health" and to "negotiations in the undertaking on occupational safety and health matters".

** See e.g. the objectives mentioned in the Dutch Working Conditons Act 1980.

Worker participation may take different forms. This part of the study is limited to participation by means of representative institutions within the enterprise at establishment or shop level and information and participation of individual employees. Other machinery which allows workers to be directly of indirectly involved in company decisions on working conditions, such as representation on company boards, falls outside the scope of the study - not because it is considered irrelevant or unimportant, but because, as far as occupational health and safety are concerned, arrangements at - or below - plant or establishment level have a primary role to play, due to the specific characteristics of health and safety problems.

First, if the experience and knowledge of those exposed to certain working conditions are to be taken into account, participation has to be as direct as possible. Second, in so far as inspection and supervision are looked upon as essential functions of worker involvement, mechanisms for participation have to be operative at shop or plant level. Third, the machinery set up for participation must be able to work on a more or less permanent basis, so that it may also deal with contingencies that do not allow for delay. Board representation, or representation at enterprise level in complex undertakings with more than one establishment, do not meet these requirements.

This also holds for collective bargaining, even if taking place at enterprise level: in general it lacks the required directness and continuity of representation; moreover, it does not in itself provide mechanisms for inspection and supervision. This is not to say, of course, that collective agreements may not be an important instrument for laying down arrangements on working conditions and the working environment, but only that

existing procedures for collective bargaining do not eliminate the need for employee rights and institutionalised employee representation in safety and health matters.

Worker involvement may be studied at two different levels: one can deal with it mainly from a legal point of view; in this perspective it is national legislation which is the main source upon which one has to draw. Or one may try to assess the degree of worker participation in practice, whether or not resulting from the arrangements provided for by the law. In this study the first approach has been adopted. As the study addresses the question to what extent employee involvement in health and safety is backed and ensured by the Member States, and as the law is one of the main instruments for this purpose, a focus on legal safeguards and statutory arrangements is appropriate. Accordingly, action at Community level in this field will primarily take the form of elaborating principles or procedures, which may be or must be embodied in national legislation.

This is not to say, of course, that it is of no consequence whether or not there is a gulf between the law and its application. In so far as information is available on the factors affecting the effectiveness or ineffectiveness of the law, such information should be taken into account in designing arrangements for worker participation.

It should be borne in mind, however, that the actual degree of participation is hard to assess, as information on the real situation in the undertakings is limited. As far as arrangements prescribed by the law are concerned, many of them are relatively new and there is still little knowledge concerning how they operate in practice; even where they are of longer standing, evidence on their implementation is still scanty. Since

this alone makes an assessment at the national level very difficult, a comprehensive appraisal of how institutions for worker participation operate in practice in a number of different countries seems hardly feasible at least at present.

This study deals with arrangements for worker participation which have force of law in the member countries; it focuses on statute law, statutory regulations and binding administrative provisions. Sometimes additional provisions have been laid down in collective agreements. A survey of these contractual provisions is not included, since this would take us too far afield. Indeed, it would be virtually impossible to provide a complete picture of collective agreements in all the member countries. Nevertheless, in Chapter 2.2. some collective agreements are discussed, mainly in instances where until now a statutory system of employee participation in safety is virtually lacking or exists only in a rudimentary form, as in Italy and Greece. In surveying the legislation in force in the Member States, the most important arrangements and provisions are described with a view to giving a general outline for each national system. In some countries special arrangements exist for the public sector alongside the arrangements adopted for the private sector; in other instances, in addition to the standard arrangements applying to most of the private and public sector, specific legislation concerning employee participation in safety has been adopted for particular sectors of economic activity.* The study makes mention of such special arrangements, but limits itself to the principal arrangements adopted in each member country. These main arrangements are described

*Such specific provisions mostly apply to the sectors of mines and quarries, building and construction.

in some detail, with the exception of such details which did not seem important with respect to action at the Community level relating to employee participation in occupational safety and health matters.

In the survey in Chapter 2.2., a major distinction is made between institutional arrangements or organisational provisions on the one hand, and legal rights and powers granted to workers and/or their representatives in such institutions on the other. As far as organisational arrangements are concerned, the study deals not only with specific health and safety arrangements, such as health and safety committees and safety representatives or delegates, but also with more general representative bodies which have responsibilities in the field of occupational safety and hygiene, such as the works councils or works committees provided for by law in Belgium, France, Germany, Luxembourg and the Netherlands.
Furthermore, in accordance with the development of international and national standards concerning health and safety at work, the terms 'health and safety' are taken in a broad sense, so as to include not only machinery set up for the purpose of preventing industrial accidents and professional diseases, but also representative bodies dealing with working conditions, the improvement of the working environment or the humanisation of work.
As to the rights and powers bestowed upon workers or their representatives, two groups may be distinguished. The first group comprises rights that can be associated with information, i.e. a general right to be informed by the employer as well as rights to be given specific information or to receive specific documents such as action programmes, reports and surveys. Also included are powers for employees or their representatives to

obtain information on the hazards of work through investigation and inspection.
The second group comprises rights and powers in the field of consultation, i.e. the right to give an opinion, to be consulted on the employer's health and safety policy, on a yearly action programma and/ or on specific activities envisaged to improve the working environment; also included are provisons which entitle employee representatives to receive a motivated reply to their representations, to enter into negotiations on health and safety matters or to give prior approval to arrangements adopted by the employer in the domain of safety and health. Usually, the role of representative bodies is defined in terms of their relation to management. Still, one should not overlook the fact that participation in health and safety also depends on access to public authorities on the one hand and to experts on the other. Expert knowledge plays an important role, given the technical complexity of at least some health and safety problems; access to administrative agencies is a crucial factor, since there are few other areas of public administration where the State's powers to intervene are as far-reaching as in health and safety. Therefore, the survey given in Chapter 2.2. relates not only to powers and rights vis-à-vis management, but also to employee rights vis-à-vis occupational health and safety experts employed by the firm and vis-à-vis the labour inspectorate, or public officials with similar supervisory functions.

The content of the following chapters is as follows. Chapter 2.2. consists of ten sections dealing with the situation in the Member States. Each section opens with a paragraph containing general remarks

on the historical background and development of legislation concerning worker participation in health and safety. The second paragraph relates to the institutional arrangements provided for this purpose by law. It describes the bodies which have to be established under national law, as well as their legal basis, composition, tasks and responsibilities and the position of employee representatives on them. A third paragraph surveys the rights of individual employees and their representatives with regard to information and consultation not only vis-à-vis management, but also vis-à-vis health and safety experts and the labour inspectorate. In the final paragraph of each section, comments are made on the national system of worker representation in safety matters. Without providing a comprehensive assessment of each system, these remarks give additional information on important recent developments, the availability of data on how the system functions in practice, and brief comments on its characteristic features as compared to other national systems.

Chapter 2.3. provides a comparative analysis of the national arrangements described in the preceding chapter. It is divided into two sections, one dealing with institutional arrangements, the other with legal rights.

Finally, Chapter 2.4. discusses the principles for employee participation in health and safety which might be adopted at the Community level as well as the instruments available for such action.

2.2. Arrangements at national level

2.2.1. Belgium

2.2.1.1. General remarks

The oldest statutory arrangement for the development of workers in the prevention of employement injury is laid down in an Act of 1897 which makes provision for the appointment of workers' labour inspection delegates in mines. The delegates, since 1927 nominated by the unions in this sector, operated in a particular geographical area under the guidance and supervision on the Mine Inspectorate. Their duties included making regular inspection tours, investigating accidents and notifying the inspectorate of any infringement of safety standards in force in mines and quarries. For other industries, it was to take another 50 years before legislation was enacted concerning employee participation in health and safety matters. The first legal provisions of this kind date from 1946, when two orders were issued concerning the mandatory establishment of a joint safety and health committee* in all enterprises having 50 or more employees. In 1947 these provisions were incorporated in the Règlement Général pour la Protection du Travail (R.G.P.T.). A further, statutory basis for the legal obligation to set up such committees was provided by the Act of 10 June 1952 on employees' safety and health, as amended by an Act of 17 July 1957. The latter Act added several new elements: worker representatives on the committee could only be elected from a list presented by recognised trade unions; they were protected against undue dismissal. The Act

*Comité de sécurité, d'hygiene et d'embellissement des lieux de travail.

of 1952 (as revised in 1957) was amended in 1963, 1967, 1971, 1975 and 1978. The alterations relate, inter alia, to the composition of the committee, protection from dismissal, election of committee members and the field of application of the Act.

2.2.1.2. Institutional arrangements

According to the legal requirements in force at present, health and safety committees must be set up in all companies which normally employ 50 workers or more, with the exception of mines and quarries, for which specific arrangements are laid down in the Royal Order of January 10, 1979. 'Enterprise' is taken in a broad sense: it applies to all organisations which, on the basis of social and economic criteria, can be qualified as 'technical units of production'. The Act covers the private and the public sector, except for those public bodies which come under a Royal Order of 20 June 1955* - basically this means that only the central state apparatus falls outside the scope of the Act. But for the latter organisation, the Royal Order of September 28, 1984 provides for the establishment of Consultative Committees, which have all the missions of a health and safety committee. The committee consists of worker representatives (elected every four years by all workers from among the candidates presented by recognised trade unions), the employer (or his direct representative) and other representatives appointed by the employer. The number of employee representatives must be equal to or higher than the number of management delegates, the minimum number of employee representatives being two and the maximum 25, depending on the size of the company. The committee's chairman is the employer or his direct representative; the head of the company's safety

*This Order deals with trade union representation of public officials and provides for a 'statut syndical' (trade union charter).

service acts as its secretary. The Act lays down detailed provisions as to the responsibilities and the meetings of the committee, and the position of its members. Rules on facilities, time off and training can be found in collective agreements of 15 and 30 June 1971.

Whereas the committee's election, composition etc. are regulated under the 1952 Act, the provisions with regard to its terms of reference and duties are laid down in the R.G.P.T. Its basic function is to study and to propose all measures and to contribute to all activities directed at the improvement of the working environment in terms of safety, hygiene and health. It has not only the task of giving opinions on all matters affecting safety and health, but also of inspecting the workplace, monitoring the application of standards, investigating accidents and supervising the work of health and safety experts.

In addition to the health and safety committee, many enterprises have two other arrangements for employee representation and participation, which can be of importance in the field of workplace health and safety. An Act of 1948 provides for the compulsory establishment of works councils in companies with at least 100 employees. The works council, with an equal number of management and employee representatives, is entitled to give its opinion and to submit proposals on the organisation of work and the working environment. Under certain conditions, the works council may replace the health and safety committee and exercise its functions. According to a Royal Order of 1978 these conditions are:

- that the safety committee endorse this arrangement;
- that the trade unions which have nominated the council's worker representatives cover at least 60% of the workforce;

- that the council can count on the cooperation of the company's health and safety experts, supervisors etc.;
- that the decision be approved by the responsible Minister.

The other representative body is the trade union delegation ('délégation syndicale'). The institution of trade union delegates is regulated under a national collective agreement of 24 May 1971. They promote employees' interests and play a role in the process of collective bargaining. Whereas a works council may replace an existing health and safety committee, according to the Act of 23 January 1975 the trade union delegation can be charged with the tasks of the committee in firms employing fewer than 50. Further rules are laid down in a Royal Order of October 1978, which states that the union delegation can act as a health and safety committee when there is no such committee in office. Moreover, several more specific provisions of the R.G.P.T. give the union delegates a task where a safety committee is lacking.

In principle the union delegation, but also the works council, are distinct from the health and safety committee; the latter is not a specialised committee of the council. This is not to say that no personal links may exist between the three bodies. In many companies, some representatives in the works council are also members of the safety committee, and sometimes even also of the union delegation. Although the law allows for replacement of the committee by the works council or the union delegation, these provisions are seldom applied, the only exception being the building sector, where union delegates very often act as a safety committee.

2.2.1.3. Legal rights

Apart from several requirements relating to the informa-

tion and safety training of individual employees (see for instance Art. 54 quarter, 148 decies, 163 and 839 bis), the R.G.P.T. contains many provisions on the information to be given to the safety and health committee. Since 1971, the employer must draw up a yearly action program based on the reports and proposals of the committee and of the company's health and safety experts; this program describes the objectives of the health and safety policy adopted for the next period and the means to achieve them.

In addition to this action program, the committee must be provided with all other information required to perform its functions and must be enabled to inspect all relevant reports and documents. The latter requirement is of particular importance since the Royal Order of 20 June 1975 has obliged the employer to have an extensive documentation available including a survey of all standards in force in the workplace and a list of all dangerous machines and substances as well as the locations where they are used.

In addition to these more general provisions concerning information, there are several more detailed provisions in the R.G.P.T. relating to information of the safety committee (or the worker representatives on it) on specific working conditions. An example is the right of the employee representatives in the committee to request the employer to investigate the possible hazards of substances used at the place of work and of physical agents such as ionizing radiation, excessive noise etc. and to be informed on the results of such an enquiry.

The committee also seeks information directly. It must charge some of its employer and worker representatives with periodical inspections of every work site, at least once a year. After an accident or a

dangerous occurence or at the request of at least one third of the worker representatives, it immediately sends a delegation to inspect the hazardous situation.
As far as rights to consultation are concerned the provisions in the R.G.P.T. are hardly less extensive. Suffice it to say that the safety committee must be consulted in advance on the following:

- all measures which may affect health and safety, including the employment of specialised organisations or experts;
- the purchase, maintenance and use of protective devices;
- all measures taken to adapt working methods and working conditions to the worker.

Furthermore, the committee must be enabled to offer previous advice and make proposals concerning the yearly action programme. The programme cannot be carried out until the committee has given its opinion or, if it has not done so, not before the first day of the year to which the programme relates.
The employer is not allowed to disregard the committee's proposals completely. If they are unanimous and concern a situation of serious danger, he must adopt them as soon as possible; if the committee's advice is not unanimous, he must take the appropriate measures. He has to follow up all its other proposals within the time limits set by the committee, or at the most within six months. If the employer decides not to act on the advice of the committee (or part of it), he must state his reasons.
On the other hand, apart from the hiring and firing of health and safety experts (see below), the committee (or the employee representatives on it) do not have a right to prior approval of health and safety measures envisaged by management. There are only a few exceptions to this general rule (see e.g. Art. 64 and 65 of the

R.G.P.T.), the most important being the committee's prerogative to decide on and carry out a programme for the information and training of employees concerning health and safety.

In Belgium, all private companies must employ occupational health physicians to the extent that each individual worker will receive a minimum of occupational health care. This minimum is expressed in terms of the amount of time which the plant physician should be able to devote to the employee within the period of one year. The Belgian law on occupational health care was adopted in 1965 and came into force in 1968.
The basic responsibility for the organisation and functioning of the occupational health service rests with the employer. To some extent, labour has a supervisory and advisory role, either in case of an autonomous service - through the health and safety committee, or - in the event of an inter-enterprise service - through a joint inter-enterprise committee. The committees are entitled to periodical reports from the service concerning its organisation and development as well as its activities; the occupational health physician attends committee meetings in an advisory capacity.
The employer is under an obligation to consult with the safety committee before signing a contract with a particular inter-enterprise service. For appointment and dismissal of a plant physician, the law requires the committee's previous advice. As far as dismissal is concerned, worker representatives on the committee have more extensive rights. According to an Act of 1977 relating to the position of occupational health doctors, employees can start a special procedure which may result in his replacement by another physician if he fails to perform all his functions or has lost their confidence.

This procedure is elaborated in the Royal Order of 27 July 1979. Another characteristic feature of Belgian legislation is that it is not limited to a general statement concerning the doctor's duty to assist both employer and employees. It contains a number of specific provisions giving worker representatives a say in some of his activities. Besides informing them of all actual and potential health hazards discovered in the course of his work, the physician must visit a particular plant or department and inquire into working conditions if he is requested to do so by the worker representatives within the safety committee or a recognised trade union. Moreover, at the request of the worker representatives the health effects of toxic substances and other dangerous agents are to be analysed by the plant physician himself or by a laboratory or service engaged by him for this purpose.
Belgian law provides not only for the establishment of occupational health services, but also for the establishment of company safety services. Statutory regulations relating to safety services were adopted in 1947, but have been extended considerably under the Royal Order of 20 June 1975 concerning prevention policy, which gives the head of the safety service a central role in the prevention of accidents and professional diseases. The safety service is mandatory for all enterprises. Like the occupational health physician, the head of the safety service must perform his functions in complete independence from labour and management under the supervision of the company health and safety committee.
The law regulates the relationship between the safety committee (or the worker representatives on that committee) and the safety expert in detail. The head of safety service acts as a secretary to the committee; he convokes its members for the periodical meetings. He

must send them a monthly as well as an annual report. Since 1975, the committee's prior approval to his appointment or dismissal is required; it must also give its consent for the amount of time for which he is employed in the enterprise as a safety expert. At the request of the worker representatives in the committee, the head of the safety service must start an inspection of a work site or department as soon as possible. Furthermore, he offers the committee all such support and advice it may require and keeps it informed, through his monthly report, on the development of work hazards and the measures adopted to prevent them. When new machinery or equipment is introduced in the workplace, he must inform the committee on the safety requirements imposed by him and on the factual compliance with these requirements.

Whereas the law is very elaborate as far as the rights of workers or their representatives vis-à-vis company health and safety experts are concerned, it is less explicit on the relationship between the workforce and the public authorities, notably the labour inspectorate. The health and safety committee has a general duty to cooperate with the authorities. The competent labour inspector may convoke the committee and preside its meeting. Furthermore, the committee must appoint a management and a labour delegate from among its members to meet the inspector on his visit to the premises. The law does not give worker representatives a right to be informed by the labour inspectorate on its activities and findings or to be consulted on the actions it envisages; but under Art. 839 sexies of the R.G.P.T. worker representatives have a general right to liaise with the labour inspector. However, if he does not act on their request, they have no formal right of appeal. In the event of a serious and imminent danger, the

safety committee, after sending a delegation to inspect the hazardous situation, must alarm the employer and may call on the labour inspectorate. The committee (or the worker delegation on that committee)does not have a right to discontinue the dangerous activities of its own accord, but it can ask the labour inspector to serve a notice of prohibition to the employer. When there is no time to alarm management or to wait for the inspector's arrival, the head of the safety service can take the necessary measures to remove the causes of the health hazards.

2.2.1.4. Comments

There are no other Member States where legislation on employee involvement in health and safety matters is as extensive and detailed as in Belgium. In the course of almost forty years a complex system of worker participation has developed in this field, under which a specialised health and safety institution must be established in addition to other, more general channels for participation.

The law is very elaborate regarding the committee's rights to be informed and consulted by management and on the relationship with the health and safety experts employed by the firm; for this purpose, it provides for a number of specific arrangements (yearly action plan, monthly and annual reports, health and safety documentation) which will help the committee to exercise its functions. Most of the powers concerning information and consultation are bestowed on the joint committee as such, but there is a tendency in recent legislation to grant specific powers to the worker representatives on the committee. An example is their right to demand that the head of the safety service inspect a workplace, or to take the initiative for an investigation into the health effects of substances used at work.

How do health and safety committees function in practice? At present an extensive survey is taking place on safety services, which may also shed some light on the work of the safety committee*. In the Belgian literature on this subject, one can find criticism on the application of the law. In some cases, employers have not met the requirement to set up a committee. According to the Belgian report presented to the European Foundation for the Improvement of Living and Working Conditions**, one might expect the health and safety committee as designed by the law to be an instrument enabling the employees to exercise an effective control over their working conditions; however, these expectations are not met by real facts, according to the report.
According to more recent research on safety committees***, the vast majority of them used their powers concerning information fairly effectively. But as regards consultation and inspection their activities were more limited. In a number of instances, in which their prior advice was required by law, this advice was not sought, nor did the committees give it on their own initiative. Quite a few committees dit not seem to supervise the application of health and safety standards in a meaningful way.
The amount of research so far is too limited, however, to allow for general conclusions regarding the functioning of health and safety committees to be drawn.

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* Note relative aux comités de sécurité, d'hygiène et d'embellissement des lieux de travail institués en Belgique (Séminaire de Paris du 15 novembre 1983).

** Sécurité et santé sur les lieux de travail, Office belge pour l'accroissement de la productivité, Bruxelles, juin 1978, p. 89.

*** M. Rigaux (ed.), Werknemersinspraak in veiligheidsbeleid (Worker Participation in Safety Policy), Kluwer, Antwerp 1982, pp. 163 ff.

2.2.2. Denmark

2.2.2.1. General remarks

The Danish system of labour relations is primarily a system of voluntary cooperation, regulated under collective agreements between both sides of industry. Traditionally, statutory regulation plays only a minor role in this field. Nevertheless, the rules regarding participation in health and safety at work have been laid down predominantly in statute law, in particular during the last fifteen years.

Before that time, two institutions for worker participation had already been developed in Denmark: the shop steward and the cooperation committee. The shop steward acts as a representative of union members, in particular in the process of collective bargaining; he has no special tasks with respect to matters of safety and health, but he may become involved with them in the course of his work. The cooperation committee is a joint committee with equal members of employer and employee representatives, to be set up in industrial (and some other) enterprises with at least 50 employees. Its main function is consultative and advisory. It may also take decisions on the principles underlying the company's health and safety policy, but in fact the committee can only decide on such matters if worker and employer representatives agree on the decisions.

Therefore, the main channel for workers to take part in occupational safety and health is the company's safety organisation. Legal rules concerning this machinery were first adopted in 1971. The regulations enacted in pursuance of this Act made provision for the organisation of safety groups and safety committees in the sectors of industry, building and construction, and the loading and unloading of ships. The safety group, set up in each division of a factory, consisted of

the shop-foreman and a safety representative, who was elected by and among the workers in the division. The safety group's task was to solve the daily safety problems within the division. The work of the safety groups was controlled and coordinated by a safety committee consisting of a representative from management, two shop foremen and two safety representatives. In 1975, a new and comprehensive law on occupational health and safety was enacted, which is basically a framework law: the Working Environment Act (in force since 1 July 1977). Part II of this Act - and in particular the Sections 6-12 - concerns the safety organisation in undertakings. Regulations to implement these provisions of the 1975 Act were adopted in 1978 (Ministry of Labour's Order No. 392 0f 10 August 1978). Another Ministry of Labour Order (No. 469 of 6 October 1983) contains further rules relating to the training of members of safety groups.* The arrangements concerning safety organisations under the 1975 Act are on the whole similar to those under the 1971 Act. The most significant difference concerns their field of application: the obligation to set up such an organisation has been extended to all kinds of work, including work done in the public and administrative sector.

2.2.2.2. Institutional arrangements

According to present legislation, in companies with ten or more employees, safety activities must be organised in a safety organisation, consisting of safety groups and - if the company employs twenty of more - also a safety committee. For each department or field of activity within such enterprises, the employees in principle elect a safety representative

* The first Order on training is No. 93 of 26 February 1981.

who, together with the supervisor of the department or work sector, forms a safety group. Small departments or sectors may be attached to bigger departments, to ensure that all employees are covered by the safety organisation. The election of safety representatives takes place through direct elections among the employees who are not engaged in supervisory functions. Representatives hold office for a period of two years. When work is performed at temporary and changing work sites, for example in the building and construction sector, safety representatives must be appointed if there are five or more employees. The arrangements applying to the loading and unloading of ships are still more exacting. In companies where the employees are exclusively or mainly engaged in administrative or office work, the election of safety representatives is only required when there are twenty or more employees. The safety group is primarily responsible for action on safety and health in the department or section concerned. The group's duties include ensuring that working conditions are fully acceptable in terms of safety and health, the provision of adequate instruction, and ensuring that employees comply with external and internal standards in force at the workplace.
As mentioned above, safety committees must be set up in companies with twenty or more employees. In the calculation of the number of employees, all employees who are not engaged in supervisory functions are included, even if they only work a small number of hours. In the case of office work or other administrative work, as well as work in shops, however, employees are only included when they work ten hours per week or more. The safety committee has five members, i.e. two safety representatives, two representatives of supervisors and the employer or a responsible representative ap-

pointed by him. The employer or his representative is chairman of the committee. The Order on Company Safety and Health Activities of 10 August 1978 contains further provisions relating to the functioning of the committee and its meetings. The committee has to appoint a supervisor to act on its behalf as a leader of all safety activities on a day-to-day basis.

The safety committee has to plan, supervise and coordinate the safety and health activities within the firm. It keeps a record of existing work environment problems and offers advice on their solution to management. In this connection, it takes part in the company's planning. Furthermore, it must see to it that the safety groups are kept informed and are guided in their work. The safety committee must make sure that the causes of accidents and dangerous occurences are examined and that measures are taken to avoid them; once a year it prepares a survey of accidents and professional diseases.

The cornerstone of the system described above is the safety group. The explanatory notes to the Order of 10 August 1978 read: "It is decisive for safety that it is constantly supervised and that the safety and health efforts are made where the problems arise. The safety activities must be carried out in the undertaking, in the individual departments or working areas by the safety group. The safety group thereby becomes the unit that will primarily be carrying out the safety activities in the undertaking". The members of the safety group, i.e. the safety representative and the supervisor of a particular department or field of activities, must be given enough time to perform their function in relation to the nature and hazards of the work concerned. They enjoy a certain protection against

dismissal. Until 14 October 1983, all members of safety groups had to have a safety training of 32 hours duration. For reasons of economy, the Order of 6 October 1983 (which entered into force on 14 October) has reduced or eliminated this requirement for such sectors as shops, offices and teaching.
In companies where one or several safety groups have been set up but where a safety committee is not required, the employer must ensure that activities which are normally taken up by a safety committee shall be effectively carried out in cooperation with the safety group or groups. In companies with one to nine employees, safety and health activities are carried out through personal contact between the employer and other employees, unless special arrangements are prescribed, as in the area of building and construction.

2.2.2.3. Legal rights

Under Section 17 of the Working Environment Act, it is the general duty of the employer to inform employees of any risks of accidents and diseases which may exist in connection with their work. Furthermore, the employer must ensure that the employees receive the necessary training and instruction to perform their work in such a way as to avoid any danger or risk.
As to members of the safety groups and safety committees, Section 9 of the Act obliges the employer to offer them the opportunity of obtaining the necessary information in matters concerning safety. In addition, Section 18 provides for mandatory information by the employer of the safety representatives and shop stewards within a particular department or section on any directions in writing given by the labour inspectorate. The law does not further elaborate the right to information of safety group or safety committee members. One may assume, however, that unless the employer provide the necessary information for their functioning, he does

not meet his duty to ensure that cooperation concerning safety and health in accordance with the provision of the Act can take place (Section 19). Furthermore, safety groups are entitled to inspect working conditions in their department or work sector, and can take part in inspections and investigations made by the safety committee.

As far as consultation is concerned, the employer must offer the safety groups and the safety committee the opportunity of participating in the planning of health and safety measures. The 1975 Act is particularly elaborate on the safety committee's functions in this respect. It has to register health and safety problems and to make representations to management on their existence and resolution. It has to be associated with decisions concerning the enlargement or change of the workplace and the employment of new plant and equipment. However, the safety committee's duties are entirely advisory: it is not authorised to take decisions in health and safety matters. Responsibility for this rests with the employer. This is not to say that the employer can disregard the committee's opinions. If he does not follow its advice, he must give his reasons for this at a subsequent meeting to be held within three weeks.

What does the law say about the relation between workers or their representatives on the one hand and occupational health and safety experts or services on the other? Danish law provides for the obligation to set up or to join an occupational health service in a number of specific branches of economic activity. Rules concerning the workers' rights vis-à-vis such a service are laid down under the Order No. 288 of 22 June 1978, supplemented by Order No. 365 of 13 August 1980.

The safety organisation in which both worker and employer representatives take part has to be consulted on the objectives and projects of the company's own occupational health service. If occupational health care is provided by an inter-enterprise service - either by an 'occupational health centre' for a certain geographical area or by a 'branch occupational health service' for a specific economic sector - it must have a board on which employers and employees of the enterprises concerned have an equal number of representatives.

The choice between the establishment of an autonomous service or joining a centre or branch service is subject to the safety committee's advice; the same holds for hiring and firing of staff on the service (the Order of 22 June 1978 does not refer to 'physicians' but to 'health specialists' in more general terms, implying that the medical profession is not necessarily the most important, let alone the only discipline to be represented in an occupational health service). The occupational health service is under a general obligation to co-operate closely with and offer advice to the company's safety organisation.

Regarding the relations between safety organisation and labour inspectorate, the following observations can be made.

The safety representative is allowed to accompany the inspector on his inspection tour through the department or work sector concerned. The safety group may liaise with the inspectorate and submit complaints and problems. In practice, when visiting a factory, the inspector will always approach the members of the safety group. In case of an immediate, considerable danger to the safety of employees, the safety group can stop the work or work process to the extent required to ward off the danger if there is no time to notify the safety

committee chairman or the company management. From Section 10(2) of the Order of 10 August 1978 it follows, that the right to cease work ends when management has intervened and decided to continue the activities concerned. If individual workers do not agree, they may of course call on the labour inspectorate who can direct the discontinuation of work under Section 77(2) of the Working Conditions Act.

2.2.2.4. Comments

When compared to the arrangements adopted in most other Member States, the Danish health and safety system has its charateristics features, in particular as regards the comprehensiveness of the system and the extent to which the principle of cooperation is embodied in the institutions provided by the law for the purpose of worker involvement. With respect to the first aspect, it should be noted that, in principle, a safety group is required by law in all enterprises, whether public or private, for departments or work sectors with ten or more employees, whereas a safety committee is already required at a company size of twenty employees. It is fair to state therefore, that the law is quite exacting as far as the institutionalisation of worker involvement in health and safety matters is concerned; on the other hand, it is less elaborate as to the rights of workers or their representatives in this field.

