RGLavCOEC

COP

EMPLOYMENT
DEPARTMENT

Deputy Secretary

CONFIDENTIAL

Department of Employment
Caxton House
Tothill Street
London SW1H 9NF
Telephone: 01-273 3000
GTN Code: 273
Telex: 915564
Fax: 01-222 7261

Direct line 01-273 5824

R G Lavelle Esq
Cabinet Office
70 Whitehall
London SW1

20 June 1989

Dear Roger,

EC COUNCIL MADRID: BRIEFING EXERCISE

I now enclose the draft text for discussion at our meeting tomorrow morning.

The draft follows the agreed form, though the balance of pages is slightly different from that originally proposed. The layout is broadly that specified by COI though we shall of course produce a consistent and better quality typescript for the final production.

The DSS section has been seen and approved by Mr Moore, and we have therefore made no editorial changes to the text except for a few additional references to employment services for people with disabilities at the end of their piece.

Copies go to John Kerr (FCO), Strachen Heppell (DH), Jim White (DSS), Bernard Ingham No (10), and Richard Smith (COI).

Yours,
Graham.

G L REID

Roger
Send drafts
with box
Andrew.
CDR

INTRODUCTION

Since 1979 the UK Government has sought to promote an enterprise economy. Within a firm framework of financial discipline, it has reduced taxes; it has reduced public borrowing; it has promoted the free operation of markets, by deregulation and the removal of unnecessary restrictions across industry and commerce; it has returned to private hands many areas of the public sector; and it has promoted competition across the UK economy and internationally.

These policies have resulted in a continuous growth of output over the last seven years. There are more people in the workforce than ever before. The number of jobs has risen by about 3 million since 1983, more than the rest of the European Community together. Unemployment has fallen for 34 consecutive months, and is now considerably below the European Community average.

These substantial ~~social~~ economic gains have been achieved without sacrificing high levels of social protection. This is assured partly by legislation, backed up by effective administrative and compliance systems, and partly through voluntary collective or individual arrangements. This approach builds on the history and practice in the United Kingdom, and enables variety and diversity in provision to fit the circumstances and the wishes of workers and citizens.

The following pages outline social progress in the UK in the fields of employment and social protection.

KEY POINTS

- There are over 26.5 million people now in work - the highest number ever.

- Unemployment has fallen to 1.835 million, and is well below the EC average rate of 9.4%.

- Industrial peace is widespread, with the lowest number of stoppages for 53 years.

- The Government is committed to high quality relevant training through life, for example through YTS and ET covering nearly a million (946,300) people at a cost of £2.4bn.

- There is comprehensive and well-enforced legislation protecting people from discrimination.

- All employees have important statutory rights, and 65% are eligible for major employment rights eg redundancy payments, unfair dismissal protection, maternity leave.

- There has been a great expansion in part-time jobs, meeting the needs of an increasing number of workers.

- The Government fully supports employee involvement on a voluntary basis and the UK has a successful record, leading Europe in encouraging financial involvement.

- The UK has comprehensive health and safety legislation, devised and implemented through a tripartite Commission, and with high standards of enforcement.

* Social protection in the UK has four outstanding elements:

  - massive State commitment to social security accounting for £51 billion, 10 per cent of GDP or nearly one sixth of the disposable income of the country as a whole;

  - complementing that, extensive occupational and private pensions and sick pay;

  - a comprehensive nationwide scheme of social assistance providing minimum income for all groups living in the UK, including unemployed workers. Regardless of nationality; 4.2 million recipients of social assistance have their rent met in full from public funds.

  - free health care for all at a cost of £26 billion.

* The social security system contains a large proportion of non contributory benefits, met from general taxation. This leaves a very low burden of contributory insurance on employers and employees alike.

* Virtually all men receive the full basic rate of contributory State pension. Many women receive their State Pensions on the same basis, alternatively they can receive a 60% provision based on their husband's contributions if that gives them more.

* In addition pensioners receive extra pension from occupational or private pensions or from the State earnings related pension scheme. Fifty per cent of all pensioners and 70 per cent of those recently retired have an occupational pension.

* For needy pensioners, the comprehensive social assistance scheme gives extra minimum income and meets 100 per cent of rent.

* Between 1979 and 1986 pensioners' total incomes increased twice as fast as the population as a whole and the proportion in the bottom fifth of the income distribution fell from 38 per cent to 24 per cent.

* Family Credit is a generous State benefit for all low income families in work in addition to Child Benefit for every child in Britain.

* The extensive range of benefits for disabled people account for £9 billion. Many of those benefits are paid on the basis of need and do not depend on payment of contributions.

COLLECTIVE BARGAINING

In the UK employers and employees are free to decide pay, hours of work, holidays and other terms and conditions of employment by collective bargaining, by individual negotiation or by whatever other means they choose. Employees are generally free to decide for themselves whether or not to join a trade union and are protected by the law against dismissal on grounds either of membership or of non-membership of a union.

Over the last 10 years the Government has carried through a programme of legislative reforms to reduce industrial conflict and to strengthen the democratic rights of trade union members. The number of days lost through strikes has been reduced from an average of over 13 million in each year in the 1970s to less than 3 million in the latest 12 months. Union members are now guaranteed the right of a secret ballot to elect their leaders and to decide whether or not to strike. There are new safeguards to prevent workers not involved in a dispute from being drawn in against their wishes.

TRAINING

The Government attaches very great importance to achieving a skilled workforce to meet the needs of the labour market of the 1990s, and it is now establishing a structure of industry-led Training and Enterprise Councils geared to local training needs and economic development. It is encouraging provision of relevant training by employers and training organisations throughout the individual's working life. In 1986/7 employers spent some £18 billion on training. The Government spends nearly £3 billion on training programmes, mainly for unemployed and young people.

The major Government training programmes are the Youth Training Scheme (YTS) for young people and Employment Training (ET) for long-term unemployed people over 18. These programmes guarantee training to all school leavers under 18 who do not find jobs; and to anyone aged between 18 and 25 who has been unemployed for between six and twelve months. There are currently more than 386,000 young people on YTS, and ET can help over half a million long-term unemployed people in a year. Both these programmes aim to provide individuals with high quality training leading to qualifications.

EQUAL OPPORTUNITIES

The UK has comprehensive legislation, which predates EC legislation, promoting equality of opportunity and equal treatment regardless of sex. A system of industrial tribunals, with powers to award compensation and reinstatement, provides individuals with an inexpensive means of redress against discrimination in the employment field. Almost uniquely in the EC, individuals can also turn to the Equal Opportunities Commission for free advice and assistance. This is a statutory, Government-funded body which can also conduct investigations and serve non-discrimination notices, and has issued a Code of Practice, approved by Parliament.

The UK has a better record of employment growth, particularly for women, than any other EC country. Since 1983, 1.8 million more women have entered paid work. The UK has the second lowest female unemployment rate (4.4%) and the second highest female participation rate (69%) in the EC.

INDIVIDUALS' RIGHTS IN EMPLOYMENT

All employees, regardless of the hours they work, are covered by legislation dealing with a number of important employment rights. These include equal pay, discrimination on grounds of sex or race, protection against the employer's insolvency and unfair treatment related to trade union activities. In addition, everyone who has worked for at least 16 hours a week for two years for the same employer (63% of all employees) can claim other legal rights. These include redundancy payments, redress against unfair dismissal, and the right to maternity leave. Industrial Tribunals provide an accessible means of dealing with complaints.

SERVICES TO UNEMPLOYED PEOPLE

The Government provides a comprehensive placement service through its network of 2,000 Employment Service offices throughout the country. 1.9 million people, 80% of whom were unemployed, are placed in jobs every year. The offices provide free access to a range of services, mainly for unemployed people, including entry to training programmes (particularly ET), Restart, which last year provided over 2 million individual interviews for long-term unemployed people, jobclubs to help jobsearch and motivation and the Enterprise Allowance Scheme to help unemployed people to set up their own business.

PART-TIME WORK

Economic growth and increased labour market flexibility has led to a great expansion of opportunities for part-time work. Since March 1983 over 1.4 million part-time jobs have been created, particularly in the service industries which benefit from the flexibility part-time working affords. The EC Labour Force Survey shows that the vast majority of part-time workers - nine out of ten - have chosen to work part-time because it suits their particular circumstances, by enabling them to combine paid work with other activities.

EMPLOYEE INVOLVEMENT

Employee involvement is one of the major success stories of British industry, and many British employers are among Europe's leading exponents of the best modern practice. This success has developed on a voluntary basis, with the encouragement of Government. One of the most effective ways of increasing commitment is to give employees a direct stake in the ownership and prosperity of the business for which they work, through profit-sharing, employee share ownership (including employee share ownership plans (ESOPS)) and profit-related pay. The Government has directly encouraged the extension of such measures through tax reliefs which have been introduced or extended in 9 out of the last 10 UK Budgets.

HEALTH AND SAFETY AT WORK

UK legislation provides a comprehensive framework for maintaining, improving and enforcing standards of occupational health and safety. It provides for the protection of employees, the self-employed and members of the public from risks which arise from work activities, and places compulsory duties on all those involved. Many EC proposals are either derived from this legislation or developed in parallel with it. The legislation is devised and implemented through the tripartite Health and Safety Commission (comprising representatives from employers, unions and local authorities) and its Executive. Standards of enforcement in the UK are among the highest in Europe, and level of accidents among the lowest. The Commission employs over 1200 inspectors, about half of them Factory Inspectors.

SOCIAL PROTECTION

The United Kingdom has a large and comprehensive system of social protection based on a partnership between State, occupational and private provision. The State Social Security scheme combines a system of contributory benefits, covering for example age, sickness, unemployment and widowhood with a wide range of non-contributory benefits and a universal income related system guaranteeing a minimum income as of right to all persons legally resident. People are encouraged to choose how to provide for their own needs above the basic Social Security provision and in pensions this is achieved by a mixture of State earnings related pension, occupational and private provision. The State lays down standards and a statutory framework, providing for safeguards by way of regulatory bodies as necessary for those complementary schemes.

NATIONAL HEALTH SERVICE

The National Health Service provides a comprehensive medical service for all residents irrespective of means. The needs of the community are served by family doctors, dentists, pharmacists, health visitors, district nurses, midwives and other professionals such a chiropodists and physiotherapists. This unique primary health care system provides a gate-keeper role which reduces the need for expensive hospital care. For those who need it, hospitals provide a full range of treatment and diagnostic facilities and many are responsible for pioneering advances in medical technology.

The success of this two tier approach can be seen in the continuing increases in life expectancy among the UK population as a whole and a downward trend in infant mortality. However, the UK system of social benefits is constantly evolving. The management and organisation of the NHS is under review to build on existing success and efficiency, to give people more choice and rights as consumers and to place more emphasis on local management of local services.

THE ELDERLY

People who have reached State pension age (65 for men and 60 for women) can qualify for the contributory flat-rate State pension - 96 per cent of retired men receive the full rate. Women may receive pension in their own right or pension of 60 per cent of their husband's pension if they do not receive more on their own contributions. In addition, people either contribute for an

occupational or private pension or contribute for the State earnings-related pension, and about 2½ million pensioners now receive additional pension through this scheme (which was set up in 1978). More than half of the workforce are in occupational or private schemes.

The UK Government is particularly conscious of the need of its growing elderly population. Elderly people want to live in their own homes and to be part of their community. The Government's policy is therefore to develop community based health and social services which help to prolong independent living.

For those elderly people who for some reason have not been able to contribute sufficient to earn a pension, the Income Support scheme provides a guaranteed adequate income while the Housing Benefit scheme pays 100 per cent of rent for people of this income level.

MINIMUM INCOME

Social assistance in the United Kingdom is a national scheme administered by the Department of Social Security. It provides title to a minimum income to all groups including the elderly, the sick, lone parents and the unemployed. Help is available to everyone in need without time restriction and in particular it provides a basis income for long-term unemployed people including those who have exhausted their entitlement to contributory Unemployment Benefit.

For those who are not working full-time, Income Support guarantees an adequate minimum income and this scheme has recently been restructured to give additional help to families with children. People receiving Income Support also receive Housing Benefit which pays 100 per cent of their rents.

Family Credit is a benefit designed to supplement full-time earnings where these are low and there are children in the family. Housing Benefit provides help of 100 per cent of rent to those receiving Income Support or with the equivalent income level from other sources. As benefit is gradually withdrawn as income exceeds that level and about 2 million people with incomes above the IS level receive help through this scheme with rent and local taxes.

PEOPLE WITH DISABILITIES

The United Kingdom provides a wide range of State benefits for the sick and disabled at a cost of about £9 billion a year. In addition, there is a well developed system of occupational sick pay schemes. Benefits are paid for both short and long tern sickness. In the short term, people can receive Sickness Benefit or Statutory Sick Pay (paid through an employer). For long term sickness, Invalidity Benefit is paid. These benefits are contributory. For those who have not been in recent employment a non-contributory benefit - Severe Disablement Allowance - is available.

The extra costs of disability are met by Mobility Allowance for people with walking difficulty and Attendance Allowance for those who need attention or supervision. In addition, Invalid Care Allowance is available to someone looking after a disabled person. All of these benefits, which are for extra needs rather than income replacement, are non-contributory.

Where a disability is due to an industrial accident or occupational disease, benefits are available to compensate for the disablement itself and for resulting loss of earnings capacity.

