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**SUMMARY REPORT ON THE COMPARATIVE STUDY
ON RULES GOVERNING WORKING CONDITIONS
IN THE MEMBER STATES**

(presented by the Commission)

TABLE OF CONTENTS

	<u>Paragraphs</u>
I. Introduction	1--5
II. The Main Findings	
A. <u>The Contract of Employment</u> (The differences in the Legal Concepts, Limitations to the Freedom of Contract)	6-13
B. <u>Non Standard Employment Contracts</u> (Part Time Employment Contract, Fixed Term Contract, Agency Work Contract, Home Working)	14-19
C. <u>Wage Regulation</u> (The Sources of Wage Regulation, Minimum Wage, Equality of Pay, Insolvency)	20-23
D. <u>The Organisation of Working Time</u> (Length of Working Time, Night Work, Overtime, Regulation of Working Time Longer than a Week, Paid Annual Leave and Public Holidays)	24-28
E. <u>The Termination of The Employment Contract by The Employer</u> (Individual Dismissals, Collective Redundancies)	29-33
F. <u>The Regulation of Industrial Disputes</u> (Strikes and Lock-outs, Mechanisms for Conflict Resolution)	34-38
G. <u>Workers' Right to Information, Consultation and Participation</u> (Works Councils, Competences, Contractual Arrangements, Worker Participation)	39-44
H. <u>Collective Agreements as Sources of Regulation</u> (The Validity and the Legal Effects of Collective Agreements, Collective Bargaining)	45-52
III. Conclusions	53-54

SUMMARY REPORT ON THE COMPARATIVE STUDY

ON RULES GOVERNING WORKING CONDITIONS IN THE MEMBER STATES

1. INTRODUCTION

1. The European Council held in Hanover on 28/29 June 1988 requested the Commission to carry out a comparative study on the rules governing working conditions in the Member States of the Community. This summary report brings together the main findings which are presented in a synoptical report prepared by the services of the Commission together with a series of national reports prepared by experts.

2. The aim of the study is:

i) To show in a factual way:

To what extent and in which way the shaping of working conditions is governed:

- by legislation
- by collective agreements
- otherwise (notably employers' prerogatives).

At what level and by what procedure governments and both sides of industry intervene in this process.

ii) To identify specific topics in view of possibilities for future harmonisation for the gradual and progressive creation of a Community Labour Market.

3. Because of the possible wide range of aspects which could potentially be treated in such a comparative study a number of limitations had to be observed:

i) the study does not treat aspects relating to safety and health at the work place since they already form part of a Community programme which will be endorsed by a number of Directives laying down minimum standards to be developed progressively in the future.

Equally the study does not cover continuous in-company training which, in many Member States, is an area covered by contractual arrangements

ii) the study does not cover social security legislation in as far as this area is essentially a matter for national authorities

iii) the study focusses essentially on rules concerning the private sector - although some findings relate to the public and the semi-public sectors

4. The term "rules" is understood in an extensive way. The rules dealt with in this context are not only those laid down in legislative texts and case-law of the Member States, or directly applicable Community legislation, but they include also, if appropriate, some main provisions laid down in significant collective agreements.

5. The notion "working conditions" also carries a broad meaning. It covers individual working conditions such as the different forms of the employment contract, as well as its beginning, suspension and termination, working time issues, the regulation of minimum wages, the regulation of industrial disputes and collectively organized working conditions such as information, consultation and participation of employees in the decision-making process of their enterprises.

II. THE MAIN FINDINGS

A. THE CONTRACT OF EMPLOYMENT

The differences in the legal concepts

6. Workers and employers are the parties to the contract of employment. The worker is, prima facie, a person employed under a contract of employment, but the legal definition of the term, provided either by legislation or by case-law, may vary from one state to the other.

7. The legal concept of contract of employment in continental Member States is broader than that in Ireland and the United Kingdom and therefore various categories of workers subject to statutory employment rights on the Continent are excluded therefrom in Ireland and the United Kingdom.

8. Most countries exclude a wide range of individuals from the application of labour law or from the scope of particular statutes. The categories most commonly excluded are domestic workers, members of boards of Directors, commercial agents, work carried out on a friendship, charity or neighbourship basis. Other categories sometimes excluded are trainees, clergymen, agricultural workers, family workers, casual or short-term workers, temporary workers supplied by intermediaries, employees under certain fixed-term contracts and part-timers working less than a given number of hours.

9. In the legislation of most countries there is no general definition of the concept of employer. In general, the employer is a party to a contract of employment who provides work for the employer. The group of enterprises is, generally speaking, not recognized as such in the labour law of most countries. In all Member States a distinction is made between the enterprise or undertaking and the establishment and place of work.