This has to do with the second aspect referred to above: the degree to which the safety organisation is based on co-operation. Most rights and duties are not bestowed on worker representatives as such, but on joint bodies (safety groups, safety committee). Even the right to stop work in event of grave and imminent danger and the right to liaise with the labour inspectorate are exercised by a joint body, i.e. the safety representative and the department's supervisor in close cooperation. More directly than in other countries, worker represen-

tatives in Denmark seem to take part in the supervision of safety and health activities at department and enterprise level, as well as in the application of external and internal standards at the place of work.
How do safety organisations operate in practice? As yet, not much information is available on this point. About the functioning of safety groups and committees under the 1971 Act, a Ministry of Labour Report says: "The effectiveness of the various safety organisations varies considerably; among other things, it is dependent on the nature of the predominant hazards. Above all, the effectiveness depends on the question whether the top management of the individual undertaking wholeheartedly backs up the safety organisation".*
After the Order No. 392 on the company's health and safety activities came into force on 1 October 1978, the labour inspectorate started an intensive campaign to motivate labour and management to cooperate and to set up safety organisations. Since the same date an extensive programme for the training of safety group members has been carried out; during the past five-year period approximately 150,000 safety representatives have been trained. Although the exact number of safety committees is not known, by 1983 safety committees had been elected in most companies where they were required,** according to the labour inspectorate. It is estimated by the Directorate of National Labour Inspection that in most cases the safety organisations function satisfactorily.

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* Occupational safety, health and welfare, Social Conditions in Denmark, No. 4, Ministry of Labour and Social Affairs, 1973, p. 22-23.

** Seminar on Safety Committees in Business Enterprises, 15-17 November 1983 (in Paris), Reply from the National Labour Inspection, Copenhagen.

2.2.3. Federal Republic of Germany

2.2.3.1. General remarks

Under German law, three different fields of legislation can be distinguished in which rules have been developed relating to employee participation in occupational safety and health: industrial safety legislation, notably the 'Arbeitssicherheitsgesetz' (Occupational Safety Act) of 1973; social security legislaion, notably the 'Reichsversicherungsordnung' (Insurance Code); and finally the legislation on works councils, in particular the 'Betriebsverfassungsgesetz' (Works Constitution Act) of 1972.

Apart from statutory arrangements for a specific sector (such as the provisions concerning safety delegates in mines) or for a particular region (such as the Berliner Arbeitsschutzgesetz of 1949), until 1952 German law did not provide for worker participation in safety matters. If some of the larger industrial undertakings had joint safety committees comprising employee members, such bodies had been set up on a voluntary basis.

The first general enactment dealing with worker involvement in occupational safety was the Betriebsverfassungsgesetz of 1952. The works council was entitled to conclude agreements with the employer on measures to prevent accidents and injury to the employees' health. According to Section 58 of the Act, the works council had to be involved both by the employer and by the factory inspectorate in accident investigations and in the follow-up given to them.

2.2.3.2. Institutional arrangements

The 1952 Act was replaced in 1972. According to the new Betriebsverfassungsgesetz, works councils may be elected by the employees in all establishments with five or more employees. The act covers the private sector as a whole; similar arrangements have been adopted for the public

sector, which provide for the election of 'Personalräte' (Staff Councils).

The works council consists of one representative in establishments employing twenty or fewer employees. In other establishments the number of representatives is related to the number of employees. Unlike in France and Belgium, the employer does not chair the council, nor does he have a seat on it. He must attend the meetings which take place at his request and any other meetings to which he is expressly invited. Works council and employer work together in a spirit of mutual trust for the good of the employees and of the establishment. The works council may call on external experts for assistance. If it comprises nine or more members, it may set up committees for a specific purpose, such as accident prevention and health protection at work. Such committees can exercise all powers delegated to them by the council, except for the conclusion of plant agreements ('Betriebsvereinbarungen') with the employer. Council members enjoy a certain protection against dismissal; time spent on council activities is paid for and members are entitled to take part in training activities during working hours. The 1972 Betriebsverfassungsgesetz does not only deal with the works councils' role in safety and health matters in the strict sense, it also allows worker representatives to have a say in plans and measures which may affect their working conditions, as specified in Section 90 and 91 of the Act which relate to humanisation of the workplace, work process and working environment (see 2.2.3.3. below).

Although the works council is by far the most important and central body through which workers participate in the field of health and safety, it is not the only machinery of this kind. A second arrangement is laid down in the Insurance Code, as amended in 1963 (by the Unfallversiche-

rungs-Neuregelungsgesetz). Section 719 brings the employer under an obligation to appoint from among the employees one or more safety stewards ('Sicherheitsbeauftragten') for the purpose of monitoring work safety. It should be noted, however, that the safety steward is first of all conceived as an assistant to management, and not primarily as a worker representative. 'Sicherheitsbeauftragten' have to be appointed in companies with over twenty employees; further details are to be found in the accident prevention regulations enacted by the 'Berufsgenossenschaften', professional associations which operate as industrial accident insurers for specific branches of economic activity and which have the promotion of occupational safety as their first responsibility (see 1.2.3.).
The employer has to consult with the works council before appointment of the safety stewards. He must enable them to perform their functions, which include motivating and advising fellow-employees, notifying the employer of defects in plant or equipment and of other hazards, and taking part in inspections and accident investigations, in particular those conducted by the technical officials of the Berufsgenossenschaft. The 'Sicherheitsbeauftragte' must receive payment for the time spent either on his mission or for appropriate training, which is provided by the Berufsgenossenschaft concerned.
If more than three safety stewards have been appointed, a safety committee ('Sicherheitsausschus') has to be established with the stewards as its members. This obligation does not exist if an 'Arbeitsschutzausschuss' (see below) must be set up. The employer meets the 'Sicherheitsbeauftragten' or the 'Sicherheitsausschuss' for an exchange of experience at least once a month.
Since 1973 the law provides, in addition to works councils and safety delegates, for a third body in the field

of health and safety. According to the 'Arbeitssicherheitsgesetz' (Occupational Safety Act) which was adopted in that year, all undertakings which have to employ or bring in occupational health or safety experts in pursuance of the Act*, have to set up a 'Arbeitsschutzausschuss' (Labour Protection Committee). This committee comprises the employer or his representative, two members of the works council, occupational health physicians, safety engineers and safety delegates. In firms with more than one establishment, each establishment must have its own 'Arbeitsschutzausschuss'. The committee meets at least once every three months to discuss matters concerning accident prevention and health protection. The committee is envisaged to further cooperation between all the parties involved: employer, works council, experts and safety delegates; it is to function as a centre of information and coordination within the establishment in health and safety matters.

2.2.3.3. Legal rights

In the field of occupational safety and health, German law confers rights not only upon employee representatives (in particular the works council or 'Betriebsrat') but also on individual employees. Thus Section 81 of the Betriebsverfassungsgesetz obliges the employer to inform every newly engaged employee about the hazards of his work and about the measures adopted to protect him from those hazards. A similar obligation is laid down in the general accident prevention provisions enacted by the Berufsgenossenschaften (Unfallverhütungsvorschrift nr. 1: Allgemeine Vorschriften). More detailed provisions on the information of individual employees are contained in statutory regulations such as the 'Verordnung über

*Under the Arbeitssicherheitsgesetz, it is the reponsibility of the Berufsgenossenschaften to determine if and to what extent the enterprises in their sector must bring in such experts, join a health or safety service or establish such a service on their own.

gefährliche Arbeitsstoffe' (Dangerous Substances Regulations). In addition to the right to be informed, Section 82 of the Betriebsverfassungsgesetz provides for a right of the individual employee to express his opinion on his working conditions and to make complaints or representations to management.
According to Section 80 of the same Act, the works council has to monitor the application of external and internal standards, whether statutory or contractual. For this purpose, the employer is under a general obligation to provide the council with all information it may need to perform its task. As far as safety and health protection at work are concerned, this obligation is elaborated in Art. 89 Betriebsverfassungsgesetz, which states that:

- the works council has to be involved in all issues relating to health protection and associated with all inspections and accident investigations;
- it has to be informed on all notices served on the employer by inspectors;
- members of the council must be enabled to participate in the consultations between employer and 'Sicherheitsbeauftragten' or 'Sicherheitsausschuss' (see 2.2.3.2.);
- the works council must receive a report on all consultations, inspections or investigations with which it is to be involved;
- it must also receive a copy of the documents drawn up by the employer for the purpose of notifying occupational accidents to public authorities.

In addition to the right to be informed and to take part in inspections and investigations, and to discuss with the employer any aspects of health and safety it may raise, the Betriebsrat is also entitled to co-determination over arrangements for the prevention of employment accidents and occupational diseases, and for the protection of

health within the framework of statutory regulations or accident prevention provisions, as specified in Art. 87(7) Betriebsverfassungsgesetz. Co-determination does not only mean that the employer needs the council's approval for such an arrangement, but also that the council may take the initiative and seek an agreement with management. If no agreement can be reached, the dispute can be submitted to arbitration and settled by the 'Einigungsstelle', according to Section 76 of the Act.
The interpretation of Section 87(7) Betriebsverfassungsgesetz has been the subject of much debate in the legal literature, however. For the existence of a right of co-determination with respect to a specific subject matter, it is required that the issue has been regulated - at least to some extent - under statutory regulations or under the provisions enacted by the Berufsgenossenschaften. Furthermore, these legal enactments should leave some discretion to the employers as to the measures to be taken. On the whole, one can say that co-determination is possible within the limits set by the law and then only to the extent that no exhaustive regulation has taken place. Another element in Section 87(7) which has given rise to debate is the meaning of the word 'arrangement'; an example is the dispute over the question as to whether the works council's prior consent is required for the employer's decision to join a group occupational health service rather than setting up his own service (see below).
In Art. 90 and 91 of the Act special provisions are laid down for the works council's rights with respect to management decisions concerning the construction of new plant and equipment or the introduction of new working methods. The employer has to inform and consult the council in good time on plans and projects entailing a modification of working conditions or the working environment. In designing a new workplace or transforming

the working environment, the employer has to take into account generally accepted knowledge regarding the humanisation of work. The works council cannot veto management plans, but if the modifications are obviously not in accordance with such knowledge and signify a particular burden on the employees (for instance an encroachment on their wellbeing), the works council may request adoption of appropriate measures to reduce or remove this burden, or request compensation for it.

With respect to the relationship between health or safety experts and the employees, the "Betriebsrat" is the main channel for participation (both in terms of information and in terms of consultation and co-determination) also when a company has joined an inter-enterprise occupational health service or has established a joint service together with other companies. Unlike under French, Danish, Dutch and Belgian law, inter-enterprise committees or participation in management boards are not provided for. This is not to say that there is never any worker participation in the administration of group services.
First of all, such participation may exist on a voluntary basis, without legal safeguards to fall back on. Secondly, occupational health services may also be established by professional associations ('Berufsgenossenschaften') set up to implement the Insurance Code (Reichsversicherungsordnung). They may establish a mandatory group service, covering the whole branch, with a management board jointly composed of worker and employer representatives. Until now, this arrangement has only been adopted in a few sectors (e.g. sea transport, building and construction works); in most instances occupational health care is delivered by autonomous or inter-enterprise services, as in the

other countries under review.
Because the German works council - like its Dutch counterpart - has a general right of co-determination with respect to arrangements in the field of health and safety at work (see above), the unions have always argued that prior agreement of the works council is required for the employer's decision to set up his own service or to join a group service. For a long time the employer associations have contested this right. After extensive litigation, the Federal Labour Court has decided that the works council must give its previous consent; before entering into a contract with a particular inter-enterprise service, the employer must consult the council (Bundesarbeitsgericht, decision of 10 April 1979). The works council has a statutory right to approve or disapprove of all decisions concerning not only hiring and firing of an occupational health physician, but also the extension or limitation of his tasks within the enterprise.
The general legal mission of the plant physician is to assist the employer, but the law says that, in performing his mission, he should cooperate with the works council, as well as inform and advise it. As set out in 2.2.3.2., with a view to furthering the cooperation between employer, works council and occupational health physician, the law requires the establishment of a Labour Protection Committee ('Arbeitsschutzausschuss') with consultative and coordinative functions in all companies employing such physicians.
German legislation on worker participation in safety matters includes several provisions on access to and cooperation with the labour inspectorate and the technical inspectors of the Berufsgenossenschaften. As to the latter, Unfallverhütungsvorschrift nr. 1 (Allgemeine Vorschriften) says that safety stewards (Sicher-

heitsbeauftragten) must be enabled by the employer to be associated with the inspections and investigations conducted by them. But again, it is the works council which assumes a predominant role here.
According to Art. 89(1) Betriebsverfassungsgesetz, the Betriebsrat has to assist the competent authorities in reducing health hazards and improving working conditions. It may liaise with them in the event of disagreement with management on the ways safety legislation is applied and implemented within the establishment.
On the other hand, the official inspectors, both those of the labour inspectorate and the technical officials of the Berufsgenossenschaften, must carry out their duties in close cooperation with the works council, informing and consulting it and involving it in their enquiries.
Worker representatives do not have the right to halt work in case of a serious and imminent danger, but of course they may give a warning to management or call on the inspectorate. Unlike recent legislation in France and the Netherlands, German legislation does not grant an explicit, statutory right to discontinuation of work in extremely hazardous circumstances to individual employees. According to the legal doctrine, however, if there is a serious breach of a safety regulation or an accident prevention provision, the employee has such a right, so long as the health and safety regulations in force have not been observed by the employer.

2.2.3.4. Comments

The most conspicuous feature of the German system of employee involvement in occupational health and safety is the central position of the works council (Betriebs-

rat). So, the primary role in this field is assumed by a general body and the decision whether or not to establish a specialised body (health and safety or working conditions committee) is left to the works council. One could object, of course, that the law provides for mandatory establishment of a joint Labour Protection Committee ('Arbeitsschutzausschuss') in a company which is subject to the provisions adopted to carry out the Occupational Safety Act (Arbeitssicherheitsgesetz) on the employment of health and safety experts. But the Arbeitsschutzausschuss is not vested with many powers of its own; it is mainly a platform for the exchange of information and for improving cooperation between management, worker representatives, safety engineers and occupational health physicians. Therefore, as far as the law is concerned, the opportunities for worker participation in safety matters are for a great deal dependent on whether a works council is in office. Since such a council may be established in enterprises with five or more employees, legal backing for employee participation is provided for even in many of the smaller undertakings.
Another characteristic of the German system is the works council's co-determination right over health and safety issues. As has been explained above (2.2.3.3.), apart from the debate over the extent to which the council may demand specific measures to be taken, the scope of the right of co-determination is determined to a large degree by the existence of legal standards and their level of concreteness and comprehensiveness. From a study of the functioning of works councils in the health and safety field in the Federal Republic of Germany*, it appears that the right to co-determi-

*J. Denck, Arbeitsschutz und Mitbestimmung des Betriebsrat, in: Zeitschrift für Arbeitsrecht (Cologne), Vol.7, 1976, No. 4, p.447 ff.

nation is mostly invoked in organisational matters, in particular the selection and functioning of health and safety experts. Co-determination in technical matters, such as the adoption of measures relating to specific hazards, seems to occur less frequently.

2.2.4. France

2.2.4.1. General remarks

France was one of the first Member States to adopt fairly general enactments concerning employee participation in safety matters. By a Decree of 1 August 1947 health and safety committees ('comités d'hygiène et de sécurité) had to be established in every industrial or commercial undertaking over a certain size. Before 1947 the law provided only for the appointment of workers' safety delegates in hazardous sectors such as mining (1890) and railway transport (1931).

When they were first set up the committees - joint advisory bodies which should enable the workers' representatives to be involved in any prevention policy - were given the task of inspecting the undertaking with a view to satisfying themselves as to the enforcement of the laws and regulations and the proper maintenance of safety devices and equipment. They were also empowered to carry out investigations whenever an accident happened or an occupational disease revealed the existence of a serious danger. The functions of the safety committee were considered as being primarily of a technical nature; it was hardly regarded as a channel for worker participation or for trade union involvement. The worker representatives on the committee chaired by the employer had to be chosen on the basis of their technical knowledge or safety and health aptitudes.

The Decree of 1947 was modified by two further Decrees of 1 April 1974 and of 20 March 1979. The former enactment was adopted in pursuance of the Act of 27 December 1973 relating to the Improvement of Working Conditions. This act, which provided for the mandatory establishment of 'commissions d'amélioration des conditions du travail' in companies with over 300 employees,also extended the powers of the 'comité

d'hygiène et de sécurité'. Worker representatives on the committee were given a special task in situations of imminent danger. In enterprises with at least 300 employees they were protected against dismissal. The Decree of 1974 also made it possible to set up more than one committee or more sections of the committee within the same company.
De Decree of 20 March 1979 was adopted to implement the Act relating to the Development of the Prevention of Occupational Accidents (Act Nr. 76-1106 of 6 December 1976). Again the tasks of the committee were extended: apart from supervising programmes for employee safety training, it was charged with analysing the occupational hazards to which the workers might be exposed and with taking all possible measures to promote the use of the safest methods, processes and equipment. The analysis of occupational hazards must serve as the basis for the annual prevention programme to be drawn up by the head of the undertaking and submitted to the committee for examination.

2.2.4.2. Institutional arrangements

It should be noted that, although the 'comité d'hygiène et de securité' was the foremost body dealing with health and safety matters, it was by no means the only institution to do so. First, personnel delegates ('délégués du personnel') may operate in this field, as the Code du travail entitles them to voice employee complaints or requests concerning safety matters, to monitor the application of laws and regulations and to liaise with the labour inspectorate. Second, 'délégués syndicaux' (trade union delegates), with the general tasks to promote employee interests within the enterprise, may discuss health and safety issues with the employer. Finally, the 'comité d'enterprise' - the French works council, mandatory in companies with over fifty employees and composed

of worker representatives with the employer or his representative as its chairman - is to be involved in all issues concerning the improvement of the working environment in general.
In 1982, the law on these various forms of employee representation has been modified considerable by the adoption of the so-called 'Auroux Acts'. The first of these Acts (Act No. 82-689 of 4 August 1982) - apart from describing the drawing up of a 'réglement intérieur' (internal regulations) which also relates to health and safety measures - provides for a new right of self-expression, to enable employees to voice their opinions directly and collectively on all issues concerning the organisation of work and working conditions.* In undertakings with more than 200 employees the employer has to negotiate with the trade unions on how to organise this self-expression. In smaller undertakings, if there is no agreement with the trade unions, the employer has to consult with employee representatives in his company concerning the organisation, duration and frequency of the meetings to be held for this purpose. Very often, groups of workers are formed comprising 15 to 20 employees, with a view to realising the right to self-expression. The direct and collective self-expression of employees on their working conditions is not meant to infere with the functioning of the various workers' representation institutions in the undertaking, but rather to support and supplement it.
A second Auroux Act (Act No. 82-915 of 28 October 1982) deals with the further development of the three aforementioned representative institutions: the 'délégués syndicaux', the'délégués du personnel' and the 'comité

*An Act of 26 July 1983 extends the right of self-expression to the workers employed in the public and nationalised sectors.

d'entreprise'. On the whole, the changes brought about by this Act - and, for that matter, by Act No. 82-957 of 13 November on collective bargaining - allow for increasing trade union influence at enterprise level, at least according to some observers.

The most important of the Auroux Acts as far as occupational health and safety are concerned is the fourth one: Act No. 82-1097 of 23 December 1982, which relates to 'comités d'hygiène, de sécurité et des conditions de travail' (health, safety and working conditions committees) and which has been partially elaborated in a Decree of 23 September 1983. According to the Act a Health, Safety and Working Conditions Committee (HSWCC) must be set up in all undertakings - industrial, commercial or agricultural - both in the public and in the private sector (with the exception of mines, quarries and transport companies which are covered by specific statutory arrangements). Setting up a HSWCC is mandatory for establishments with at least fifty employees (in the sector of building, construction and public works: 300 employees).* If no committee has been set up in these establishments, the 'délégués du personnel' have to carry out the tasks and functions of the HSWCC; for this purpose, they may exercise all the powers otherwise given to the committee. In establishments with 49 or fewer employees, they have the same tasks without, however, the powers and facilities of a HSWCC.

Since the HSWCC is to replace the 'comité d'hygiène et de sécurité' and the 'commission pour l'amélioration des conditions de travail', it has a broad mission. Besides monitoring the application of internal and external standards in force in the workplace it has to contri-

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* This difference is due to the existence, in the latter sector, of a specialised national agency with regional committees (Organisme Professionel de Prévention du Bâtiment et des Travaux Publics) on which labour and management are represented to an equal extent and which carries out the tasks of a HSWCC.

bute to the protection of the health of all persons employed in the enterprise and to the improvement of the working environment. For this purpose, it must analyse potential occupational hazards and the working conditions and encourage all initiatives aimed at the improvement of health protection at work.
The HSWCC is composed of the head of the enterprise (or his representative), who acts as chairman, and employee representatives elected for a period of two years by a body constituted for this purpose and comprising works council members and 'délégués du personnel'; the number of employee representatives on the committee depends on the size of the undertaking. The HSWCC has to meet at least every three months. The occupational health physician and the company's safety engineer attend its meetings in a consultative capacity. The committee's members must dispose of the time-off and training * needed to carry out their functions. They are protected against undue dismissal. In establishments employing 500 or more, the works council determines, with the employer's approval, the number of HSWCC's to be set up, taking into account the particular circumstances within the plant; the works council is also responsible for the coordination between the various committees.
Although the Act of 23 December 1982 came into force on 1 July 1983, it provides for a transitional period of two years, during which already existing 'comité's d'hygiène et de sécurité' and 'commissions d'amélioration des conditions de travail' may continue to function separately. From 1 July 1985 onwards, however, the establishment of a HSWCC is mandatory for all companies covered by the Act. The following will focus on the

*On training, see in particular Decree No. 84-981 of 2 November 1984.

HSWCC as designed in the 1982 Act and the Decree of 1983. In addition, some attention will be paid to the function and powers of the works council ('comité d'entreprise') and of the 'délégués du personnel'.

2.2.4.3. Legal rights

In addition to the right of every employee to receive training concerning the health and safety aspects of his job, the law enables worker representatives to receive and to collect information concerning the hazards of work and all measures taken or envisaged to reduce them. The HSWCC (see 2.2.4.2.) is entitled to receive all information needed to carry out its tasks. At least once a year, the head of the establishment has to submit a report on the general situation with respect to safety, health and the working environment, and on the activities carried out to improve this situation. Furthermore, the HSWCC must be provided with a yearly programme for the prevention of occupational hazards and the improvement of working conditions. It is also to be informed on the measures taken in pursuance of complaints and requests regarding the working environment, voiced by individual workers at the meeting held for the purpose of direct and collective self-expression. In view of its general mission regarding improvement of working conditions, also the works council ('comité d'entreprise') has a right to receive all necessary information. In particular, it is to be informed in advance on important projects entailing the introduction of new technologies which may affect working conditions.

In order to collect information and to analyse occupational hazards, the HSWCC undertakes regular inspections of the place of work; furthermore, it has to investigate accidents and cases of work-related diseases. Its enquiries are carried out by a delegation com-

prising (a representative of) the head of the establishment and an employee representative on the HSWCC. In the event of a serious hazard, the HSWCC may also bring in an external expert; if the employer disagrees, the decision is left to the courts.
The HSWCC must not limit its analysis of the working environment to risks which become apparent through occupational accidents or diseases, but must include potential risks. A Decree of 16 January 1980 sets out the points to be dealt with by management in their report to company health and safety committees in order to enable such committees to fulfill their tasks of analysing the risks to which workers are exposed at the workplace.
Act No. 82-1097 of 23 December 1982 obliges the head of the establishment to consult the HSWCC in advance on all decisions which may affect health and safety or entail important modifications of working conditions. The HSWCC is also to be consulted on the measures adopted to continue the employment of or to re-employ disabled employees. Furthermore, it gives its opinion on the report relating to the general situation with respect to safety, health and the working environment and on the activities carried out to improve this situation. With regard to the yearly action programme, the HSWCC may propose the fixing of priorities and the adoption of additional measures. If some of the measures envisaged by the head of the establishment or requested by the HSWCC have not been adopted during the year covered by the programme, the head of the establishment must explain this in the next report.
As far as general working conditions policies are concerned, the employer must also consult the works council ('comité d'entreprise'). In particular, the law stipulates that the works council is to be consulted in advance on important projects entailing the

introduction of new technologies which may affect working conditions (thus Act No. 82-915 of 28 October 1982).
If both the HSWCC and the 'comité d'entreprise' are entitled to information and consultation on working conditions, how should we conceive of the relationship between both bodies? The HSWCC - as the more specialised body - is charged with the more technical tasks of monitoring and analysing the working environment, while the works council is to concern itself with general policies relating to working conditions. In cases where both are to be consulted, consultation of the HSWCC should take place before consultation of the works council. The opinions of the HSWCC, and notably its comments on the annual report and yearly action programme, have to be communicated to the 'comité d'entreprise'. The latter may call on the HSWCC to conduct studies or inquiries in the field of health and safety at work.

Since French law does not prescribe the employment of a safety engineer or the establishment of a safety service for particular types of enterprises, statutory regulation of the relationship between employees and health and safety experts is limited to the field of occupational medicine. France was the first country within the Community to enact legislation on occupational health services. In the first enactment of this kind - dating from 1946 - virtually no attention was paid to the position of workers; in this respect, the 1946 law was a true reflection of other health and safety regulations, in which workers or their representatives did not play a role of much importance.
In the wake of the gradual expansion of worker participation in health protection at work, workers have also been involved in the supervision of the occupa-

tional health services. The Decree of 1979 attests to this development.
The autonomous (single-enterprise) service is administered by the employer under supervision of the works council ('comité d'entreprise'). The works council has to be consulted on organisation and functioning of the service. Every year, the head of the service has to submit a report to the council on the progress of his work. The works council also receives from the employer a yearly report on the service.
The head of the service may attend the meetings of the works council in a consultative capacity. The same holds for inter-enterprise services (unless - which is rather exceptional - they are established by employer organisations and trade unions and have a joint management board). However, in this case the role of the works council is either assumed by an inter-enterprise works council ('comité interentreprise') or by a so-called 'commission de controle', which is the most common arrangement. According to the 1979 Decree, worker representatives have twice as many seats on the commission as employer representatives. Furthermore, regardless of whether there is a 'comité interentreprise' or a 'commission de controle', every group service must have a number of 'medical sectors' each of which relates to a specific geographic area and encompasses all staff working for enterprises in that area. Each sector has its own consultative committee composed equally of representatives of employers and workers in the enterprises concerned. In medium-sized companies in particular, the employer is free to join a group service or to set up his own service. However, before he takes a decision, he must consult the works council. He must do the same before he enters into or ends a contract with a particular inter-enterprise service (according to a decision of the Chambre

criminelle de la Cour de Cassation of 4 January 1979). The prior consent of the works council, the inter-enterprise works council or the 'commission de controle' is required for all decisions on the appointment or dismissal of an occupational health physician. According to the Cour de Cassation (Chambre criminelle, decision of 9 May 1978), this rule does not infringe on the principle of freedom of contract. Under French law, worker representatives cannot oblige the occupational health service to undertake specific action (e.g. to conduct a certain study); the occupational health physician is only under a general obligation to advise employer and employees on an equal basis.

Regarding access to and cooperation with public authorities, the law provides that the labour inspector must be informed about all HSWCC meetings and may attend them. As far as the relationship with the inspectorate is concerned, also the 'délégués du personnel' (see 2.2.4.2.) can act in the workers' behalf. Act No. 82-915 of 28 October 1982 entitles the delegates to liaise with the inspectorate and lodge complaints concerning safety, health and the application of the law in this field. Furthermore they have the right to accompany the inspector on his visit to the premises.
The worker representatives on the HSWCC do not have a right to halt dangerous work, but they may give a warning to the employer of a serious and imminent danger and enter such a warning in a register kept for this purpose. The employer (or his representative) is obliged to conduct an investigation, together with the HSWCC member concerned, and to take the measures necessary to avert the danger. In the event of disagreement about the nature of the hazards or the measures to be adopted, the HSWCC holds an emergency

meeting; moreover the employer has to give immediate notice to the public authorities. If employer and HSWCC cannot reach an agreement, the inspector may intervene with the means at his disposal, including the power to start proceedings to obtain a court decision on the discontinuation of work.
A completely new feature of the Act of 23 December 1982, is the granting to the workers themselves of a right to refuse to work in situations which a worker may reasonably assume present a serious and immidiate hazard to life or health. After a worker has given notice to the employer of the existence of the danger, any disciplinary sanction imposed in such circumstances is illegal. If an industrial accident occurs when the employer has been warned of the danger, he is committing an inexcusable fault.

2.2.4.4. Comments

There are certain similarities between the French system of worker participation in safety and the Belgian system, discussed in 2.2.2.: in both countries legislation dates back to 1947 and provides for worker involvement through representation on a joint safety and health committee, which has to be established in companies with more than fifty employees. Another similarity is the extensive and detailed character of the statutory provisions regulating the committees' functioning.
Like the former Belgian committee, also the French 'comité d'hygiene et de sécurité' has been subject to considerable criticism.
Recently, it has been observed, that "... there is general agreement ... that many health and safety committees exist only on paper or have only a formal existence. Ten years or so ago, it was generally considered that barely a third of them functioned regularly and actively in the undertakings. According to

some people, this figure should be revised significantly upwards: thanks to the advances made, more than two-thirds of the health and safety committees were in fact operating and carrying out the general activities they are called upon to perform in occupational safety and health matters. It is probable in fact that the progress made in recent years is reflected both in the number of health and safety committees in existence and in the quality of their work, although it may perhaps be optimistic to consider that two-thirds of them are operational".*
This observation is in keeping with other French studies, according to which many committees do not play a dynamic role, but are inclined to a formalistic approach; the inspections held by them, for instance, are often rather superficial and do not exceed the legally required minimum.** While such studies hardly permit general conclusions on the degree of actual participation in French undertakings, they at least give an indication that the statutory arrangements adopted for this purpose can be improved.
The 1982 Auroux Acts, and notably Act No. 82-1097 of 23 December 1982, have amended the existing system substantially, and it will be interesting to see to what extent these modifications result in a higher degree of application of the law and attainment of its goals. Several changes may be significant in this

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* G. Roustang, Worker participation in occupational safety and health matters in France, Int. Labour Review Vol. 122 (1983), 172.