A wide range of services is provided for people with disabilities in the UK by health authorities, local authorities and voluntary organisations and the Employment Service. They cover a very broad spectrum - medical and nursing care, rehabilitation, therapy, supply of equipment, support services in the home, holidays, relief for carers, access to information about local services and special employment services for employed and unemployed people with disabilities. The objective is to encourage people with disabilities to live independent lives in the community. Local authorities must ensure that young disabled people leaving school receive the services they need.

ANNEX 1

UK LABOUR MARKET

Employment

Workforce in employment over 26.5m - highest ever. Since March 1983 number of people in jobs increased by 2.948 million.

Over 3m self-employed; up by more than 1.1m since June 1979.

Part-time employment at 6.25m - 24% of workforce.

Unemployment

Now stands at 1.835m, down by 1.298m since July 1986.

Unemployment rate (UK) 6.4% (Male 7.9%, Female 4.4%).

OECD standardised rate 6.9% - well below EC average of 9.4%.

Falls in all regions of the UK.

Long-term unemployment at 744,000 and has fallen faster than total unemployment.

young people's unemployment -18-24's 47% lower than 3 years ago.

Living standards

Well into 8th successive year of growth averaging 3%.

Real take home pay of married man with 2 children on average earnings up by nearly a third since 1978/9.

Women

43% of labour force are women.

11.4m work or are seeking work

Only UK in EC has lower unemployment rate for women than men.

Industrial Disputes

Number of stoppages in 1988 lowest for any year since 1935.

ANNEX 2

MAIN SERVICES FOR EMPLOYMENT, TRAINING AND ENTERPRISE

Restart
Counselling interviews for long-term unemployed. In last year 2.2 million interviews carried out and 43,000 people began motivational Restart courses.

Jobstart Allowance
Offers £20 a week for up to 6 months for unemployed people who take lower-paying jobs. 10,700 applications accepted last year.

Jobclubs
Facilities, support and motivation for job-hunting. Currently 1,000 Jobclubs with places for 175,000.

TRAINING

YTS
Broad based vocational education and training for 16 & 17 year old. 386,300 entrants now in training. Place guaranteed to all unemployed school leavers. Cost £1bn a year.

Employment Training
Flexible package of high quality training for long-term unemployed. Will help up to 560,000 in a year at a cost of £1.4bn.

Career Development Loans
Loans to individuals for training or vocational education. £7.5 million worth of lending on over 3,300 applications.

Open Learning
Improved access to training. £2.75 million provided in 1989/90

Small Firms Service
Free management and business information service and counselling by experienced businessmen. 280,000 enquiries in 1988/89.

Enterprise Allowance Scheme
Helps unemployed people to start their own business by providing a weekly allowance of £40. 90,000 places available per year. 440,000 set up in business since scheme began in 1982.

Loan Guarantee Scheme
Government guarantees 70% of each loan to viable small firms.

SPECIAL NEEDS

Help for people with Disabilities.
Advice, rehabilitation, training and sheltered employment. Over £310 million spent helping around 200,000 disabled people last year.

Inner Cities
Help for unemployed people and small businesses. Government spends over £3 billion in 57 Urban programme areas.

Annex (Extent of provision and growth)

The Elderly

* About 10 million individuals are in receipt of basic retirement pension - an increase of one million over the last ten years. Basic pension is increased annually in line with the movement in prices.

* Basic pension is intended to provide a secure foundation in retirement; the vast majority of pensioners also have income from other sources, eg savings, occupational pensions and earnings. Pensioners' average total net income increased by 23 per cent in real terms between 1979 and 1986.

* In October 1989 the Government will introduce a new income-related benefits package for older and disabled pensioners. It is estimated that over 2.5 million pensioners will gain from this measure.

* Pensioners' average income from savings increased by over 7.0 per cent a year (64 per cent over the period) in real terms between 1979-86.

* About 70 per cent of pensioners had savings income in 1986 (compared to 60 per cent in 1979).

* Pensioners' income increase in real terms twice as fast as those of the population as a whole between 1979 and 1986.

* Expenditure on benefits for the elderly rose by 24 per cent in real terms between 1978/9 and 1988/9.

* Occupational pension schemes typically provide a pension of 2/3 salary for 40 years service or 1/2 salary plus a lump sum and must also provide widow's benefits.

* Average income from occupational pension schemes increased by 7.1 per cent pa in real terms between 1979 and 1985.

The Disabled

Expenditure is now running at almost £9 billion a year - an increase of over 90 per cent in real terms since 1979.

Increase in average numbers of recipients of main benefits

	1978-79	1988-89	Per Cent
Invalidity Benefit	600,000	1,130,000	185
Non-contributory Invalidity Pension/Severe Disablement Allowance	150,000	265,000	176
Attendance Allowance	265,000	760,000	280
Mobility Allowance	95,000	530,000	568
Industrial Injuries Benefits	230,000	290,000	26

Low Income Families

* Income Support is an income related benefit payable to people not in full-time work whose incomes are insufficient to meet their needs and those of their dependants. It is payable without time limit including to people who are long term unemployed.

* Family Credit is an income-related benefit payable to working families with modest earnings. The average benefit is £25 a week.

* Housing Benefit is an income-related benefit to help people with low income in any category with housing costs, ie both rent and rates (local taxes). It meets 100 per cent of cost for people at Income Support levels.

* The Social Fund provides payments for maternity and funeral costs to people on low incomes, grants to help with caring for people in the community and makes interest-free loans to people on Income Support who are faced with large and necessary items of expenditure.

The Family

* Child Benefit is a tax-free, non-contributory benefit paid without any income test for all children at the rate of £7.25 a week.

* One Parent Benefit is an addition to Child Benefit of £5.20 a week where there is only one parent in a family.

* The value of family support has risen 27 per cent in real terms over the last decade.

Planned Total Social Security Expenditure by Broad Groups of Beneficiaries for 1989/90

	£ millions
Elderly People	24,650
Sick and Disabled People	8,670
Family	8,540
Unemployed People	5,240
Widow and Orphans	1,220
Total Benefit Costs	48,320
Administration	2,660
Total	50,980

NB Of the Benefit payments, £27 billion are contributory benefits and 21 billion are non contributory.

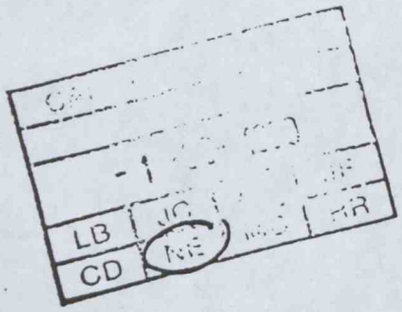
Synopsis dated 28.4.89

COMMISSION
DES
COMMUNAUTES EUROPEENNES

Secrétariat général

SEC(89) 926/2

(annexe au doc. SEC(89) 926
à utilisation interne)



Bruxelles, le 1er juin 1989.

CONFIDENTIEL

OJ 968 - 7 juin 1989

CONFIDENTIEL VERTRAULICH RISERVATISSIMO CONFIDENTIAL EMBARGO VERTROUWELIJK

TEXTE E

Les dispositions régissant les conditions de travail dans les Etats membres

(Communication de Mme PAPANDREOU)

- Cette question est inscrite à l'ordre du jour de la 968ème réunion de la Commission, le mercredi 7 juin 1989.

Destinataires : Membres de la Commission
M. DEGIMBE
M. DEWOST

FORTROLIGT VERTRAULICH EMBARGO CONFIDENTIAL

A N N E X

Internal Use

28 April 1989

COMPARATIVE STUDY ON RULES GOVERNING WORKING CONDITIONS IN THE MEMBER STATES

A SYNOPSIS

COMPARATIVE STUDY ON RULES GOVERNING WORKING CONDITIONS

A SYNOPSIS

INTRODUCTION

PART I: GENERAL ASPECTS

I. The Actors

II. The Sources of Regulation

III. Industrial Action and Methods for Conflict Solution

PART II: THE REGULATION OF INDIVIDUAL EMPLOYMENT RELATIONSHIPS

CHAPTER I: THE CONTRACT OF EMPLOYMENT

I. Legal Definition

II. The Worker

III. The Employer

IV. Freedom to Recruit and Limitations

V. The Probation Period

CHAPTER II: NON-STANDARD EMPLOYMENT CONTRACTS

I. Fixed-Term Contracts

II. Temporary Work Contracts

III. Part-Time Employment Contracts

IV. Homeworking

V. Apprenticeship Contracts

CHAPTER III: JOB CLASSIFICATION SYSTEMS

I. The Classification System

II. Other Aspects

CHAPTER IV: THE EMPLOYERS' PREROGATIVES AND THE DUTY TO PROVIDE PROTECTION

I. Employers' Prerogatives

II. Disciplinary Powers

III. The Duty to Provide Protection

CHAPTER V: WORKING TIME

I. Limits Imposed on the Duration of Working Time

II. Flexibility of Working Time

III. Night Work

IV. Overtime

V. Weekly Rest and Public Holidays

VI. Paid Annual Leave

CHAPTER VI: REMUNERATION AND MINIMUM WAGES

I. Sources and Regulation

II. Minimum Wages

CHAPTER VII: SUSPENSION OF THE CONTRACT OF EMPLOYMENT

I. Acts of God

II. Suspension by the Employer

III. Suspension by the Employee

CHAPTER VIII: TERMINATION OF THE EMPLOYMENT CONTRACT

I. Individual Dismissals

II. Collective Dismissals

CHAPTER IX: THE SETTLEMENT OF INDIVIDUAL LABOUR DISPUTES

I. Conciliation, Mediation, Arbitration

II. Court Procedures

III. Labour Inspectorate

PART III: COLLECTIVE ACTION AND THE DETERMINATION OF WORKING CONDITIONS

CHAPTER I: COLLECTIVE AGREEMENTS

I. Parties to the Collective Agreement

II. Negotiating Rights and Obligations

III. Levels of Bargaining

IV. Content of the Collective Agreement

V. The Binding Effect of the Collective Agreement

VI. The Duration of the Collective Agreement

VII. The Extension of the Normative Part of the Agreement

CHAPTER II: INDUSTRIAL DISPUTES

I. Prevention and Settlement of Disputes

II. Arbitration

III. Intervention of the Courts

IV. Strikes

V. Lock-outs

CHAPTER III: WORKERS RIGHTS TO INFORMATION, CONSULTATION AND PARTICIPATION

I. Mandatory versus Voluntary Systems

II. Machinery of Legal Participation

COMPARATIVE STUDY ON RULES GOVERNING WORKING CONDITIONS IN THE COMMUNITY MEMBER STATES:

A SYNOPSIS

INTRODUCTION

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. The present synoptical report, which is not exhaustive as to all details in the area covered, seeks to give the main features.

Having regard to the possible wide range of features which could potentially be treated in such a study a number of limitations had to be applied :

- the study does not treat aspects relatingt to safety and health at the workplace since they form already 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;

- the study does not cover social security legislation;

- the study focusses essentially on rules concerning the private sector.

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 main provisions of significant collective agreements, work rules in enterprises and, if appropriate, practice as it has developed over time.

The notion "working conditions" also carries a broad meaning. It covers the different forms of the employment contract, as well as its beginning, suspension and termination, working time issues, questions of minimum wages and collectively organized working conditions, such as information, consultation and participation of employees.

It is also important to point out that this study emphasises the comparative perspective and does not focus on all particularities of national regulations. It will also bring out evidence that on many occasions similar functions of rules on working conditions are fulfilled by different levels of intervention.

Finally it should be underlined that the development of rules on working conditions is not static, but a dynamic process which is shaped to a large extent by developments on the labour market. In this context one has to take into account structural, technological, sociological and employment pattern changes which appear to take place at an increasing speed and which, with regard to working conditions, become concrete in the following phenomena :

- there is a declining proportion of persons employed in the manufacturing sector, where standard employment contracts (full time of an indefinite duration), regularized working conditions and union coverage are more widespread than in most other sectors of activity and notably the expansion of employment in the services has increased diversified employment relationships and arrangements;

- evidence suggests that greater diversities have also been intensified by the increasing participation rate of women, a more varied pattern of employment contracts in the public sector, the increased importance of small and medium sized enterprises in economic activity and job creation, the emergence of phenomena such as decentralisation of production, subcontracting, outsourcing and the widespread introduction of new information technologies.

The trends just mentioned contribute to a more diffuse and diversified or even segmented labour market producing a variety of differently protected jobs, which are covered unequally by legislation and/or collective agreements. However, it is also found that the large majority of employees continues to benefit from full-time jobs of an indefinite duration, which remains the norm for putting people to work.

Taking into account these developments the study contains the following parts:

Part I presents a general overview of the actors on the labour market, notably both sides of industry and their interaction with State policies, the main sources of regulation, which are at their disposal and addresses finally the methods and procedures of collective action in case of dispute and means for conflict resolution. It gives thus an overall pecture of the functioning of the main institutions relevant for dealing with rules on working conditions with the objective of outlining the principal forces which shape both the individual employment relationship and collective arrangements for the treatment of working conditions.

Part II is the main part of the study due to the fact that the subject covered, i.e. the individual employment relationship, is a wide area with different aspects. It covers not only different forms of the employment contract as such together with rules on its coming into existence, possibilities for its suspension and methods of its termination, but deals also with material subjects as job classification systems, employers' prerogatives, working time, minimum wages and the settlement of individual labour disputes. The aim is to clarify similarities and differences in the Member States in central matters of working conditions applicable for the individual worker.