10. The general minimum age to work is 16 in France, Spain and the United Kingdom, 14 in Portugal and 15 in the other Member States. Full capacity to contract is reached in all Member States at the age of 18.

The Limitations to the Freedom of Contract

11. The Freedom of Contract is the basis of the employment relationship in all Member States and implies the prohibition of forced labour. The main limitations and restrictions to this principle are the following:

- i) The principle of equality of treatment and the prohibition of discrimination on any ground such as race, colour, language, religion, political or other opinion, social origin or other status. This principle is explicitly or tacitly enshrined in the Constitutions of all Member States, with the exception of Denmark and the United Kingdom
- ii) The principle of equality of treatment between men and women within the meaning of EEC Directive 76/207, which is enshrined in the provisions of all Member States
- iii) The principle of equal treatment of EEC-nationals

Apart from the restrictions imposed by the above-mentioned principles, there are other limitations stemming from legislation or collective agreements.

12. All Member States require a work permit with respect to the employment of non EEC-nationals. Some Member States (notably France, Italy, Portugal and Spain) specify, through legislation or collective agreements, priorities or preferences as regards recruitment of specific groups (disabled persons, redundant workers, workers over a certain age, part-time workers, casual and seasonal workers etc).

13. In Italy and Spain the freedom to contract is subject to a legal limitation stemming from state intervention in the employment market and in the Federal Republic of Germany works councils have the right to be informed of and consulted on recruitments. Collective agreements in some Member States (for example - Belgium, the Federal Republic of Germany, France and the Netherlands) may contain guidelines on the recruitment and selection of workers.

B. NON-STANDARD EMPLOYMENT CONTRACTS

14. The term "non-standard employment contract" is understood to comprise the most important employment contracts or relationships which are not full-time and for an indefinite period.

Part-Time Employment Contract

15. The most important non-standard form of employment is based on a part-time contract. Specific legal definitions are only found in France and Spain. In the Federal Republic of Germany some statutory minimum provisions are laid down for on call workers. In the majority of Member States basic terms and conditions of employment as well as legislation on minimum notice periods, redundancy pay, etc. apply to full-time and part-time employees equally. Exceptions exist in the Federal Republic of Germany concerning the wage payment for the first six weeks of absence in case of illness for blue collar employees working less than 10 hours per week, in Ireland where part-time employees must work at least 120 hours per month to qualify for annual leave and, as in the United Kingdom, where they have to work a certain number of hours per week in order to be covered by legislation on dismissals. In the Netherlands statutory minimum wage legislation applies only if the part-time employee works more than one third of standard hours.

16. Other differences in the treatment of part-time employees are whether or not works councils or employee representatives have to be informed or consulted about the introduction of part-time work, whether or not part-time workers are allowed to vote for or to be elected to these bodies, to what extent they count fully, partly or not at all as members of the workforce for legal purposes and whether or not they need a written employment contract.

Fixed Term Contract

17. Fixed-term contracts are regulated by general employment legislation in the Federal Republic of Germany, Greece and the Netherlands. Specific legislation can be found in Belgium, France, Italy, Luxembourg, Portugal and Spain. In Denmark, Ireland and the United Kingdom there are no legal regulations for this type of employment contract. In most Member States with legislation the maximum length is two years (or three years in Spain, more than three years in Portugal, but limiting renewals to three years, and no legal ceiling in Greece). In the majority of these countries particular circumstances are required to justify fixed-term contracts.

Agency Work Contract

18. As far as agency work contracts (involving an employee, the employing agency and the client company) are concerned three different approaches can be found. In some countries (Greece, Italy and Spain) temporary work agencies are forbidden and hence the conclusion of such contracts. In Portugal there are no regulations at all. In the other Member States, temporary work agencies are required to register, but the modalities for their functioning vary to a great extent. There are, e.g., differences in the length of period permitted for temporary work, in the conditions for renewal, whether or not a written contract is prescribed and whether or not this form of employment relationship is forbidden partly (as in the Federal Republic of Germany and in the Netherlands in the building industry) or only allowed in particular circumstances, as in Belgium.

Home Working

19. In the area of homeworking legal protection concerning notably basic provisions on pay, working time, safety conditions and dismissals exists for the relevant employees in France, the Federal Republic of Germany, Italy and Spain. Very often a decisive point is, however - also in view of a possible coverage by collective agreements - whether or not the employment relationship of homeworking is considered a genuine employment contract.