** See e.g. L. de Bettignies, L'institution du comité d'hygiène et de sécurité: aspects structurels de la prévention des accidents, Revue francaise des affaires sociales, 1977, p. 13-14;
H. Seillan, Le fonctionnement du comité d'hygiène et de sécurité, Droit social, 1981 (February), p. 164-174.

respect. The 1982 legislation has not only strengthened the position of the committee, its function and powers, but has also reinforced its representative character by enlarging employee membership of the committee. Another potentially important modification is the extension of the committee's terms of reference to include working conditions in general in addition to health and safety; in this way the occasional overlap and confusion resulting from the existence - in larger companies - of a separate committee for the improvement of working conditions will be avoided.

2.2.5. Greece

2.2.5.1. General remarks

Greece has a long history of legislation relating to occupational health and safety, the first enactments dating back as far as 1920. Unlike most other Member States, however, it does not have statutory regulations concerning worker participation in health and safety matters. Greek law does not provide for the mandatory establishment of joint safety committees, nor - for that matter - for the election of works councils or employee delegations. Until now, as far as worker involvement with working conditions is concerned, one can only mention Act No. 1264 of 1982. Under Art. 16, Par. 4 of this Act (relating to democracy at the workplace) the employer is obliged to meet the representatives of trade union organisations at their request at least once a month, and to endeavour to settle issues which are a cause of concern to the workers or their organisations.

To a limited extent, health and safety committees have been appointed by employers on a voluntary basis, but more often than not these committees were merely technical in character and were not seen as vehicles for worker participation.*

A few years ago, the Federation of Greek Industries and the General Confederation of Labour of Greece concluded a central agreement concerning the establishment of joint safety and health committees in the quarrying, mining, extraction, manufacturing and electricity supply industries. According to this agreement (of 12 May 1981) such committees were to be set up on the initiative of the employer for production units employing more than

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* Rapport au Gouvernement de la Grèce sur les travaux de la mission multidisciplinaire du PIACT. BIT, Geneva, September 1978, p. 38.

thirty workers, but they would become compulsory for all units employing more than 500 workers. The committees would comprise equal numbers of employee and employer representatives (two from each side in units employing more than thirty and less than 500 wage earners and four in the case of units more than 500 wage earners). Employee representatives would be elected by secret ballot for a period of two years.

The committees were to serve as an advisory body in monitoring the application of safety and health laws and regulations, to analyse occupational hazards at the workplace, to suggest methods of dealing with them, to recommend accident prevention training programmes and to supervise the training of workers in this field. Furthermore, they were to control the existence and adequacy of personal protective equipment and encourage its use. A joint committee would meet regularly once a month, or whenever necessary in an emergency.

At the national level, a central committee on health and safety at work would be set up, consisting of seven members - three appointed by each side of industry, with an independent chairman jointly approved by the other members. Its task would be to monitor the application of the new agreement and, in particular, to formulate training programmes for the elected workers' representatives and supervise the application of these programmes.

In a certain sense, the collective agreement of 12 May 1981 can be regarded as a follow-up to the recommendations made by the multi-disciplinary PIACT-mission of the ILO in 1978. This mission - referring to a first draft of law concerning health and safety arrangements at enterprise level - pointed out that joint committees are an important instrument in promoting health and safety and ensuring cooperation between labour and

mangement in this field. It should be noted, however, that the 1981 agreement has never been properly carried out, mainly because of difficulties in developing the required training programmes.
In the meantime, the Greek Ministery of Labour has prepared a new draft law on the working environment which was recently submitted to Parliament.
This draft law on health and safety at work covers the private sector, with the exception of some specific trades such as mines, fishery and transport. During a certain period, however, only undertakings with more than 100 employees will come under the law; later, it will be extended to include smaller establishments.

2.2.5.2. Institutional arrangements

The law provides for the election of a safety and health committee consisting of worker representatives in enterprises with over fifty employees, and for the appointment of a safety and health representative in enterprises employing more than twenty workers.
Establishments with more than fifty employees must also have recourse to safety and health experts.
The employer or his representative meets with the committee within the first ten days of every trimester at a fixed time to discuss existing health and safety problems; the safety expert and occupational health physician attend the meetings.
The general function of the committee is to examine health conditions in the establishment and to suggest improvements.

2.2.5.3. Legal rights

According to the proposal submitted to Parliament, the committee will have the following rights:
- to receive any kind of information necessary for them to carry out their duties, in particular information

on accidents and occupational diseases, as well as on new processes, substances and equipment introduced in the workplace;
- to investigate a serious accident and propose measures to remedy the situation;
- to bring in - with the employer's consent - external experts, for instance to carry out measurements;
- in case of a serious and imminent danger, to require the employer to take immediate measures;
- to participate in the development of the employer's health and safety policy and to give their opinion on the yearly programme of activities concerning safety and health which the employer is required to prepare.

2.2.5.4. Comments

As the law has not yet come into force, no evidence is available on how it is carried out and what its effects will be in terms of improving health and safety at work.

2.2.6. Ireland

2.2.6.1. General remarks

Statutory regulations relating to worker participation in health and safety were enacted in Ireland in 1955. The Factories Act, adopted in that year, included a section dealing with the establishment of safety committees in factories. The safety committee was introduced as an avenue whereby employees could contribute to promoting a safe and healthy workplace. The system laid down under the 1955 Act was voluntary, not mandatory: the persons employed in a factory could select from among themselves a safety committee; the safety committee was entitled to nominate one of its members as a safety delegate. According to the relevant section of the Factories Act, the employer should consider any representation made to him by the safety committee on matters affecting safety, health and welfare of the persons employed, whereas an inspector should consider any representations made to him by the safety delegate. It was expected that the workers in industry would readily take the opportunity to establish safety committees within their firms; however there appeared to be a general apathy on their part to do so. In 1957, 16 such committees were formed; this number increased to 99 in 1967, and to 270 in 1977. In 1979 only 285 committees had been established, while the number of factories operating in the country exceeded 18,000. By that time, no other legislation on worker participation in health and safety had been adopted, except for Section 105 of the Mines and Quarries Act, 1965. According to this Section, workers may appoint two persons with practical experience to act as workmen's inspectors. These people are to be paid by their fellow workers for the hours spent on inspection duties. They are entitled, although not obliged, to inspect

every part of the mine or quarry and the respective equipment at least once a month. They investigate accidents and have the power to examine record. However, in practice no such workmen's inspectors appear to have been appointed so far.
The system of worker involvement under the Factories Act was amended in the Safety in Industry Act 1980, notably by Sections 35-39, which came into force on 1 March 1981. It should be noted that this Act covers only about 25 percent of the workforce; it focusses on industrial activities, irrespective of whether the private or the public sector engages in them. Excluded from legislative cover are workers in such areas as agriculture, forestry, fishing, transport, laboratories and hospitals and those in the professions. There is no mechanism for involvement of workers in places covered by the Office Premises Act or Shops (Conditions of Employment) Act.

2.2.6.2. Institutional arrangements

According to the Safety in Industry Act 1980, in factories where up to twenty workers are employed, the workers can appoint from among their number a safety representative to represent them in consultations with the employer for the purpose of ensuring cooperation on the premises with respect to the applicable provisions of occupational health and safety enactments. The safety representative must have had within the previous two years experience in the work in which the employees represented by him are engaged; he holds office for a period of three years.
In factories with more than 20 employees workers may select and appoint from among themselves the worker members of a joint worker/management safety

committee.* The number of members of a safety committee must not be less than three and not exceed ten, the majority of them being appointed by the employees, the rest by the employer. It is the function of the committee to assist both employer and employees in relation to the relevant provisions of the health and safety legislation in force. The worker members of the committee may appoint from among their number a safety delegate to make representations on their behalf to and accompany inspectors. The 1980 Act is very brief on such issues as facilities for the safety committee and the frequency of its meetings; for the most part these issues are subject to agreement between labour and management. Since the 'voluntary' safety committees of the 1955 Act failed to be established in large numbers, the 1980 Act introduces an element of compulsion: if the workers do not exercise the option to elect a safety representative or committee, the employer is obliged to appoint the representative or committee, as appropriate. The rationale for this mandatory system is similar to that for the system adopted in 1955: the need for cooperation and co-responsibility of employers and workers in the common interest of securing a safe and healthy workplace.

2.2.6.3. Legal rights

Apart from certain more specific provisions (such as Section 17 of the 1980 Act on the training and instruction of persons working at machines), Irish health and safety legislation does not entail a general duty for

*In this context the term 'factories' includes electricity generating stations, certain charitable or reformatory institutions and places such as technical schools where both mechanical power and manual labour are used for instruction. The provisions regarding the establishment of safety committees or the appointment of safety representatives, however, do not apply to docks, wharves, quays and warehouses.

employers to give adequate information, training and instruction to employees. Even worker representatives (safety representatives, worker members of the safety committee, safety delegates) do not have unambiguous legal rights to be informed by the employers on the hazards of work and the measures envisaged to protect health and safety. An exception is Section 39 of the Safety in Industry Act 1980, which obliges the occupier of premises in which ten or more persons are employed to prepare a "safety statement" in writing, specifying the manner in which the safety and health of the persons employed will be secured. The statement must not only specify the arrangements for safeguarding the safety and health of such persons, but also the cooperation required from them, the duties of safety officers (if any), the available training facilities and the measures to be taken to deal with hazards of particular relevance to the individual workplace. If necessary the statement must be revised from time to time; copies must be given to the safety representative, the safety committee, or (if they are lacking) to every employee. A copy must be made available to the Department of Labour's Inspection on request; if the Minister for Labour is not satisfied that the statement prepared is adequate, he can order that it be revised.

The worker representatives mentioned above do not have a legal right to carry out inspections or to investigate accidents, potential hazards and dangerous occurrences on their own, but they have a right of access to the inspector. When an inspector enters premises for the purpose of a tour of inspection (other than a tour of inspection for the investigation of an accident), the occupier must inform the safety representative, who is entitled to accompany the inspector on

his tour. The same holds for the safety delegate appointed by the safety committee. If a safety representative or safety committee believe that a specific potential danger to safety or health exists they may request the Minister for Labour to order an investigation to be carried out by an inspector. When completed the Minister may, if he thinks fit, communicate the outcome of the investigation to the representative or committee by whom the request was made. Worker representatives are not entitled to be informed by the inspectorate on facts or matters relevant to safety or health in their facory; in the last resort, it is in the Minister's discretion to publish such facts or matters to them or to inform them on the serving of a prohibition notice.

According to the Sections 35-36 of the Safety in Industry Act 1980, an employer is under an obligation "to consider any representations made to him on matters affecting the safety, health and welfare of persons employed", either by the safety representative or by the safety committee. The safety committee on the other hand must consider any representation made to it by the employer on the said matters. This is about all the law says on consultation between employer and worker representatives. Safety representative or committee can suggest safety improvements, but cannot insist they be implemented. They have no powers to veto or withhold consent to managements' decisions on health and safety. In the event of conflict between worker members on the committee and the employer, the committee's safety delegate has a legal right to make representations to the inspector. He may for instance request the inspector to investigate a hazardous situation and to serve a prohibition notice to the employer. However, if the inspector does not act at his request, the safety

delegate has no formal right of appeal (although in practice he is free to communicate his dissatisfaction either to the Minister for Labour or the Chief Inspector). Neither the safety delegate nor the individual worker has a statutory right to cease work in case of imminent and serious danger.

2.2.6.4. Comments

Under the present system of statutory law, the rights of workers or their representatives to be involved in health and safety matters would seem to be very limited, regarding both information and consultation. This holds not only for the rights of employees vis-à-vis management, but also for their relation to the labour inspectorate. The law does not mention the right to be informed by and to consult with health and safety experts employed by the firm; this has to do with the fact that the establishment of occupational health services or safety services is not compulsory under Irish law (except for the obligation of construction companies employing more than twenty persons to have a qualified safety officer).

How does the system work in practice? In its communication to the EEC-Seminar on Safety Committees in Companies (Paris 15th-17th November, 1983), the Industrial Inspectorate stated: "Although the Act has been in force now for just 2½ years, it is perhaps a little early to draw conclusions on the success or otherwise of these new Safety Committee requirements; however we are encouraged by the interest shown by the Employer Federations and the Trade Union Movement in these Sections of the 1980 Act and who have positively promoted participation by their members. We are at present conducting another survey into the operation of the Safety Committee under this new legislation and though its findings are far from complete there are signs that some difficulties still exist" (p.6).

In its Report, submitted to the Minister for Labour on 14 July, 1983,* the Barrington Commission elaborates and explains some of the difficulties arising from the existing system of worker participation in safety. In addition to the fact that some committees would seem to deal with individual grievances instead of with long-term issues, dissatisfaction is expressed about the vague formulation of the functions of the committees: "Committees are charged to assist employers and workers in relation to the Act and regulations, thus reinforcing tendencies towards regarding the law as central to occupational safety and health in the workplace. To some extent the safety policy statement will serve to flesh out a programme for the Communitees, but we feel that from the start, a clearer statement of functions would have helped Committees to form a better view of their role and responsibilities" (p. 71). The Commission also felt that present information responsibilities of employers are not always clearly understood or clearly stated, and that the 1980 Act leaves too much to the labour inspectorate's discretion with respect to the disclosure of information to workers or their representatives.

However, the main problem with the present system, according to the Commission, centres on its inflexibility: in practice the uniform system of safety representatives, committees and delegates would form a legal straitjacket preventing adaption to local conditions.

The Commission recommends that the existing statutory requirements concerning safety committees with their inflexible provisions about size, composition, etc. be repealed. In its search for an alternative, it draws

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* See 1.2.6.

inspiration from certain elements of the model designed for mines and quarries (see above). The Commission states that all places of work must have a mechanism for ensuring that workers be involved in decisions about their working environment. It suggests that workers be given the right to appoint their own safety representatives. The proposed new Authority* should develop this principle and might deal, inter alia, with the considerations to be borne in mind when deciding the appropriate number of representatives for each plant. The new framework Act recommended by the Commission should provide that the functions of the safety representative include the following:

- to make representations to management on all aspects of safety and health;
- to investigate complaints;
- to carry out inspections;
- to liaise with inspectors;
- to investigate accidents, potential hazards and dangerous occurrences;
- to assist in setting up appropriate bodies (for involvement of larger numbers of workers, etc).

Furthermore, the Commission recommends that safety representatives be given certain rights, including the right to training, time off and information. Information should not only be given to worker representatives. According to the Commission the framework Act should contain provisions along the following lines: information must be given by employers to all employees about the potential risks connected with their work, and about the precautions taken by the employers and to be taken by workers. "In most cases, the employer will be in the

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* See 1.2.6.

best position to know what are the hazards and he should take the initiative by providing the information, not wait for the workers to ask for it. Information should, in particular, cover appropriate disaster or emergency plans as well as the legal provisions which apply. Additional information will be necessary in specific situations e.g., access to results of biological tests and notifications where limit values have been exceeded" (p. 182-183).

About disclosure of information on health and safety matters by the inspectorate, the Commission says:

"... any information from an Inspector which is made available to employers on the extent to which safety and health legislation is being observed or contravened in the workplace should equally be provided to the workers or their representatives at the workplace. Where practicable Inspectors' reports on accidents should als be made available to both employers and workers" (p. 109).

2.2.7. Italy

2.2.7.1. General remarks

As in the other Member States, traditional safety legislation in Italy did not give workers a say in occupational health and safety. The two enactments, which contain the main body of general safety regulations - the Decree of April 27, 1955, nr. 547 concerning the prevention of work accidents and the Decree of March 19, 1956, nr. 303, concerning hygiene at work - only lay down the employer's duty to inform the workforce on the health risks to which they are exposed. Among the many enactments relating to specific sectors or trades, only the Decree of April 9, 1959 (mines and quarries) and the Decree of February 13, 1964 (nuclear energy) provide for the mandatory establishment of joint worker - management safety committees with a consultative function.

This is not to say that safety committees with employee representation were completely unknown in other industrial sectors. In some enterprises they were set up on the initiative of the employer. Moreover, during the sixties several collective agreements made provision for enterprise committees for prevention and safety. However, these joint committees never became a generally accepted channel for worker involvement in health and safety, and during the seventies they were replaced in collective labour contracts by other arrangements. These new arrangements were the result of the emergence - from the end of the sixties on - of new forms of industrial democracy, i.e. the appointment of 'delegati' by groups of employees working in similar working conditions ('gruppo omogeneo') and the establishment of factory councils ('consigli di fabbrica'), consisting of worker delegates. This de-

velopment is accompanied by an intensification of collective bargaining at enterprise and trade level, with much attention being paid to the organisation of work, the working environment and employee health. Characteristic features of the new worker attitudes to working environment issues are the emphasis on directness of participation, the refusal to leave the solution of safety and health problems to 'experts', and the rejection of hazard pay.
To a limited extent, this process of social change is reflected in legislation, in particular in the "Statuto dei lavoratori' (Workers' Statute) adopted in 1970.

2.2.7.2. Institutional arrangements

In addition to the appointment of trade union delegates ('rappresentanze sindicali aziendali') in each unit of production on the initiative of the employees (Art. 19), the Workers' Statute includes an important section on the 'protection of health and physical integrity' (Art. 9), which entitles workers to supervise and promote health protection at work 'through their representatives'. This rather general provision has not been elaborated in statutory regulations, however, and until now the right of workers or their representatives to be involved in occupational health and safety matters is mainly regulated under collective agreements many of which deal with such issues as:

- the discontinuation of work when threshold limit values are exceeded;
- the introduction of general and personal documents ('registri' and 'libretti') in which the results of biological and environmental monitoring are recorded;
- the employment of public health services to monitor workplace health and safety;
- the admission to the enterprise of external experts,

brought in on the initiative of worker representatives;
- worker participation in investigations and the elaboration of health protection measures.

An important issue in these agreements is the designation of the bodies representing the workforce with respect to safety and health. In the national collective agreements these are mostly the factory council or the trade union delegation; in many collective agreements at enterprise level, participation in the field of health and safety is delegated to a working environment committee ('commissione ambiente'), which comprises representatives of different departments or of groups of workers exposed to similar health risks.

As far as statutory arrangements are concerned, mention should also be made of the Law on the Reform of Health System (Act No. 833 of 23 December 1978, which came into force on 1 January 1979), under which a national health service has been established. It is also responsible for guaranteeing work safety, with the participation of workers and trade unions, with a view to preventing and eliminating conditions harmful to health and ensuring that factories and other places of work have adequate facilities and services for this purpose.

The national health service is organised in local health units ('unitá sanitarie locali') - each covering between 50,000 and 100,000 inhabitants. These units are responsible for ensuring, besides health care as such, rehabilitation and health education, and for detecting and controlling environmental hazards and harmful substances at the place at work. They have taken over the functions previously carried out by the Labour Inspectorate concerning the prevention of occupational injuries and diseases and health surveillance. Their intervention in the workplace must take place in close

cooperation with the employer and trade union representatives in particular when the measures they propose are not mandatory under statutory health and safety regulations in force.

2.2.7.3. Legal rights

As far as individual workers are concerned, the employer is under an obligation to inform them on the specific risks to which they are exposed and on the arrangements adopted to prevent health impairment, as specified in Art. 4 of both the Decree Nr. 547 of 27 April 1955 and Decree Nr. 303 of 19 March 1956. Do worker representatives have a statutory right to receive information pertinent to health risks and accident prevention from the employer? Art. 9 of the Workers' Statute states that "workers, through their representatives, are entitled to monitor the application of health and safety standards, and to promote the research, development and implementation of all suitable measures in order to protect their health and physical integrity".

First of all, it must be noted that the 'representatives' mentioned in Art. 9 may be either the 'rappresentanze sindicali aziendali' mentioned in Art. 19 (see above), or the 'consiglio di fabbrica', or representatives elected by the workforce for this specific purpose only. Although one could argue that Art. 9, in the final analysis, leaves it up to the workers themselves to determine who is to represent them in health and safety matters, in practice this question is dealt with in collective labour agreements (see 2.2.7.2.). Second, the question rises to what extent Art. 9 implies a right to be informed by the employer. In the legal literature, this question is usually answered in the affirmative, since it is hard

to see how worker representatives could 'monitor' the application of external and internal standards in force in the workplace without such information.
It is obvious that Art. 9 - at least in some way and to some extent - allows worker representatives to inspect the workplace and to investigate accidents. However, both the representatives' right to be informed by the employer and the right to obtain information themselves by means of inspections and investigations have been further elaborated under collective agreements. Many contracts oblige the employer to inform worker representatives, for instance on dangerous substances used at work, on new substances introduced into the process of production, and on investments aimed at the improvement of working conditions. Some contracts state that worker representatives may hold inspections as they think appropriate, but other contracts empower them only to take part in the inspection and accident investigation activities carried out on behalf of management.
Furthermore, many contracts include arrangements for the selection and employment of external experts for the purpose of monitoring or investigation. Inspections and investigations are often left to experts or agencies chosen by mutual agreement. Some collective agreements allow worker representatives to bring in technical advisers of their own choice, provided that these experts figure on a list previously agreed upon with the management. In order to ensure the experts' independence and objectivity, it is mostly public agencies (local health services, university departments) that are called on for assistance.
An important provision concerning information on health

risks - which is to be found in most collective agreements - is the employer's obligation to set up a documentation, consisting of a 'registro dei dati ambientali' (data relating to physical and chemical agents at the place of work), a 'registro dei dati biostatici' (data based on medical examinations and data concerning illness, professional diseases etc.), and a 'libretto personale sanitario e di rischio' (which contains confidential information on the individual results of medical examinations and may also include a survey of the health risks to which the individual has been exposed during his or her working life).
To what extent worker representatives are entitled to be consulted on health and safety matters? Also in this respect Art. 9 of the Workers' Statute is not unambiguous, although the right to 'promote ... development and implementation of all suitable measures ...' seems to imply at least the right to make proposals to the employer (including the latter's duty to study them and make a reply). Again, more detailed provisions are to be found in collective agreements. For instance, several agreements provide for a joint evaluation of monitoring results with a view to the elaboration of protective measures; in some agreements, worker representatives are charged with the task to 'negotiate' with management or to 'conclude agreements' on the measures to be taken. However, as will be clear from the foregoing, a formal, statutory right to give prior approval to or to veto management decisions on health and safety matters is lacking under Italian law.

Because participation in health and safety matters depends not only on the relationship between worker representatives and management, but also on access to

public authorities and to health and safety experts, the question rises whether worker representatives have any legal rights vis-à-vis inspectors or, for instances, occupational health physicians. Since the functions of the labour inspectorate have been transferred to the local health units under Act. Nr. 833 of 1978 (see 2.2.7.2.) and since the same organisations have been charged with providing occupational health care and with setting up an occupational health department, it is in particular the relationship between worker representatives and the officials of the local health units which is of importance here. Workers or their representatives may request these officials to intervene if the existing health and safety regulations are not observed in the workplace; they are entitled to receive a copy of a notice served on the employer.
According to Art. 20 of the Act, enforcement officers have to inform trade union representatives on the results of inspections and investigations. Furthermore, when they order the employer to adopt a measure not explicitly required by law, they have to consult not only the employer, but also the trade union representatives. There is no statutory right to stop work in the event of imminent serious danger, but many collective agreements stipulate that work may be discontinued when the threshold limit values agreed upon are exceeded.

2.2.7.4. Comments

There is no other Member State in which statute law and statutory arrangements play such a limited role in the regulation of participation in occupational health and safety, as in Italy. There is only one statutory provision (Art. 9 of the Workers' Statute) which is of major importance in this field, and this provision is rather vague in its wording and has given rise to

much debate on how it should be interpreted. Therefore, Art. 9 serves mainly as a general principle, which legitimates the contractual provisions laid down in collective agreements, but is can hardly be used as an unambiguous touchstone for these voluntary arrangements. This situation is, to a large extent, the result of the 'contractual strategy' adopted by the Italian trade union in the early seventies. The comparative neglect of legislation, and the preference for collective bargaining, has resulted in flexibility as regards the organisation of worker participation in different sectors and companies, but on the other hand it has also given rise to considerable disparities between various industries and firms concerning employee rights in safety matters. Moreover, collective agreements are not equally applied: they seem to be implemented fairly well in big private enterprises and in the public sector, but have been ignored in several medium-sized enterprises and very often in small ones. Finally, the absence of statutory rules as regards the establishment and functioning of representative bodies has made it more difficult for workers to have recourse to public authorities in the event of conflict over their rights.

According to Art. 24 of the Law on the Reform of the Health System (Act. Nr. 833 of 1978), the adoption of a new framework law on the working environment is envisaged. This law will deal, inter alia, with the issue of discontinuation of work in case of imminent, serious danger. However, Art. 24 does not request the Government to prepare legislation on employee participation in health and safety. Furthermore, although the law came into force in the beginning of 1979, the new legislation on health and safety at work required by it has still not been prepared.

2.2.8. Luxembourg

2.2.8.1. General remarks

Luxembourg's legislation relating to worker participation in health and safety dates back to 1925. In that year a Grandducal Decree was adopted concerning the appointment of manual worker delegations ('délégations ouvrières') in industrial undertakings. Art. 22 of this decree charged the delegations, among other things, with 'contributing to the prevention of accidents and of health hazards and with assisting the labour inspectorate and the competent authorities with all suitable proposals'.

A few years later, under the Decree of 31 December 1929, further provisions were issued as to the way in which the delegations should perform these functions: every delegation should nominate one of its members as as safety delegate. Every two weeks, this delegate should make a tour of inspection in the factory, together with (a representative of) the employer; afterwards he should put down his findings in a special register, which could be consulted by management, worker delegation and inspection. In case of immenent danger, when the immediate intervention of public authorities seemed to be justified, the safety delegate was entitled to call directly on the labour inspector, provided that management and the worker delegation would be informed about this. Inspectors could require the safety delegate to accompany them on their visit to the premises, also when they made their tour in order to investigate an accident.

New provisions for worker delegations were laid down in the Grandducal Decree of 1958 (revised in 1962): the legal duty to set up these bodies was extended to all industrial and commercial undertakings, including

the obligation to appoint a safety delegate. On the other hand, the statutory regulations concerning (white collar) employee delegations ('délégation d'employés'), adopted in 1919 and revised in 1937, did not contain provisions relating to work safety. In addition to these statutory arrangements, in some undertakings participation and cooperation in health and safety was organised on a voluntary or contractual basis; an example is the joint safety committee in steel factories, prescribed by collective agreements covering this sector from 1960 onwards.

2.2.8.2. Institutional arrangements

Under the Act of 18 May 1979, the 'délégation ouvrière' and the 'délégation d'employés' have been replaced by 'délégations du personnel' at least in undertakings with fewer than 100 employees. The functions of the personnel delegation (or in the larger undertakings: the worker and employee delegation respectively) in the field of health and safety have been expanded to 'improvement of the working conditions'. The task of the safety delegate to be elected by the delegation has remained more or less the same. The delegation has to be appointed in all private enterprises with fifteen or more workers. The same holds for undertakings in the public sector employing at least fifteen workers on the basis of a labour contract. The members of the delegation are selected by the workers from among themselves. They are appointed for four years, and cannot be dismissed during that period. Their number may range from one to 25 or more, depending on the size of the undertaking. Chapter 8 of the 1979 Act contains rather detailed provisions on such matters as meeting times, schooling, time off and other facilities. In principle, the remuneration of the delegation members is to continue during the time they spend in

exercising their function.
Ever since 1974, another body has to be established as well, at least in the larger undertakings, which is important for worker participation in health and safety. According to the Act of 6 May 1974, all industrial and commercial undertakings in the private sector employing 150 or more must have a joint committee ('comité mixte'), composed equally of management and worker representatives. The worker members on the committee are appointed by the worker and employee delegations for a period of four years. In undertakings with fewer than 500 employees, the 'comité mixte' consists of six members; in undertakings employing under 1000, eight members, and so on. Its chairman is the employer or his representative.
The committee's importance resides in the fact that it may take, inter alia, decisions concerning the health and safety measures to be adopted in the enterprise. However, for such a decision to be taken the majority of both worker and management members on the committee must agree. If agreement cannot be reached, each of the parties may start a statutory conciliation or arbitration procedure. The members of the committee must be paid during meeting hours; furthermore they must be given the necessary time off to perform their functions. They cannot be dismissed without the committee's prior approval.

2.2.8.3. Legal rights

Luxembourg law does not make provision for a general right to information of the individual worker. Of the representative bodies mentioned in the preceding paragraph only the joint committee ('comité mixte') has a legal right to be informed by the employer. According to Art. 8 of the 1974 Act, it is entitled to prior information on all important decisions concerning:

- construction, change or enlargement of plant and machinery;
- introduction, improvement and renovation of equipment, working methods and manufacturing processes (except for trade secrets).

Furthermore, the employer must inform the joint committee about the impact of these measures on the working conditions and the working environment.
The personnel delegation does not posses such a right. On the other hand, the safety delegate appointed by it may not only accompany an inspector on his visit to the undertaking, but also, once a week, make his own tour of inspection together with the employer or his representative. After his tour, he writes down his observations in a register, which is accessible to other delegation members as well as the inspectorate. At places where administrative work is being done, the number of inspections is limited to two per year.
The personnel delegation has the general task of defending worker insterests in the area of working conditions, at least as far as this task does not come within the competence of the 'comité mixte'. For this purpose, the delegation is entitled 'to participate in the protection of work and working environment as well as in the prevention of accidents and professional diseases'; it may 'give its opinion and work out proposals on every question relating to working conditions' (Art. 10, Act of 1979). If the application of statutory and other health and safety provisions within the enterprise gives rise to a complaint, it can call on the labour inspectorate.
Whereas the delegation has only a general right to consult with the employer, here again the powers of the joint committee ('comité mixte') are more explicit and unambiguous. It must be consulted previously on

the measures set out in the afore mentioned Art. 8 of the 1974 Act. Moreover, it may decide on its own on the introduction or modification of all measures directly related to the health and safety of the workforce, or to the prevention of professional diseases. This form of co-determination enables worker representatives not only to veto management proposals which they feel are inadequate for the reduction of health hazards, but also to put forward their own proposals. If the employer representatives do not respond to such initiatives, a conciliation or arbitration procedure may be started according to the Decree of 6 October 1945 on the institution, powers and functioning of a national conciliation agency.
Under Luxembourg law, workers or their representatives at present have no statutory right to cease work in the event of a serious and imminent danger. This power is reserved for the labour inspectorate. In a case of emergency it is primarily the task of the safety delegate to liaise with the inspector and to call on him to stop the hazardous work process. Safety delegates or other delegation members do not have a formal right of appeal when the inspector does not act upon their request.
It should be noted that, in the iron- and steel sector, collective agreements between both sides of industry play an important, additional part as far as participation and cooperation in health and safety matters are concerned alongside the statutory arrangements described above. The collective agreements provide for joint worker-management safety committees.