Part III concentrates on collective action and the determination of working conditions and addresses the collective agreement as main action instrument, the handling of collective disputes and rules governing information, consultation and participation of employees in their firms. This part seeks to show in which way and to what extent the collective representation of workers by unions and bodies such as works councils can have an influence on shaping rules applicable for working conditions in the different Member States.

PART I

GENERAL ASPECTS

1. THE ACTORS.

The main actors considered here are i) trade unions and employers' organisations as far as collective bargaining processes are concerned and ii) employee representation in connection with information, consultation and participation in individual firms or at other levels. Mention will also be made of other, sometimes tripartite, bodies, which shape to a certain extent rules on working conditions.

With regard to trade union organisation it can be found that the level of trade union membership is high in some countries, such as Belgium and Denmark, medium in others, e.g. the Federal Republic of Germany, Ireland, Luxembourg, Netherlands, United Kingdom and Italy, and low in Greece, France, Portugal and Spain. In the 1980's membership has declined in most countries, apart from Greece and even more in those where membership was already low. But more recently this overall trend has been reversed in a notable number of cases in specific manufacturing and service industries. Table 1 presents an overview of main trade unions, the rate of unionization and the number of affiliated persons.

The trade union movement is organized differently in the various Member-States. In Denmark and the Federal Republic of Germany there is basically one large horizontal trade union organisation covering, with some exceptions, the employees of all sectors of the economy. In the majority of Member-States there are two or more competing union organisations, often divided along political or ideological lines, which cooperate closely from time to time however, depending on the issues at stake. This is the case in the Netherlands, Luxembourg, France, Italy, Belgium, Spain, Greece, and to a much lesser extent in Portugal. In some other countries such as the United Kingdom and Ireland central umbrella organisations exist but collective bargaining is carried out in such a way that their influence on actual negotiations is limited.

As far as employers' organisations are concerned they are set up in such a way as to be able to deal with trade unions at an appropriate level. In some countries there are separate organisations for small and medium size enterprises, or along political or ideological lines, but in political terms these organisations act mostly in accordance with each other in negotiations. Details can be found in table 2.

The activities of both sides of industry are based on the fundamental rights of freedom of association and of collective bargaining as they are in force in all Member States backed up either by the Constitution, by legislation and case law or by mutual agreement between the partners involved.

Actual bargaining between both sides of industry or, as is sometimes the case, in conjuction with the government, can and does take place at various levels and on different subjects depending on the country, sector, etc. Often the result of these actions depends to a large extent on the respective competence of both sides of industry and government for certain issues, such as wages, working hours, etc.

In a number of Member States for example there is a legal minimum wage fixed by government and regularly revised, which is thus excluded from collective bargaining. Similarly, in some Member States legal systems exist to monitor cost of living and to provide a more or less automatic increase in pay once the consumer prices index reaches a certain point. This means that in these cases, unlike other countries the nominal part of changes in wages is not dealt with through collective bargaining.

Apart from questions like these, the structure of collective bargaining in a wide sense can differ. Although changes take place, depending on the problems faced, negotiations at sectoral level are the predominant form of collective bargaining in most Member States for most relevant issues. There are some notable exceptions to this general principle, e.g. the United Kingdom, where the main level for bargaining is the enterprise or occupational group. Another extreme on several occasions has been Belgium where interprofessional agreements are sometimes signed in the National Labour Council, at which both sides of industry are represented with a neutral chairperson.

In a number of countries unions have to fulfil certain criteria of representation in order to qualify for collective bargaining. Sometimes these criteria are laid down by law, and may vary depending on the purpose for which they are fixed, sometimes how representative the union is depends more on the political and practical strenght of the union at the various levels. A good example of how a large membership and importance as a negotiating partner need not go together is in France where in recent years the role of both sides of industry has been increased at the expense of state intervention, although at the same time the unions as organisations have lost strength in quantitative terms.

While it is true that the State has been tending to intervene less in the regulation of working conditions in recent years, there are also situations where government participates in agreements or exerts a strong indirect influence in such a way as to produce a result compatible with government policy. An example of the former is an agreement on incomes policy in Portugal in 1987 and 1988 by the tripartite Standing Council of Social Concentration, other tripartite agreements have occasionally been concluded in Spain and Italy. The second case may be illustrated by a package of pay moderation, reduction in working hours and employment creation contained in an interprofessional agreement in Belgium in 1985. In cases where both sides of industry do not reach an agreement, government may intervene by imposing by law a certain provision, e.g. in Denmark in 1986/87 when a general reduction in working hours was introduced for the whole economy.

The influence of social groupings on working conditions takes place not only through bipartite or tripartite agreements or State legislation in the particular area, but in all Member States there are also works councils or employee representatives in enterprises, which normally have certain areas of competence in this field and may be an integral part of collective bargaining procedures at enterprise level. These bodies have in most cases rights to information and consultation on issues which are of direct concern to the workers. In eight countries such bodies are set up by law, whereas in the others they are established by collective agreement or are voluntary in nature. In addition to these types of representation, in some countries there are rights for workers' representatives to sit on boards of management or most often, supervisory boards of incorporated companies, where they can influence the overall policy of the company.

The particular arrangements which exist in the Member States in this respect are compared in more detail in PART III.

In a wider sense representatives of the workers participate in the decision-making processes in a number of countries via trade unions representation on government advisory bodies formulating economic and social policy. This is the case, for example, in Portugal in the tripartite Standing Council of Social Concentration, in the Netherlands in the Economic and Social Council and in the Foundation of Labour, in Belgium in the National Labour Council and the Central Council for the Economy, in Luxembourg in the Economic and Social Council and the Committee of Tripartite Coordination, and in France in the Economic and Social Council. In other countries these structures are sometimes less formal without however carrying necessarily less weight.

II. THE SOURCES OF REGULATION.

This part contains an analysis of the formal sources of regulation, that is to say, the normative or regulatory instruments through which the political and social actors manifest themselves. A comparative examination of the sources of regulation in Member States reveals as far as the normative sources are concerned, three main systems of regulation: the Roman-Germanic system, the Anglo-Irish system and the Nordic system.

A. THE ROMAN-GERMANIC SYSTEM

This includes the legal systems of Greece, Portugal, Spain, France, Belgium, Luxembourg, the Netherlands, the Federal Republic of Germany and Italy.

Its basic and essential features can be summarised as follows:

1. Existance of a written Constitution enshrining fundamental social rights and freedom.

The Constitution is at the top of the hierarchy of sources guaranteeing fundamental rights and freedoms and provides at the same time the foundation and the limits of the other normative sources.

According to the emphasis put on social and economic rights, two groups of Constitutions can be distinguished:

a) The Constitutions of Spain (1978), Portugal (1975), Greece (1975), France (1958), the Federal Republic of Germany (1949), Ireland (1937, amended in 1987), Italy (1948) and Luxembourg (amended in 1948) which guarantee, to a lesser or major extent, a core of fundamental rights and freedoms: the right to work; the freedom to exercise a profession or occupation; the principle of equality before the law, including the right to equal treatment between men and women; the right to form and join trade unions; the right to collective bargaining and collective action. The value and effectiveness of those rights go beyond more programmatic statements and are generally invocable before the Courts. In the Constitution of the Netherlands amended in 1983 most of these rights are also enumerated but they are only in specific cases invocable before the Courts.

b) The Constitution of Belgium makes no reference to social rights, although certain political and civil rights are applicable to individual and collective relations.

As set out later, the Danish Constitution makes no reference, or a very limited one, to some rights and the United Kingdom has no written Constitution.

2. Relevance of the role played by stature law in regulating individual and collective employment relations.

a) The State, usually by means of particular law establishes the public order, determines the necessary minimum in individual employment relations, fixes the basic institutional infrastructure and intervenes in collective relations with a view to protection, regulation, encouragement or guidance. Italy where positive law on collective relations is scarce is an exception within the system. In the nine countries, central governments exercise regulatory powers through legislation, decrees, decree-laws, regulations and orders.

b) The material scope of state legislation normally covers broadly the following subjects:

- legal framework for the employment contract
- minimum levels of protection (length of working day, rest periods, holidays, night work, in some countries remuneration)
- working conditions for special categories of workers (children, young people, elderly people, disabled persons, women, foreigners, etc.)
- legal framework for collective bargaining and law governing trade union activities
- structures for workers' representation in companies.

Although the above list of subjects generally corresponds to the content of State legislation in the nine countries in question - with the exception of matters concerning collective labour relations and institutions for the representation of workers within firms in Italy - the degree of intensity of legislation and consequently the margin of freedom left to employers and employees vary considerably from one country to another.

c) Adoptation of State legislation on industrial relations in the nine countries is preceded by a process of consultation with the two sides of industry.

3. Monist and dualist approaches to the incorporation into national law of international treaties and conventions.

The monist approach - as applied in Spain, Portugal, Greece, the Netherlands, Luxembourg and, not without controversy, in France - makes it possible, once the agreement or Treaty is ratified and promulgated, to incorporate it into internal law, giving it preference over any previous or subsequent law to the contrary.

On the contrary, under the dualist system - Italy, Belgium and the Federal Republic of Germany and, as will be seen, the United Kingdom, Ireland and Denmark ratification and publication of the Treaty does not lead to its incorporation into internal law and individuals cannot in principle invoke the Treaty before the mentioned Courts.

4. Collective agreements as source of regulation

Collective agreements constitute the most important source in the regulation of working conditions although their validity is limited by the observation of mandatory law and statutory minimum rights.

- with the exception of the Italian situation the general regulation of collective agreements is a matter for the law. The legislation determines the form of the agreement, the bodies authorized to conclude agreements, their effect, limits, negotiation procedures, rules for the extension of agreements and in some cases their content;

- only the employer, employers' associations 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 workers' representatives and works councils may negotiate agreements, and Greece where the law does not authorize individual employers to conclude agreements, although company-level negotiations have become very important. In the Federal Republic of Germany the works council may conclude company agreements, provided the subject is not covered by a sectoral agreement;

- the law often requires trade unions and their federations to meet certain criteria of representativeness and organisation before they can negotiate and conclude agreements. Italy, the Netherlands and Portugal are here the exceptions;

- in all the countries concerned the traditional levels of negotiation - intersectoral, sectoral, company and establishment - exist to a varying degree, with the exception of the Federal Republic of Germany where intersectoral agreements are rare. Sectoral agreements, which continue to be the norm in most countries, are increasingly giving way to supplementary agreements at lower levels. In some countries, notably Italy, the Netherlands, the Federal Republic of Germany, Belgium, France and Luxembourg, bargaining systems cover a wide range of negotiable subjects, whereas in others - Greece, Portugal and to a lesser extent Spain - collective bargaining focuses in practice on determining wages, working hours and holidays;

- as regards the legal effect of the normative content, in Belgium, Spain, France and Luxembourg collective agreements are generally binding so that they apply equally to all workers whether or not they are members of the trade unions bound by the agreement. In the Federal Republic of Germany, the Netherlands, Portugal, Greece, and Italy they are only binding on the contracting parties and their members, in Italy only on the employers. Eight of the nine countries in question have a legal instrument to extend an agreement erga omnes, although there are considerable differences in the conditions and requirements to do so. In Italy, on Constitutional grounds, collective agreements cannot be extended;

5. Case-law

Case-law while generally lacking formal recognition as a source of law, plays a decisive role in its application and incorporation.

B. THE ANGLO-IRISH SYSTEM

The legal systems of the United Kingdom and Ireland are both derived from the Common Law tradition; despite considerable differences they form a system "per se" with essential features and peculiarities unknown in the Nordic and Continental systems.

The main features of the Anglo-Irish system may be summarized as follows:

1. Absence of fundamental rights enshrined in a Constitution (United Kingdom) or limited scope of constitutional law for social rights (Ireland)

The United Kingdom has no written Constitution, hence no formal entrenchment of fundamental rights and freedoms. Within the limits imposed by Community Law, Parliament's lawmaking powers are unrestricted, and even the rules and conventions of so-called Constitutional law can be changed by ordinary legislation.

Ireland, however, does have a written Constitution (1937). Equal treatment and freedom of association are enshrined in its preceptive part (Articles 40 to 44). The Irish constitution has, nevertheless, played a minor part in shaping labour relations, and constitutional judgements (a ruling that the closed shop is unconstitutional, for example) are frequently ignored by employers and trade unions. In both countries there are no "positive" rights concerning industrial action. Strikes, lock-outs and industrial action short of a strike is protected through a system of immunities to common-law torts.

2. The abstentionist role of the state in regulating industrial relations.

The Anglo-Irish system could be described, at least up to the late 1970s, as a voluntarist system in which the State refrains from dealing with collectivve Labour relations and regulates in a highly selective fashion the rights and obligations devolving from contractual relationships.

In the United Kingdom, the legislation promoting the voluntary system of collective bargaining has been limited in the 1980s. There are no legal bodies representing a company's workforce (nor in Ireland) and protective legislation on working conditions is very selective and undergoing revision.

In both countries regulatory legislation is concerned with health and safety at work, the employment of children, young people and women, redundancy compensation, certain matters relating to the organization of trade unions, collective action and contracts of employment and areas covered by Community Directives.

3. Collective agreements

The collective agreement is the key factor determining wages and other working conditions. In the United Kingdom company agreements or agreements by occupational groups are of most importance, while in Ireland nationwide umbrella agreements may complement them, thus providing the general framework.