C. WAGE REGULATION

The Sources of Wage Regulation

20. The main sources of pay regulation in all Member States are collective bargaining, State legislation and individual negotiations. Collective agreements are the most important source determining pay and remuneration. Intersectoral, industry-level agreements and agreements at enterprise or, even, shop floor level are usually responsible for fixing the structure and levels of pay. The State intervenes in the regulation of wages by the implementation of incomes policies and the enactment of protective legislation governing minimum wages, equality of payment, structure of wages and the place, time and form of payment as well as the protection of wages. State intervention in pay regulation has traditionally been low, apart from periods of incomes policies, in Ireland, the United Kingdom, Denmark, the Federal Republic of Germany, Italy and Belgium, and higher in the other countries.

Minimum Wage

21. A statutory national minimum wage fixed by the State exists in France, Luxembourg, the Netherlands, Portugal and Spain. In the United Kingdom and Ireland specific minimum wages for certain sectors are laid down by Wages Councils (the United Kingdom) and Joint Committees (Ireland). In Belgium and Greece a general minimum wage is fixed by national-level collective agreements, whilst in the other Member States industry-level collective agreements lay down specific minimum levels of pay.

Equality of Pay

22. The principle of equality of pay between men and women is common to all Member States via article 119 of the EEC Treaty and Directive 75/117/EEC. The right to non-discrimination between EEC-nationals, as enshrined in Article 48 of the EEC Treaty, is also applicable to levels of pay throughout the Community.

Insolvency

23. All Member States should also guarantee, in accordance with Directive 80/987/EEC relating to the protection of employees in the event of the insolvency of their employer, the payment of certain arrears of pay through statutory Redundancy or Special Guarantee Funds. On the other hand in Belgium, France, the Federal Republic of Germany, Greece, Italy, the Netherlands, Spain and Portugal wages are considered privileged credits and cannot be seized by creditors in full.

D. THE ORGANISATION OF WORKING TIME

Length of Working Time

24. With regard to the regulation of weekly working time statutory rules are found in all Member States, apart from the United Kingdom and Denmark. In this latter case, after an Act of Parliament in 1986 to fix a normal working week at 39 hours, collective agreements are now again solely responsible for the length of the working week which have to take into account statutory minimum weekly rest periods. In all the other Member States the statutory length of the working week is between 39 hours (France) and 48 hours (the Federal Republic of Germany, Ireland, Italy, the Netherlands and Portugal). Collective agreements have however in the large majority of cases laid down average working hours between 38 to 45 hours with the consequence that the legal duration very often is only of notional importance.

Night Work

25. Another area covered by general legislation in most Member States (apart from Denmark, Ireland, Luxembourg and the United Kingdom) is night work. Generally speaking two legal models can be distinguished.

- I) In the first one night work is generally forbidden but derogation for a number of activities is allowed. This system applies in Belgium and the Netherlands. While in the latter rules for governing night work are equal for men and women, in the former exceptions for female employees are granted to a lesser extent than for male employees. For men night work is not prohibited at all under the legislation on new working time rules.
- II) In the second model, which is applied in all other Member States with such legislation, night work is allowed unless explicitly forbidden for certain activities. In the majority of these cases night work for women is restricted or prohibited in industrial enterprises. In Ireland these prohibitions have been repealed and in France the prohibition of night work can be waived by an extended collective agreement based on legislation concerning the flexibility of working time.

Overtime

26. With regard to the regulation of overtime there are nine Member States (apart from Denmark, Italy and the United Kingdom) which have laid down ceilings per day, week, or year which have to be respected. These limitations vary considerably (e.g. an annual ceiling of 80 hours in Spain and 240 hours in Ireland) but often collective agreements are concluded which fix lower levels for overtime or render its use more in accordance with the interests of employers and employees.

Regulation of Working Time for Longer Periods than a Week

27. In a number of countries (notably Belgium, the Federal Republic of Germany, France, Italy, the Netherlands and Spain) measures have recently been introduced, either by legislation or collective agreements, to allow for the possibility of regulating working hours over a longer period than a week and for up to one year.

Paid Annual Leave and Public Holidays

28. Finally there are statutory rules for paid annual leave (between three weeks and 30 days per year) in all Member States, apart from Italy and the United Kingdom, but in those countries where the length of the leave period is relatively short, collective agreements have generally fixed a length which goes beyond the minimum thresholds.

As far as annual working time is concerned the number of statutory public holidays varies between 8 and 14 per year, while in Denmark and the United Kingdom there is no legislation on this point.