2.2.8.4. Comments

Among the EEC Member States, Luxembourg has the oldest legislation concerning worker participation in safety

(not counting nineteenth-century legislation on worker-appointed safety delegates in mines, in such countries as Belgium, Britain and France). The system existing at present is still more or less the same as that adopted in 1925: i.e. personnel delegations with an elected safety delegate who is entitled to undertake periodical inspections of the workplace and to liaise with the Inspectorate for Labour and Mines, the most important modification being the extension of the delegation's terms of reference in the health and safety field to include the 'improvement of working conditions'.

The single most important difference with the old system is the emergence of the joint 'comité mixte', which has definite legal rights not bestowed upon the personnel delegation, such as the right to decide on health and safety provisions and the right to be informed and consulted on all other measures affecting the working environment.

Luxembourg does not have legislation on the mandatory establishment of health and safety committees like Belgium and France. In its report on the existing health and safety system, issued in the mid-seventies, the national Economic and Social Council proposed making the establishment of such committees - by that time already set up in the steel sector - compulsory for all industrial undertakings. However, this recommendation has not been realised.

As a consequence of the statutory arrangements in force, worker involvement in health and safety is best regulated in the larger private enterprise with 150 or more employees where a 'comité mixte' is in office. The opportunities for participation are fewer in undertakings where only personnel delegations have been appointed.

According to the report of the Economic and Social Council, the legal powers of these delegations are limited: without recourse to the Inspectorate for Labour and Mines the delegations have no means at their disposal of ensuring that the alterations they require are brought into effect, no matter how legitimate they may be. Moreover, the law does not require the member of a delegation with responsibility for safety to have any specific qualifications; the Council therefore argues that these safety delegates should receive comprehensive training in safety matters.

Legal rights to be involved in health and safety are lacking in the smallest undertakings where the law does not provide for appointment of a personnel delegation. In these establishments workers do not even have a formal right of access to the labour inspectorate similar to that of the delegation-elected safety delegate.

Statutory rights to be informed and consulted by plant physicians or safety officers on the staff of a firm's health and safety service do not exist, as there is no legislation requiring employers to set up such services.

2.2.9. The Netherlands

2.2.9.1. General remarks

Apart from provisions relating to the appointment of worker committees and workmen's inspectors in mines, Dutch legislation did for a long time not provide for worker participation in safety. The first arrangement of this kind was adopted under the Safety Act of 1934. According to Art. 20 of this Act, a safety committee could be established within the enterprise with a view to the promotion of safety and the prevention of health impairments due to working conditions; this safety committee had a consultative function. However, this article has never become operative. This is not to say that safety committees did not exist at all by that time. Several of the larger industrial enterprises had in fact set up such bodies on their own, but these arrangements were not related to the provisions of the 1934 Act; their members were in most cases nominated by management and could not be regarded as worker representatives.

From 1950 onwards, when the first Works Council Act was adopted, the works council became the main channel for employee involvement in health and safety matters. Whereas under the 1950 Act the works council's task in the safety field was limited to monitor compliance with internal and external safety and health standards, a new act in 1971 extended the council's terms of reference, notably by giving it a right of prior approval to all management decisions on measures concerning safety, health or industrial hygiene. In 1979 the 1971 Act was revised, but the works council's functions with regard to health and safety remained the same. One of the major changes brought about by the revision of 1979 concerns the council's composition: since that year, the works

council consists only of representatives of the workers and elected by them; the members appoint a chairman from among their number.

2.2.9.2. Institutional arragements

The establishment of a works council is mandatory in all enterprises employing at least 100 persons.* From 1982 onwards, the same requirement applies to enterprises with at least 35 workers employed for more than one third of normal working time. The works council may appoint standing committees for the purpose of dealing with a particular subject-matter, such as health and safety. Such a committee must have a majority of council members and can be entitled by the works council to exercise one or more of its powers. The works council may also set up committees for separate departments within the enterprise. The establishment of committees is entirely at the discretion of the council, except in enterprises employing fewer than 100, where management may withhold its consent.

The works council's functions, powers and facilities with respect to health, safety and wellbeing at work have been substantially expanded under the Working Conditions Act of 1980 which basically covers both the private and the public sector.** Part of this Act came into force on 1 January 1983, but it is expected that it will take at least eight years for all the provisions of the Act to become operative. The Working Conditions Act does not only elaborate the works council's terms

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* In principle, the Works Council Act applies only to the private sector, but similar arragements exist in the public sector.

** The Act does not yet cover the transport sector, educational institutions and prisons; for the military, the Act applies with certain modifications.

of reference concerning safety and health, it also provides for worker involvement where no council is in office: enterprises which are too small to come under the terms of the Works Councils Act (i.e. having fewer than 35 employees engaged for more than one third of normal working hours) may be obliged to set up a working conditions committee with the same rights and facilities as the works council has as far as safety, health and wellbeing are concerned. Like the works council, working conditions committees are constituted entirely of employee representatives; if a company has several departments, each department elects its own representative.

It should be noted, however, that the provisions of the Working Conditions Act which allow the government to impose on certain groups of companies the obligation to set up working conditions committees, have not yet come into force (they will therefore be excluded from the review in the following paragraph). Even when these provisions become operative, it is likely that their impact will remain restricted: in view of the organisational and financial burden associated with the establishment of such committees on enterprises employing fewer than 35 workers, it is to be expected that they will only be made mandatory in circumstances where working conditions are hazardous.

In companies with neither a works council nor a working conditions committee, a role is assigned to 'the employees concerned' or 'a majority of the employees concerned'. For instance according to Art. 4(4) the employees concerned must be informed and consulted in advance on company policies affecting health and safety; according to Act. 40(1) a majority of them can call on the labour inspectorate.

Both the Works Council Act and the Working Conditions Act lay down provisions on such issues as facilities for worker representatives, protection from dismissal, time-off to carry out their duties and training.

2.2.9.3. Legal rights

According to Art. 6 of the Working Conditions Act, the employer is under a general obligation to see to the following:

- that all employees, when they start their job, are well informed about the hazards of their work and about the measures adopted to protect them from those hazards;
- that they remain adequately informed in the course of their employment;
- that they receive proper training concerning health, safety and well-being at work;
- that they know how to use protective devices which have been made available to them as well as safety devices on machines etc.

In Art. 7, the Act makes provisions for additional information to be given to young employees.

The works council is entitled to receive all information necessary for the exercise of its functions. Under the Working Conditions Act, certain groups of companies can be obliged to draw up:

- a yearly action programme, describing company policies with regard to safety, health and well-being;
- a labour safety report (mandatory only for enterprises where particular hazards prevail, as in the chemical industry);
- an annual report on working conditions.

In such companies as are required to produce one or more of these documents, the works council must be provided with a copy. Every individual employee must be given ac-

cess on demand to the yearly action programme and the annual report on working conditions. The employer must also inform the works council, or - if no works council is in office - the employees concerned, of every notice of prohibition served on him by the labour inspectorate, and of all official requests submitted by him to the inspectorate (e.g. concerning exemptions).

The Working Conditions Act does not entitle the works council to inspect the workplace and to investigate accidents or dangerous occurrences etc.; no more does it mention a right to have an investigation conducted by external experts recruited by the works council. Under Art. 14 of the Act, the members of the council (or of its working conditions committee) only have a right to inform themselves on working conditions within the enterprise.
The employer has a general duty to consult in advance with the works council or its standing committee (or with the 'employees concerned', when there is no such council) on all company policies which may affect safety, health or well-being at work. Furthermore, the works council can always require the employer to consult with it on specific matters of safety, health and well-being. It can veto all management decisions relating to an arrangement in the area of safety, health and well-being. However, the works council cannot force the employer to take such decisions on its own initiative and without recourse to the labour inspectorate.

Consultation at department level is required under Art. 16 of the Working Conditions Act: within companies comprising several departments,direct consultations as far as required for the sake of safety, health or well-being at work must take place in each department

on a regular basis between the head of the department and the workers employed therein or the representatives appointed by them, unless a special working conditions committee has been set up for that department.

Special mention should be made of the works council's rights vis-à-vis expert services.
The Working Conditions Act provides for the mandatory establishment of both occupational health services and safety services; however, so far only the establishment of occupational health services has been made compulsory for industrial companies with over 500 employees. The works council has a right to be consulted on matters concerning the organisation and functioning of the occupational health service, which must submit a report 'on the activities and findings of the last year and indicating the problems which deserve special attention'. Unlike for instance in France, the Dutch regulations do not provide for an inter-enterprise works council or comparable institution for the supervision of a group service; they state that "one or more representatives of the workers from the enterprises which have joined the service" should sit on its board; furthermore, the group service must send its yearly report to the works councils of all enterprises concerned.
Another difference with the French system concerns the hiring and firing of plant physicians: the employer does not need the works council's prior approval; the latter is only entitled to offer advice in case of dismissal. The law does not say anything on its role in decisions on whether or not to join an inter-enterprise service and on the choice of a particular service. Given its terms of reference as

defined in the Works Council Act 1979, one may assume that it has a right to offer advice on these issues. As regards the works council's influence on the daily work of the occupational health physician, Dutch law is similar to that in most other Member States which have adopted legislation on occupational health care: the works council has no right to interfere with actual medical practice. The law only says that the physician should 'cooperate with' and 'assist' the works council; to this is added, that he must submit all information required for the works council to perform its functions. Moreover, whenever he sends a report to management, he should submit a copy to the works council as well.

A special feature of Dutch legislation is the extensive regulation of the relation between employees or their representatives and the labour inspectorate. Apart from the fact that - as in most other Member States - worker representatives (i.e. either members of the works council or members of its standing committee on safety, health and well-being at work) are allowed to accompany officials of the inspectorate on their visit to a factory, they are also entitled to receive all necessary information from the inspectorate. Moreover, they must be informed and consulted when an inspector envisages a particular measure with regard to the company, for instance serving a notice of improvement on the employer. The inspectorate is legally required to act upon their request to inspect the workplace, to inquire into certain health hazards and to report its findings to them. Finally, the works council or its committees has the right of "request for application of the law": they may ask the inspectorate to take a certain measure, for

example to issue a prohibition notice or notice of improvement to the employer. If the inspector refuses to do so, he must let them know in writing and worker representatives may appeal against his decision with the Minister of Social Affairs and Employment.
In enterprises where a works council is lacking, it is the collectivity of workers exposed to the health hazard in question which is to be informed and consulted by the inspector before serving a notice of improvement concerning such a hazard. The majority of the workers concerned may make a request for application of the law. A recognized trade union may also exercise the right of request for application of the law in their stead, if there is no works council in office.
Art. 38 of the Working Conditions Act allows every individual worker to cease work in case of serious danger: if the employee is of the opinion that he is in serious physical peril and that this danger is so imminent that action by the labour inspectorate cannot be waited for, he can stop work while retaining full pay, until the inspectorate has taken a decision. He is however obliged to report this to the employer immediately. Discontinuation of work is only unlawful if the employer can prove that it was not reasonable for the employee to assume the existence of an imminently and seriously dangerous situation.

2.2.9.4. Comments

From the preceding, it appears that the Dutch statutory system of worker involvement in health and safety is elaborate and comprehensive. It not only bestows rights on elected representatives of the workers but also on individual employees and on groups of workers exposed to the same working conditions. It not only

regulates relations between workers and management, but also makes provisions for access to health and safety experts employed by the company, as well as to the labour inspectorate.

Although the law offers more support and provides better procedures for worker participation in larger companies where a works council operates, it should be noted that in companies with no institutional participation those employees whose safety, health or well-being are threatened in any respect have direct admission to the labour inspectorate and that a majority of them can request a statement against which they can appeal.

This is not to say that the law covers all aspects of worker participation in safety. For example, under the legislation in force, the establishment of specialised bodies such as health and safety committees is entirely left at the discretion of the works council. No more does the law provide for special safety delegates (like for instance the British 'safety representatives') with legal rights to inspect the workplace and to investigate accidents.

Sometimes, the law is rather vague, as in the case of the works council's right to veto management decisions relating to "arrangements in the area of safety, health and well-being". Until now, it has remained unclear how this wording should be taken. Do 'arrangements' only refer to internal regulations, or also to specific health and safety measures? What are the scope and limits of the concept of 'well-being'? And, above all, does the right of co-determination apply only to decisions aimed at the improvement of the working invironment or to all decisions directly affecting the employees' safety, health and well-being?

If it were interpreted in the latter sense, it would mean that quite a few company decisions would be subjected to the works council's prior agreement.
Another problem concerning the works council's co-determination right with respect to health and safety arrangements, is that it may interfere with the labour inspectorate's authority to issue improvement notices. Moreover, if a works council does not reach agreement with the employer on a proposed arrangement, it may either withhold its consent or exercise its right of request for application of the law. As a consequence, two different procedures may be started to resolve the same conflict. In a recent address to the Social and Economic Council, the Minister of Social Affairs and Employment considers this situation undesirable and confusing, and he suggests that all arrangements adopted by the employer to effectuate the provisions of the Working Conditions Act should no longer be subject to the works council's right of prior approval.
As the Working Conditions Act has only been in force (and only partially) for approximately two and a half years, it is as yet too early to assess its potential impact on worker participation in safety. Still, from the available information, it would appear that works councils are showing an increasing interest in health and safety matters. This development is evidenced by the growing number of council members participating in training courses on health and safety issues. Furthermore, in 1984 more than half of the companies with over 100 employees did have a specialised health and safety committee, mostly having been set up as a standing committee by the works council itself.
On the other hand, several of the new instruments made available to workers or their representatives by

the Working Conditions Act have so far only been used to a limited extent. In 1983, the right to discontinuation of work in the event of serious and imminent danger has been invoked only six times. Only two cases have been reported of a 'request for application of the law'. The latter, however, may be related to the fact that Art. 3 of the 1980 Act (concerning the general duties of the employer to promote safety, health and well-being at work 'as far as reasonably practicable') has not yet come into force.

On the whole, it would seem that the last two years have been predominantly a period of orientation on organisational and procedural arrangements for involvement in health and safety. It remains to be seen to what degree the instruments provided by the law will be used in the future.

2.2.10. United Kingdom

2.2.10.1. General remarks

The first British legislation providing for worker representation in safety matters was the Coal Mines Regulation Act of 1872. Like the mining laws adopted at the end of the nineteenth century in some other Member States, the 1872 Act allowed the workers to appoint safety inspectors from their own ranks. This provision was strengthened by the Coal Mines Act of 1911. Inspections were allowed at least once a month; all parts of the mine could be inspected and accidents and dangerous occurrences could be investigated. Mine-owners were obliged to provide appropriate facilities for the workers'safety inspectors. The provisions of the Coal Mines Act were updated by Section 123 of the 1954 Mines and Quarries Act, which deals specifically with workmen's inspections.*

In contrast with legislation regarding mines and quarries, factory legislation prior to 1974 (when the Health and Safety at Work Act was adopted) was generally silent on the question of workers' involvement in safety matters.

Under the Factories Act 1961 and related legislation, the employees or their trade union representatives had no rights to inspect the statutory safety and health records kept at the workplace, and no legal right to liaise with the factory inspector at his visit to the premises or to see any inspector's report which could affect them as individuals. Employees did not even have a formal, statutory right to information about

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*G.R.C. Atherly, R.T. Booth, M.J. Kelly, Workers' Involvement in Occupational Health and Safety in Britain, Int. Labour Review 1975, p. 469

the hazards of their work.

Except for the post-war Nationalisation Acts, which contained obligations to set up joint accident prevention machinery, health and safety legislation did not provide for any arrangement for worker representation. An attempt to enact such arrangements did not succeed: the Employment (Inspection and Safety Organisation) Bill 1953 which made provision for safety delegates and committees in all industries, elected by the persons employed, was defected. Another Bill - the Employed Persons (Safety and Health) Bill 1970, proposing to grant to recognised trade union the right to appoint safety representatives in all factories with ten or more employees, augmented by a right to require management in factories employing 100 or more to set up joint safety committees - fell with the Labour Government in 1970.*

The lack of legal requirements does not mean that joint accident prevention machinery did not exist. Many of the larger firms established management-worker safety committees with the intention of providing a forum for discussion and initiating schemes of self-inspection and self-regulation. During the sixties there was a considerable increase in the number of these essentially consultative bodies. According to the Robens Report** , the number of factories with joint safety committees rose from 5,826 to 9,487 between 1966 and 1969, at which point it was estimated that joint safety committees covered nearly 70% of the workforce in factories employing more than fifty people. Where specific machinery did not exist, health and safety

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* R.W.L. Howells, Worker Participation in Safety. The Development of Legal Rights, Industrial Law Journal Vol. 3(1974), p. 87.

** Safety and Health at Work, Report of the Committee 1970-1972, H.M.S.O. London 1972, p. 19.

could still be matters for workplace negotiation, since shop stewards could act as employee representatives also in this field and discuss safety and health issues with management as part of their practice.
In 1972 the Robens Committee published its Report. In the context of health and safety, according to the Committee, real progress is impossible without the full cooperation and commitment of all employees. If workpeople were to accept their full share of responsibilities they had to be able to participate fully in the making and monitoring of arrangements for safety and health at their place of work. Since there was a greater natural identity of interest between the two sides of industry in relation to safety and health problems than in other matters there was "no legitimate scope for bargaining on safety and health issues, but much scope for constructive discussion, joint inspection and participation in working out solutions".
Although the Robens Committee acknowledged that measures of statutory backing could help to spread already existing voluntary arrangements for joint cooperation on safety and health between employers and employees, it felt that a statutory provision requiring the appointment of safety representatives and safety committee (a proposal in the Employed Persons Health and Safety Bill 1970) might be rather too rigid and too narrow in concept. Instead, the Committee recommended, that there should be a statutory duty of every employer to consult with his employees or their representatives at the workplace on measures for promoting safety and health at work, and to provide arrangements for the participation of employees in the development of such measures.
However, the form and manner of such consultation and participation would not be specified in detail, so as

to provide the flexibility needed to suit a wide variety of particular circumstances and to avoid prejudicing satisfactory existing arrangements.
The Health and Safety at Work Act - adopted two years after publication of the Report - was for a large part based on the general philosophy elaborated by the Robens Committee. As to arrangements for worker involvement in safety and health, however, the 1974 Act went further than the Robens Committee proposal, and provided for the appointment of workers' safety representatives and for the establishment of a safety committee at their request.
According to the Health and Safety at Work Act as enacted in 1974, the Secretary of State could allow both the appointment and the election of safety representatives. The proposal, as first worded, envisaged only the appointment of representatives by recognised trade unions. This was sharply criticised in the course of Parliamentary passage on the grounds that the law would not provide for statutory safety representatives in areas of activity where no trade unions were recognised or operated. In the event, a provision enabling employees to elect representatives from among their number was added to the Bill at the House of Lords level. Not much later, however, the provision in question - Section 2(5) of the 1974 Act - was repealed by the Employment Protection Act 1975, making the appointment of safety representatives a union prerogative.

The Health and Safety at Work Act came into force on 1 April 1975. It covers persons employed both in the private and in the public sector. Among the regulations implementing the Act are the Safety Representatives and Safety Committees Regulations 1977 (S.I. 1977, No. 500), which became operative on 1 October 1978,

together with two Codes of Practice approved by the Health and Safety Commission (see 1.2.10.), one relating to safety representatives and safety committees, the other concerning time off for the training of safety representatives.
A survey carried out by the Health and Safety Executive in 1979 one year after the Safety Representatives and Safety Committees Regulations had been in force indicated that around three quarters of employees in manufacturing and some other sectors were covered by safety representatives. More up-to-date information is not available but a recent independent survey estimates that there could be about 150,000 trade union safety representatives in Britain.
Since the enactment of the Health and Safety at Work (Northern Ireland) Order, the same health and safety legislation has been in force in all parts of the United Kingdom.
According to the 1974 Act, the safety representatives appointed by recognised trade unions from amongst the employees represent the employees in consultations with the employer. It is the duty of every employer to consult such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

2.2.10.2. Institutional arrangements

Appointment of representatives may take place irrespective of the number of workers employed in the undertaking, except in the case of workers employed in a mine which comes under the Mines and Quarries Act 1954. As far as reasonably practicable, a person appointed as a

safety representative must either have been employed in that undertaking for the preceding two years, or have had at least two years experience in similar employment. In addition to consultation with the employer, the safety representative has the following functions:

- investigating potential hazards and dangerous occurrences;
- examining causes of accidents;
- investigating complaints from represented employees;
- making representations to the employer on matters affecting employees' health, safety or welfare;
- carrying out inspections;
- communicating with the appropriate enforcing authorities.

An employer must permit a safety representative to take such time off with pay during working hours as is necessary for the purpose of performing his functions and undergoing the relevant training. If the employer has failed to permit him to take the appropriate time off or to pay him, a safety representative may present a complaint to an industrial tribunal, thus Section 11 of the 1977 Regulations.

If at least two safety representatives request him in writing to do so, the employer must establish a safety committee to keep under review the measures taken to ensure the health and safety of his employees. In establishing such a safety committee, he must consult with the safety representatives who made the request and with the representatives of recognised trade unions whose members are employed in any workplace in respect of which he proposes that the committee should function. Furthermore, he must post a notice stating the composition of the committee and the workplaces to be covered by it. The committee must be established not later than three month after the request.

The 1977 Regulations do not contain any further provisions on the composition of the committee, its functions, powers and mode of operation, except for Section 4 (1)(h) which charges the safety representative with attending meetings of the safety committee in his representative capacity. However, in the Guidance Notes published together with the Regulations, the Health and Safety Commission has given suggestions for and advice on the organisation and functioning of safety committees.
Finally, it should be noted that during the seventies there has been increasing legislation on industrial relations. At least to a certain extent, this legislation provides legal backing and support to the activities of the representatives of recognised trade unions at the workplace. This legislation is also of some importance for employee representation in health and safety, given the central position of the union-appointed safety delegate. In the following, however, I will focus on legal rights conferred upon such representatives by health and safety legislation.

2.2.10.3. Legal rights

Under Section 2(2)(c) of the Health and Safety at Work Act it is the duty of every employer to provide such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety of his employees. To this general duty is added the obligation to prepare and, as often as may be appropriate, revise a written statement of his general health and safety policy and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees. According to the

Employers' Health and Safety Policy Statements (Exceptions) Regulations 1975 (S.I. 1975, no. 1584) this obligation to prepare a written statement does not apply to employers employing fewer than five people. The Safety Representatives and Safety Committees Regulations 1977 require employers to make information within their knowledge necessary for safety representatives to fulfil their functions,available to them. According to the Health and Safety Commission's Code of Practice on Safety Representatives and Safety Committees* such information should include:

- information about the plans and performance of their undertaking and any changes proposed insofar as they affect health and safety at work;
- information of a technical nature about hazards and precautions deemed necessary to eliminate or minimise them, in respect of machinery, plant, equipment, processes, systems of work and substances in use at work, including relevant information provided by others such as manufacturers or suppliers;
- information kept by the employer relating to the occurrence of any accidents, dangerous occurrences or industrial diseases;
- any other specific information related to health and safety, including the results of any measurements taken in the course of checking the effectiveness of protection measures.

Section 7(2) of the 1977 Regulations contains several exceptions to the employer's duty to provide information, among them disclosure of information which would cause 'substantial injury' to the employers undertaking.

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* Although the Codes of Practice approved under the 1974 Act have no direct binding effect on employers, the provisions of such codes are admissible in evidence in criminal proceedings according to S. 17 of the Act.

After giving the employer reasonable notice, safety representatives are entitled to inspect and take copies of any document relevant to the workplace or to the employees, represented by them, which the employer is legally required to keep (except a health record of an indentifiable individual). Furthermore, safety representatives have a legal right to inspect the workplace or a part thereof if they have given the employer notice in advance and have not inspected it in the previous three months. They may carry out more frequent inspections by agreement with the employer. They are also entitled to inspections following notifiable accidents, occurrences and diseases, if it is safe for an inspection to be carried out and the interests of the employees represented by them might be involved. The employer must provide such facilities and assistance as the safety representatives may reasonably require (including facilities for independent investigation by them and private discussion with the employees), but he or his representative may be present in the workplace during the inspection.

Whereas the law is very elaborate as far as rights to information and inspection are concerned, it goes into far less detail concerning consultation. Apart from the general duty of the employer under Section 2(6) of the 1974 Act to consult with safty representatives regarding the making and maintenance of arrangements for effective cooperation in the development of health and safety measures and in monitoring their effectiveness, the 1977 Regulations entitle the representatives to make representations to the employer on matters arising from their investigations or employee complaints and on general matters affecting health, safety or welfare at work. Finally, the safety representative is entitled to participate in the consultations taking place in the safety committee.

The safety committee does not have any formal decision-making powers, however, nor does the safety representative have a right to veto management decisions on safety grounds. The absence of any form of co-determination does not mean, of course, that safety and health problems may not be discussed with management with a view to bargaining out the matters in dispute and resolving matters by collective agreement or otherwise. According to the Bullock Report*, the provisions of the 1974 Act will have the effect of bringing a whole range of issues associated with health and safety into the sphere of joint regulation.

As British legislation does not require the employer, except if he is covered by the Construction (General Provisions) Regulations 1961, to employ health or safety experts in his undertaking, or to join an inter-enterprise occupational health or safety service, the relationship between employees or their representatives and such experts or services is not regulated by the law. But is does contain several provisions on employee communication with and access to the health and safety inspectorate.
The most important provision in this respect is Section 28(8) of the Health and Safety at Work Act, which states that an inspector shall - in circumstances where this is necessary for the purpose of helping to keep persons or their representatives employed at any premises adequately informed about matters affecting their health, safety or welfare - give factual information discovered in course of his investigation, as well as information

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* Report of the Committee of Inquiry on Industrial Democracy, London HMSO 1977, Cmnd. 6706

on any action which the inspector has taken or proposes to take. Section 4(1) of the 1977 Regulations designates safety representatives as recipients of this kind of information and empowers them also to represent the employees in consultations at the workplace with inspectors of the Health and Safety Executive and of any other enforcement agency.
Although safety representatives have formal rights to liaise with the inspectorate and to be informed by it, there is no ready machinery to compel an inspector to disclose what he considers unnecessary nor can they apply directly for court orders requiring an inspector to enforce regulations by means of an improvement or prohibition notice. No more does the safety representative (or, for that matter, the individual employee) have a statutory right to stop the work in any area where they feel there is imminent risk of personal injury.

2.2.10.4. Comments

The British system of worker participation in occupational health and safety has at least three characteristic features when compared with the legal arrangements developed in most other Member States of the Community.
First of all, the system assigns a central role to individual safety delegates as opposed to more complex machinery such as joint committees or works councils. One possible advantage of this system is that it may be applied to all enterprises, whereas legislation on joint committee or works councils usually only applies to companies of a certain size.
Second, the system fits well into the British voluntaristic tradition of industrial relations in that it is optional: the appointment of safety representatives is a right, not a duty. In the absence of initiatives

at the employee side, the employer is not obliged to see to it that another arrangement for worker participation is set in place. Nevertheless, appointment of such representatives is attractive, since the law provides for considerable legal backing to their activities. A third feature is the trade unions' prerogative to appoint safety representatives, which creates the problem of encouraging consultation on safety matters in workplaces where there is no recognised union. This situation has given rise to various comments in the literature. According to some, lack of union representation ought not to cut off employees from consultation in respect of safety, but others have pointed out that a disproprotionately high number of trade union members are employed in industries with above-average accident rates, and that there are consequently sound industrial relations as well as good health and safety reasons for restricting the statutory appointment of safety representatives to the unionised sector.

How do safety representatives and safety committees operate in practice? According to a recent publication which surveys the research and studies conducted on this subject-matter*, after the Health and Safety at Work Act became operational in the mid-seventies, there was a sudden and unprecedented increase in worker participation in health and safety. "Training courses for safety representatives have been set up on a large scale, although inevitable these are of limited scope and in themselves can only hope to provide an introduction to workplace health and safety. It remains to be seen whether safety representatives will cope with the problems attendant upon their new role. So far,

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* A.J. Glendon, R.T. Booth, Worker participation in occupational safety and health in Britain, Int. Labour Review, Vol. 121 (1982) p. 399

the evidence remains scanty on precisely how they are adapting to their functions".
The authors point out that, although safety committees previously existed in many organisations, they have been promoted by health and safety legislation as a vehicle for worker participation. "Their effectiveness in significantly improving occupational health and safety in Britian remains to be proved. Nevertheless, whatever the objective evidence might reveal, there are grounds for regarding the safety committee as an aid to industrial relations which is valued by the participants".

2.3. Comparative analysis

2.3.1. Institutional arrangements

2.3.1.1. Types of machinery

Although the rationale underlying the enlargement of worker participation in occupational safety is more or less identical in all EEC member States, the arrangements that have been adopted for this purpose are varied. In some countries existing institutions (works councils, staff representatives or union delegates) have been given safety responsibilities; elsewhere, special mechanisms have been created (work environment committees, safety committees, safety representatives). In several countries both general and specialised bodies play a role, their character depending largely on prevailing traditions in the field of industrial relations. Basically, three types of systems for employee involvement in health and safety matters may be distinguished:

- systems in which works councils set up under statute law occupy a central place and in which safety delegates or safety committees play only a secondary role;
- systems in which joint safety committees form the main channel of participation;
- systems in which the law does not require the establishment of either general of specialised bodies with health and safety responsibilities, but allows for the appointment of safety delegates or safety representatives.