Although collective agreements are not legally binding some of their clauses have a normative effect if expressly or implicity included in the employment contracts of individual employees, whether or not they are members of the trade union(s) concerned. At enterprise or establishment level shop stewards who are the representatives of the unions often act as representatives of the whole workforce. The system of pre-entry closed shops still exists in the United Kingdom. In Ireland it has been declared unconstitutional. Ireland unlike the United Kingdom, permits by law and under certain circumstances the extension of collective agreements.

4. Dualism in the acceptance of treaties and international conventions.

The United Kingdom and Ireland apply the dualist system. Therefore the convention on Human Rights, the United Nation covenants, the European Social Charter and the ILO Conventions ratified by these countries cannot be relied upon before mentioned Courts.

5. Decisive role of courts and judges in determining and interpreting the law.

The key part played by the Courts in explaining and extending common law accounts for the importance they assume in the Anglo-Irish legal system.

The doctrine of precedent is an integral part of the Anglo-Irish system. That means that judges and lower Courts are bound by the decisions (stare decisis) of the higher Courts within the same jurisdiction.
In Ireland, unlike the United Kingdom, the Courts review the unconstitutionality of laws and rules in general. In 1965, basing itself on the terms of the Constitution, the Supreme Court rejected strict application of stare decisis.

C. THE NORDIC SYSTEM.

The situation in Denmark can be described as the Nordic system. The Danish Constitution contains few provisions on economic and social rights, such as the right to work and freedom of association. In the absence of general legislation, legal regulation of Danish employment relations is casuistic and limited to certain groups of workers or specific working conditions. The law on collective bargaining lays down procedures and legislation on the individual employment relationship covers in particular sickness and unemployment benefits, health and safety and regulations arising from Community Directives. Staff representation, with the exception of health and safety committees, is not regulated but traditionally collective agreements have been the cornerstone of the system of regulation. Due to the high unionization of the workforce these cover the large majority of workers. The basic principles of collective relationships are defined in intersectoral agreements between the Confederation of Trade Unions and the Employers' Confederation and comprise such subject as recourse to strikes and lock-outs, the right to unionize and the employers' prerogatives in relation to recruitment, dismissals, organisation or work, etc. These prerogatives mean in practice that managerial freedom is only limited by what is laid down by law and collective agreements.

The collective agreement is binding on the contracting parties and applies equally to all workers whether or not they belong to a union. There can be no extension of collective agreements under Danish Law.

III. INDUSTRIAL ACTION AND METHODS OF CONFLICT SOLUTION.

Part III, Chapter II will give a more detailed account of regulation which apply to industrial disputes and of methods for conflict solution. The aim here, having considered the actors and the sources of regulation is to give a broad outline of the basic features which exist in the field of industrial disputes and the general systems for their prevention and solution.

1. Regulation of industrial disputes.

a) An analysis of the systems of regulating industrial disputes in Europe reveals a common feature: the abstentionist role of the state in collective disputes; the weakness of legislation on strikes and the importante role played by the Courts in filling the resulting legal gaps.

b) 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.

c) Lock-outs are constitutionally banned in Portugal and Greece. In France, Italy and the Federal Republic of Germany they are permitted under certain circumstances. In Luxembourg and Spain lock-outs are legally recognised, 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.

2. The settlement of industrial disputes.

A few general observations on the systems which exist in the 12 Member States for the prevention and solution of industrial disputes can be made.

- Solutions clearly founded on the principle of cumpulsory state intervention are rejected by all the Member States except Denmark and Greece.

- 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, the Labour Court in Ireland, IMAC in Spain, mediation and arbitration procedures in Portugal, tripartite committees and Arbitration Tribunals in Greece).

- The cooperation of the two sides of industry at company level or on the shop floor is decisive in countries which have employee or trade union representation at that level.

- There is a variety of techniques for the prevention and solution of disputes, predominantly a mixture of contractual and statutory provisions.

Large scale mobilization involving a wide range of workers in protest against and in opposition to government social policy has taken place quite frequently in the 1980s, especially in Italy, Belgium, Denmark, Spain, Greece and France.

PART II

REGULATION OF INDIVIDUAL EMPLOYMENT RELATIONSHIPS

CHAPTER I

THE CONTRACT OF EMPLOYMENT

1. CONTRACT OF EMPLOYMENT: LEGAL DEFINITION

The contract of employment forms the basis of the employment relationship in each of the twelve Member States.

In five Member States - Belgium, the Federal Republic of Germany, Greece, the Netherlands and the United Kingdom - a definition of the contract of employment is contained in the Civil Code or in Labour law.

In Denmark, France, Ireland, Italy, Luxembourg and Spain there is no definition in law, but one can be found in the Courts, case-law and jurisprudence on the basis of positive law governing the contract.

The conventional elements in the definition of contracts of employment(- common to all Member States -) are: agreement, work performance, element of time, remuneration and, above all, dependency or subordination.

The criterium of dependency or subordination has been subject to flexible interpretation by the Courts, in order to guarantee that protective labour regulation is applied to a wide range of workers whose links of dependency and subordination to the employer are increasingly vague and loose. This trend can be observed particularly in Belgium, France, the Federal Republic of Germany, Italy, the Netherlands, Portugal, the United Kingdom and Spain.

Another feature common to all Member States is that the label given to the relationship is not conclusive. The parties to the contract cannot define the legal nature of their relationship.

In general it appears that the legal concept of contract of employment in Continental Member States is broader and more comprehensive than that in Ireland and the United Kingdom, where the contract of employment is equivalent to the common law "contract of service or of apprenticeship". In the United Kingdom, for instance, one third of those in employment - such as "casual" workers and temporary workers supplied through an intermediary - is excluded from statutory employment rights.

The rules governing the capacity to contract are drawn in a number of Member States from the Civil Code. Other Member States have introduced more specific regulation, particularly for minors.

The general minimum age at which an individual can legally work in the twelve is as follows:

TABLE 3	GENERAL MINIMUM AGE
COUNTRY	
France, Spain, U.K.	16
Denmark, Belgium, Greece, the Federal Republic of Germany, Ireland, Luxembourg, Italy, Netherlands	15
Portugal	14

The full capacity to contract is reached in all Member States at the age of 18. Young people above the minimum age to work but under 18 years of age have a limited capacity to contract in all Member States. In general, they can conclude a contract of employment providing that they have the explicit or tacit consent of their parents and guardians.

Consent must be reached in accordance with civil or common law rules. Violence, deceit and error can be grounds for annulment.

The contract of employment (the performance of work) and its cause (the obligations of both parties) must be possible and legally permissible, i.e. in accordance with rules of law, public order or morality.

The contract is rendered void from the moment of declaration of nullity. Thus, in most countries, for the duration of the factual employment the relationship is treated as if there were a valid contract. Only future employment is affected by nullity.

In principle the contract of employment has no set form. Therefore it can be concluded in writing, orally or even tacitly. This situation is common to all Member States.

There are, however, exceptions. Legislation (or collective agreements) may require specific types of contracts of employment to be in writing.

Part-time contracts, fixed-term contracts, temporary contracts, apprenticeship contracts, contracts for seamen, commercial travellers or civil aircraft persons are often required in writing. Examples, but not necessarily for all categories, can be found in the legislation of Belgium, France, Greece, Italy, Luxembourg (both for fixed term and indefinite duration), Portugal, the United Kingdom and Spain.

In the Netherlands, in exceptional cases, legislation or a collective agreement may provide that the contract of employment or specific clauses must be in writing.

In Ireland and the United Kingdom the employer is obliged to provide, after a certain period of time, every employee with a written statement of the main terms of employment.

As regards the proof of the contract, the general rules of proof apply.

II. THE WORKER

A worker is, prima facie, a person employed under a contract of employment. That general definition applies to all Member States. In some of them - Belgium, Denmark, the Federal Republic of Germany, Ireland, the Netherlands and the United Kingdom - there is no general statutory definition of worker. The role of the Court, in establishing a legal definition through case-law and jurisprudence, has been decisive.

In five Member States - Belgium, France, the Federal Republic of Germany, Greece and Italy - statutory law distinguishes between blue collar and white collar workers. In some cases - Denmark - different statutes cover each category. In others - France, Belgium and the Federal Republic of Germany - the distinction is the subject of much debate and its legal relevance is diminishing. The distinction is of little or no importance in the other Member States, including Luxembourg where recent law stipulates an unified statute.

Most countries exclude a wide range of individuals from the application of labour law or from the scope of particular Statutes. The categories excluded are the following :

Directors of joint stock companies, in Denmark; home helpers, trainees, clergymen, in France; agricultural, domestic, home and family workers, in Greece; part-timers, 13 categories in the Unfair Dismissals Act, 3 categories under the Industrial Relations Act, in Ireland; agricultural and domestic workers, mariners, in Portugal; members of boards of Directors; work carried out in a frimship, charity or neighbourship basis; commercial agents in Spain; and casual or short-term workers, temporary workers supplied by intermediaries, part-timers working less than 8 hours/week or 8 to 16 hours for less than 5 years and all employees working for less than two years as well as employees under certain fixed-term contracts in the United Kingdom.

Certain categories of workers are subject to particular rules and regulations in Belgium, France, the Federal Republic of Germany, Greece, Ireland, the Netherlands, Portugal, Spain and the United Kingdom. The "special" categories are: domestic servants, commercial travellers, homeworkers, seamen, disabled workers, dockers, agricultural workers, professional sportsmen, leading personnel. In the United Kingdom more than 22 categories of workers are subject to special legislation.

Specific legislation on the employment of handicapped persons exists in all countries, with the exception of Ireland, where there is a code of practice on the subject.

As regards recruitment, quota systems exist in eight Member States, which in France may however sometimes be waived by financial contributions or otherwise.

TABLE 4 QUOTA SYSTEMS FOR THE EMPLOYMENT OF HANDICAPPED PERSONS

COUNTRY	QUOTA
Italy	15 %
France	6 % (1991)
Fed. Rep. of Germany	6 %
Ireland (voluntary, public sector)	3 %
The Netherlands	3-7 %
Spain	2 %
United Kingdom	3 %
Greece (public service)	2 %
Luxembourg	2 %

Failure to comply with the law amounts to a civil or administrative tort. In the United Kingdom employers may commit a criminal offence.

III. THE EMPLOYER.

In the legislation of most countries there is no general definition of the concept of employer. Occasionally, a definition is provided with a specific application, e.g. the Irish Unfair Dismissals Act 1977. In general, the employer is a party to a contract of employment who provides work for the employee. Unlike workers, employers can be legal persons as well as natural persons.

The group of enterprises is, generally speaking, not recognized as such in the labour law of most countries.

Case-law has had little to say on the subject. Individual enterprises forming the group are generally considered to have their own legal personality. Case law tends to maintain that the group of firms cannot constitute a single enterprise when it comes to the legal regulation of employment relationships.

IV. FREEDOM TO RECRUIT AND LIMITATIONS

The freedom of contract is the basis of the employment relationship in all Member States . This principle stems from the general principles of the law of contracts and implies that each individual is free to choose the occupation and employment she/he desires. On the employer's side it means that the employer is free to choose with whom he/she wants to conclude a contract.

The freedom of contract, guarantied by the Constitution of three Member States- the Federal Republic of Germany, Portugal and Spain - implies in all Member States the prohibition of forced labour.

This general principle is like other principles, rights and freedoms, subject to the limitations and restrictions imposed upon it by other rights, principles or values statutorily or constitutionally guaranteed in the legal system concerned.

a) The freedom to recruit and select workers may not infringe upon the principle of equality of treatment and the prohibition of discrimination on any ground such as race, colour language, religion, political or other opinions, social origin birth or other status. These fundamental principles laid down in various international instruments (European Convention on Human Rights, U.N. convenants I.L.O. conventions) is enshrined explicitly or tacitly in the Constitutions of Spain, Portugal, Greece, France, the Federal Republic of Germany, Italy, Luxembourg, Belgium, Ireland and the Netherlands. Most of these countries have specific legal provisions dealing with particular cases of discrimination.

In the United Kingdom, there is no general positive right of equality of treatment; specific statutes, however, prohibit discrimination for reasons of sex, marital status and race.
There is no doctrine of "abuse du droit" in English Law. In a British leading case it was considered that "an employer may refuse to employ (a worker) for the most mistaken, capricious, malicious or morally reprehensible motives that can be conceived but the workman has no right of action against him".

In Denmark discrimination in matters of recruitment is not forbidden by the Constitution nor is there a general legislative instrument . The principle of equality of treatment between men and women and EEC-nationals is, however, statutorily imposed. The main protection against an employer's abuse of discretionary power resides in the collective bargining system, but the employer may discriminate against non-union members (e.g. in the case of a closed shop agreement, for which there are no statutory provisions).

b) Sex discrimination within the meaning of EEC Directive 76/207 on equality of treatment for men and women, in respect of access to employment, vocational training, promotion and working conditions is forbidden in all Member States.

c) The principle of equal treatment of EEC-nationals treatment in respect of access to employment is in force in all Member States, via article 48 of the EECTreaty and EEC Regulations (e.g. Regulation 1612/68).

d) Discrimination on the grounds of belonging or not belonging to a trade union is illegal in all Member States. The United Kingdom following the judgment of the European Court of Human Rights in Young James and Webster, amended its legislation on closed shops, and the government proposes to introduce legislation banning pre-entry closed shops.

e) The employer's freedom to contract is also restricted in respect of non EEC-nationals. Non EEC-nationals are subject to various restrictions throughout Member States.

A work permit is necessary in all countries. When awarding or renewing these permits the competent administrative authorities take into account a series of factors, including the situation and development of the domestic labour market (is there a national or an EEC worker available for the job) and the circumstances of the particular case. Other criteria may also play a role.