E. THE TERMINATION OF THE EMPLOYMENT CONTRACT BY THE EMPLOYER

Individual Dismissals

29. In the Member States there are different ways to guarantee the individual employee some form of job security or income security in the case of dismissal. One is the requirement for the employer to motivate and to justify the termination of the employment contract. In all Member States, however, procedures and content of such motivation and justification are very different. In Portugal for example the Constitution prohibits dismissals without just cause, for which the employer has the burden of proof, but possibilities to dismiss for economic reasons have recently been introduced by law.

30. Also in all countries, apart from Portugal, a term of notice has to be served in most cases in order to terminate an individual labour contract of indefinite duration. The length of the notice period differs considerably from one country to another. In certain countries, such as Belgium, Denmark, the Federal Republic of Germany and Italy a difference is made between white collar workers and blue collar workers. Seniority rights may also play a role. Also in some cases minimum notice periods are fixed by collective agreement, as is the case in Italy and for blue collar workers in Denmark.

31. Apart from differences in the periods of notice a large number of different regimes concerning monetary compensation in the case of dismissal are in operation, often differentiating according to the statute of the employee (blue or white collar), the age and the years of service. Such compensations are granted in Denmark, France, Greece, Ireland, Italy, Luxembourg, Spain and the United Kingdom. Monetary compensation is also the most common remedy for an illegal dismissal, but possibilities for reinstatement are also provided for in the majority of Member States. However, the practical implementation of these provisions varies widely.

32. In a number of Member States the public authorities may intervene in individual dismissals. This is the case in the Netherlands, where the employer can normally only terminate the employment contract with the prior permission of the Director of the District Labour Office. In France and Greece the administrative authorities have to be informed about the dismissal. Notably in the Federal Republic of Germany, Greece, Italy, Portugal and Spain the representatives of the employees are involved in the dismissal procedure.

Collective Redundancies

33. Procedural rules concerning consultation of the workers' representatives and the notification of the competent public authorities in the case of collective redundancies vary. Compensations on top of individual dismissals are granted in Belgium, the Federal Republic of Germany and Portugal, in France a social plan has to be established and also in the Netherlands compensatory payments are usual.

F. THE REGULATION OF INDUSTRIAL DISPUTES

34. An analysis of the systems of regulating industrial disputes in Europe reveals some common features: the abstentionist role of the state in collective disputes; the weakness of legislation on strikes and the important role played by the Courts in filling the resulting legal gaps.

Strikes and Lock-outs

35. The right to strike is expressly guaranteed by the Constitutions of Italy, Greece, Spain, France, Luxembourg and Portugal, while in the Federal Republic of Germany, the Netherlands and Belgium the constitutional guarantee is only implicit. In the United Kingdom and Ireland there are no positive rights concerning industrial action. Protection of workers involved in a strike operates through a system of legal immunities. The right to strike in Denmark is provided through an intersectoral agreement.

36. Lock-outs are constitutionally banned in Portugal and by legislation in Greece. In France, Italy and the Federal Republic of Germany they are permitted under certain circumstances. In Luxembourg and Spain lock-outs are legally recognized and in Belgium tolerated. In the United Kingdom, Ireland and Denmark lock-outs are an admissible counterpart to strikes, whereas in the Netherlands, the legal position is unclear.

Machineries for Conflict Resolution

37. A few general observations on the systems for the prevention and resolution of Industrial disputes can be made:

- I) Solutions clearly founded on the principle of compulsory state intervention are rejected by all the Member States except Denmark and Greece.
- II) All the Member States, apart from the Netherlands, have systems which involve the two sides of industry in statutory procedures for the prevention and resolution of disputes (e.g. Industrial Tribunals in the Federal Republic of Germany and Denmark, National Council for Conciliation in Denmark, Conciliation Office in Luxembourg, ACAS in the United Kingdom, Labour Courts in Ireland, MAC in Spain, mediation and arbitration procedures in Portugal, tripartite committees and Arbitration Tribunals in Greece).
- III) The cooperation of the two sides of industry at company level or on the shop floor is generally decisive in countries which have employee or trade union representation at that level.

38. The most common procedure for the solution of collective disputes is voluntary conciliation, mediation or arbitration either set out in the collective agreement, agreed by the parties in the course of the dispute or provided for by statutory law under optional and additional procedures.

This is mainly the case in Belgium, France, Italy, the Federal Republic of Germany, the Netherlands, Portugal, Spain and the United Kingdom. In Ireland, although the Labour Court facilities are entirely voluntary, where the workers agree unilaterally to refer the matter to the Court, the latter may investigate the dispute even in the absence of the employer's consent if the workers accept in advance to be bound by the Court's recommendation. In Luxembourg the Conciliation procedure, provided by the National Conciliation Office is obligatory but the awards made are not binding, unless so agreed by the parties.