The first kind of arrangement can be found in the Federal Republic of Germany, Luxembourg and the Netherlands. Dutch legislation provides the purest example of this type, because the establishment of a committee on "safety, health and well-being at work"

is almost entirely left to the works council ('ondernemingsraad'). German and Luxembourg law provide for the mandatory appointment of safety delegates ('Sicherheitsbeauftragten'; 'délégués à la sécurité') and safety committees ('Arbeitsschutzausschuss') respectively, at least in certain circumstances, in addition to work councils ('Betriebsrat' and 'comité mixte' respectively). The powers of these specialised bodies, however, are very limited compared with those of the works council.

Assigning a primary role to general bodies, such as works councils with co-determination rights, has an obvious advantage: theoretically, these general representative bodies are in a better position to negotiate on health and safety matters and to weigh improvements of the working environment against other employee interests. In practice much depends on the degree of priority given to health and safety issues. It always remains possible for these issues to be pushed on to the sidelines. This risk may be minimised, at least in the larger or most dangerous undertakings, by establishing safety committees, which can devote all their energy and resources on safety and health and gain more expert knowledge. In Germany the establishment of such a committee depends on whether the undertaking has to employ occupational health and safety experts under the Occupational Safety Act of 1973. The Netherlands Working Conditions Act of 1980 allows for more differentiation: except for very small undertakings (fewer than 35 employees) where committees may be legally prescribed (which has not been done until now), the establishment of specialised committees is left to the discretion of a works council. With this approach there is a greater chance of committees being set up where they can be really use-

ful; on the other hand, committees may fail to exist in undertakings where they are badly needed.

The second system, in which legally prescribed joint safety committees occupy a central place, is the most common one, although considerable variety exists as to the way in which this principle is put into practice. The purest examples of this system are the arrangements provided for under French and Belgian law. Other countries which belong in this category are Denmark and Ireland. Finally, Greece should be mentioned, where preparations are being made for legislation requiring the election of safety and health committees in enterprises employing more than fifty workers.
In France and Belgium, although establishment of a works council ('comité d'entreprise' resp. 'conseil d'entreprise') is required under statute law (at least in the medium-sized and large undertakings), health and safety matters are mostly left to specialised bodies ('comité d'hygiène, de sécurité et des conditions de travail' and 'comité de sécurité, d'hygiène et d'embellissement des lieux de travail' respectively). In spite of the works council's rights to be informed and consulted on working conditions, the committee is the main channel of participation, because it is better equipped to deal with specific safety and health problems and because, in addition to information and consultation, it performs a number of other functions (inspection and supervision, responsibility for employee safety training, etc.).
Irish and Danish legislation do not require the employer to set up a works council with certain responsibilities concerning work safety alongside the safety committee, but they provide for the appointment

of safety representatives in addition to the safety committee. Under Irish law, in all premises which come under the Safety in Industry Act and have more than twenty employees, workers appoint from among themselves the worker members of a joint worker/ management safety committee*; but in factories where up to twenty workers are employed, they elect a safety representative instead of cooperating with the employer in a safety committee.
In Denmark, in companies employing twenty or more employees, safety committees must be set up. However, the safety committee constitutes part of the company's safety organisation, which includes the election of safety representatives in companies with ten or more employees for each department or work sector. Every representative forms a 'safety group' together with the supervisor of the department or sector concerned. The employee representatives on the safety committee are appointed from among the safety representatives.

The third system, mentioned above, exists in Italy and in the United Kingdom. Italian and British law do not require the establishment of either works councils or other represntative bodies with specific health and safety functions. The appointment of safety representatives is optional.

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* It is interesting to note that the Barrington Report states that this system is not flexible enough and advocates a system whereby the mandatory establishment of safety committees is replaced by the employees' right to appoint their own safety representatives. This would mean that Irish legislation would fall under the third type of system rather than under the second one.

The Italian Workers' Statute of 1970 stipulates that workers may exercise certain rights 'through their representatives', but it does not specify, who these representatives are. This last question is answered in many collective agreements which designate 'factory councils' or 'environment committees' as worker representatives in the field of health and safety. In Britain, recognised trade unions have the right to appoint safety representatives from amongst the employees; if they fail to do so, the employer is not under any obligation to appoint them himself, as under Irish law. The employer is obliged to set up a safety committee, only if at least two safety representatives request him to do so.
This third system allows for a selective and flexible approach in the design and setting up of machinery for discussion between employer and employees. On the other hand, the absence of statutory rules requiring institutionalised representation in health and safety matters may result in unequal participation opportunities for employees in the different industries and firms.

Each of the three systems described above assigns a central place to representatives of the workers, and makes little provision for direct participation in the strict sense. Where formal rights are bestowed upon workers themselves (such as an individual right to information concerning one's own working circumstances), these rights are for the most part only secondary to the powers of workers' representatives. At first sight, this may seem contrary to the value attached to the experience and insights of the owrkers exposed to a given working environment. On the other hand, it is hard to see how, except in very small undertakings,

participation would be feasible other than through representatives, in particular when it entails influence on the decision-making process whereby the collective interests of all workers and of the plant or enterprise as a whole are at stake.
To a certain extent, each of the systems may still allow for direct participation. This may be done by providing that the employee representatives on working condition committees or health and safety committees represent different departments or are elected by a group of workers subject to similar working conditions, as for instance in Italy or in the Netherlands. Another possibility is to make provision for machinery operating at department or unit level in addition to machinery at plant level. Examples are the Danish 'safety group' (see above) and French legislation according to which several sections of the health and safety committee can be established, depending on the nature and structure of the enterprise. In this context, special mention should be made of the new right of self-expression, laid down in a French Act of 4 August 1982. This right, which supports and supplements employee representation through the health and safety committee and other representative bodies, enables employees to express themselves directly and collectively on all issues concerning the organisation of work and the working conditions.

2.3.1.2. Legal basis and field of application

A direct relation exists between the type of arrangement adopted in a member country and the legal basis of the arrangements in question. In Germany, Luxembourg and the Netherland, it is primarily the law on works councils that deals with the establish-

ment of representative institutions with health and safety responsibilities. It should be noted, however, that occupational safety statutes in Germany and in the Netherlands ('Arbeitssicherheitsgesetz', 1973; 'Arbeidsomstandighedenwet', 1980) contain special provisions regarding the works council's powers in safety matters, additional to those already laid down in the law on works councils ('Betriebsverfassungsgesetz', 1972; 'Wet op de ondernemingsraden', 1971).

In countries which have adopted the second system, it is predominantly occupational health and safety legislation that regulates employee participation in the field of working conditions, although other legislation (e.g. laws on works councils) may contain additional arrangements.

In Britain and Italy, which have only enacted enabling legislation with respect to employee involvement in safety, the relevant statutory provisions are either laid down in health and safety law (as in the British Health and Safety at Work Act 1974) or in general legislation on industrial democracy (as in the Italian 'Statuto dei lavoratori' of 1970).

To which types of economic activities do these various statutory provisions apply? Which employers are obliged to set up representative bodies with health and safety responsibilities? In which sectors do workers or trade unions avail of the right to appoint representatives?

As to the last question, both the British and the Italian law cover the private and the public sector, at least in principle.*

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* Art. 37 of the Italian Workers' Statute makes an exception for those public agencies for which specific provisions have been enacted.

As far as Germany, the Netherlands and Luxembourg are concerned, the legislation on works councils applies only to the private sector. In Germany and the Netherlands, however, representative bodies exist in the public sector which have powers and functions similar to those of the works councils in the private sector. In Luxembourg, the 1979 Act on personnel delegations (which have to nominate one of their members as a safety delegate), applies also to workers employed in the public sector on the basis of a labour contract. In the Member States where joint safety committees occupy a central position, legislation requiring their establishment in most cases covers both the public and the private sector. This holds for Denmark and France, and basically also for Belgium.* Minor exceptions to this rule exist, however, in particular for economic activities for which specific arrangements have been adopted, as for mines and quarries in France and Belgium, and some transport companies in France.
A completely different situation exists in Ireland, since the Safety and Industry Acts, 1955 and 1980, only apply to industrial activities, irrespective of whether the private or the public sector engages in them; excluded from legislative cover are workers in such areas as agriculture, forestry, fishing, transport, laboratories, hospitals, offices and shops.

If a sector is covered by legislation requiring the establishment of general or specialised representative

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* In part of the Belgian public sector, notably the central state apparatus, the law provides for consultative committees, which, however, have the powers of a health and safety committee (Royal Order of September 28, 1984).

bodies, this does not necessarily mean that all the employers in that sector or branch are required to do so. In general, the obligation to set up a works council or safety committee depends on the number of employees. The threshold over which such bodies must or may be established can be relatively low (as in Denmark and Germany, for instance) or relatively high, as in Belgium, France and the Netherlands.* Where the law only enables employees or trade unions to appoint safety representatives no such thresholds exist; in most of the other member countries the establishment of representative bodies is not required in small or very small enterprises.

Traditionally, formal schemes of participation are considered necessary only for undertakings of a certain size. But even if it seems reasonable not to burden small undertakings with the same organisational obligations as bigger ones, it is questionable whether worker particpation in these undertakings can be durable and effective without any institutional safeguards or legal backing. It is interesting to see that in those EEC countries where formal provisions on the establishment of works councils or safety committees do not apply to small undertakings, there is a tendency to provide for additional forms of particpation, in particular in countries with relatively high thresholds.

In Belgium and France, union delegates ('délégation syndicale') and personnel delegates respectively ('délégués du personnel') are entitled to act as safety

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* In some countries, the number of employees over which a safety committee must be established may also vary between different branches of economic activities. Danish and French law, for instance, provide special rules for the building and construction sector.

committees in firms with fewer that fifty employees, where establishment of such committees is not mandatory. In the Netherlands, where works councils have to be set up in enterprises employing at least 35 people for more than one third of normal working time, the Working Conditions Act of 1980 provides another solution: in undertakings without a works council or working conditions committee, workers exposed to a particular hazard may with respect to that hazard, exercise many of the rights otherwise enjoyed by employee representatives on works councils.

2.3.1.3. Composition and functioning

Except under British and Italian law, legal rights to participate in health and safety matters are usually not bestowed upon employee representatives as such, but on the councils or committees on which they have a seat. Therefore, the composition of these bodies is of some importance.

The works councils which play a central role in the field of work safety in Germany and the Netherlands consist entirely of employee representatives. The German health and safety committee ('Arbeitsschutzausschuss'), however, has a mixed composition. Under Luxembourg law the reverse situation exists: whereas the works council is a 'comité mixte', the personnel delegation, which has more limited powers and responsibilities, comprises only employee representatives.

In member countries where safety committees occupy a central place, such committees are joint bodies, although the extent of management participation varies. In France, Belgium and Denmark, the committee is chaired by the employer or his representative. In France, however, the other members are employee rep-

resentatives, whereas Belgian law states that the number of employee representatives must be higher than or at least equal to the number of management delegates. Under Danish law, apart from the chairman, two members of the committee are employee-elected safety representatives, whereas two other members represent the supervisors of department or work sectors. The Irish Safety in Industry Acts only state, that the majority of members of the joint safety committee are to be appointed by the employees.

Theoretically, a mixed composition of safety committees may have certain disadvantages: it may compromise its potential as a channel for employee representation and worker representatives may feel they lack sufficient possibilities to act in their representative capacity. Furthermore, the committee's effectiveness is more dependent on cooperation between the two sides, in particular when common action is required of the committee, as in a situation of imminent danger or after an accident or dangerous occurence.

It is obvious, however, that much depends on its actual composition. As long as workers have at least equal representation with employers' representatives (as is also required by the ILO Occupational Safety and Health Recommendation, 1981 Art. 12,1), these drawbacks may be small. On the other hand, a limited representation of management on safety committees can improve communication between employer and employees, and in that way facilitate the exercise of employee rights concerning information and consultation. It is interesting to see that, over the last decade, in those member countries which have the longest tradition with regard to legally required joint safety committees, i.e. France and Belgium, employee representation on the committee has been strengthened considerably either by increasing

the number of worker representatives (in particular in France) or by granting them powers of their own (in particular in Belgium), so as to give them a more independent position.

As to the functioning of representative institutions with health and safety responsibilities, disparity exists concerning the extent to which this subject-matter is regulated under the law of the member countries. In some legislations elaborate provisions have been laid down on:

- the frequency of meetings;
- who may request extra meetings to be held in addition to regular meetings;
- which facilities must be available for the committee or council;
- whether health and safety experts employed by the enterprise are to attend its meeting;
- whether experts from outside may be brought in on the initiative of employee representatives.

Rather detailed provisions of this kind can be found in Belgium, Denmark, France and Luxembourg. No legal provisions, or hardly any on this subject-matter have been adopted in Ireland, Britain and Italy. In the latter two countries, an important reason for this would seem to be that the law does not directly require the establishment of councils or committees, and deals exclusively or predominantly with the appointment of worker representatives and their powers. Germany and the Netherlands are somewhere in the middle of this scale.

In chapter 2.2 which surveys the situation in the member countries, not much attention has been given to the legal provisions concerned, the main reason being that this study is aimed at the principles of

participation and that a detailed account on such matters as frequency of meetings etc. would exceed the scope of the study. There is one aspect of the provisions adopted with regard to the organisation and functioning of representative institutions in the field of health and safety at work, however, which deserves at least some attention, as it may also be relevant for actions undertaken at the Community level.

The extent to which employee representatives will be able to carry out their tasks and to make use of the rights given to them would seem to depend on at least three conditions:

- time off to perform their functions;
- protection against dismissal or against other adverse treatment related to their activities as worker representatives;
- a right to the training needed for their activities or time off to receive such training.

In the majority of Member States, the law makes provisions for both time off for acting as representative and undergoing the relevant training, as well as for protection from undue treatment. This holds for Belgium, Denmark, Germany, France, Luxembourg, the Netherlands and the United Kingdom.

The provisions adopted for this purpose are not completely identical, however. As to the first point - time to act as a representative - all legislations state that the persons representing the workforce in health and safety matters must be paid during the time spent carrying out their responsibilities. But whereas in some countries representatives may take time off with pay as far as 'necessary' to do their work, in other countries detailed provisions have been adopted on the number of hours with pay retention to

which employee representatives are entitled. Also the provisions concerning protection are different, mainly because the special procedures required for dismissal of employee representatives are not the same.
The availability of adequate training and schooling for employee representatives is generally regarded as one of the most crucial factors in determining their success or failure. In most member countries, the law only makes provision for time off for training purposes, i.e. the employer must allow worker representatives to receive training with pay retention, but in some countries, notably Denmark, safety training is mandatory.
In a minority of member countries, no legal rules have been adopted on time off, protection and training. This holds for Ireland, and also for Greece (where statutory arrangements on worker representation in health and safety matters are still in the making). The same can be said about Italy; mention should be made of the fact, however, that the representatives appointed by the employees under art. 9 of the Workers' Statute, may fall under art. 28 of the same Statute, which provides for a court procedure against employers who interfere with trade union rights.

2.3.2. Legal rights

2.3.2.1. Rights of individual workers

Rights to be informed, to be consulted or to participate in any other way in safety and health matters may be given to workers individually or to workers as a collectivity; in the latter case the rights concerned are most often exercised by employee representatives. Although participation rights in the field of occupational safety and health generally rest with worker representatives or with the bodies on which they have a seat, under the law of the majority of Member States, individual employees also enjoy certain statutory rights. Most often such rights concern information, but in some countries one can also find rights to discontinuation of work in the event of imminent and serious danger.

As to information, a distinction should be made between rights to be informed on specific hazards, such as the health risks of a particular substance used at work or the danger of machines, and a general right to receive adequate information on work hazards. For the purpose of this study, I will focus on the latter. Furthermore I will not discuss the question whether the individual worker may be said to have a 'right to know' under civil or common law in the different Member States, since the existence, the extent and the enforcement of such a right is generally too uncertain to make a statutory right redundant.
The most comprehensive individual right to information can be found in Germany and the Netherlands. Both Art. 81 'Betriebsverfassungsgesetz' and Art. 6 of the Dutch Working Conditions Act oblige the employer to inform the employee on all the hazards of his work and the measures adopted to protect him. This information has to be given not only before the employee starts his job, but also after a change in working conditions.

A general duty for the employer is also laid down in the British, Italian and Danish occupational safety legislation. Under S.2(2)(c) of the Health and Safety at Work Act, the employer must provide such information as is necessary to ensure health and safety; furthermore he has to bring a written statement of safety policy to the notice of all his employees. According to Art. 4 of the Italian Decrees of 1955 and 1956, and Art. 17 of the Danish Working Environment Act respectively, it is the general duty of the employer to inform the employees of any risks of accidents or diseases which may exist in connection with their work.

Under French and Belgian law, the individual worker's 'right to know' is generally recognised, but the wording of the relevant statutory provisions would seem to be less unambigious or less comprehensive than the enactments mentioned above. According to the French Code du Travail, it is the objective of the safety and health training to which every individual employee is entitled, to inform him on the hazards to which he is exposed; it is not completely clear however, which obligations follow from this provision for the employer. Belgian law contains several provisions dealing with disclosure of health and safety information to individual employees. The most encompassing provision would seem to be Art. 163 of the 'Règlement Général pour la Protection du Travail', according to which the employer is under an obligation to inform the employee about work hazards and protective measures if the employee runs a risk of developing a professional disease or in the event of major accident risks which require the use of protective equipment. On the other hand, it must be acknowledged that Belgian law is much more elaborate

on what this information must include and how it must be communicated to the employee, than the law of the other Member States.
Statutory provisions laying down a general, individual right to information are lacking in Ireland, Greece and Luxembourg. This is not to say that employees never have a legal right to receive any information or training in these member countries. Sometimes, such a right is provided for with respect to specific hazards, like the right to instruction for employees working at machines under Irish Law. In Ireland, individual employees also have the right to receive a copy of the safety statement when a safety representative or committee does not exist.

The right to stop work in a dangerous situation has been a much debated issue in several member countries. Until now, in most countries the adversaries of this right have been successful in arguing that workers refusing to do hazardous work are sufficiently protected under the law governing the employment contract, and that they can appeal to the labour inspectorate. Moreover, it has been argued that an unjustified refusal could make them liable for damages or that a sudden discontinuation of work could endanger fellow employees.
So far, a statutory right to cease work has been adopted in the Netherlands and in France. In both countries, the law requires that the employee has reason to assume that the situation in which he works presents a serious and direct hazard to life or health, and that he immediately gives notice to the employer. The objective of these statutory provisions is to protect the employee from disciplinary sanctions, the withholding of pay or even dismissal.

The only other EEC country where a similar right exists is Denmark; under Danish law, however, it is not the individual worker who enjoys this right, but the 'safety group', consisting of a safety representative and the supervisor of the department or work sector concerned.

2.3.2.2. Rights of workers or their representatives: information

In most of the Member States the law provides employee representatives with a general right to information on health and safety at work. Exceptions are Greece (where a new act on working conditions is in the making) and - at least in a certain sense - Italy (where Art. 9 of the Workers' Statute does not contain an unambigious right to such information).*
In the other countries, the employer is basically under an obligation to give adequate or appropriate information to employee representatives, although the wording of the provisions concerned varies and the law is more detailed on this point in some Member States than in others. In most of them the law says that it is the employer's duty to disclose all information which worker representatives reasonably need to carry out their tasks (Belgium, France, Germany, the Netherlands, the United Kingdom). In Luxembourg, Denmark and Ireland, the law would seem to be more limited in its wording. In Luxembourg, the works council is entitled to information on all decisions concerning working conditions and on their effects on the working environment. In Denmark, the Working Environment Act obliges the employer to offer both the

* According to the legal doctrine, however, Art. 9 may be interpreted as including this right; furthermore, many collective agreements entitle worker representatives to information on particular hazards.

members of the safety committee and the safety groups the opportunity of obtaining the necessary information or training in matters concerning safety.

Under Irish law, worker representatives have a right to receive a safety statement in writing, specifying the manner in which the safety and health of the persons employed will be secured.

Apart from the general duty to provide adequate information in several Member States, additional provisions have been adopted to ensure that worker representatives receive appropriate and timely information.* Three types of provisions should be mentioned in particular. First of all, under the law of some Member States employee representatives (or the committees or councils comprising such representatives) are explicitly entitled to information on the results of measurements, enquiries or investigations, as under the Belgian R.G.P.T. or the British Code of Practice on Safety Representatives and Safety Committees.

Secondly, in five out of the ten Member States, worker representatives (at least in the larger or more dangerous undertakings) are entitled to receive and to discuss (periodical) documents concerning the company's activities as regards health and safety. This is the case in Britain and Ireland (safety (policy) statement), as well as in France, Belgium and the Netherlands (yearly action programmes). In the latter three countries the employer is also under an obligation to report, after a certain period, on the extent to which the programmes have been implemented.

Finally, in a growing number of member countries employers are legally required to keep records, for instance concerning the standards in force in the workplace, the occurrence of accidents or occupational

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* For a more detailed account, see Chapter 2.2.

diseases, the use or presence of dangerous substances or machines, or the results of biological and environmental monitoring. The most extensive rights of access to these records are provided for in the British and Belgian laws, which entitle safety representatives and safety committees respectively to inspect all relevant reports and documents which the employer is legally required to keep. Extensive provisions on record keeping and worker access to such records also exist in Ialy, but the provisions in question are most often laid down in collective agreements only.

In addition to having the right to be informed, worker representatives in most EEC countries are entitled in one way or another to be involved in inspections of the workplace and investigations of accidents. Much variety exists, however, in the degree of participation. Under Irish and Dutch law worker rights are rather limited: in Ireland, worker representatives can accompany a labour inspector visiting the workplace; in the Netherlands, they are also entitled to "acquaint themselves with the working conditions existing within the plant", but it is not completely clear what this implies in practical terms.
Under United Kingdom and Italian provisions, on the other hand, worker representatives have an unambigous right to monitor safety and health protection at work. The United Kingdom Safety Representatives and Safety Committees Regulations and some Italian collective agreements allow them to hold their own inspections and investigations. The safety delegate appointed by the Luxembourg 'personnel delegation' has a similar right.
In most of the other EEC countries employer and employee representatives are supposed to cooperate in periodical inspections of the workplace and investi-

gations of accidents, as in Belgium and France, where making periodical inspections and conducting accident investigations is a responsibility of the health and safety committee.

An interesting feature of health and safety law in at least some of the member countries is the existence of a formal right empowering worker representatives to request particular investigations or measurements to be undertaken by the employer or experts employed by him. Belgian law is most elaborate on this point, as it entitles employee representatives to request the employer to investigate the possible health hazards of, for instance, substances used at the place of work, and to request the occupational health physician or the safety expert employed by the firm to visit and inspect a particular department or work site.

In countries with legislation on (inter-)enterprise occupational health services and/or occupational safety services (i.e. France, Germany, Denmark, Belgium and the Netherlands), the professional staff of the service is under a general obligation to 'cooperate with' and 'assist' workers or their representatives, but it is not always clear what this means in terms of the employees' possibilities of influencing the experts' actual activities. In most of these countries, the law limits itself to stating that worker representatives must be informed on the activities of the expert service as well as on its findings.

If an enterprise does not have its own experts, the extent to which workers may seek assistance from external experts assumes some importance. According to ILO Convention No. 155, worker representatives must be enabled to inquire into "all aspects of occupational safety and health associated with their work; for this purpose technical advisers may, by mutual agreement , be brought in from outside the undertaking" (Article 19).

Within the EEC, legislation has been adopted only on the workers'right to seek the advice of external experts or to invite them to a meeting of the works council or the safety committee.
Regarding the right to bring in external experts for inspections of investigations at the place of work, voluntary arrangements sometimes exist, particularly in countries where there is no legislation on the mandatory establishment of expert services at enterprise level, as in the United Kingdom and Italy. In several collective agreements in Italy this point is elaborated in detail. Inspections and investigations are often left to experts or agencies chosen by mututal agreement. Some collective agreements allow worker representatives to bring in technical advisors of their choice, provided that these experts figure on a list previously agreed upon with the management. Public agencies (local health services, university departments) are most often called on for assistance in ensuring the experts' independence and objectivity.
Finally, it should be noted that in all Member States worker representatives have access to the public authorities supervising the application of health and safety regulations. In general, representatives have a right to liaise with the inspectorate, and in the majority of EEC countries the law entitles them either to accompany an inspector on his inspection tour, or at least to meet with the inspector when he visits the premises.
There is some disparity between the laws adopted in the member countries regarding the right to be informed by the public authorities on the results of their inspections and investigations, and the steps taken or envisaged by them. Health and safety legislation in France, the United Kingdom, Italy, Germany

and the Netherlands gives worker representatives a formal right to information, although there are variations in the scope and extent of this right. In the other Member States, worker representatives do not have a statutory right to be informed by the inspectorate. In Denmark, it is the duty of the employer to inform safety representatives of any directions in writing given by the labour inspectorate. The inspectorate is sometimes legally required to act upon the worker representatives' request to inspect the workplace and to inquire into certain health hazards. This is the case in the Netherlands where worker representatives (i.e. in most cases: the works council) also are entitled to receive the inspector's report on his findings and conclusions resulting from such an investigation.

2.3.2.3. Rights of workers or their representatives: consultation

It is fair to state that the right of workers or their representatives to be consulted by management on safety and health matters has been recognised in most EC countries; it is also laid down in the draft-law on occupational health and safety submitted to Greek parliament this year. Although the right is acknowledged in principle in almost all countries, differences exist as to the ways it is embodied and elaborated in national law.

Legislation in Belgium, Denmark, France, Germany, Luxembourg and the Netherlands deals more or less extensively with questions such as when or how consultation should take place. Least unambiguous and explicit is the Italian Workers' Statute, which gives worker representatives only a right 'to promote the development and implementation of all appropriate safety and health measures'. However, many collective agreements in this country lay down more specific provisions on consultation.

In general, the right to consultation is defined in rather broad terms: in most countries consultation is required on all matters affecting health and safety at work. An example is Art. 837 of the Belgian 'Règlement Général pour la Protection du Travail', according to which the health and safety committee must be consulted on all proposals, decisions and measures which may affect safety, hygiene or health directly or indirectly, immediatly or after a certain amount of time. Like the right to information, the right to consultation normally rests with works councils, safety committees or safety representatives. In the law of some member countries, however, provision has also been made for a right of workers to express themselves directly and collectively on working conditions. The most elaborate arrangements of this kind have been adopted in France; another example is Art. 16 of the Dutch Working Conditions Act which provides for direct consultation between the head of a department or work sector and the workers employed in it.
Regarding the question when and how consultation should take place, the following comments can be made.
In the majority of member countries, the law provides that workers must be enabled to give their opinion before a particular measure is adopted and implemented. This is of course only the case in countries where the employer is under an obligation to ask the works council or safety committee for its advice (e.g. France, Germany, Denmark, Luxembourg, Belgium and the Netherlands), and not in those countries (Ireland, for instances) where the employer is only under an obligation to consider the representations made to him by the safety representative or safety committee.
Sometimes rather detailed rules exist concerning the procedures of consultation between management and

worker representatives on health and safety matters, as in the case of Belgium. The process of consultation may be institutionalised not only by the establishment of specific procedures, but also by requiring the employer to draw up certain documents and to submit them for discussion. In France, Belgium and the Netherlands, where the law makes provision for a yearly action programme, the employer is under an obligation to submit it to the safety committee or works council. The Belgian regulations even prohibit the employer from carrying out the programme before the committee has offered its advice. According to French law, the safety committee is not only entitled to be consulted on the yearly action programme, but also to give its opinion on a report relating to the general situation with respect to safety, health and the working environment and on the activities carried out to improve this situation.

In a minority of Member States, the employer is required to motivate any decision against complying with the safety committee's request or following its advice. An example is the obligation of the head of the establishment under French law to explain why measures requested by the safety committee were not adopted during the year covered by the programme. Under Belgian and Danish law, the employer is accountable to the safety committee whenever he does not act conform its opinion.

Only Luxembourg, Dutch and German law make provision for a co-determination right in health and safety matters. For decisions on health and safety arrangements to be valid, a majority of worker representatives on the works council has to agree with them in advance. It should be noted, however, that there has been some debate, in particular in Germany, over the

extent to which the works councils may demand specific measures to be taken and what its powers are concerning the less tangible aspects of the working environment that can be associated with the well-being of the worker or the humanisation of work.

To what extent are worker representatives or the bodies on which they represented entitled to be consulted on the establishment and functioning of occupational health or safety services and on the steps to be taken by the labour inspectorate?
In each of the five member countries which have adopted legislation on the establishment of enterprise or inter-enterprise expert services (France, Germany, Belgium, Denmark and the Netherlands), representative institutions have a right to be consulted on management decisions relating to the kind of service to be set up or joined, its organisation and its general functioning. Furthermore, worker representatives are involved in the appointment or dismissal of occupational health physicians or safety engineers. Under French and German law, they even have a right of prior agreement to such management decisions. According to a Belgian Act of 1977 relating to the position of the occupational health physician, the worker representatives on the safety committee can start a special procedure which can result in his replacement by another physician if he fails to perform all his functions or has lost their confidence.
On the level of consultation by the public authorities, mention has already been made of the fact that worker representatives everywhere have a right to liaise with the labour inspectorate, and very often also to meet an inspector visiting the establishment or to accompany him on his inspection tour. In particular in the latter

instances, worker representative will have an opportunity to express their opinion on specific hazards and on the measures to be adopted to reduce them. In a minority of countries, the labour inspectorate is under a formal obligation to consult with representatives of the employees before it decides on certain measures. In Italy, for instances, where the tasks of the labour inspectorate relating to the supervision of health and safety at work have been transferred to the local public health services established under the Health Reform Law of 1978, local officials have to cooperate closely with the workers and their unions. When they order the employer to adopt a measure not explicitly required by the law, they have to consult not only the employer, but also the worker representatives.
In the Netherlands, workers have a further right vis-à-vis the inspectorate, i.e. the "request for application of the law". Works councils, working conditions committees or a collectivity of workers exposed to a particular hazard may ask the inspector to take a certain measure, for example to serve a prohibition notice or improvement notice on the employer. If the inspector refuses to do so, he must let them know in writing and the workers may appeal against his desision with the Minister of Labour. In the other Member States, occupational health and safety legislation does not provide for a similar, specific procedure, although in some countries (e.g. France) worker representatives have recourse against decisions of the labour inspectorate under the general provisions of administrative law.