As regards legal sanctions, a distinction must be made between penal and civil or administrative sanctions. The most common approach is to treat recruitment without prior authorisation (work permit) as a criminal offence. This is the case in Belgium, France, Greece, Luxembourg the Netherlands and Portugal.

The sanction for an invalid contract of employment is in most countries nullity: Belgium, France, Greece and Spain. In Luxembourg and the Netherlands, however the contract is not null and void and must be terminated in the normal way. Nullity does not affect the application of general rules on working conditions and remuneration. The foreign worker, once granted the work permit, should have, in general, the same rights and duties as national workers.

f) In some Member States, legislation and/or collective agreements specify priorities or preferences as regards recruitment of specific groups. France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom have a quota system the employment of disabled persons (see Title I, Chapter II).

France, Portugal and Spain give absolute preference to redundant workers if their jobs are re-created within a certain period.

In Spain workers over 45 years of age are given indirect preference; in France and Spain priority is given to those taking extended parental leave; in Portugal seasonal and casual workers have preference for permanent jobs; in France, part-time workers have priority when full-time posts become vacant in the enterprise and vice versa.

g) In Italy and Spain the freedom to contract is subject to an important legal limitation stemming from state intervention in the employment market. In Italy the law is based on the principle that mediation to conclude an employment contract is a public function. Private employment agencies are prohibited and employers are prevented from hiring directly the workers they need and are obliged to resort to workers registered on special lists at the employment offices. Direct recruitment is only allowed in cases of urgency, for a few categories of workers and for enterprises with no more than three employees. Moreover, until recently the employer could not name the workers he wanted from the agency, but only the number of employees needed and their qualifications. Following the legal amendments introduced in 1983 and 1984, employers are entitled to request 50 % of the employees by name. Parliament is currently examining a new and comprehensive bill reforming the labour recruitment service.

In Spain the recruitment system is based on the public intervention in the employment market through a national public service organised on a tripartite basis and private employment agencies are also prohibited. The compulsory character of the State intervention means that enterprises are under an obligation to ask for workers through the employment offices but can choose freely among the registered employees. For their part, employees should be registered with the employment offices. In certain cases, however, employers are allowed to recruit directly.

h) In the Federal Republic of Germany, employers are obliged to inform the works councils in the applications from all candidates and give details about those being considered for recruitment. The works council can reject in writing prospective recruitments under certain conditions.

i) Collective agreements in some Member States - Belgium, the Netherlands, France and the Federal Republic of Germany - may contain general guidelines or recommendations concerning the recruitment and selection of workers.

j) The right to privacy must be taken into account when determining the scope of questions to be included on the application forms workers must fill in before recruitment. That is the case, inter alia, in France, Spain, the Federal Republic of Germany and the Netherlands.

In Luxembourg the law restricts the use of fixed-term contracts to precisely defined tasks, fix a certain minimum period and limit the total length (including renewals) to 24 months.

In Portugal certain restrictions apply when a contract is shorter than six months. The maximum length permitted is three years, or six years with renewals.

In Spain fixed-term contracts are used when a permanent worker's contract has been suspended, for the launching of new activities and when it is necessary for a temporary increase in the company's activities. These contracts are also possible to promote employment. The duration can go up to three years.

In Belgium fixed-term contracts are limited in length to two years. Renewals are only permitted in specific circumstances with the consent of the employee and the union. In the Netherlands, though no maximum length is laid down the employee can terminate the contract after five years. Once renewed the contract does not expire automatically but can only be terminated with the authorisation of the Labour Office. In Greece, Denmark, Ireland and the United Kingdom no maximum limits apply.

A fixed-term contract is converted "ex lege" into an open-ended contract if it continues beyond its term. This is the normal situation in Belgium, France, Greece, Italy, Portugal and Spain. If in Luxembourg the contract overruns, the law assumes that it has been renewed for the same period as the first contract. In the Netherlands a fixed-term contract, which is not explicity renewed, runs for the same period again as the original up to a maximum of one year.

II. TEMPORARY WORK CONTRACTS.

In a temporary work relationship three parties are involved: the employee, the employing agency and the client company.

In general, three approaches to temporary work exist. In some countries, temporary work agencies and hence the conclusion of such contracts are forbidden. This is the case in Greece, Italy and Spain. In Portugal there are no regulations at all. In the other Member-States agencies must be registered.

In Denmark, Ireland, Luxembourg, the Netherlands and the United Kingdom the use of temporary employment contracts is in general not restricted, but in Denmark collective agreements may prohibit such contracts. In the Netherlands (where the limit is six months) and in the Federal Republic of Germany (three months, extendable to six months by the Employment Promotion Act) they are forbidden in the building sector.

In France no authorisation is required to recruit temporary workers, and contracts may last up to 24 months.

In Belgium, where the limit is one month or three months, temporary employment contracts may only be concluded in particular circumstances (e.g. to replace of a worker, whose contract has been suspended or terminated, temporary increase in workload, exceptional tasks).

In Ireland and the United Kingdom there are no limits to the length of such a contract.

In Belgium, Denmark, France, the Netherlands and the Federal Republic of Germany subject to certain conditions a contract may be renewed, in the latter case it is in principle an indefinite one. Sometimes a break is required between contracts.

Other differences can be found: for example whether or not a written contract is required, the rights of unions and whether the employees concerned count as part of the client company's workforce. In certain circumstances temporary contracts can be converted into open-ended ones in France.

III. PART-TIME EMPLOYMENT CONTRACTS.

Specific legal definitions of part-time work are only found in two Member States:

- In France the Labour Code defines part-time work as a number of hours at least one fifth below the statutory working week or the hours fixed by collective agreement.

- In Spain the Workers' Statute defines part-time work as less than two thirds of standard hours over a fixed number of days per week or month.

In the Federal Republic of Germany the Employment Promotion Act assumes that a worker on call works at least 10 hours per week, if nothing is stipulated in the employment contract. Furthermore the Act assumes that these workers are only obliged to work when the employer notifies them at least four days in advance and when daily working time is at least three hours, unless the employment contract states otherwise.

In Belgium, Denmark, France, Greece, Italy, Luxembourg, Portugal and Spain 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.

In the Federal Republic of Germany the same applies, although blue collar employees working less than 10 hours a week do not receive sick pay from their employer for the first six weeks of absence.

In Ireland employees must at least work 120 hours a month to qualify for annual leave. Specific legislation on minimum notice, redundancy pay and unfair dismissal applies only to employees working more than 18 hours per week.

In the Netherlands statutory minimum wage legislation applies only if the part-time employee works more than one third of standard hours.

In the United Kingdom regulations on unfair dismissal, redundancy pay and minimum notice periods do not apply to employees working less than 8 hours a week, or 16 hours if they have less than 5 years' service.
Other differences in the treatment of part-time employees are whether or not works councils or employee representations have to be informed or consulted about the introduction of part-time work, whether or not part-time workers are allowed to vote and to be elected to these bodies, to what extent they count fully, partly or not at all as part of the workforce and whether or not they need a written employment contract (as is the case in Belgium, France and Spain).

In some countries other forms of employment contracts exist which resemble part-time work, for example, intermittent work in France, job-sharing regulations in the Federal Republic of Germany and intermittent employment in Spain.

IV. HOMEWORKING

In some Member States homeworkers are covered by general legislation or by collective agreements for the industry or the enterprise in question. In most cases homeworkers are explicity or implicity excluded from such regulations. A decisive point in law is whether or not the employment relationship of the homework is considered a genuine employment contract.

Employment protection legislation for homeworkers exists only in France, the Federal Republic of Germany, Italy and Spain. In the Netherlands there is a special statute which does not seem to be operative.
Where special statutes exist they mainly regulate areas where homeworking is permitted or prohibited, recruitment and employment contracts, registration and protecion with regard to wages, working time, safety conditions and dismissal.

V. APPRENTICESHIP CONTRACTS

These are contracts under which the employer agrees to instruct and teach the apprentice, in return for which the apprentice agrees to serve the employer and to learn for a fixed period.

In most Member States the structure of apprenticeship is regulated by specific laws, with the exception of Spain. The apprenticeship contract is not regarded as an ordinary employment contract, but rules for employment contracts normally apply.

In general the apprenticeship contract should be in writing and have an obligatory content.

There are certain variations between Member States, notably as regards monetary compensation for apprentices, the maximum age for entering a contract and the termination of the apprenticeship contract.

CHAPTER III

JOB CLASSIFICATION SYSTEMS

1. THE CLASSIFICATION SYSTEM

Job classification systems in the private sector are conventional systems, in Belgium, France, the Federal Republic of Germany, Ireland, Italy, the Netherlands, Portugal, Spain and the United Kingdom. The job classifications for workers are established in collective agreements.

Denmark is an exception, because the Confederation of Trade Unions has traditionally been opposed to job classification and job evaluation.

The nature of provisions in the collective agreements, however, may vary.

In Belgium this type of provision only contains minimum standards, which leave a wide margin to the individual parties to the employment contract. In France, collective agreements list the tasks and functions of a job holder for each category of employee (blue collar - white collar - managerial). In Ireland, job classification and description are traditionally a matter of collective bargaining, but custom and practise may also play a part. Where neither is the case, job classifications and descriptions are generally a matter determined unilaterally by the employer.

In Italy, since 1973, the traditional system of classification in most industrial sectors has been changed considerably in order to adopt it to changes in work organisation. Classifications are now the same for blue and white collar workers. This has meant a reduction in wage differentials between the least and most skilled workers. Within each level national agreements distinguish between different "professional profiles", i.e. patterns of jobs having a common professional value to be applied through plant wide bargaining. In general the parties refer to this collective classification in order to measure the performance due from the employee and the corresponding remuneration due from the employer.

In the Netherlands, most big companies, though not smaller companies, use job classification systems laid down in a collective agreement, and in Portugal, the clauses in collective agreements which relate to e.g. posting and career may vary extremely, depending on the structure of the enterprise, the sector and the jobs which occur in these organisations.

In Spain the job classification system is, in principle, a matter of collective bargaining. However, because of the "historical" peculiarities of the Spanish system of industrial relations, job classification is still very frequently laid down in state regulations. Collective bargaining has not yet assumed its full competence in this area and these regulations continue to have additional force in numerous sectors. This leads to an "antiquated" system of job classification; collective agreements have only created a new basis for job classification in a few sectors.

In the United Kingdom management has increasingly used work study and job evaluation techniques in both the public and private sectors during the last 20 years. The main object has been to formalise the relationship between job content and wage payment. This has involved classifying jobs into component factors, such as effort, skill, and responsibility. The result has been to produce systematic job classifications, regulated through rules often agreed with unions.

II. OTHER ISSUES

1. Good faith

In all Member States, the principle of good faith or the obligation of loyalty and trust imposed on the employee in his relationship with the employer means, generally speaking, a duty not to disclose secrets, and a commitment not to compete when carrying out other work, often extending beyond the termination of the employment contract. (These so-called ancillary duties depend on the circumstances of the specific case).

A general tendency to limit the scope of the so-called "duty of fidelity" can be observed in particular in the Federal Republic of Germany, France, Greece, Italy and Spain.

In almost all Member States, there are statutory provisions which require the employee to observe secrecy. This obligation is, in general, sanctioned in the Penal Code, especially where manufacturing secrets are concerned.

In France, this obligation is interpreted strictly. However, the duty to respect professional secrets does not usually mean that a worker cannot use the professional skills acquired on his job, nor discuss and criticise publicly the company's policy.

Furthermore, in most Member States the civil law imposes an obligation to observe secrecy, often both during the employment relationship and after its termination.

Special rules on the observance of secrecy are laid down for members of the works council or workers' representatives in e.g. the Federal Republic of Germany, Greece, the Netherlands and Spain.

As regards exclusive service, there are generally speaking no restrictions on a worker having a second job, unless there is an express agreement to the contrary. A worker is however not permitted to engage or cooperate in any form of disloyal competition during the employment relationship. If doing so would inflict serious harm on the principal employer, the employer may seek to prevent it.

In Spain, the exclusive service agreement has an elaborate legal regime. Such an agreement can never be imposed upon the worker. The collective agreement may establish exclusive service as a "characteristic" of specific jobs, and the recruitment of workers may be made subject to their accepting this condition.

Concerning restraint of trade an employee is not allowed to compete with the employer during the employment relationship but once it is terminated freedom of employment is restored.

All Member States, however, accept in principle covenants of non-competition by allowing the possibility of a specific agreement between the parties aimed at restricting the worker's post-contractual freedom of employment.
This acceptance is, in general, laid down in legislation, except for France where it is contained in case-law and collective agreement, and Ireland and the United Kingdom where it is contained in case-law.
The conditions required for the clause of non-competition to be valid vary considerably form one Member State to another.

2. Workers' inventions

The law on workers' inventions is set out in the Patent Act in five Member States : France, Ireland, the Netherlands, Spain and the United Kingdom. Denmark and the Federal Republic of Germany have special acts on workers' inventions.
In Greece, it is governed by the Civil Code and in Italy by special Acts and by the Civil Code and in Belgium the matter is regulated by case-law.