On the contrary, in Denmark, disputes concerning the interpretation of collective agreements and in Greece, industrial disputes in general, are compulsorily settled through the functioning of arbitration tribunals whose decisions are binding.

G. WORKERS RIGHTS TO INFORMATION, CONSULTATION AND PARTICIPATION

Works Councils

39. The rights of workers to information, consultation and participation are treated here together as different forms of worker involvement which in practice frequently overlap. In eight Member States (Belgium, France, Greece, the Federal Republic of Germany, Luxembourg, the Netherlands, Portugal and Spain) mandatory systems for works councils are set up, which thus constitute the most common form of worker involvement.

40. The composition of the works council is divided into two main

types. One is composed of workers only (the Federal Republic of Germany, Greece, Portugal and Spain), the other type provides for the presence of management as well (Belgium, France, Luxembourg). In the Netherlands the works council is composed of employees only but concertation meetings with management are held on a regular basis. Also the coverage is widely different, ranging from enterprises (or establishments) with 5 employees in the Federal Republic of Germany to 150 in Luxembourg. In the latter case staff representatives are, however, already mandatory in all undertakings with 15 employees and more. In Portugal no threshold is fixed by law for the establishment of a works council. French, German, Luxembourg and Dutch legislations establish also councils for groups of enterprises.

The Competences of Works Councils

41. The competences of the works councils vary widely ranging from the mere right to information, mostly on both economic and social matters and the right to be consulted, generally on the social consequences of economic decisions stemming from managerial prerogatives to negotiating powers and the right to co-decision in a small number of well-defined areas, normally regarding personnel policy. In the Federal Republic of Germany the works council may conclude agreements on issues not covered by a collective agreement and in Spain it has negotiating rights.

Contractual Arrangements

42. In Denmark, Ireland, Italy and the United Kingdom similar arrangements are made either on the basis of collective agreements or voluntarily. In Denmark an intersectoral agreement has been concluded, which provides for works councils to be set up in industrial and craft establishments employing 35 or more employees. They comprise both management and employees' representatives including the shop steward. The tasks of the works council are essentially consultative. In Ireland and the United Kingdom shop stewards act simultaneously as trade union officials and as representatives of the whole workforce. In Italy enterprise-level union organisations are installed in the industrial and commercial sectors in enterprises with 15 or more employees. In addition to information and consultation rights these bodies can negotiate company agreements. Shop stewards also play an important role - whether not a works council exists - in Belgium, Greece, France, Portugal and Spain.

Worker Participation

43. In the more narrow sense, worker participation is restricted to employee representation on managerial or supervisory boards of incorporated companies. Legal systems to this effect are established in Denmark, the Federal Republic of Germany and France, where the employee representatives (or also trade unionists as in the Federal Republic of Germany) sit on the supervisory board, in France also, as the case may be, on the management board if the one-tier system is applied by the company. This is also the case in Luxembourg. There are certain thresholds above which these formulas are applicable: companies with 35 employees in Denmark, 50 employees in France, 1000 or 2000, according to different models in the Federal Republic of Germany and 1000 employees in Luxembourg. In the Netherlands incorporated companies having 100 or more employees in the country, a works council and over a certain size of share capital are required to have a supervisory board, whose members are nominated by cooptation. In this context the works council can propose candidates and legally veto a nomination on certain grounds.

44. In all cases, apart from the German coal and steel industry (Montanmitbestimmung) and the quasi-parity representation in the Federal Republic of Germany in enterprises with more than 2000 employees, the representation of the employees is a minority representation with full rights (excluding France where their role is informative and consultative) on the respective boards.

H. COLLECTIVE AGREEMENTS AS SOURCES OF REGULATION

45. Collective agreements constitute the most important source in the regulation of working conditions, although their validity is conditional on respect for fundamental rights, mandatory provisions and the minimum rules.

The Validity of Collective Agreements

46. In the Federal Republic of Germany, France and Italy the validity of a collective agreement is, in particular situations, recognized even when it contains rules less favourable for the worker than those imposed by statutory law. In the United Kingdom the few cases in which a collective agreement may replace a statutory minimum have rarely been used.

47. With the exception of Denmark and Italy all legal systems entrust, to a greater or lesser extent, the general regulation of collective agreements to the legislative authority. The legislation determines the form of the agreements, the bodies authorized to conclude them, their effects, limits, the process of bargaining, the assumptions for their extension and in some cases, their possible content.

48. Only the employer, employers' association or federations on the one hand and trade unions and their federations on the other are authorized to conclude collective agreements in the legal sense of the word. Exceptions in this regard are Spain, where the system allows workers'