2.4. Action at Community level

2.4.1. Community standards on worker participation in occupational health and safety

2.4.1.1. General remarks

In theory, Community action could take place in either of the two areas discussed in the preceeding chapter, i.e. both with respect to institutional arrangements and with respect to the rights of employees or their representatives. Actually, adoption at Community level of provisions relating to machinery to be instituted at establishment level for the purpose of information and consultation would not seem the best method of safeguarding participation. It is interesting to see that the ILO-Conventions and Recommendations dealing with employee participation in health and safety hardly go into the question as to how worker involvement in these matters should be organised; instead, they focus on the rights of employees or their representatives or on the corresponding employer's duties. When the I.L.O. instruments refer to organisational arrangements, they do so in very general terms. An example is Art. 12 of the Occupational Safety and Health Recommendation 1981 (I.L.O. Recommendation No. 164), according to which the measures taken to facilitate the cooperation between management and workers within the undertaking "should include, where appropriate and necessary, the appointment, in accordance with national practice, of workers' safety delegates, of workers' safety and health committees, and/or of joint safety and health committees". Apart from these three arrangements, also "other workers' representatives" may represent the workforce in safety and health matters, according to the Recommendation.

Also for the Community it would be difficult to determine how employees are to be represented in the field of occupational safety. First, the dis-

parity between the different national systems as described in 2.3.1. is very large. Moreover, several of the systems already have a relatively long history of their own, and all of them are influenced to a great extent by the particular system of industrial relations which has developed within the country concerned. It is hard to see how the Community, when imposing a certain model of employee representation, could avoid entering the arduous and complicated subject-matter of worker participation in general.
Second, on the basis of the information available on how the various national systems have been functioning until now, there is not one single model that can easily be identified as the most adequate one. Each of the three types of systems mentioned in 2.3.1.1. would seem to have its strong and weak points. One could argue that the type of system which gives a central role to joint safety and health committees is the most common one; it should be borne in mind, however, that evidence available from the countries where legislation on the compulsory establishment of joint safety committees has been adopted, suggests, that this model does not necessarily result in adequate participation in health and safety. Moreover, there is certainly no general development at the national level towards this model. While the new Greek law on working conditions will probably provide for the establishment of safety committees, for instance, the Irish Barrington Committee (see 2.2.6.4.) recommends that the existing statutory requirements relating to safety committees be repealed and replaced by more flexible arrangements.
Moreover, if the Community would lay down provisions on the type of institutions through which workers should be involved in safety and health matters, it

might also have to specify for which groups of enterprises or establishments the institution of such arrangements would be mandatory. The question of which establishments, taking into account their nature and size, should institute specific organisational arrangements for the purpose of cooperation and participation in health and safety is already difficult to settle at national level, however.

If the Community wants to further and to stimulate the institution of adequate arrangements for employee participation, it should give priority to defining the basic rights and powers of workers or their representatives in occupational health and safety matters. The less ambiguous these rights are, the more organisational arrangements for the exercise of these rights may be expected to develop.

To achieve its objective - set out in the Second Action Programme on Safety and Health at Work of 27 February 1984 - of elaborating principles for employee participation, the Community should therefore focus on the rights of workers or their representatives to be informed and consulted on health and safety aspects of their work, first of all by the employer, but also by health and safety experts employed by him as well as by the labour inspectorate or other competent enforcement agencies. In doing so it should not seek uniformity, but try to remove unacceptable differences in standards between member countries by providing a common framework. So long as it would not seek to achieve complete equalisation, but only to establish a basis, a set of minimum conditions on which individual countries and enterprises could improve, it would also be able to limit interference with the system of labour relations existing in the Member States.

The question is, of course, which rights should be considered essential in ensuring a common minimum level of participation. On the one hand, standards laid down by the Community should be not so exacting or so detailed as to leave no room for the Member States to improve or to further elaborate them. On the other hand they should not be so vague or watered-down, that they would fall short of achieving an upward harmonisation of working conditions as required by Art. 117 of the EEC Treaty.
In the following, I will set out which rights could be considered for adoption at Community level. In the final analysis, whether or not a specific right is made a Community standard is of course a political decision. This is not to say, however, that no substantial arguments can be given in identifying such rights. For a right to qualify as a standard to be laid down by the Community, it needs a clear and objective rationale, i.e. it should be indispensable in ensuring employee involvement. Furthermore, the case for such a right to be regarded as basic in the context of the Community's health and safety policy would be all the stronger if it can be considered an established or emerging right within the developing body of international labour standards. Finally, in identifying the rights which should be laid down at Community level, more pragmatic considerations could also play a role: as the Community's objective in laying down such rights would be to achieve a progressive approximation of national laws and administrative provisions, there should be at least one Member State in which a similar principle has received legal recognition. On the other hand, if the right in question would have been laid down in its different aspects under the law of all member countries, its adoption at Community level would be hardly more than a symbolic confirmation.

In 2.4.1.2. - 2.4.1.4. fourteen standards will be proposed on the basis of the criteria set out above. As these standards are related to each other, it is expedient to adopt them as a whole, but there is no necessity to do so. Furthermore, although their wording has been carefully considered, variations are or course possible. In addition to alternative formulations, the standards might to a certain extent also be elaborated beyond the elementary form in which they are presented here. It should be remembered, however, that the Community must confine itself to providing a common framework of basic rights. If it should wish to develop detailed standards, it should only do so in respect of specific health hazards where particular arrangements are justified. For the rest, it should be left to the Member States to elaborate, to add further details and to adopt more exacting provisions.

Three of the proposed standards relate to the position of individual employees, and eleven to the collectivity of workers or their representatives, most of them (eight) relating to information, the other ones (three) to consultation.

Rights are bestowed, apart from on individual employees, on "workers or their representatives",* leaving it to the Member States to determine where appointment of these representatives is appropriate or necessary. Limiting rights to representatives only would mean that in those establishment where the law does not make provision for their appointment, workers would not enjoy the rights considered essential to ensure a minimum level of participation. If a Member State feels

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* 'Representatives' means: representatives of the employees within the undertaking, at the level of the establishment or shopfloor.

that - apart from the rights bestowed on the individual worker - employee rights in the field of occupational health and safety should always be exercised through representatives and not by workers as a collectivity, provision should be made for a right of employees (or their representative organisations) to appoint, on their own initiative, representatives with a mandate in safety and health matters in all establishments, where the appointment of representatives or the election of representative bodies with health and safety responsibilities is not yet required by law, regulations or administrative provisions. Basically, this leaves the Member States with three options:

- requiring organisational arrangements for worker participation in safety and health in certain types of establishments, and providing that rights to information and consultation in all other establishments may be exercised by workers collectively;
- requiring organisational arrangements for worker participation in safety and health in certain types of establishments and making provision for a right to appoint representatives with a health and safety mandate in other establishments;
- allowing for the appointment of worker representatives with a health and safety mandate in all establishments.*

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* If this system - under which information and consultation rights are enjoyed in every establishment either by the workers or by their representatives - would be considered too far beyond what is actually required in small establishments by existing national legislation, the wording 'workers or their representatives' could also be interpreted in a less exacting way, i.e. requiring only that under the national law the rights concerned be given to workers or their representatives, irrespective of the extent to which the law makes provision for the appointment of these representatives. However, this interpretation does not ensure information and consultation of employees in the very small undertakings, taking into account existing legislation in the majority of Member States.

The formula 'workers or their representatives' gives rise to two further remarks. First, as has been explained in 2.3.1.3., rights to participate in health and safety matters are often granted to joint bodies, composed of employee and management representatives. This need not be a problem, however, so long as the employee representatives either occupy a majority of the seats, or have a sufficiently independent position as to allow them to exercise rights to information and consultation on their own initiative.
Second, if workers have not been enabled to elect representatives, and rights to information and consultation are to be exercised by workers collectively, the question may arise as to who these workers are: all workers employed in an establishment, the workers belonging to a particular department or work sector, or only the workers directly concerned, e.g. those actually exposed to a specific health hazard? Furthermore, as far as they are entitled to make requests, would such a request only be valid if all workers concerned endorse it? The latter question should be answered in the negative: for a request to be valid, a majority of workers concerned must be sufficient; if not, the capacity of the workers to undertake any actions on their own initiative would be jeopardised. As to the former question, all depends on the nature of the basic right involved: if it relates to the company's general health and safety policy for instance, all workers should be involved; on the other hand, if it relates to specific hazards, involvement may be legitimately restricted to those directly affected.

Finally the fact that the principles set out below embody employee rights, does not mean that there are no employee duties in the area of health and safety.

In addition to the general duty to cooperate with the employer or the persons representing him in safety and health matters, worker can be said to be morally obliged, and often are legally required, to actually use the protective equipment made available by management, to comply with accident prevention provisions, to notify the employer or supervisor of the work sector of health and safety hazards etc.
If the Community were to decide to develop a specific instrument on information and participation of workers concerning occupational safety and health, in addition to provisions on employee rights or employer duties in this field, it might also include provisions on employee obligations in order to highlight the workers' responsibilities (see 2.4.2.).

2.4.1.2. Rights of individual workers*

First, the individual employee should have the right to receive adequate information on the hazards of his work and on the measures taken or envisaged to protect him from those hazards.
The rationale for this right is obvious: without information on health hazards, provided either directly or on his explicit request, the individual employee will not be able to cooperate in a meaningful way and to protect his own health adequately. One could even argue that exposing an individual person to a health risk without informing him adequately is an infringement of his right to physical integrity. To guarantee

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* As far as they concern information, the standards proposed here are less detailed than but related to those proposed by P. Silon in his 1979 report to the European Commission (see, P. Silon, De organisatie van de informatie van de werknemers over risico's verbonden aan gevaarlijke apparaten en producten). Although I have attempted to formulate them carefully, I have focused first of all on the substance of the standards and not on their definitive legal formulation, which will also depend on the type of Community instrument used to lay them down.

the worker's right to know, the employer should be brought under a statutory obligation to provide the necessary information. Although there can be little doubt as to its fundamental character, not all member countries have adopted legislation laying down the principle of individual worker information (see 2.3.2.1.) Hence adoption of this standard at Community level would entail a progressive alteration of national legislation in this respect.

So far, existing Community provisions do not provide for a general individual right to information, but the framework directive of 27 November 1980 on exposure to chemical, physical and biological agents provides for "information for workers on the potential risks connected with their exposure".

Over the last decade the 'right to know' has emerged as a legal principle not only in many countries, but also at international level. Art. 19 of the I.L.O. Occupational Safety and Health Convention states that there must be arrangements at the level of the undertaking under which individual workers are given appropriate training in occupational safety and health. More explicit and unambiguous is the recently adopted I.L.O. Convention on Occupational Health Services,* according to which "all workers shall be informed of the health hazards involved in their work".**

In the wording presented above, the individual right to information leaves still many questions to be answered, e.g. how the information must be provided and when, and how often it must be given. Although these are not unimportant issues, the Community may

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* International Labour Conference, 71 st session 1985, Provisional Record, Intern. Lab. Office, Geneva, 1985.

** I.L.O. Convention No. 139 of 1974 on occupational cancer lays down an individual right to information concerning the hazards covered by the Convention and the measures adopted to reduce them.

leave them to the law of the Member States.

Second, every worker should have the right to be informed of the results of the health examinations he has undergone and of the results of personal monitoring indicating exposure to hazardous agents. This standard is supplementary to the first one. Whereas the first standard relates to information on the working environment, the second one relates to information on the worker's own body and state of health. Basically, the rationale given for the first one also holds for the second. Information on one's state of health and on the exposure to hazards which might cause or contribute to future health impairment is a necessary prerequisite in making informed decisions, for instance on engaging in or (requesting) termination of a job or a specific assignment. From the study of the health and safety legislation in force in the Member States, it is not completely clear which of them have enacted this standard in a statutory form. At least some appear to have done so, in particular those countries which have adopted statutory arrangements concerning the establishment of occupational health services at (inter-) enterprise level, such as the Netherlands (see Art. 25(8) of the Working Conditions Act. 1980). In some member countries the principle may have been incorporated, be it in a more specific form, in regulations dealing with particular health hazards. The right to be informed on the results of health assessments is an established standard of health law and medical ethics. In the area of occupational safety and health, it has gained increasing recognition in international instruments; see for example the Recommendation on Occupational Health Services, Section 22(1), adopted by the I.L.O. in 1985. As far as EEC instruments

are concerned, mention must be made of the framework directive on the protection of workers from dangerous agents of 27 November 1980, which - at least for certain substances - provides for access by each worker concerned to the results of his own biological tests indicating exposure.
Different methods are available to meet the standard. The employee's right to information could be safeguarded by bringing either the employer or the person carrying out the health assessments or biological tests under an obligation to disclose the results to the employee, whether in all instances or at the latter's explicit request. Arrangements adopted for this purpose may also vary as to whether or not the employee is given direct access to his health file and monitoring results. One may of course try to reach consensus on these issues at Community level, but this endeavour should not go at the expense of adoption of the standard itself.

Third, <u>if a worker has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health, he should be protected from measures prejudicial to him</u>.
The measures from which a worker should be protected in such a case may be not only disciplinary sanctions, but also dismissal or loss of pay.
This right is laid down, in the same wording, in Art.13 of the I.L.O. Occupational Safety and Health Convention, the only difference being that the Convention adds the words: "in accordance with national conditions and practice".
The provision in the I.L.O. Convention gives rise to two remarks. First, its adoption by the International Labour Conference in 1981 bears witness to the acknowledgment, also at the international level, of the

worker's right to protect his own physical integrity, in the last resort, by discontinuing his work, and of the conviction that he should not be withheld from doing so out of fear of losing either his job or his pay. Second, as it is argued very often that the employee is already fully entitled to stop work in exceptional circumstances as a matter of common or civil law, it is to be expected that many countries will feel that the Convention (in particular given the wording "in accordance with national conditions and practice") does not oblige them to adopt statutory provisions ensuring employee protection. It seems unlikely, however, that the law of the labour contract offers sufficient protection in this particular case, as the onus of proving he was right in stopping his work is on the employee, who may be forced to start court proceedings to regain his job or pay.

Until now, the right to cease work in case of imminent and serious danger has been enacted in the Netherlands (1980) and France (1982), but only after extensive parliamentary debate.* Similar discussions have taken place in other countries (for instance Belgium), without resulting in a similar statutory right. Although it may be hard to achieve agreement on this standard, it should be seriously considered for adoption at Community level. One may argue, of course, that it is the labour inspectorate's responsibility to intervene in a situation of imminent and substantial risk, but it is obvious that the inspector cannot always arrive in time.

For the rest, evidence available from France and the Netherlands indicates that there is no reason to fear excessive use of the right to stop work.**

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* For the case of Denmark, see 2.3.2.1.

** During the first year after the right became operative in the Netherlands (1983) only six cases have been reported; within the first 18 months after the right came into force in France 20 cases were reported.

As long as the standard itself remains intact, the basic right as formulated above may be elaborated in several ways. The Dutch law states, for example, that the worker's right to stop work ends, when the labour inspector has assessed the situation and taken a decision. Furthermore, the Dutch law requires the employee to notify the employer without delay of the situation. The French law provides, that in exersing the right, the worker must take care not to expose others to unacceptable risks.

2.4.1.3. Rights of workers or their representatives: information

Fourth, workers or their representatives should be given adequate information on safety and health hazards and on the measures taken or envisaged to reduce or eliminate them.

Acknowledgement of this right is essential to ensure involvement of the work force in occupational safety and health matters. Basically, it has been incorporated both in international labour standards and - at least to a large extent - in legislation at the national level. Art. 19(c) of the Occupational Safety and Health Convention 1981 tells, that there shall be arrangements at the level of the undertaking under which representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health. A similar provision is laid down in the Recommendation adopted in the same year, which requires adequate information on safety and health matters to be given to workers' safety delegates, workers' safety and health committees and joint safety and health committees or, as appropriate, other workers' representatives.

In the majority of EC Member States, the employer is already under a statutory obligation to provide adequate

information to worker representatives, but because this is not the case in all member countries, a Community provision would not seem superfluous (see 2.3.2.2.). The most debatable aspect of the right as proposed will probably be, that in establishments where the law does not provide for the appointment of representatives, workers as a collectivity would be entitled to receive information (see 2.4.1.1.). One may argue that the latter provision is not really necessary in view of the individual employee's right to be informed on his own working conditions. On the other hand, several issues fall outside the scope of this individual right, like the employer's general health and safety policy and the arrangements adopted to implement it. It is hard to see why an employer should be exempted from giving information on such issues only because no worker representatives could be appointed under the law of the Member State in question.

Fifth, where the size of their undertaking or the nature of the work carried out in it warrant it, as specified in national law, employers should set out in writing their general policy and arrangements in the field of occupational safety and health and/or draw up periodical action programmes as well as a periodical report as to whether the actions envisaged have been carried out; employers should bring these documents to the notice of workers or their representatives.

This standard elaborates on the first one: in some undertakings basic information on the existing health and safety arrangements and/or on the planning and realisation of activities to improve the working environment should be available for workers in the form of a written document.

Until now, in five out of ten Member States occupational health and safety legislation provides for the drawing up of safety statements and/or action programmes and reports. The I.L.O. Recommendation of 1981 deals only with the employer's duty to set out in writing his policy and arrangements concerning health and safety at work and the various responsibilities exercised under those arrangements (Art. 14).
A possible objection against the standard set out above may be that it includes more than has been adopted so far in most of the Member States and at international level. One should realise, however, that the standard does not specify exactly which employers come under the obligation to prepare policy statements or action programmes and reports. In general, it would seem advisable to leave this for the national authorities to decide, although in specific instances (e.g. when major accident-hazards are involved) the Community may be justified in imposing such an obligation with respect to a particular category of employers. In its present form, the standard only requires Member States to adopt legislation empowering competent authorities to prescribe written safety statements, programmes or reports, where appropriate, and which ensures that these documents are made available to the workforce.

Sixth, workers or their representatives should have <u>access to the records relevant to occupational safety and health which the employer is legally required to keep</u>.
This standard supplements the first one in two different ways. It ensures that the information available to the employees will include the data, which the employer is obliged to record. Most often such records will contain data on important issues, such as the occurrence of notifiable accidents and professional diseases,the

presence or use in the establishment of hazardous agents or substances, and results of exposure measurements. Secondly, in allowing workers or their representatives to inspect these records, they are less dependent on the extent to which the employer wants to give information on these points. The right of access to records is an important one, in particular with a view to the increasing body of statutory provisions requiring such records to be kept, notably in the domain of dangerous substances.

The I.L.O. Convention and Recommendation of 1981 do not lay down a similar right, but on the other hand it is to be found, at least to a certain degree, both at Community level and in the law of several Member States. Where the law requires the employer to keep a certain record, it often also empowers worker representatives to inspect it. In some member countries, notably Britain and Belgium, worker representatives have a general right of access to legally prescribed records. Art. 4 of the EEC framework directive of 27 November 1980 provides for keeping updated records of exposure levels, lists of workers exposed and medical records, but Art. 5, which makes provision for "access by workers and/or their representatives at the place of work to the results of exposure measurements and to the anonymous collective results of the biological tests indicating exposure", is only applicable in respect of some specific substances, like asbestos.*

It is generally held that health data relating to an identifiable employee should not be disclosed to other workers without his or her explicit previous consent; this precludes direct access to individual

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* See also Art. 16 of the directive on asbestos of 19 September 1983.

health records (except for the individual concerned). As to the protection of trade secrets (an issue which may also arise in connection with the other information rights proposed), from the point of view of co-operation and participation it would seem a better course of action to oblige employees receiving confidential information to observe secrecy than to withhold such data merely because they concern qualified technical or commercial information.

Seventh, workers or their representatives should be authorised to check the application of safety and health standards in the workplace, by holding their own periodical inspections, as well as investigations following accidents, diseases and dangerous occurrences or by co-operating with management representatives in such inspections and investigations.
Workplace inspections and investigations can be an important source of information on the health and safety conditions in the undertaking. The right to hold them or to take part in them is therefore a valuable means of gaining better knowledge and understanding of the existing hazards and of possible protective measures. Furthermore, employee involvement in monitoring the application of health and safety standards can be considered instrumental in achieving compliance with these standards at the place of work. The standard set out above is embodied in the law of a majority of member countries, be it that the right in question is only enjoyed by the worker representatives appointed in accordance with the law. Also the EEC framework directive of 27 November 1980, providing that workers be involved in the application of the health and safety provisions required by the directive, speaks about "workers' representatives in the undertakings or establishments, where they exist". According to I.L.O.

Occupational Health and Safety Recommendation 1981 "workers' safety delegates, workers' safety and health committees and joint safety and health committees or, as appropriate workers' representatives should .... be enabled to examine factors affecting safety and health ....". On the other hand, the Occupational Health and Safety Convention entitles "workers or their representatives .... to enquire into all aspects of occupational safety and health associated with their work". Other I.L.O. instruments sometimes contain related provisions, like the Convention on dock work of 1979 which states that "workers shall have a right at any workplace to participate in ensuring safe working to the extent of their control over the equipment and methods of work".
It should be left to the Member States to further elaborate the standard and to decide to what extent the adoption of provisions dealing with procedures, methods and frequency of inspections would be appropriate.

Eighth, workers or their representatives should have the right to be informed by health and safety experts employed by the undertaking on their activities and findings; when these experts establish an action programme and draw up periodical reports, these documents should be brought to the notice of workers or their representatives.
The scope for employee participation in occupational safety and health is not only conditional on cooperation with management, but also on access to occupational health and safety experts. The present tendency, both at international level and in many countries is, to develop progressively occupational health services*

* The words 'occupational health service' are taken here in a broad sense, including not only the work of physicians and nurses, but also of various non-medical professionals like safety engineers, occupational hygienists, ergonomists etc.

for all undertakings. Where occupational health services are set up - until now in general by an employer or a group of employers for one or more enterprises - their activities will generate important information on working conditions which should be available to an equal extent for labour as well as for management.
The right of employees to be informed on the functioning of occupational health services and on their findings is clearly expressed in the recent I.L.O. Recommendation on Occupational Health Services, which states: "In accordance with national law and practice, data resulting from the surveillance of the working environment .... should be available to the employer, the workers and their representatives in the undertaking concerned ...." Furthermore the Recommendation provides that "occupational health services should draw up plans and reports at appropriate intervals concerning their activities and health conditions in the undertaking. These reports should be made available to the employer and the workers' representatives in the undertaking or the safety and health committee, where they exist ...."
In those Member States where the establishment of occupational health services or the employment of health and/or safety experts is mandatory for all enterprises or for particular categories of enterprises, the standard set out above is embodied in the law. In the other countries, where enterprise occupational health services operate only on a voluntary basis, it has not been laid down under statutory arrangements.

Ninth, workers or their representatives should be authorised to request the health and safety experts employed by the enterprise to inspect a particular

worksite or to investigate particular health hazards; where these experts do not exist, external experts may, by mutual agreement, be brough in form outside the undertaking for the purpose of inspections or investigations.

In case professional assistance is necessary to assess specific health hazards, it is appropriate that workers or their representatives should be entitled to call on experts. Therefore they should, first of all, be entitled to assistance from the company's own health and safety specialists. Where such experts are lacking, employees should of course be enabled to liaise with the labour inspectorate (see below), but in some instances they may, for good reasons, prefer to call on specialists who are not labour inspectors. Therefore provision should also be made for recourse to external specialists, provided the employer agrees with their presence at the place of work.

This standard is to a certain extent laid down in existing or proposed international labour standards. Apart from the Occupational Safety and Health Recommendation, which deals with "recourse to specialists to advise on particular occupational safety and health problems or supervise the application of measures to meet them", the Convention on the same subject-matter states that "technical advisers may, by mutual agreement, be brought in from outside the undertaking". According to the Recommendation on Occupational Health Services, the surveillance of the working environment by occupational health services, which should include identification and evaluation of the environmental factors which may affect the workers' health, "should be carried out in cooperation with the workers concerned and their representatives in the undertaking or the health and safety committee where they exist".

At the national level, where legislation on the manda-

tory establishment of occupational health services has been enacted, the law usually states only that experts should "cooperate with" or "assist" the employees on their request, although sometimes (Belgium) it is more explicit on this particular point. Legislation on the right to bring in external experts for the purpose of investigation is virtually non-existent, but this right has to a certain extent been regulated under collective agreements, in particular in Italy.*

Tenth, workers or their representatives should have the right to be adequately informed by the labour inspectorate and/or other competent authorities on their findings regarding health and safety conditions at the workplace and on the actions undertaken or envisaged by them.
The objective of this standard is to ensure that any information from enforcement agencies which is made available to employers on the extent to which safety and health legislation is being observed or contravened in the workplace will equally be provided to the workers or their representatives at the work place. This implies that where practicable, official reports on accidents should also be made available to both employers and workers.
An older I.L.O. Convention of 1947 (labour inspection) only requires the inspectorate to cooperate with workers or their organisations and to give them information and advice in technical matters, but a more recent Convention (of 1969 on labour inspection in agriculture) is more specific and entitles employee representatives to be notified of the inspector's visit and to be informed

* See also the British Health and Safety Commission's Guidance Notes on Safety Representatives and Safety Committees, No. 27, as well as the Greek draft law on safety and health at work (discussed in 2.2.5.3.).

on any infringements of health and safety standards. As explained in 2.3.2.2., until now only five Member States have adopted statutory arrangements under which workers or their representatives are entitled to receive information from official health and safety inspectors.

Eleventh, workers or their representatives should have the right to be involved in inspections and investigations carried out by the labour inspectorate and/or other competent authorities and to request these authorities to hold an inspection or to investigate specific hazards which workers believe to exist.
Like the preceding one, this standard ensures employee access to the relevant authorities by giving them certain rights vis-à-vis the labour inspectorate and other enforcement agencies. Partially it is also laid down in the I.L.O. Recommendation of 1947 on labour inspection, which states that "representatives of the workers and the management, and more particularly members of works safety committees or similar bodies .... should be authorised to collaborate directly with officials of the labour inspectorate, in a manner and within limits fixed by the competent authority, when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out". A more recent I.L.O. instrument - the Convention on air pollution, noise and vibration of 1977 - provides for a right of employee representatives to request intervention in the workplace by the competent authorities.
As far as Community law is concerned, existing health and safety directives do not deal with the relationship between workers employed in a particular enterprise or establishment, and the labour inspectorate.
As set out in 2.3.2.2., in a majority of Member States the law authorises worker representatives to be involved in official inspections, most often by accompanying an

inspector on his visit to the premises, and to request the enforcement agencies to carry out an inspection or investigation. Where employee representatives enjoy the latter right, they may of course always communicate their dissatisfaction if an inspector refuses to act at their request, but only in a minority of Member States they apparently have a formal right of appeal in such a case. For the right of requesting intervention by the public authorities to be effective, however, some form of administrative recourse against the decisions of the labour inspectorate (or other authorities competent in the field of occupational safety and health) should be available.

2.4.1.4. Rights of workers or their representatives: consultation

Twelfth, workers or their representatives should have the right to make representations and proposals on safety and health matters to the employer and to be previously consulted by him on all measures likely to affect safety and health at work.

In itself this standard needs little explanation. Consultation between employer and workers in the field of occupational safety and health has always been considered an important means of ensuring employee cooperation. Furthermore, the ideas, knowledge and experience of workers can be an essential contribution to the solution of specific health and safety problems. Finally, consultation is nowadays also considered a matter of right in an area where vital employee interests are at stake.

The right in question is to a large extent already embodied in international labour standards.* In ad-

* EEC directives on dangerous substances refer only incidentally to consultation of employees, see Art. 11(2) of the directive of asbestos of 19 September 1983, for instance.

dition to the I.L.O. Convention and Recommendation on air pollution, noise and vibration (1977), mention should be made in particular of the Occupational Safety and Health Convention and Recommendation of 1981. The Convention requires arrangements at the level of the undertaking under which "workers or their representatives and, as the case may be, their representative organisations in an undertaking, in accordance with national law and practice .... are consulted by the employer on all aspects of occupational safety and health associated with their work". According to the Recommendation worker representatives should be consulted "when major new safety and health measures are envisaged and before they are carried out"; these representatives should also be consulted "in planning alterations of work processes, work content or organisation of work, which may have safety and health implications for the workers".
As set out in 2.3.2.3., there is no member country in which the right to consultation has not been recognised under the law, at least to a certain extent. Most of the differences in statutory arrangements adopted for this purpose in the Member States concern methods and procedures. A major aspect where disparity still exists, however, is the right of workers or their representatives to be previously consulted on measures with safety and health implications. In several Member States (e.g. Ireland, Italy, United Kingdom) worker representatives may submit proposals to the employer on working environment issues, but they have no statutory right to be consulted on decisions which may affect safety and health at work, and before they are carried out.

Thirteenth, workers or their representatives should be consulted on the employer's general health and safety

policy and be enabled to give their opinion on any action programme he is legally required to establish, before it is carried out.

This standard supplements the preceding one, ensuring that workers or their representatives are not only consulted on specific matters, but also on the employer's general policy in the field of occupational safety and health. If the employer prepares a programme of actions to be carried out over a period of, for instance, a year, it is essential from the point of view of cooperation and employee participation that employees or their representatives are enabled to offer their advice in time.

As far as previous consultation on programmes of activities is concerned, this right is not laid down in existing I.L.O. standards. On the other hand, it may be argued that it is contained by implication in existing I.L.O. provisions,in particular in the right to consultation on envisaged major new safety and health measures and on planned alteration of work processes, work content or organisation of work with safety and health implications.