Three types of inventions can be distinguished :

a) Service inventions are those made in the course of the normal duties of the employee. In Belgium, France, Greece, Ireland, Italy, the Netherlands, Spain and the United Kingdom the service invention belongs to the employer. In these countries compensation to the worker for service inventions is exceptional. In France, Italy, the Netherlands and Spain, however, compensation has to be paid if the wages do not compensate the worker for making such inventions. In the United Kingdom compensation is due by law for patentable inventions of outstanding importance, if the relevant collective agreement does not provide for compensation. In Denmark and the Federal Republic of Germany the right to inventions always belongs to the employee. However the employer is entitled to have the workers' rights to both service and dependent inventions fully or partially transferred to him/her.

b) Dependent inventions are those which are not made in the course of the normal duties of the employee but relate to the activity of the enterprise and use knowledge acquired in the job.
In Denmark, the Federal Republic of Germany, Belgium, France, Greece, Ireland, Italy, the Netherlands, Spain and the United Kingdom, they belong to the employee.
In France, Italy and Spain the employee has a right to compensation when the employer has made use of a dependent invention.

c) Free inventions, i.e. those which are not connected with the work, experience and knowledge assumed by the particular job, belong to the employee.

CHAPTER IV

THE EMPLOYER'S PREROGATIVES AND THE DUTY TO PROVIDE PROTECTION

1. POWER OF MANAGEMENT

The power of management is attributed to the employer. As a matter of law, there is a duty on the part of the employee to obey lawful and reasonable instructions by management. The employer can delegate this power.

Generally speaking, the power of management includes the power to "organize" the work or to "direct" the work. The worker is under the obligation to carry out the work under the direction of the employer, complying with the general company regulations and observing the specific orders given to him. The employer also has the power to control and supervise the compliance on the part of the workers with their jobs.

In Denmark, the concept of managerial prerogatives is used in even a broader way, since managerial prerogatives are recognized in collective agreements and case law. They are not laid down by statutory provisions. The scope of managerial freedom in the employment relationship is therefore of varying extent depending on the collective agreement by which the individual employer is bound. Part of the managerial power is the right to interpret collective agreements. Conflicts over the interpretation of collective agreements are in the last resort settled by arbitration. In the period between going to arbitration and receiving the award, the workers are under an obligation to abide by the employer's interpretation of the collective agreement.

Although the power of management is to a large extent discretionary, there are limitations.
Limitations can be set by the individual employment contract, but also by the law, the collective agreement, business regulations and custom. However the employer shall generally carry out his/her duties in an appropriate and responsible manner without "abuse of right". In other words, the orders of the employer must be in line with normal exercise of his/her managerial powers.

Power of management includes the freedom to recruit and dismiss personnel. This freedom can be limited by collective agreements or protective legislation. Limits can also be imposed in the regulations concerning worker participation and consultation and in some cases co-decision. One of the most relevant manifestation of employer's prerogatives is the "ius variandi" or the working conditions.

Although neither party can unilaterally change the contracted terms, the employers managerial power allows him/her to modify working conditions to the extent permitted by nature of the working conditions and by the contract of employment and relevant collective agreement.

A majority of Member States distinguish between "hard core" working conditions- wages and working hours- which can not be varied unilaterally by the employer, and working conditions subject to managerial prerogatives- the use of technical equipment, modification of job content, distribution of work betweens workers, establishment of working hours within the limits set by statute and workers' agreements and change of the place of work.

The unilateral power of the employer to transfer employees from one work floor to another or from one plant to another has, for a number of years, been reduced in all Member States. The respect for the worker's professional status and remuneration, as well as technical and organisational justification is required by law, to a greater or lesser extent, in Italy, Portugal and Spain.

In the Federal Republic of Germany, Spain and Luxembourg the works councils must also be consulted and agreement must be reached. In the Netherlands, information and consulation with works Concils are necessary when collective working conditions are to be modified.

Individual contracts and collective agreements may include a mobility clause permitting the employers to transfer the employee from one workplace to another, or flexibility clause permitting the employer to modify the work content.

In Belgium these clauses are forbidden by law. In France and Spain they have a narrow interpretation. In Italy their legality is the subject of some controversy. In the Netherlands, case-law requires that any modification of working conditions by the employer must be "reasonable", and in Ireland and the United Kingdom Courts may supply a mobility or flexibility clause if considered reasonable.

In France, a recent case in the Cour de Cassation sharply narrowed the employer's power to change unilaterally working conditions.

If the employer modifies the terms of the individual contract of employment in a way that constitutes a breach of contract the worker is entitled to refuse to work under the new changes conditions.

If the worker is subsequently dismissed, the employer has to pay a dismissal allowance. The burden of proof that he has acted correctly rests on the employer.

In some countries such as France (according to recent case law) and Spain, the Court might also rule in favour of the original conditions, being restored.

In the United Kingdom, the employee who has 2 years or more continuous employment has the right to resign and claim "constructive dismissal" (a resignation of the employee provoked by the employer).

Likewise, in France and Spain, workers adversely affected by modifications in certain working conditions, have the right to terminate the contract and receive compensation.

In some countries like Denmark and the Netherlands where modifications in certain conditions also constitute a breach of the relevant collective agreement the Courts can order the employer to pay an amount of money to the trade unions which are parties to the collective agreement.

II. DISCIPLINARY POWER

When an employee violates basic duties, the employer may take disciplinary action. In most Member States the exercise of this disciplinary power has been restricted and controlled as regards the concept of misconduct, procedure and judicial review. These restrictions have been laid down by Statutes, collective agreements, work place regulations, codes of practice or case-law.

In Denmark and Luxembourg there is no statutory legislation in this respect.

In Belgium, France, Greece and Portugal the principal rules concerning the employer's disciplinary power can be found in work place regulations, but in France disciplinary law is also important. In the Federal Republic of Germany sanctions can only be imposed and executed with the consent of the works council. In cases of non-agreement, the arbitration committee decides. In Spain misconduct and sanction procedures must be formalised in collective agreements and the employer must also notify the works council of all sanctions imposed on the grounds of grave misconduct.
In Ireland collective agreements are also the main source of regulations governing disciplinary and grievance procedures. These are binding upon employers and employees when incorporated in the contract of employment.
According to the Italian Civil Code sanctions should be proportional to the seriousness of the employee's misconduct. The Worker's Statute sets out general restrictions on the employer's disciplinary power and collective agreements lay down detailed regulations.
The Civil Code of the Netherlands entitles the employer to impose a fine for a breach of rules to which explicit reference has been made. An agreement in which a fine is stipulated shall be entered in writing. Collective agreements, work place regulations and individual contracts of employment stipulate additional rules.

In the United Kingdom the common law prerogatives of management have been restricted by development in the law against unfair dismissals since 1972.
One of the major effects of this legislation, as interpreted by the Courts, has been to encourage management to develop disciplinary rules and procedures. This has also been a statutory requirement since 1972 : a written statement of terms of employment must be given to the employee which must include a note specifying any disciplinary rules which apply to the employee or refer to a document, reasonably accessible to the employee, which specify those rules.
When dealing with complaints of unfair dismissals the Industrial Tribunals may have regard to the Code of Practice on Disciplinary Practices issued by ACAS and approved by Parliament in 1977.

III. DUTY TO PROVIDE PROTECTION

The duty to provide protections, be it physical, moral or, in a broader sense, personal, is known in all Member States.
In Belgium, Denmark, France, Luxembourg and the Netherlands the material scope of this duty is interpreted narrowly and generally linked to safety and hygiene matters.
On the contrary, in the Federal Republic of Germany, Portugal, Spain, Greece and Italy, the duty to provide protection has a broader meaning concerning risk and the physical integrity but also the moral integrity of workers.
According to British and Irish case-law, employers should not behave in a manner which undermines mutual trust and confidence and should be "good and considerate". This extends not only to the physical working conditions but also to the psychological conditions of work. The employer's failure to provide protection makes him/her liable in all Member States to civil, common law or penal responsibilities, the extent and nature of which vary considerably from one State to the other.

III. NIGHT WORK

Table 6 gives details on the hours which are considered as night working time.

Generally speaking two legal models can be found with regard to night work. In the first model night work is generally forbidden but derogation for a number of activities are allowed. This system is applied in Belgium and the Netherlands.

In the second model, which is applied in all other Member States, night work is allowed, unless explicitly prohibited.

It should however be pointed out that this theoretical difference need not lead to large differences in the practical recourse to night work.

In Belgium there is a long list of exceptions for male workers and some exceptions for female employees, the latter laid down by Royal Decree. Derogations are possible under the legislation on new working time rules, which do not prohibit night work for male employees.

In the Netherlands, there is also a large number of exceptions for male night workers; for women such exceptions were more restricted. At present the rules governing night work for men and women are equal, apart from the protection of pregnant women.

In Denmark there are no regulations in legislation which limit night work.

In the Federal Republic of Germany night work is not restricted for male employees. Female blue-collar workers may not, with some exceptions, do night work.

In Greece night work is, with some exceptions, forbidden for all female employees in industrial enterprises.

In France night work is normally forbidden for women in industry, but this prohibition can be waived by an extended collective agreement based on an Act of 1987 on working time arrangements.

In Ireland night work is permitted for all adult workers. Existing limitations for women have been repealed.

In Italy night work is limited for most women. Collective agreements may define night work and a number of them derogate from the legal provisions for night work.

In Luxembourg there is no general legislation on night work. Pregnant women and nursing mothers must not be employed between 22 p.m. and 6 a.m.

In Portugal night work is usually prohibited for women in industrial enterprises.

In Spain there are no limits on night work for adult employees. Overtime in addition to night work is usually forbidden.

In the United Kingdom night work is not regulated by law in general. Exceptions for specific groups like young people and women are being repealed.

II. MINIMUM WAGES

There are three main systems of regulating minimum wages in the Member States. The first system, applied in France, Spain, the Netherlands, Portugal and Luxembourg, is based upon a statutory national minimum wage.
In the second system the level of minimum wages are laid down by collective bargaining, either by national-level collective agreements establishing a general minimum wage - Belgium and Greece - or by industry-level collective agreements fixing specific minimum levels of pay Denmark, Italy and the Federal Republic of Germany.

In the United Kingdom and Ireland a different type - the third system - prevails whereby specific minimum wages for certain sectors of industry are laid down by Wages Councils (the United Kingdom) and Joint Labour Committees (Ireland).

Under the first system minimum wages are fixed by government statutes after consultation with the two sides of industry. All workers are covered in France, Luxembourg, Portugal and Spain. In the Netherlands, however, there is a threshold: employees working hours less than one third of "standard" working hours do not qualify, consequently 6% of all employees are not in practice covered by the law. In Luxembourg, lower rates are fixed in agriculture and in domestic work.

Young workers are entitled to a fixed percentage of the adult minimum in France, Luxembourg, the Netherlands and Portugal; in Spain the youth minimum is fixed in cash amounts.

TABLE 8 STATUTORY MINIMUM WAGES

Age	France	Luxembourg	Netherlands	Portugal	Spain
23			adult 1987,90FL		
22			85,0%		
21			72,5%		
20			61,5%	adult 30,000Esc	
19			52,5%	75%	
18	adult 4860.44FF	adult 31.969LF	45,5%	75%	adult 44.040Pts
17	90%	80%	39,5%	50%	+ 60%
16	80%	70%	34,5%	-	+ 40%
15	-	60%	30,0%	-	-

In France, in case of technical or partial unemployment, the employee is entitled to a partial remuneration. The employer will not be freed from his/her obligations unless an administrative decision on unemployment benefit entitlement has been made.

In the Federal Republic of Germany a mere suspension of the contract of employment due to economic reasons does not, in principle, free the employer from the obligation to pay wages. The Federal Labour Court holds that the employer who normally makes the profit is supposed to bear the risk. There are two exceptions to this rule : suspension by industrial action and when the existence of the establishment would be endangered. In this latter case the obligation to pay wages could be reduced or eliminated.

A scheme covering short-time work is widely used in case of a temporary slackness.

In Greece, the employer may lay off the workers for economic reasons only after making a written announcement and for a maximum of three months in one year. If this is the case, the employers pay half of the regular remuneration.

In Italy, a special public fund guarantees part of the income during periods of suspension or reduction of work for economic reasons (lay-off and part-time). This has become the major instrument of public protection for workers' incomes. An 1988 Act introduced important changes in the regulation of this Fund. The maximum duration limit has been fixed at 36 months over a five-year span.

In Luxembourg short time work regulations stipulate that the State covers 80% of the pay from the sixteenth hour lost per month; the first eight hours are carried by the worker, the following 8 hours by the employer.

In the Netherlands, the Labour Inpectorate may grant a short-time permit in exceptional cases of a temporary slackness. Once a permit is granted, the employer is freed from his obligation to pay (full) remuneration and the employee will be entitled to unemployment benefit.

In Portugal, the Minister of Labour grants a permit to suspend employment contracts if this measure is indispensable to insure the company's survival. The maximum is one year, and employees are entitled to a minimum financial compensation of 2/3 of their regular remuneration.

In Spain too, when economic causes temporarily impede production, an administrative procedure must be followed in order to bring about suspension. Once suspension has been authorised, the workers are considered to be in a situation of partial unemployment and are entitled to receive the amount of unemployment benefit which corresponds to the protection of the working day lost.

In the United Kingdom, there are different legal forms of lay-off and short-time. The law draws a distinction between lay-offs from work due to a trade recession when remuneration must still be paid and lay-offs due to circumstances such as mechanical failure when a principle of risk-sharing is applied. The legal rules regarding the maintenance of income during lay-off and short-time are extremely complicated. Various forms of protection are provided in collective agreements and by statute.

SUSPENSION BY THE EMPLOYEE

1. Illness

Generally speaking, illness merely suspends the execution of the employment contract.

In Greece, the law defines the extent of a short illness during which the employment contract is suspended, while in Ireland and the United Kingdom prolonged illness in extreme cases may amount to "frustration", so that the employer may legally declare the contract as having come to an end.

In all Member States legislation exists for sickness benefits to be paid to employees who cannot work because of illness. In Ireland, the Social Welfare Consolidation Act may provide some protection.

In most Member States social security legislation devolves (at least a part of) the responsibility for paying sick employees to the employer. This is especially the case in Belgium, Denmark, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands and the United Kingdom. In some cases the state provides a (partial) reimbursement. In France collective agreements and an interprofessional agreement extended by law regulate the payment of sickness allowances.

Sick pay is paid by the employer from the first day of absence in Belgium, Denmark, the Federal Republic of Germany, Italy (white collars only) and Luxembourg (white collars only). In France from the first day in the case of industrial injury or occupational disease. The duration of sick leave which employers are required to pay varies from 30 days (in Belgium) to six months (in France and Italy).

The level of sick pay can vary from 100% of usual pay (Belgium, the Federal Republic of Germany, Italy and Luxembourg: white collar working only) down to 70% in the Netherlands. In the latter case at least the minimum wage during the first six weeks is granted and the stated percentage is often completed by collective agreement.

In the United Kingdom, employers are obliged to pay statutory sick pay with fixed rates, depending on earnings.

In Greece, Portugal, Spain and Ireland there are no such obligations on the employer. In these countries payments may be made through voluntary schemes. For more details see table 8.

2. Maternity

In all Member States expectant mothers are entitled to a leave of absence before confinement and afterwards.

See table 9 for more details.

3. Military service. Trade union activities. Public activities

The execution of the employment contract is suspended during military service. The law, however, does not provide for a form of guaranteed income during this suspension.

This is the case in most Member States. (In Greece and the Netherlands, there is a minimum continuous employment requirement).

FOR OFFICIAL USE ONLY

CONFIDENTIEL

VERTROUWELIJK

RISERVATISSIMO

CONFIDENTIEL

CONFIDENTIAL

EMMISTEYTIKO

VERTRAULICH

FORTROLIGT

CHAPTER IX

THE SETTLEMENT OF INDIVIDUAL LABOUR DISPUTES

The settlement of individual labour disputes is achieved in all Member States by two principal mechanisms: conciliation, mediation and arbitration, on one hand, and Court proceedings on the other.

In most Member States, more than one machinery or mechanism is used.

I. CONCILIATION, MEDIATION, ARBITRATION

Generally speaking, one can say that in Denmark, Greece, Luxembourg and the Netherlands, the conciliation, mediation and arbitration procedures play a small part in the settlement of individual labour disputes.

In the other Member States the part of conciliation and mediation is especially important, although the practical implementation may vary from one country to another.

In Belgium, grievances arising in the course of the employment relationship will usually be handled by the union delegation or the union business agent. The procedures for handling grievances are laid down in collective agreements. If the dispute is still not settled, the joint committee will deal with the case. This committee can conciliate and recommend a solution to the parties. In some sectors grievances are rarely brought to the Courts, and are in fact settled by the joint committee.

Arbitration plays no part in Belgium labour law and industrial relations. Arbitration clauses covering future grievances are only valid for employees earning over BF1,300,000 and who are responsoble for the day-to-day management of the enterprise.

There is no system of conciliation, mediation and arbitration in individual employment contracts in Denmark.

In France, conciliation in particular has developed in the shadow of the labour Courts procedures mediation and arbitration are rarely used in industrial disputes.

In the Federal Republic of Germany, where there is a works council, the matter may initiate grievance procedings. According to the law, a worker who believes that he/she has been discriminated against, treated unfairly, or otherwise put at a disadvantage by the employer or by other employees of the firm has several options:

- He/she may make a complaint to the competent authorities in the plant, either himself or through a member of the works council;
- He/she may make a complaint to the works council which is obliged to listen to the employee's grievance and, if it appears justified, try to induce the employer to remedy it. If the employer and the works council do not agree on the justification of the complaint, the works council may appeal to the arbitration committee.

3. Shop stewards and other employee representatives.

In a number of Member States union delegates play an important role in the enterprise, whether or not a works council exists at the same time. Their role is not so much monitoring decisions in the enterprise, but to formulate and negotiate policies which the unions want to see realized.

This is notably the case in Belgium, where union delegates are installed on the basis of intersectoral agreements. They handle collective disputes, grievances, etc. and may engage in bargaining.

In Denmark the shop steward may also conclude, as the local union representative, agreements with the employer.
In France there is an elaborate legal system of workers' and union delegates.

In Greece, Portugal and Spain legally installed trade union representatives operate alongside the works council.

In Italy, the trade union organisation in the enterprise is an extension of the collective bargaining system in general. In the United Kingdom and Ireland shop stewards are the main trade union bargaining agent with the employer at plant and enterprise level.

4. Other rights of employee and union representatives.

In all Member States there are legal rights for employees and/or union representatives, either within the works council or in separate committees, in the field of safety and health at the workplace. These competences are not covered in this study.

In Belgium, the Labour Courts are competent to deal with all the grievances which arise out of the individual employment contract. The Courts deal mainly with individual disputes. They are, however, not competent to intervene in the settlement of disputes of interest. Each chamber comprises a career judge and two lay judges, one of whom is nominated by the trade unions and the other by the employers' association. Appeal can be made to the Labour Court of Appeal (similar composition to the labour Court) and finally to the Court of Cassation (exclusively career judges).

In France, the "conseil de prud'hommes" is an elected bipartite body which exclusively resolves all individual disputes between employer and employee over the interpretation of the employment contract.
Each "conseil" is divided into four (sometimes five) sections. Each section includes at least one conciliation unit.
All cases must first go through this conciliation unit. If conciliation fails, the procedure will go forward to the "conseil".
Appeals can be taken to the ordinary "Court d'Appel" and the "Cour de Cassation".

In the Federal Republic of Germany, the Labour Courts are the dominant mechanism for resolving conflicts in labour disputes. The German system comprises three levels: Labour Courts of the first instance, appellate labour Courts and the Federal Labour Court.
The Labour Courts are composed of one or more panels, each with a professional judge as chairman and one lay judge each from the employer and employee side.
The procedure in the Labour Court is divided into two steps: a conciliation session and the ordinary panel session. Normally there are several months between these two sessions.

In Luxembourg, the "conseil de prud'hommes" is composed of one professional judge (judge of the peace) and one lay judge each from the employer and employee side.

Appeal to the "Cour supérieure de justice" is possible in the case of a claim of over LF12,000, disputes concerning agreements between employer and employee are handled by the arbitration Court.

In Spain, the resolution of individual labour disputes is achieved almost exclusively through special labour Courts.
Labour judges are individual judges, who are informed of the dispute in a single petition. Conciliation must be attempted as a prerequisite to Court proceedings.
In the majority of cases, this is simply a formality.

The judge must endeavour to conciliate of the litigeant parties. A sentence is pronounced, only when this is not reached.

Appeals are made to the Supreme Court or the Central Labour Court.

The legal labour organisation is presently being reorganised. This reform will have to overcome a series of technical obstacles.

Ireland and the United Kingdom.

In Ireland the Employment Appeals Tribunal, the Labour Court and the civil Courts each have a role in resolving disputes.

The Employment Appeals Tribunal (EAT) acts by division (chairman or vice-chairman and two ordinary members, one from each side). The Tribunal hears applicants under a number of statutes, and issues legally binding determinations under these statutes, subject to appeals to the civil Courts.

The above mentioned statutes are the Redundancy Payments Acts, Minimum Notice and Terms of Employment Act 1973, Unfair Dismissals Act 1977, Maternity Protection of Employees Act 1981 and Protection of Employees (Employers' Insolvency) Act 1984.

The EAT procedures are slightly less formal and more flexible than those of the civil Courts (as regards legal representation and rules of evidence).

The tripartite Labour Court hands down legally binding decisions in cases involving equal opportunity of men and women under the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977.

A Decision of the Labour Court may only be appealed against in the civil Courts on a point of law.

The Civil Courts may be involved in appeals from the EAT or Labour Court and in cases relating to the interpretation of the employment contract or action for breach of employment contract.

In the United Kingdom, a specialized system of Labour Courts, known as industrial tribunals, has existed since 1964. These tribunals now have jurisdiction over a wide range of disputes arising in respect of statutory rights, but they do not have jurisdiction over all individual disputes. In particular claims for breach of contract must still be brought before the ordinary civil Courts.

The industrial tribunals consist of a legally qualified chairman and two industrial members, one drawn from a panel appointed after consultation with representative employers' organisations, and the other from a panel appointed after consultation with trade unions.

There may be an appeal on a question of law to the Employment Appeal Tribunal EAT, which is similarly constituted.

A further appeal may be brought to the Court of appeal (England) or Court of Session (Scotland), and from there, to the House of Lords. (In Northern Ireland, there is no EAT and appeals are taken directly to the Northern Ireland Court of Appeal and then to the House of Lords).

The EAT has no power to promote or order a compromise. The function of conciliation has being given to ACAS. The tribunals are, however, much speedier and cheaper, more accessible and more informal than the ordinary Courts.

The ordinary Civil Courts have exclusive jurisdiction in respect of actions for damages and other remedies arising out of breach of the employment contract.

LABOUR INSPECTORATE

In all Member States, there are public labour inspectorates with responsibility for the enforcement enforcement of general or specific legislation. Labour inspectorates fall into two main categories. The generalist system, under which labour inspectors monitor the application of labour law, collective agreements, health and safety regulations and, in some cases, social security law, is applied, to a greater or lesser extent, in Belgium, France, Greece, Italy, Luxembourg, Portugal and Spain.

The specialist inspectorates' system operates in Denmark, the Federal Republic of Germany, Ireland, the Netherlands and the United Kingdom. Under this system inspectors' duties are limited to the enforcement of health and safety regulations and, in certain countries, minimum wages and working time.

In Denmark the labour inspectorate does not deal with individual employment contracts except under the Act of Vacations which is likely to be changed as a means of de-regulation.

PART III

COLLECTIVE ACTION AND THE DETERMINATION OF WORKING CONDITIONS

CHAPTER I

COLLECTIVE AGREEMENTS

The notion of collective agreement is understood in this context in a narrow sense, i.e. collective bargaining involving a process of negotiations between individual employers or employers' associations and trade unions, leading, in case of accord, to an agreement.

1. PARTIES TO THE COLLECTIVE AGREEMENT

In general one can say that parties to a collective agreement are individual employers and employers' association on the one hand and trade unions on the other.

In a number of countries the trade unions need to satisfy certain requirements to be able to conclude collective agreements.

In Belgium only the more representative unions can be a party to a legally binding collective agreement. In the Federal Republic of Germany a trade union must be represented at more than one plant in order to qualify as a party to a collective agreement. In France, Greece, Luxembourg and Spain the trade union must also be a representative organisation, which in Spain is spelt out in great detail. In Luxembourg the trade union should not only be representative at inter-industrial level but also at sectoral level. In the Netherlands and Portugal every trade union is legally entitled to conclude a collective agreement as soon as it complies with very minor formal requirements. In the United Kingdom the trade union has to fulfil a number of legal requirements and needs a certificate of independence in order to obtain a number of statutory rights. In Ireland all organisations involved in collective bargaining need a negotiation licence in order to be able to conclude valid agreements. In Italy no specific requirements are stipulated and in Denmark union recognition is based on an agreement with the employers' organisation.

In some countries works councils can also conclude agreements, often in the shadow of employer trade union bargaining. This is notably the case in Spain, but also to a minor extent in the Federal Republic of Germany, the Netherlands and France.

In Belgium, Ireland, Italy, Portugal, Spain and the United Kingdom union or workers' delegates may also take part in collective bargaining and in Greece in principle only employers' associations can conclude collective agreements although in practice a large number of company agreements have come into existance.

II. NEGOTIATING RIGHTS AND OBLIGATIONS

In general there is no obligation nor a right to bargain in a number of countries. Bargaining depends in fact on power relations, in particular the relative strength of trade unions, notably in Belgium, the Federal Republic of Germany, Denmark, Greece, Ireland, Italy, the Netherlands and the United Kingdom. In the United Kingdom there is no legal duty on an employer to recognize a trade union for the purposes of bargaining; in Denmark such recognition is contained in an intersectoral agreement.
In France, Luxembourg, Portugal and Spain social partners have a legal duty to bargain.

In France this duty to bargain exists at both industry-wide and enterprise level. It is not however a duty to reach agreement. At industry level bargaining must take place over minimum wages (every year) and job classifications (every five years). At enterprise level bargaining must cover such subjects as the right of expression, a plan of training when none has been negotiated at industry level, annual wage bargaining by categories of employees, actual working hours and the organisation of working time. There are penal sanctions when one side refuses to bargain. In Luxembourg and Portugal there is likewise a mandatory duty to bargain. There is however no duty to conclude a collective agreement. In Spain there is implicity a general duty to bargain, in the sense that the party which receives an invitation to bargain is under an obligation to do so in good faith with a view to reaching agreement.

In certain specific cases there may be an obligation to bargain, for example in the case of collective redundancies in Denmark and mergers in the Netherlands.