As far as legislation in the Member States is concerned, where the law requires the drawing up of a periodical action programme, the employer is under an obligation to submit it to employee representatives or the bodies on which they are represented. However, until now such a requirement exists only in France, Belgium and the Netherlands (see also the fifth standard proposed above).

As to the first aspect of consultation covered by the standard - consultation on the general health and safety policy - it can be considered to be embodied, at least implicitly but sometimes also in an explicit form (as in the Netherlands), in national health and safety legislation in most of the Member States. It seems

doubtful, however, whether employee representatives could claim to enjoy such a right in those countries where the law only authorises them to make representations to the employer and refrains from stating to what extent the latter is under an obligation to ask for their opinion.

Fourteenth, workers or their representatives should be consulted on the organisation, functioning and activities of occupational health services operating for the establishment in which they are employed.
This standard is related to the eighth standard set out in the preceding paragraph. Also in this case "occupational health service" is taken in the broad sense of the recently adopted I.L.O. instruments on occupational health services. It does not only concern occupational medical services, but all expert services aimed at the improvement of health and safety at work, irrespective of the disciplines that are represented on its professional staff. As the expert's role in the field of occupational safety and health is of growing importance and an ever growing part of the working population in the Member States is covered by occupational health services, the modes of organisation and operation of the service, its programme of activities and the hiring and firing of staff have become important issues. Employee participation in health and safety matters should include their involvement in the supervision of how the occupational health service is set up and how it is functioning.
Art. 25 of the I.L.O. Recommendation on occupational health services ensures this involvement in several ways. It provides for instance that, in conformity with national conditions and practice, employers and workers or their representatives must par-

ticipate in decisions affecting the organisation and operation of the occupational health service, including those relating to the employment of personnel and the planning of the services' programmes. Importance is also attached to employee involvement in the supervision of occupational health services by the Community's Economic and Social Committee in its statement on the future development of occupational medicine in the Member States of 26-27 September 1984.*
At the national level, only those member countries which have adopted legislation prescribing the mandatory establishment of occupational medical services and/or occupational safety services have made provision for worker participation in decisions concerning the service's organisation and operation. Although there is no complete identity between the different national arrangements (in particular with respect to such issues as the procedures for appointment and dismissal of personnel), they more or less meet the standard set out above. In the other countries, where expert services operate on a voluntary basis, statutory provisions ensuring employee participation are lacking.

* O.J. 19-11-1984, C 307.

2.4.2. Instruments

In 2.4.1.1. it has been argued that in elaborating principles for employee involvement in occupational safety and health, the Community should give priority to the adoption of employee rights, so as to ensure a common minimum level of participation in all Member States. Fourteen basic rights have been identified which may be considered suitable standards to be adopted by the Community for this purpose. Irrespective of whether these standards will be adopted in their present form, or whether other rights are to be regarded as basic in the context of the common health and safety policy, the question rises which instruments are available at Community level to lay down the proposed standards or similar ones.

Before answering this question, a preliminary issue should be discussed: to a growing extent, employee participation in safety and health at work has been regulated under international labour standards, in particular in the ILO Occupational Safety and Health Convention and Recommendation of 1981 (see paragraph 2.4.1.2. - 2.4.1.4.).

Why should the Community still enact its own provisions? First, although the work of the ILO forms a suitable basis for the development of Community instrument, adoption of ILO standards will not necessarily result in the minimum level of participation envisaged by the Community. On certain points, the Community could and should attempt to assert higher and more exacting standards.For the same reason, the standards proposed in the first part of this chapter are not identical to the standards formulated by the International Labour Conference, although they are intimately related to the ILO standards.

Second, the ILO standards which would be most appropriate for the Community are for the most part laid down in Recommendations, notably the said Recommendation of 1981, i.e. they are not binding on members. Where they form part of a Convention, the obligation of members to observe the standards set out in it is conditional on ratification of the Convention. From the Community point of view, therefore, even the existence of an adequate ILO Convention is not sufficient reason to refrain from developing its own instruments, unless the Commission would be authorised to ratify the Convention on behalf of all the Member States.

Theoretically, three instruments are available for the adoption at Community level of standards relating to employee involvement in occupational health and safety: recommendations,regulations and directives.
In the past, a recommendation under Art. 155 EEC Treaty was used to lay down common principles concerning occupational medical services. The question therefore rises why a recommendation would not be a suitable instrument to provide for other related institutional arrangements at enterprise or establishment level. Recommendations have the obvious disadvantage of not being binding upon the Member States. In practice, this need not be a serious drawback, if the Member States would be committed to comply with recommendations on a voluntary basis. Taking into account that the EEC Recommendation on occupational medicine* has been observed in about half of the member countries only, the prospects for a ready implementation of a recommendation on employee participation would seem dim, however.

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* O.J. 31 August 1962, No. 80

Adoption of a regulation would be appropriate if the Community would want to enact a body of legal rules directly applicable in the Member States in order to replace or supplement national provisions. In the area of employee involvement, however, the Community's objective is limited to formulating principles and providing a common framework for national legislation. Worker participation in safety and health is a sector in which it is desirable and possible to formulate common aims, but impossible (and not necessary) to formulate or at least to impose common methods. This is in fact reflected in the contrast between regulations and directives under Art. 189 of the EEC Treaty. Therefore, directives appear to be the most suitable instrument for laying down standards of employee participation in safety like the ones proposed in 2.4.1. Taking into account that in the past Art. 100 EEC Treaty has been used as a basis for directives with widely varying social policy objectives, the said Treaty provision would seem to be a sufficient basis for directives on employee participation in safety and health at work. The primary consequence of adoption of such directives would be, that in developing their own legislation, the Member States would be obliged to adopt new laws, regulations or administrative provisions or to amend existing ones in order to comply with the standards laid down by the Community.

When a directive is to be considered the most suitable instrument, would a separate directive be appropriate, or could standards like the ones proposed in 2.4.1. be incorporated in already existing or envisaged directives?
As the subject-matter of this study is related to the issues of industrial democracy and worker participa-

tion in general, in theory it might be possible to include them in future directives in that area. The disadvantages of such an approach are evident, however. First, it is unlikely that, in the foreseeable future, a general directive on employee information and consultation will be adopted covering all establishments in the Member States.
Second, even if such a directive would come into existence, at least some of the standards proposed would presumably fall outside its objective and scope, notably those dealing with the relationship of worker representatives with occupational health services and labour inspectors.
Third, also as far as employee rights vis-à-vis the management are concerned, incorporating adequate and acceptable Community provisions on participation in health and safety in a specific health and safety directives would seem much easier than laying them down in a general industrial democracy directive. Until now all Member States have adopted at least some legislation with respect to employee involvement in health and safety, but several of them have always favoured a contractual and voluntaristic approach with respect to industrial relations in general.

Are there any health and safety directives in which standards like the ones proposed might be incorporated?
Obviously, employee rights vis-à-vis health and safety experts or enforcement officers would not be out of place in a directive on occupational health services or on the organisation and operation of health and safety inspection agencies. The possibility of developing such directives has been hinted at in the past.*

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* See the First Action Programme on Safety and Health at Work as proposed by the Commission, O.J. 1978, C 165.

Recently, the Economic and Social Committee has proposed adoption of a directive on occupational medicine.* Given the considerable disparity between the systems of occupational medicine existing in the Member States**, it would seem difficult to develop a common framework in the near future; the same holds for the eventual development of a directive on inspection services. At least for the time being, employee rights vis-à-vis health and safety experts and inspectors should therefore be laid down in other directives.

Possible candidates for the incorporation of worker rights in the domain of occupational health and safety are the present and envisaged directives on the protection of workers from the risks related to exposure to hazardous agents at work, in particular the framework directive of 27 November 1980 or other general directives of the same kind, planned for the near future. However, provisions on employee information and consultation in such an instrument can only ensure worker participation with respect to the specific health hazards dealt with in the directive. Incorporation of standards like the ones proposed, would exceed its objective and scope.

This is not to say, of course, that the directives on dangerous agents should not include any provisions on information and consultation or that such provisions would become redundant, if a separate directive on employee information and consultation in occupational safety and health would come into existence.

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* See the Committee's Advice of 26-27 September 1984, O.J. 1984, C 307

** See in particular: J.K.M. Gevers, Worker control over occupational health services in the EEC, International Journal of Health Services, 1985, Nr. 2.

On the contrary, while such a directive will only embody general standards on worker participation in this field, it may be appropriate to lay down additional provisions in other directives, taking into account the nature of the health hazards dealt with in those directives.

The above discussion leads to the conclusion that for the purpose of laying down common standards on worker participation in occupational safety and health, a separate directive would be the most appropriate instrument.
Drawing up such a directive would also enable the Community to include - in addition to employee rights - basic employee duties in the domain of occupational health and safety (see 2.4.1.1.).
Another important element which should be incorporated in such a directive are provisions ensuring the capacity of workers or their representatives to exercise their information and consultation rights (see also 2.3.1.3.). On the basis of the ILO Occupational Safety and Health Recommendation the following provisions may be adopted:

- no measures prejudicial to a worker should be taken by reference to the fact that, in good faith, he complained of what he considered to be a breach of statutory requirements or a serious inadequacy in the measures taken by the employer in respect of occupational safety and health;
- workers should be free to contact the labour inspectorate;
- workers or their representatives should have access to all parts of the workplace and be able to communicate with the workers on safety and health matters during working hours at the workplace;

- workers or their representatives should be free to contact specialists for advice on particular safety and health problems;
- worker representatives should have reasonable time during paid working hours to exercise their safety and health functions and to receive training related to these functions;
- worker representatives should be given protection from dismissal and other measures prejudicial to them while exercising their functions in the field of occupational safety and health.

Finally, the directive should provide that the Member States would remain free to apply or introduce laws, regulations or administrative provisions which would ensure a higher level of worker participation in occupational safety and health.

Summary

The first part of this report deals with the involvement of representative organisations of employers and workers at the national level in the development and implementation of policies and legislation in the field of occupational safety and health. The second and most extensive part of the study deals with worker participation in health and safety at the level of the workplace.
Both parts contain a survey of national arrangements, a comparative analysis of the arrangements and a discussion of the desirability of and scope for Community action. Whereas the conclusion in Part 1 is, that such action is not necessary in respect of the involvement of employers' and workers' organisations at the national level, Part 2 results in recommendations and proposals for action by the Community in respect of employee participation in safety and health within undertakings.

Part 1.

Part 1 relates to the question to what extent and in which way the member countries of the Community have embodied the principle of participation of the social partners in their national systems of health protection at work. It focuses in particular on the role played by the two sides of industry in the development of health and safety legislation.
The bodies, set up in the Member States to enable the representative employers' and workers' organisations to take part in the formulation of national policy and its implementation in laws,regulations and other binding provisions, are analysed in terms of
- their legal basis and origin;

- their composition, notably with respect to labour and management representation;
- their responsibilities and powers;
- the existence and composition of (sub)committees dealing with particular health hazards or particular trades.

From the survey of the national arrangements, it appears that all Member States have developed machinery enabling representatives of the two sides of industry to be involved in the process of formulating and reviewing national policies and legislation. However, considerable variety exists among the arrangements adopted for this prupose at the national level.

First, while in the majority of member countries, the main body serving as a channel for labour and management participation is set up under occupational health and safety legislation, in some countries involvement of both sides is regulated predominantly under social security legislation. Sometimes, a double system of representation exists, i.e. both under occupational health and safety legislation and under social security legislation. Furthermore, in several countries, general councils with industry participation and broad terms of reference in the field of social and economic affairs (including health and safety matters) operate alongside consultative bodies with a specific mandate in occupational health and safety.

Second, in general, labour and management are represented to an equal extent on the bodies dealing with health and safety policy and legislation. Differences exist as to whether these bodies comprise other members (public officials; experts; other interest groups, like the self-employed).

Third, as far as responsibilities and powers are con-

cerned, a basic distinction must be made between - on the one hand - social security associations or health and safety authorities with direct responsibility for health and safety policy and with powers to draw up health and safety provisions and/or to monitor their application, and - on the other hand - bodies with predominantly consultative functions.

Fourth, in several of the member countries of the Community, involvement of the social partners is also organised at the level of specific trades or branches of economic activity; for this purpose, trade-oriented bodies have been set up, most often of a consultative nature and in addition to central councils or authorities with general advisory functions or overall responsibilities.

Against this background, Community action in respect of the involvement of the social partners at the national level would not seem necessary in particular for the following reasons:

- the principle of involvement of the two sides in the formulation and implementation of national policy and law is already acknowledged in all Member States;
- all Member States have taken certain steps to apply this principle in practice;
- this objective can be and is achieved by different institutional arrangements;
- there is no single model appropriate for all Member States.

Part 2.

Part 2 relates to employee involvement in occupational health and safety matters within the undertaking at establishment or shop level. It focuses on laws, regulations and other binding provisions enacted in the Member States to ensure worker participation in respect of health, safety and the working environment.
In surveying the legislation in force in the Member States, the most important arrangements and provisions are being described so as to give a general outline of each national system. In some countries, special arrangements exist for the public sector beside the arrangements adopted for the private sector; in other instances, in addition to the standard arrangements applying to most of the private and public sector, specific legislation concerning employee participation in safety has been adopted for particular sectors of economic activity. The study makes mention of such special arrangements, but limits itself to the predominant arrangements adopted in each member country.
A major distinction is made between institutional arrangements or organisational provisions on one hand and legal rights and powers granted to workers and/or their representatives on such institutions on the other. As far as organisational arrangements are concerned, the study deals not only with specific health and safety arrangements, such as health and safety committees and safety representatives or delegates, but also with more general representative bodies which have responsibilities in the field of occupational safety and hygiene among other tasks, such as work councils.

As to rights and powers bestowed upon workers or their representatives, two groups are distinguished. The

first group comprises rights that can be associated with information, e.g. a general right to be informed by the employer or rights to be given specific information or to receive specific documents such as action programmes, reports and surveys. Other examples are powers for employees or their representatives to inform themselves on the hazards of work and on the possibilities to reduce them, through investigations and inspections.
The second group comprises rights and powers in the field of consultation , e.g. the right to give an opinion, to be consulted on the employer's health and safety policy, on a yearly action programme and/or on specific activities envisaged to improve the working environment; included are provisions which entitle employee representatives to receive a motivated reply to their representations, to enter into negotiations on health and safety matters or to give approval to arrangements adopted by the employer in the domain of safety and health.
Finally, the study does not only analyse information and consultation rights vis-à-vis the employer, but also vis-à-vis occupational health and safety experts employed by him, as well as vis-à-vis the labour inspectorate or other enforcement agencies.

In the Member States, different arrangements have been adopted for the purpose of ensuring employee involvement in matters of work health and safety. In some countries existing institutions (works councils, staff representatives or union delegates) have been given safety responsibilities; elsewhere, special mechanisms have been created (work environment committees, safety committees, safety representatives). In several countries both general and specialised bodies play a role,

their character depending largely on prevailing traditions in the field of industrial relations. Basically, three types of systems for employee involvement in health and safety matters may be distinguished:

- systems in which works councils set up under statute law occupy a central place and in which safety delegates or safety committees play only a secondary role;
- systems in which joint safety committees form the main channel of participation;
- systems in which the law does not require the establishment of either general or specialised bodies with health and safety responsibilities, but allows for the appointment of safety delegates or safety representatives.

The second system is the most common one, although considerable variety exists as to the way this principle is put into practice. A direct relation exists between the system adopted in a member country and its legal basis. In the first group of countries, it is primarily the law on works councils which deals with the establishment of representative institutions with health and safety responsibilities. In countries which have adopted the second system, it is predominantly occupational health and safety legislation which regulates employee participation in the field of working conditions, although other legislation (e.g. laws on works councils) may contain additional arrangements.

If a sector is covered by legislation requiring the establishment of general or specialised representative bodies (see above), this does not necessarily mean that all the employers in that sector or branche are required to do so. In general, the obligation to set up a works council or safety committee depends on the

number of employees. Where the law only enables employees or trade unions to appoint safety representatives no such thresholds exist; in most of the other member countries, the establishment of representative bodies is not required in small or very small enterprises. Each of the three systems described above, gives a central place to representatives of the workers, and makes little provision for direct participation in the strict sense.

Although participation rights in the field of occupational safety and health generally rest with worker representatives or with the bodies on which they have a seat, under the law of the majority of Member States also individual employees enjoy certain statutory rights. Most often such rights concern information, but in some countries one can also find a right to discontinuation of work in the event of imminent and serious danger.
Apart from the general duty of the employer to provide adequate information on health and safety matters to employee representatives which exists in most of the Member States, several of them have adopted additional provisions to ensure that these representatives are appropriately and timely informed. These provisions may include in particular:

- the right to receive information on the results of measurements and investigations;
- the right to receive certain documents, like policy statements, periodical programmes and reports;
- the right to inspect documents and records which the employers is legally required to keep.

In addition to the right to be informed, worker representatives in most EEC countries are entitled to be involved in inspections of the workplace and investi-

gations of accidents and dangerous occurrences, but whereas in some countries they are authorised to hold their own inspections and investigations, elsewhere they are required to cooperate with employer representatives.

An interesting feature of health and safety law in at least some of the member countries is the existence of a formal right which empowers worker representatives to request particular investigations or measurements to be undertaken by the employer or experts employed by him. Regarding the right to bring in external experts for inspections or investigations at the place of work, sometimes voluntary arrangements exist, particularly in countries where there is no legislation on the mandatory establishment of expert services at enterprise level.

In all Member States worker representatives have access to the public authorities supervising the application of health and safety regulations. In general, representatives have a right to liaise with the inspectorate and in the majority of EEC countries the law entitles them either to accompany an inspector on his inspection tour or at least to meet the inspector when he visits the premises. However, a statutory right to be informed by the public authorities on the results of their inspections and investigations and the steps taken or envisaged by them, only exists in five member countries.

The right of workers or their representatives to be consulted by management on safety and health matters is acknowledged in most of the EEC countries, although disparity exists as to the ways it is embodied and elaborated in the national laws. Like the right to information, the right to consultation normally rests with works councils, safety committees or safety rep -

resentatives. In the law of some member countries provision has also been made for a right of workers to express themselves directly and collectively on working conditions.
In the majority of member countries, the law provides that workers must be enabled to give their opinion before a particular measure is adopted and implemented, but only in some Member States the employer is required to motivate a decision not to act on the safety committees request or not to follow its advice.
A general co-determination right in safety and health matters exists only in those countries, where works councils play a predominant part in this area: for decisions on health and safety arrangements to be valid, a majority of worker representatives on the works councils has to agree with them in advance.
In each of the five member countries which have adopted legislation on the establishment of enterprise or inter-enterprise expert services, representative institutions have a right to be consulted on management decisions relating to the kind of service to be set up or joined, its organisation and its general functioning. Furthermore, worker representatives are involved in the appointment or dismissal of occupational health physicians or safety engineers. As to the right to be consulted by the labour inspectorate, apart from the right to meet an inspector at his visit to the premises - which is quite common in EEC countries - the labour inspector is under a formal obligation to consult with representatives of the employees before he decides on certain measures only in a minority of countries.

Theoretically, Community action to ensure employee involvement in health and safety at the workplace may concern the institutional arrangements and/or the rights

of employees or their representatives in health and safety matters.

Adoption at Community level of provisions relating to the representative institutions to be set up at the workplace with a view to employee participation would not seem the best method of safeguarding such participation. It will be difficult for the Community to determine how employees are to be represented in this field:

- the disparity between the national systems is not only very large but also intimately related to deeply rooted differences in industrial relations;
- there is no model which can be identified as the best or most adequate one, and as far as information on the various systems is available, all of them appear to have their weak and strong points.

If the Community envisages formulating standards on participation in occupational health and safety, it should give priority to the development of a set of basic employee rights. In this way, the Community would still ensure a minimum level of participation in all Member States without interfering too much with national systems of labour relations. In doing so, the Community should not seek to achieve complete equalisation, but only try to remove unacceptable differences between member countries by providing a common framework.

Taking into account their potential for ensuring employee participation in health and safety matters, the developing body of international labour standards and the present state of legislation in the Member States, fourteen rights have been identified which may be considered suitable standards to be adopted by the Community for this purpose. Three of them concern the individual employee, the other eleven are to be

exercised by the collectivity of workers or their representatives.

The proposed standards are the following:

1. Every worker should have the right to receive adequate information on the hazards of his work and on the measures taken or envisaged to protect him from those hazards.
2. Every worker should have the right to be informed of the results of health examinations he has undergone and of the results of personal monitoring indicating exposure to hazardous agents.
3. If a worker has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health, he should be protected from measures prejudicial to him.
4. Workers or their representatives should be given adequate information on safety and health hazards and on the measures taken or envisaged to reduce or eliminate them.
5. Where the size of their undertaking or the nature of the work carried out in it warrant it, as specified in national law, employers should set out in writing their general policy and arrangements in the field of occupational health and safety and/or draw up periodical action programmes, as well as periodical reports as to whether the actions envisaged have been carried out; employers should bring these documents to the notice of workers or their representatives.
6. Workers or their representatives should have access to the records relevant to occupational health and safety which the employer is legally required to keep.

7. Workers or their representatives should be authorised to check the application of safety and health standards in the workplace by holding their own periodical inspections, as well as investigations following accidents, diseases and dangerous occurences, or by cooperating with management representatives in such inspections and investigations.
8. Workers of their representatives should have the right to be informed by health and safety experts employed by the undertaking on their activities and findings; when these experts establish an action programme and draw up periodical reports, these documents should be brought to the notice of workers or their representatives.
9. Workers or their representatives should be authorised to request the health and safety experts employed by the enterprise to inspect a particular worksite or to investigate particular health hazards; where these experts do not exist, external experts may, by mutual agreement, be brought in from outside the undertaking for the purpose of inspections or investigations.
10. Workers or their representatives should have the right to be adequately informed by the labour inspectorate and/or other competent authorities on their findings regarding health and safety conditions at the workplace and on the actions undertaken or envisaged by them.
11. Workers or their representatives should have the right to be involved in inspections and investigations carried out by the labour inspectorate and/or other competent authorities and to request these authorities to hold an inspection or to investigate specific health hazards which workers

believe to exist.

12. Workers or their representatives should have the right to make representations and proposals on safety and health matters to the employer and to be previously consulted by him on all measures likely to affect safety and health at work.
13. Workers or their representatives should be consulted on the employer's general health and safety policy and be enabled to give their opinion on any action programme he is legally required to establish, before it is carried out.
14. Workers or their representatives should be consulted on the organisation, functioning and activities of occupational health services operating for the establishment in which they are employed.

Irrespective of whether these standards will all be adopted in their present form or whether other rights are to be considered basic in the context of the common health and safety policy, the question rises which instrument provided by the EEC Treaty is the most suitable one for laying down the proposed standards or similar ones. After discussing the preliminary issue whether adoption of provisions at Community level is necessary at all given the existing ILO standards and after commenting on the drawbacks of recommendations or regulations in this area, the report concludes that a directive is the most adequate instrument for this purpose.

Since it is impossible to include the proposed standards or similar ones in already existing or planned directives - either in the field of worker participation in general of in the field of occupational health and safety - a separate directive would seem appropriate, without prejudice to the possibility of incor-

porating more specific provisions on information or consultation in other directives, taking into account the nature of the health hazards dealt with in those directives.

Drawing up a directive on employee information and consultation in health and safety matters would also enable the Community to supplement the employee rights laid down in it with basic employee duties, with a view to highlighting the worker's responsibilities concerning safety and health. Another element which should be added in such a special directive, are provisions ensuring the capacity of workers or their representatives to exercise information and consultation rights (i.e. general provisions on time off, facilities, training, protection from dismissal).

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CONTENTS

1. Introduction

The preceding report was written at a moment when Portugal and Spain had not yet joined the European Community. The entrance of both countries in the E.C. made the Report incomplete. This Annex supplements the Report in this respect.

The arrangements in Spain and Portugal have been analysed and described in the same way as the arrangements existing in the other Member States. The first section of each of the chapters relating to Spain and Portugal resp. deals with the involvement of representative employer and worker organisations at the national level, the second section with employee participation at enterprise level. The latter section opens with a paragraph on the development of worker participation in occupational safety. The second paragraph describes the existing institutional arrangements. The third paragraph surveys the rights of individual employees and their representatives with regard to information and consultation vis-à-vis management, health and safety experts and the labour inspectorate. A final paragraph comments on the system as a whole.

The last chapter deals with the question as to whether the conclusions of the Report which were based on a study of ten Member States need to be modified taking into account the results of the study on Portugal and Spain. The conclusion of this chapter is, that an alteration of the recommendations and proposals laid down in the Report is not required.

2. Spain

2.1. Involvement of representative organisations of employers and workers in the formulation and application of a national policy and legislation on safety and health at work

According to the Spanish Constitution of 1978, "the law shall establish the forms of participation in social security and in the activities of those public bodies whose operation directly affects the quality of life or the general welfare" (art. 129.1).
Spain has ratified the I.L.O. Occupational Safety and Health Convention (1981), as well as the European Social Charter, which in art. 3 obliges the contracting parties to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health. So, the need for involvement of the social partners would seem to be generally acknowledged in Spain and the participation of both sides of industry in the development of a national health and safety policy is accepted as a matter of principle.
Several provisions adopted over the last 5 years have begun to apply this principle in practice. One of the most important arrangements for this purpose is laid down under the Royal Decree of 17 March 1982 which provides for the participation of workers' and employers' organisations in the General Council of the National Occupational Safety and Health Institute (Instituto Nacional de Seguridad e Higiene en el Trabajo), an autonomous public body, established by Royal Decree in 1978. This Institute plays a central role in investigating work related health hazards, in conducting safety and health studies and in developing policies and programs. It offers technical advice to the Ministry of Labour and the Labour Inspectorate , to other offical agencies, to employers' and workers' organisations, and to individual

enterprises.

Under Section 2 of the Decree the functions of the Institute include, inter alia:

- to analyse the causes and determining factors of accidents at work and occupational diseases and to propose corrective measures;
- to draw up, promote and develop research programs on methods and techniques of occupational safety and health;
- to propose rules applicable to the work of women, minors and the elderly;
- to carry out studies on toxic and hazardous products;
- to formulate standards concerning maximum permissible concentrations for contaminants;
- to educate workers regarding the prevention of occupational hazards;
- to propose to the General Directorate of Labour technical rules and regulations concerning the approval of personal and collective protective devices;
- to report to the Inspectorate of Labour any serious offences jeopardising the health or physical integrity of workers.

The decree of 1982 also contains provisions on the functions of 4 Centros de Investigación y Asistencia Tecnica and about 50 Gabinetes Tecnicos Provinciales, which are the operational arm of the Institute at different territorial levels.

The Order of 25 January 1985 further elaborates the representation of both sides of industry in the Institute's General Council, which supervises and controls its activities. The Council is chaired by the Subsecretary of Labour and Social Security. It has atripartite composition: 13 of its 39 members are representatives of the most representative trade union organisations, 13 are representatives of the employer organisations and 13 members represent the public administration. The Council

meets at least two times a year; its Permanent Committee, however, which also has a tripartite composition, meets at least every two month.
The representative character of employers' and workers' organisations was determined by the Worker s' Charter of 1980, according to which a trade union organisation shall be deemed to enjoy the requisite status if it covers 10 per cent or more of the works committee members or staff representatives and an employers' association if it covers 10 percent or more of the undertakings and workers at the national level.* Five years later, the representativity of trade unions was further elaborated, along the lines set out in the Workers'Charter, in the Ley Organica de Libertad Sindical of 2 August 1985.
Actually, on the workers' side, the most important participants in the General Council are the two principal national trade union confederations (U.G.T. and CC.OO.), on the employers' side the national confederation of employers' organisations (C.E.O.E.).
Finally, participation of the two sides of industry in the activities of the National Institute has also been provided for at the provincial level. According to a Resolution of the Ministry of Labour of 27 September 1985, in every province a Provincial Committee of the General Council will be set up, consisting of 3 trade union representatives, 3 employer representatives and 3 representatives of the administration. The administration's representatives are: the provincial director of the Ministry of Labour (which is chairman to the committee), the provincial director of the National Health Institute and the chief of the provincial labour

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* Special rules apply to trade union or employers' associations set up for one of Spain's autonomous communities, like the Basque country and Galicia

inspectorate.*

In addition to the National Occupational Safety and Health Institute, there are several other national services or institutions with a role in the area of occupational health and safety, such as, inter alia the National Institute of Occupational Medicine and Safety (Instituto Nacional de Medicina y Seguridad en el Trabajo; it has a longer history than the National Occupational Safety and Health Institute and dates from 1944), the National Health Institute and the National Silicosis Institute. Labour and management are represented on the boards of some of these other institutions but not on all of them. At present a national body with overall-responsibilities or with consultative functions covering the whole field of health, safety and working conditions which must be consulted by the public authorities on all proposed regulations (like the national working environment councils in Denmark and the Netherlands and the supreme health and safety councils in France and Belgium), does not exist in Spain. This is not to say, that such a body may not come into existence in the future, for instance, if a new framework-law on occupational safety, health and the working environment would be elaborated.**

Whatever the future developments may be, the involvement of both sides of industry is likely to remain a basic principle guiding the design of organisational arrangements at national level. Recently, the protection of health at work has also become one of the objectives of the new National Health System created by the General Health Act of 25 April 1986. Art. 22 of this Act provides

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* The resolution states, that this arrangement is adopted wihout prejudice to the powers of autonomous communities as far as the execution of labour legislation is concerned.

**At its 34th Congress in 1986, one of the main trade union confederations, the U.G.T., advocated the establishment of such a general consultative body with a tripartite composition

that employers and workers, through their representative organisations, will participate in the planning, organisation and supervision of health protection activities, undertaken at the different territorial levels by agencies of the National Health System.

2.2. Worker participation in health and safety at the workplace

2.2.1. General remarks

There is a long tradition in Spain of worker involvement within the enterprise, also in safety and health matters. Under the Franco regime, joint boards or works councils were established by a Decree of 18 August 1947. According to a recent I.L.O. report, "their essential function was to ensure collaboration between capital, technology and labour within the undertaking. They were composed of not more than ten members elected from among the technical staff, administrative staff and manual workers and were under the chairmanship of a person appointed by the board of directors".* A former study group, set up by the I.L.O. in 1969, had already pointed out the principal weakness of these 'jurados de empresa' as a channel for employee involvement, given the authoritarian nature of the existing system of industrial relations, and of the political regime in the Franco era in general.
Before 'jurados de empresa' were set up under the 1947 Decree (establishment of these works boards was mandatory only for very large undertakings), an Order of 21 September 1944 had made provision for the institution of health and safety committees (Comités de Seguridad e Higiene del Trabajo) in work centres of a certain size.** In some sectors of economic activity (e.g. chemical industry, gas and electricity, transport and communications) safety committees were compulsory for establishments with 500 or more workers, in other sectors (e.g. machine industry, metal works, construction and building) establishments with 250 or more were obliged to set up a

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* The trade union situation and industrial relations in Spain, Report of an I.L.O. mission, Geneve 1985, p. 83

** According to a Decree of 11 September 1953 in an undertaking with a 'jurado de empresa', the latter one should act as a health and safety committee

safety committee. The activities and functions of these committees, however, were confined within narrow, technical limits and on account of their composition they could hardly be considered as an instrument of worker participation in health and safety matters.

In 1971 the General Occupational Safety and Health Ordinance was approved (Order of 9 March 1971), which replaced the General Industrial Safety and Health Regulations of 31 January 1940. In addition to laying down general employer's duties and workers' rights and obligations, the General Ordinance provided new rules relating to the establishment, composition and functions of occupational safety and health committees.* Such committees had to be set up in all work centers employing more than 100 workers. Their functions, as defined by the law, included inter alia:

- to promote compliance with existing legislation;
- to advise on what safety and health standards should be laid down in the works rules of the undertaking;
- to visit workplaces and acquaint themselves with prevailing health and safety conditions;
- to look into the causes of the accidents and occupational diseases that occur in the undertaking;
- to see that all workers receive appropriate training in safety and health matters and to encourage their cooperation in this field.

According to art. 9 of the General Ordinance, employers with five or more employees which were not required to set up a safety committee should appoint a safety delegate with the tasks of interesting workers and furthering their cooperation in health and safety matters, of notifying hazardous situations, of looking into health and safety conditions in the undertaking and of giving first aid to persons injured in accidents.

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* See also the Decree of 11 March 1971 on the same subject matter

A basic modification of the system of worker participation at the level of the undertaking took place after the change of regime in the mid 70ties. In December 1977 a Royal Decree was issued which made provision for elections to appoint members of new, representative staff institutions: staff representatives and works committees. For the first time freely created unions were authorised to put forward candidates for the elections, which where held in 1978. In the same year, the Constitution was adopted; in addition to making health protection at work a public policy objective (art. 40.2), it provides in art. 129.2 that the public authorities shall promote the various forms of participation within companies.
Two years later, the right to participation was embodied in the Workers' Charter (Estatuto de los Trabajadores) of 14 March 1980, which lays down rules for the election of staff representatives and members of works committees, specifying the guarantees applicable to them as well as their powers and duties, including some powers in the domain of occupational health and safety. Finally, in 1985, the Ley Organica de Libertad Sindical was adopted. It formally acknowledges the right to carry out trade union activities and authorises trade union members to set up trade union sections within the undertaking. In enterprises with more than 250 employees, trade unions with a seat on the works committee are represented by trade union representatives.

2.2.2. Institutional arrangements

Under Spanish law, two different areas of legislation can be distinguished in which rules have been developed relating to employee participation in occupational safety and health: industrial safety legislation (notably the General Ordinance of 1971 which is still in force) and the legislation on representative institutions within

the undertaking (as laid down in the Workers' Charter of 1980).*

According to the Decree of 11 March 1971, which further elaborates the General Ordinance, occupational health and safety committees (Comités de Seguridad e Higiene del Trabajo) shall be set up in all undertakings and workplaces employing more than 100 workers, or, on the orders of the Ministry of Labour, in undertakings and workplaces employing less than that number, where the work carried out presents special hazards. The functions of these committees shall be to promote the observance of existing regulations, to consider and propose appropriate action for the prevention of occupational hazards and to carry out any other duties entrusted to them by the Ministry of Labour in the insterest of protecting workers' lives, physical integrity, health and welfare. The committee is composed of a chairman and a secretary appointed by the employer, the technician with the highest qualifications in occupational safety, the chief medical officer of the undertaking's own or joint medical service, the best qualified medical aid among the staff, the chief of the safety team or safety brigade and employee representatives, appointed by the works committee or trade union. The number of employee representatives depends on the size of the undertaking (three in undertakings employing up to 500, four in undertakings with 501-1,000 employees, five in undertakings of more than 1,000).

In undertakings where it appears expedient to set up more than one such committee because of the large number of workers employed or because the undertaking consists

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* Specific rules have been adopted for mines; see the Miners' Charter of 21 December 1983, which provides for safety and health committees as well as for miners' safety delegates

of several workplaces each of which has its own committee, the employer can be authorised to create a central committee to co-ordinate the work of the committees.
According to art. 8 of the General Ordinance, the health and safety committee meets at least once a month and whenever they are called by their chairman, either on his own initiative or at the request of three or more members. Every six month the committee meets with the technicians, medical officers, supervisors and foremen of the undertaking under the chairmanship of the general manager. Meetings are to take place during working hours. A monthly memorandum on the activities of the committee must be sent to the provincial officer of the Ministry of Labour. The committee must also draw up an annual account and send it to the provincial inspectorate.
Undertakings employing five or more workers which are not required to have a committee, must have a safety delegate (vigilante de seguridad) appointed by the employer. This shall be the technician with the best qualifications in the prevention of occupational hazards or, if there is no one who meets these requirements, a worker who can show that he has succesfully attended an occupational safety or first-aid course. The functions of the safety delegate (increasing employee co-operation in safety matters, acquainting himself with working conditions, notifying dangerous situations, providing first aid) must be compatible with the exercise of his ordinary job in the undertaking.
The Workers'Charter of 1980 (as amended by an Act of 2 August 1984)* makes provision for the election of staff representatives (delegados de personal) and works committees (comités de empresa).**

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* According to art. 1, the Workers' Charter does not apply to public servants. However,similar bodies may be set up in public administrations

** In all undertakings, workers have the right to hold meetings; see art. 77 of the Workers' Charter

The workers in an undertaking or workplace employing fewer than 50 and more than ten workers are represented by staff representatives. There may also be a staff representative in an undertaking or workplace employing between six and ten workers if the majority of such workers so decide. There should be one staff representative for up to 30 workers and three for between 31 and 49 workers. According to the Workers' Charter, staff representatives jointly discharge vis-à-vis the employer the duties of representation for which they were elected. Their competence is the same as that laid down for works committees.

A works committee must be set up in every workplace where 50 or more workers are employed. A single works committee shall be set up for an undertaking having two or more workplaces located in the same province or in neighbouring localities if such workplaces do not employ as many as 50 workers when taken separately but do employ that number when taken together. The number of members of a works committee depends on the size of the establishment: five members for between 50 and 100 workers; nine members for between 101 and 250 workers and so on. The committee elects a chairman and a secretary from among its members and prepares its own rules of procedure. It meets every two months or whenever requested by one-third of its members or one-third of the workers represented.

Staff representatives and members of a works committee are directly elected by all the workers. Any legally constituted workers' trade union may nominate candidates for election; any worker may also come forward as a candidate if his candidature is supported by a certain number of signatures. Staff representatives and members of a works committee hold office for four years. In general, they may not be dismissed while in office or during the year following expiry of their term, nor

may they suffer any prejudice in connection with a wage increase or promotion by reason of their duties as workers' representatives. They must be allowed a certain number of hours of time off with pay each month to carry out their duties as representatives.
The Workers' Charter does not deal with the relations between staff representative or works committee on the one hand, and safety committee or safety delegate - as provided for in the General Ordinance - on the other. So, the relation between the two systems remains legally unexplained. This may be due to the fact, that the General Ordinance and the Workers' Charter were adopted in completely different periods and under different regimes in combination with the fact that the General Ordinance has not been replaced by a new law on the working environment, which takes account of the changes in labour relations.

2.2.3. Legal rights

Both the General Ordinance (art. 8) and the Workers' Charter (art. 19) lay down the employer's duty to provide adequate instruction and training to all employees. According to the Workers' Charter an employer is required, either with his own facilities or through the relevant official services, to provide practical and suitable safety and health training for workers who enter into employment, change their job or have to use new methods that may imply a serious danger for themselves or any of their workmates or third parties. Workers are required to attend such training and to participate in any drills arranged during working hours or at other times, provided that any time spent in this connection shall be deducted from their hours of work.
Works committees (or staff representatives) have the

right to be informed at least once a quarter of the level of absenteeism and its causes, of employment accidents and occupational diseases and their sequelae, of the incidence of employment injuries, of periodic or special studies of the working environment and of the procedures followed for the prevention of risks.
The Workers' Charter does not bestow on the works committee an explicit right to be informed on the safety and health hazards existing within the undertaking and on the use of dangerous substances and tools, but it gives them a general power to supervise compliance with current employment legislation and the safety and health conditions in which the undertaking's work is carried on. The law does not provide for a duty of the employer to set out in writing his health and safety policy or to draw up periodical action programmes or reports.
No more do workers or their representatives have an explicit right of acces to the records relevant to occupational health and safety which the employer is legally required to keep.
Employees or their representatives may be able to obtain information on the hazards of work through investigation and inspection. In this respect, the Workers' Charter (art. 19), apart from laying down the general, aforementioned power of supervision, limits itself to stating that, when a visit of inspection or supervision is made in connection with any such measures that the employer is required to take, the workers are entitled to take part through their legal representatives at the workplace, if no specialised authorities or centres have been declared by law to be competent in such matters. As to health and safety committees, the General Ordinance authorises them to visit the workplace and the services and annexed fa-

cilities set up for the workers of the undertaking in order to acquaint themselves with regard to good housekeeping, the working environment, plant, machinery, tools and processes and to look out for hazards that might endanger the workers' lives and health. According to the Ordinance, the safety delegate has a similar task.
To what extent worker representatives are entitled to be consulted on health and safety matters? The General Ordinance empowers the health and safety committee to propose preventive measures, where appropriate, as well as any other action they deem advisable; furthermore, they can offer advice on what safety and health standards should be laid down in the works rules of the undertaking. Neither the health and safety committee, nor staff representatives or works committees have a legal right to be consulted on the employer's health and safety policy or a right to be previously consulted on measures likely to affect safety and health at work. This is not to say that staff representatives or workers committees may not discuss health and safety problems with management with a view to bargaining out the matter in dispute and resolving matters by collective agreement or otherwise. Art. 87 of the Workers' Charter entitles works committees, staff representatives or trade union representatives to engage in collective bargaining. If the dispute concerns compliance with the health and safety legislation currently in force, a works committee also has the capacity, as a collective body, to institute administrative or judicial proceedings if the majority of its members so decide.

Employee participation in health and safety depends not only on powers and rights vis-à-vis management, but also on access to experts on the one hand and to public

authorities on the other.
Under Spanish law, in undertakings of a certain size employers are required to set up an occupational medical service or to join such a service. According to a Decree of 10 June 1959*, an undertaking of more than 1,000 workers must have its own medical service. Undertakings which employ between 100 and 1,000 workers, must join an interenterprise service. The same holds, on the order of the Minister of Labour, for undertakings employing less than 100 where the work carried out presents special health hazards.
Apart from the fact that the occupational health physician is bound to professional secrecy, the law does not contain many safeguards for his professional independence. As to worker involvement, the regulations of 1959 are a true reflection of other labour legislation of that period, in which workers or their representatives did not play a role of much importance. The regulations provide that the occupational medical service should cooperate with the 'jurado de empresa' (see par. 2.2.1.) and the health and safety committee.
The chief medical officer of the enterprise or interenterprise service has a seat on the health and safety committee. Before an enterprise medical service is established, the 'jurado de empresa' must be consulted; the same body is to advise management on the functioning of the service. Interenterprise services are supervised by a joint committee (comisión rectora) composed of representatives of the undertakings and of the workers concerned. The legislation currently in force does not make provision for specific employee rights vis-à-vis occupational medical services, however.
The 'jurados de empresa' do not exist any more, and

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* See also the Order of 21 November 1959

the 'comisiónes rectoras' never seem to have had much practical importance as a vehicle for employee participation. On the whole, the law does not provide for worker involvement in the establishment and functioning of occupational health services in a meaningful degree. The relation between the employees or their legal representatives at the workplace and the public authorities is regulated to some extent by the law. Employees or their representatives have access to services and institutions for technical advice or may liaise with the labour inspectorate. Staff representatives or works committees may institute any necessary proceedings with the competent authorities or courts. In general labour inspectors on visiting a workplace will inform worker representatives of their presence and enable worker representatives to accompany them on their inspection tour.

According to art. 19 of the Workers' Statute, where the worker representatives consider that there is a genuine and serious likelihood of an accident occurring through failure to comply with the relevant legislation, they must request the employer in writing to take the necessary measures to eliminate the danger. If the employer takes no action on their request within four days, they shall apply to the competent authority, which, if it considers that the alleged circumstances are present, shall instruct the employer, by means of an order, to take the appropriate safety measures or to suspend operations in the area or workplace or with the equipment where the danger is apprehended. If it considers that there is serious danger of an accident, it may also, on receiving the necessary technical reports, order an immediate stoppage of work. If there is imminent danger of an accident, a decision to stop work may

be taken by the competent safety authorities within the undertaking or by 75 per cent of the workers' representatives, in the case of an undertaking not engaged in a continuous process, or, in the case of other undertakings, by all the workers' representatives; any such decision shall be immediatly communicated to the undertaking and to the labour authority, which shall, within 24 hours, cancel or confirm the decision taken.*

2.2.4. Comments

Until now, no studies have been conducted on how staff representatives and works committees exercise their tasks and powers in health and safety matters. Information as to what extent the health and safety committees required by the law have been established or are operative in practice, is hardly available.
What is obvious, however, is that the Spanish systeem of employee involvement in health protection at work is still in a period of transition. On the one hand there is the safety committee which predominantly has a technical character and does not seem to be designed, at least not in the first place, as a channel for worker participation. The works committee, on the other hand, does provide such a channel, but its terms of reference and powers in health and safety matters are not very much elaborated or systematically defined by the law. The relation between both institutions remains unclear.
It is not unlikely, however, that this situation may

* The Miners' Charter of 1983 has a further provision which reads: "A worker who interrupts his work because he has reasonable cause to believe that it constituted an imminent and serious danger to his life or health shall not, if the reasonable cause for his decision has been demonstrated, be penalised for stopping work, neither shall he forfeit the corresponding wage" (art. 30).

change in the future. In the Economic and Social Agreement (Acuerdo Economico y Social) for 1985-1986*, the contracting parties (i.e. employer organisations, an important section of worker organisations and the public administration) have agreed on a revision and actualisation of existing health and safety legislation, taking into account present economic realities, Spain's entrance into the European Community and the I.L.O. conventions ratified by Spain. The parties will endeavour, inter alia, to define a new legal framework regarding the organisation of the prevention of employment injury and work-related health impairments at enterprise level.

If new statutory provisions are developed in this field, it will be interesting to see what choices will be made. Will works committees which have a better position to bargain on health and safety matters occupy a central place or will this role be assigned to specialised bodies with specific health and safety tasks, without prejudice to the overall responsibilities and powers of the works committee?**

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* Acuerdo Economico y Social; Resolution of 9 October 1984 of the Instituto de Mediación, Arbitración y Conciliación.

** In a resolution adopted at its 34th Congress in 1986, the U.G.T., one of the principal trade union confederations, advocates a revision of the existing legislation on health an safety committees which would give them substantive new powers.

3. Portugal

3.1. Involvement of representative organisations of employers and workers in the formulation and application of a national policy and legislation on safety and health at work.

In Portugal, the representative organisations of employers and workers are associated with the development and implementation of the national policy on occupational safety, health and the working environment.
The principle of the participation of both sides of industry in the state's social and economic policies is acknowledged in art. 81 of the Constitution. Moreover, in 1985 Portugal has ratified the I.L.O. Occupational Health and Safety Convention (1981) which prescribes consultation with the most representative organisations of employers and workers in formulating, implementing and reviewing national policies.

The consultative body through which participation takes place is the National Occupational Health and Safety Council (Conselho Nacional de Higiene e Segurença do Trabalho). It was established in July 1982* in order to improve the cooperation of the state with the social partners with a view to the formulation, application and periodical evaluation of a national health and safety policy.
According to the Regulations on the composition and functioning of the Council** its duties include the following:

- to elaborate proposals which contribute to the development and application of a national policy on health and safety at work;

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* See Resolution of the Council of Ministers No. 204/82, as amended by Resolution No. 12/83

** Regulamento do Conselho Nacional de Higiene e Segurença do Trabalho, Diário da República, II Serie, No. 114, 25-6-1983, p.5327-5329

- to give its opinion on policy measures, objectives, programmes and projects of the periodical health and safety plans;
- to supervise the implementation of the programmes and evaluate their results;
- to analyse and offer its advice on the proposals presented by the government or the social partners;
- to set up technical committees to conduct specific studies or to prepare opinions or proposals on particular issues.

The Council has a tripartite composition. In addition to its chairman, who is appointed by the Prime Minister and the Minister of Labour together, it consists of seven representatives of different ministeries and the regional governments of Madeira and the Azores, three representatives of the most representative employer organisations and three members representing the most representative employee organisations. The employer members are representing the sections of industry, commerce and agriculture. The trade union representatives are nominated by the two principal trade union confederations (the C.G.T.P. and the U.G.T.); one member is representing dock workers.

Finally, mention should by made of two articles in the Constitution of the Portuguese Republic (art. 55 and 57 resp.) which entitle employee representatives (workers' committees and trade union organisations resp.) to participate in the elaboration of labour legislation. For this purpose, Act No. 16/79 of 26 May 1979 provides for the compulsory publication of all new laws and regulations, before they are to be discussed by legislative bodies. In this way, workers' committees and trade unions are enabled to give their opinion on the proposals.

3.2. Worker participation in health and safety at the workplace

3.2.1. General remarks

Portugal has a long history of legislation relating to occupational health and safety, the first specific enactment in this domain dating back to 1895. Although in the first half of this century further statutory regulations were adopted (in particular the general decrees of 1918 and 1922 resp.), it was not until 1959 that the establishment of joint health and safety committees became part of the policies adopted by the public authorities responsible for the protection of health at work.

In a decision of 13 May 1959, the Minister of Corporations and Social Security stated that the time had come to lay down minimum rules concerning the obligations of employers in respect of occupational medicine on the one hand and occupational safety on the other. As to the latter field, the rules make provision for the establishment of joint safety committees in undertakings of 50 or more employees, or in undertakings employing less than that number where the work carried out presents special hazards. The committee consists of four members (two of them appointed by management, two by the trade union), and is to be assisted by general staff members, among them the occupational medical officer. The functions of the committee include, inter alia, to hold periodical inspections, to investigate into accidents, to supervise compliance with the regulations in force and to elaborate recommendations to improve health and safety conditions. In every undertaking a safety delegate should be appointed as the operational arm of the committee. Where no committee exists, he should carry out its tasks himself.

It should be noted however, that the ministerial decision of 1959 does not bring the employer under a legal obligation to set up a safety committee and to appoint a safety delegate. According to the Minister, collective labour agreements are a more adequate instrument to lay down such obligations. Therefore, the contracting parties are requested to include, in their agreements, the rules proposed by him.
Several provisions adopted after 1959 refer to the eventual existence of a safety committee, without, however, making its establishment compulsory. So, a Legislative Decree of 24 November 1969 on individual contracts of employment tells that "workers shall be bound to collaborate with the employer in matters of occupational health and safety through safety committees and other appropriate procedures". The General Health and Safety Regulations for Industrial Establishments of 3 February 1971 tell the employer to consult, in the terms of the applicable collective agreements, the safety committee or the safety delegate.

Actually, many collective agreements applying to different sectors make provision for safety committees and delegates. Until now, a statutory obligation to set up a committee and to appoint a delegate is only laid down in the General Regulations on Safety and Health in Mines and Quarries, of 15 January 1985. However, this situation may change in the future. At the moment, a new basic law on occupational health and safety is being developed which will deal, inter alia, with institutional arrangements at enterprise level. Maybe, the establishment of safety committees will become mandatory in the years to come.
Apart from the developments with regard to joint safety committees, mention should be made of the important change in labour relations which took place after the

April revolution of 1974. The new Constitution entitled workers to set up workers' committees to defend worker interests, with a right to receive all information needed to carry out their activities and to exercise control over management. The election of these committees and their terms of reference are elaborated in an Act of 12 September 1979. The Constitution also empowers trade unions to operate within undertakings. According to an Act of 30 April 1975, for this purpose trade union delegates may be appointed who may form committees within the enterprise. Both the workers' committees and the trade union delegates, where they exist, can represent the employees (or the trade union members among them) in health and safety matters.

3.2.2. Institutional arrangements

Apart from the sector of mines and quarries, there is no statutory legislation on the establishment of safety committees. For various branches of economic activity, however, collective agreements may have legal significance in this respect. The metal-working industry is an example of a sector for which rules on safety committees and safety delegates are laid down under a collective labour contract.* The health and safety regulations which form an annex to the contract make provision for the establishment of a prevention and safety committee ('comissao de prevençao e segurança') in enterprises or production units of 40 or more employees, or in undertakings employing less than that number when the work carries out presents exceptional health risks.

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* See Contrato colectivo de trabalho para as industrias metalúrgicas e metalomecânicas, Boletim do Trabalho e Emprego, 1ª Serie, No. 33, 8/9/81, p.2382-2461

The committee is composed of two representatives of the enterprise, two representatives elected every year by the workers, and the safety delegate or safety technician. The occupational health physician and one or two other staff members attend its meetings, which normally take place once a month. The functions of the committee members are more or less similar to those proposed in the ministerial decision of 1959 (see 3.2.1.). The employer must see to it that the committee members receive the necessary training in health and safety matters to carry out their tasks.

In all undertakings belonging to the sector there must be a safety delegate ('encarregado de segurança'; in undertakings employing more than 500 he is called 'tecnico de prevençao'). The safety delegate, who is elected by the employees taking into account his ability to perform the safety delegate's functions, carries out the tasks of the prevention and safety committee where it has not been established. His functions include holding periodical inspections in the workplace and taking the required measures in a case of grave and imminent danger. He makes representations on behalf of the employees to the prevention and safety committee, management and the labour inspectorate. Furthermore he submits periodical reports on the working conditions to the management of the undertaking.

In all enterprises workers have a statutory right to elect a workers' committee ('commissao de trabalhadores')* The law tells how the committee is to be elected and for how long it may remain in office (three years).

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* The law provides also for the election, where appropriate, of subcommittees and coordinating committees.

The rules relating to its functioning are to be approved by the employees concerned. The committee may have up to three members in undertakings of 200 or less employees, five members in undertakings employing 500 to 1,000 etc. The right to elect a workers' committee applies also to the public sector. The same holds (at least in principle) for the appointment of trade union delegates and the establishment of a trade union committee in the enterprise. The law leaves it for the trade unions to determine, how these delegates are to be elected. Like the members of workers' committees, trade union delegates have a limited right to time off to exercise their functions. Very often, collective agreements lay down further rules on the functioning of trade union representatives in the undertaking. Furthermore, to a certain extent they are protected from dismissal. Whether a workers' committee exists or trade union delegates are appointed depends entirely on the initiative of the employees concerned and on the trade unions. Although in terms of the law, they are different forms of representation, in practice it can be difficult to make a clear distinction between the functions of the workers' committee and the activities of trade union organisations within the undertaking.

3.2.3. Legal rights

Since health and safety committees have no statutory basis in the law (except for mines and quarries) and since workers' committees (let alone trade union representatives in the undertaking) hardly have specific rights with respect to the working environment, rights of workers or their representatives in health and safety matters are not systematically elaborated in the law. This is not to say, of course, that such rights do not exist. As far as information is concerned, mention should be made of the general duty of the employer to

inform the employees about the hazards to which they are exposed and about the precautions to be taken, in particular when they enter into employment or change their job.
According to the same regulations (the General Health and Safety Regulations of 1971) the employer must also see to it that all employees receive adequate safety training.
Workers' committees, where they exist, have a right to receive all information they need to perform their functions. However, art. 23 of the Act on workers' committees (of 1979) which specifies the contents of this right, does not specifically refer to safety and health. On the other hand, workers' committees are entitled (art. 24 of the same Act) to express previously their opinion in writing on any management decisions which would result in a substantive deterioration of working conditions. This implies, of course, that they are to be informed when the employer envisages a measure which may have such effects. Furthermore, the right of workers' committees to control management ('controlo de gestao'; art. 29) includes the power to see to it that the labour legislation is complied with in the enterprise.

However, the law does not give worker representatives the competence of informing themselves on safety and health conditions at the place of work either by holding their own periodical inspections or by cooperating with management representatives in such inspections. Apart from the sector of mines and quarries, the latter competence only exists in those sectors where collective agreements entitle a joint safety committee and a safety delegate to periodical inspections and investigations of accidents and professional diseases which have occurred in the undertaking.

As far as consultation is concerned, mention should be made of the general duty of the employer, to consult safety committees and safety delegates, where they exist, in all matters within their competence (General Health and Safety Regulations, art. 3). The right to consultation is further elaborated in those collective labour agreements which make provision for safety committees and delegates. As to workers' committees, in addition to their right to be previously consulted on measures with adverse affect on working conditions, the Act of 1979 also entitles them to make suggestions and recommendations, and to criticise safety and health conditions in the undertaking.

Under Portuguese law, all industrial and commercial undertakings with more than 200 employees must set up their own occupational medical service. Smaller enterprises when located at approximately the same place and with 500 or more employees when taken together, must organise an interenterprise service. In other circumstances smaller undertakings must contract an occupational health physician for an adequate number of hours.* The law safeguards the principle of moral and technical indepencence of the occupational health physician. It does not lay down any rules on how workers or their representatives may be involved with the functioning of occupational health services. According to the ministerial decision of 13 May 1959 however (see 3.2.1.), the occupational health physician must collaborate with safety committees and safety delegates when they exist; under

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* See the decree of 25 January 1967, which was preceded by a decree of 27 April 1972 on the establishment of medical services in undertakings where there is a risk of silicosis. For a critique on the existing system of occupational health services and recommendations for basic modifications, see M. Faria a.o., A saúde ocupacional em Portugal; situaçao actual, perspectivas para o futuro, Caixa Nacional de Seguros de Doenças Profissionais, Lisboa 1985

collective agreements safety committees and delegates are obliged to cooperate with the occupational health service. The occupational health physician attends meetings of the safety committee, where it exists. Workers or their representatives may of course call on the labour inspectorate. The law does not further elaborate the relationship between the labour inspectorate or other enforcement agencies and worker representatives. In case of grave and imminent danger, the inspectorate may order an immediate stoppage of work; worker representatives have no statutory right to stop work in such circumstances. Collective agreements may lay down further provisions on employee right vis-à-vis the labour inspectorate. The collective labour contract for the metal working industry (see 3.2.2.), for instance, provides that the employees can make representations to the inspection agencies, either directly or through the safety committee or the trade union concerned. Furthermore, when the employees or trade unions request an inspection, the trade union concerned can appoint an expert to accompany the representatives of the inspection agency; he must be given the documents stating which measures the employer is required to take.

3.2.4. Comments

The Portuguese system of worker involvement in health and safety is rather voluntary than compulsory in its character. The establishment of safety committees and the appointment of safety delegates depends in most sectors on what is agreed upon by the social partners in collective labour contracts. The establishment of workers' committees and the appointment of trade union delegates is optional and conditional upon the initiatives of employees and trade unions.
Legal rights of workers or their representatives in health and safety matters are laid down in the law,

both with regard to information and with regard to consultation, but only to a limited extent. The relationship between worker representatives and occupational health and safety experts employed by the enterprise is not eleborated by the law. This situation may change in the future, however, since a new basic law on occupational health and safety is being prepared which is likely to deal also with employee involvement at the place of work.

4. Conclusions

In the first part of the Report, which deals with involvement of representative organisations of employers and workers in the development and implementation of a national health and safety policy, it was concluded that Community action in this field is not required, mainly because the principle of participation of the two sides of industry is already acknowledged in the ten Member States which were studied and because all of them had taken certain steps to apply this principle in practice.
Both in Portugal and in Spain the principle of involvement of employers' and workers' organisation is incorporated in the Constitution of each country. Both Member States have ratified international conventions which lay down the same principle. Provisions adopted over the last 5 years apply this principle in practice. Therefore, there is no reason to modify the conclusion reached in the first part of the Report.
In the second part of the Report, which deals with worker participation in health and safety at the workplace, it was concluded, that if the Community wants to ensure employee participation, it should give priority to the development of a set of basic employee rights in the domain of working conditions, rather than determining how employees are to be represented in this field. Fourteen rights were identified as suitable standards to be adopted by the Community for this purpose.
Taking account of the arrangements adopted so far in Spain and Portugal, an alteration of the recommendations and proposals laid down in the second part of the Report would not seem to be required. On the one hand, the institutional arrangements developed in each country for the purpose of employee involvement in health and safety matters are a further illustration of the variety

between the Member States as far as institutional representation is concerned; these differences would seem to make it hard to develop a single model of institutional participation. On the other hand, also in the case of Spain and Portugal, the adoption by the Community of a set of basic employee rights in occupational health and safety would seem to be instrumental in safeguarding a common, minimum level of participation.

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European Communities — Commission

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Both parts contain a survey of national arrangements, a comparative analysis of the arrangements and a discussion of the desirability of and scope for Community action. Whereas the conclusion in Part 1 is, that such action is not necessary or appropriate in respect of the involvement of employers 'and workers' organizations at the national level, Part 2 results in recommendations and proposals for action by the Community in respect of employee participation in safety and health within undertakings.

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