III. LEVELS OF BARGAINING

Although bargaining takes place at different levels (plant, enterprise, industry, inter-industry) there are noteworthy differences, which also change with time. In Denmark, the Federal Republic of Germany, Greece and the Netherlands, the most important bargainings are carried out at industry level. In the Federal Republic of Germany these negotiations are often regionalized. In the United Kingdom and Ireland, on the other hand, the main focus of bargaining is at plant and company level. Ireland also has a tradition of nation-wide agreements. Single-employer bargaining, either centralized or decentralized, is quantitatively more important than multi-employer bargaining in both these countries. In other countries bargaining may take place at different levels depending on the case, sometimes at more than one level at once. In Luxembourg negotiations take place either at the level of the enterprise or at sectoral level and in Portugal the level at which bargaining takes place depends among other things on the level of organisation of the employers.

IV. CONTENT OF THE COLLECTIVE AGREEMENT

1. The normative part.

The content of the collective agreement can be decided by the contracting parties and comprises principally individual normative stipulations, such as all aspects of working conditions, wages, sometimes including cost of living and overtime clauses, fringe benefits (additional holiday pay, sickness benefits, etc.), job classifications, working hours, time-off, training, job security, non-contributory benefit schemes, etc. It can also contain collective normative stipulations relating to informing and consulting workers and participation, procedural rules and similar subjects. There is generally no limit on the possible subject matter of agreements.

Although it is difficult to make general statements in this area, some observations can be made.

In France legislation has specified that the collective agreement must contain all terms and conditions of employment as well as social guarantees for the employees.

In Luxembourg legislation lists a number of items every agreement must contain: additional payments for nightwork, payments for dangerous, unhealthy and difficult work, equal treatment for men and women and cost of living allowances.

In the United Kingdom negotiations cover in varying degrees of detail, pay, working hours, etc., and such non-pay issues as physical conditions, redeployment within the establishment and manning levels.

In those countries where negotiations take place mainly at sectoral level, particular circumstances in individual companies cannot be taken into account and therefore such negotiations are sometimes of limited relevance for the more prosperous enterprises.

The material content of the normative part of collective agreements is also influenced by the fact that in some countries collective agreements can derogate from legal provisions (e.g. in the Federal Republic of Germany and in Italy in general terms, working time in France). In Ireland, however, only in very rare cases, can agreements have any normative effect.

In a wider sense, it has to be noted that governments also set a number of normative issues, either on a permanent basis or from time to time when a crisis situation has to be mastered.

As far as the first case is concerned reference can be made to the setting of legal minimum wages in a number of Member States which have to be respected in the collective agreements and individual employment contracts.

In the second case, governments intervene normally in order to ensure certain macro-economic policies, e.g. with regard to wage moderation, employment creation or working time issues. In this context can, inter alia, be quoted the Act of Parliament by which working time was reduced in Denmark in 1986/87 or the possibilities provided by the Law on social recovery in Belgium.

2. The obligatory part.

The obligatory part of the collective agreement refers to the rights and obligations of the parties to the agreement. The main obligation is the peace obligation. According to the (relative) peace obligation, neither of the parties is, for the duration of the collective agreement, permitted to initiate industrial action against the other party with the intention of altering conditions laid down in the agreement.
The peace obligation is recognized in Belgium, Denmark, the Federal Republic of Germany, Greece, Luxembourg, the Netherlands, and Spain. In Spain it is only absolute if agreed upon by the contracting parties. Likewise most collective agreements in Ireland contain a peace obligation.

In France there is no peace obligation as such, but a much weaker principle. The Labour Code provides that parties to a collective agreement are bound not to do anything which might compromise the faithful implementation of the agreement within the limits laid down in the agreement itself.

In Italy there is no peace obligation unless provided for in the collective agreements and in the United Kingdom no contractual peace obligation binding upon the collective parties exists.

v. THE BINDING EFFECT OF THE COLLECTIVE AGREEMENT

As far as the binding effect of a collective agreement is concerned there is a striking difference between the situation in the United Kingdom on the one hand and the other Member States on the other.

In the United Kingdom, collective agreements have no legally binding effect, unless they are in writing and contain a provision that the parties intend the agreement to be a legally enforceable contract, which in practice is rare. With one exception this holds also for "single union 'no strike' agreements" with a provision for "binding arbitration". In many cases, however, the Courts accept that the terms and conditions of collective agreements are incorporated in the individual employment contract, but this does not mean that collective agreements are treated as minimum terms of employment.

In all the other countries the normative part of the collective agreement is considered to be legally binding as minimum employment conditions, which can be improved upon by other collective agreements at a lower level, individual contracts or otherwise. In Ireland a special procedure of "incorporation" has to be followed to this end which is frequently done.

In Belgium, France, Luxembourg and Spain the agreement is - under certain conditions - binding on all employees, whether or not the employee is a member of the union. In Denmark a collective agreement is binding upon the employer vis-à-vis all employees whether or not they are organized.
In the Federal Republic of Germany, Greece, Italy and the Netherlands collective agreements' normative rules only have a legally binding effect for employment relationships when the employee is a member of the contracting union and in the Federal Republic of Germany the employer is a member of the contracting employers' association. In practice however non-union employees receive the same terms and conditions.

vi. THE DURATION OF THE COLLECTIVE AGREEMENT

Due to the large autonomy of both sides of industry the duration of collective agreements varies greatly. In many cases agreements tend to be for a certain period (very often one or two years) and end automatically at the date of expiration. In Portugal the legally prescribed period is two years, with the exception of one year for the determination of pay. In France and in the Netherlands a maximum term of five yeas is granted for specific topics contained in the collective agreement.

In a number of cases, framework agreements or agreements providing for general working conditions outside the area of pay, may be of indefinite duration with the option to give a term of notice, or with effect until a new agreement is concluded.

vii. THE EXTENSION OF THE NORMATIVE PART OF AN AGREEMENT

In a number of countries the normative part of an agreement can be extended by government decree. Such a declaration 'erga omnes' means a procedure by which the applicability of collective agreements can be extended to all employers and all employers within a sector or a branch of industries. In such a case the collective agreement functions as a legal provision.

Extension of agreements is only possible in Belgium, France, the Federal Republic of Germany, Greece, Ireland (under certain restrictive circumstances by registration with the Labour Court), Luxembourg, the Netherlands, Portugal and Spain. In Spain in branches with difficulties in reaching collective agreements, the Ministry of Labour may take the initiative for extension. This is also an applicable option in France. In Greece an agreement which covers 3/5 of the workforce is normally eligible for extension, in the Netherlands the same applies for an agreement covering "an important majority" of the workforce and in the Federal Republic of Germany one of the criteria for extension is that 50% of the employees in question are covered.

CHAPTER II

INDUSTRIAL DISPUTES

Divergence of interests between employers and employees, possibly leading to industrial conflict, in which the right to strike and, to a lesser extent, lock-out take a central place, is inherent in a system of industrial relations in which freedom of labour and freedom of enterprise are guaranteed. In order to channel possible conflicts or even to prevent them from emerging several forms of handling these situations have been developed.

In most countries, a distinction is theoretically made between collective conflicts of interests and collective conflicts of rights. Whereas the latter concern the interpretation and application of existing contractual clauses, typically involving Courts, the former relate to changes in the establishment of collective rules and require the conflicting economic interests to be reconciled with a view to reaching a solution on the basis of legal or collective procedures. This distinction is however not always clear-cut, nor does it in a number of countries carry much practical weight, for example, in Belgium, France, Greece, Italy, Luxembourg, the Netherlands and Spain. The distinction is not made in Ireland and the United Kingdom. In Portugal, the law provides for different mechanisms for the resolution of these two basic forms of conflict.

In Denmark, however, a conflict of right cannot be resolved by industrial action but has to be settled through a procedural system which is subdivided into two branches: industrial arbitration and the Labour Court. Broadly speaking, conflicts over the interpretation of collective agreements are settled by arbitration, whereas conflicts over an alleged breach of the collective agreement, e.g. strikes in violation of the peace obligation, are dealt with by the Labour Court (or the arbitrator if the parties concerned see fit).

In the Federal Republic of Germany, the Labour Courts have sole competence for all disputes of right between the parties to collective agreements or between them and third parties.

I. PREVENTION AND SETTLEMENT OF DISPUTES

A traditional distinction is made in the area between mediation and conciliation on the one hand and arbitration on the other.

Conciliation and mediation arise from and have their legal base in the obligatory part of the collective agreement, which allows the parties to stipulate mutual relations, rights and duties. In a number of countries the peace obligation is closely related to this and mainly requires the parties not to take industrial conflict for the duration of the agreement aimed at changing any or all the matters they had agreed upon when concluding the agreement.

Therefore, conciliation and mediation procedures are in most cases laid down by the parties themselves, which implies that they are first and foremost responsible for finding solutions to conflicts. Government mediation and conciliation services (or the Labour Court in Ireland) are available in all Member States, with the exception of the Netherlands, but they, in most cases, have a secondary role. Their purpose is to bring the parties together to conclude an agreement which will usually have the same effect as a collective agreement. (See table 12 for details).

II. ARBITRATION

Arbitration plays a role in Denmark, Federal Republic of Germany, Greece, Luxembourg, Spain and the United Kingdom. In the first three countries it is mandatory for certain conflicts. Some details are presented in table 12.

iii. INTERVENTION BY THE COURTS

Intervention by the Courts in collective disputes is an important feature in Denmark, Federal Republic of Germany, Greece, Ireland, the Netherlands, Portugal and the United Kingdom and is growing in France.

iv. STRIKES

1. Freedom or right.

The right to strike is explicitly recognized in the French, Greek, Italian, Portuguese and Spanish Constitutions. There is also a right to strike in Belgium, the Federal Republic of Germany, Ireland, Luxembourg and the Netherlands. In Denmark and the United Kingdom there is the freedom to strike. In Ireland and the United Kingdom strike actions are protected by certain immunities established by law, in the former proposals have been made to turn them into 'rights'.

The right to strike belongs in most countries to the employees, who organize their interests collectively, individual actions are mostly excluded. In the Federal Republic of Germany, Greece and Portugal the right to strike belongs to the trade unions, in the latter case also workers' collectives have this right in cases where no trade unions exist. In some countries the right to strike is not defined.

2. Lawful and unlaful strikes.

The fact that there is freedom or the right to strike does not mean that all forms of strike action are acceptable. In all countries (apart from Italy under certain conditions) political strikes against government policies are considered illegal or they are not defined.

socio-political strikes which further the interest of the workers are allowed in Greece, France, Italy, Portugal and Spain. Other actions often considered illegal are go-slows, sit-ins, occupation of plants, etc.. Sympathy strikes are in the majority of cases considered legal, at least if the interests of the sympathy strikers are linked to those who are on strike in the first place. In a number of countries goals and means to achieve them must be reasonably related. And finally it should be underlined that participation in a legal strike means in most countries a suspension of the individual employment contract. In Denmark, the contract is terminated and in the United Kingdom, such participation may almost certainly mean a breach of the employment contract.

In a number of countries, Belgium, the Federal Republic of Germany, Greece, Ireland, the Netherlands, Portugal and Spain, essential services and supplies must be maintained under all circumstances.

Table 13 contains more details per countries.

v. LOCK-OUTS

Lock-outs in general do not enjoy the same protection as the right or freedom to strike. Information is given in table 13.

CHAPTER III

WORKERS' RIGHTS TO INFORMATION, CONSULTAION AND PARTICIPATION

The notion of the right of workers to information, consultation and participation in the decision-making process of the enterprise they work in is put into practice in different ways in the Member States. In the following part the term worker participation will be used for all the forms of worker involvement which vary greatly in the machinery of worker participation and in their respective competences. There is also a wide variety in the coverage of the various national systems as far as employees are concerned. This last point has much to do with the mandatory versus voluntary character of worker participation systems.

i. MANDATORY VERSUS VOLUNTARY SYSTEMS

In eight Member States (Belgium, France, Greece, the Federal Republic of Germany, Luxembourg, the Netherlands, Portugal and Spain) there are mandatory systems for works councils. In Denmark, works councils are set up on the basis of an intersectoral collective agreement but worker participation is provided by law on the supervisory board of incorporated companies.
In Italy, Ireland and the United Kingdom arrangements are made on the basis of collective agreements.

In the United Kingdom, there is no institutionalized system of worker participation, either at the level of the enterprise or the establishment. A certain stimulus to greater employee involvement is however provided for in the Employment Act of 1982 which requires companies with more than 250 employees to state in their annual reports what they have done to promote employee involvement arrangements. In practice, consultation arrangements exist in a large number of cases, usually confied to the plant or establishment level. Where these committees exist they include both management and workers' representatives (shop stewards).

In Italy, the law confers a number of rights on the most representative unions at the level of the enterprise which form enterprise-level union organisations in the industrial and commercial sectors in enterprises with 15 or more employees usually representaing all workers. In addition to rights to information and consultation these works organisations can negotiate company agreements, especially with regard to wages, working time and job classification.

In Denmark, an intersectoral agreement was concluded in 1987 which provides for works councils to be set up in industrial and craft establishments employing 35 or more employees when recommended either by the employer or a majority of the workers. The works council comprises both management and workers' representatives (including shop stewards). The council has essentially consultative powers and is entitled to co-determination on principles of personnel policy.

fax to M. Simonsid

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC (89) 926 final

Brussels, 20 June 1989

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

(presented by the Commission)

TABLE OF CONTENTS

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 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 major 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 organised 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 states. 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

16. 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.

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 6 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 dismissals are in operation, often differentiating according to the status 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 declared 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, 500, 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'

representatives and works committees to negotiate agreements and Greece where the law does not authorize individual employers to conclude agreements. In the Federal Republic of Germany and France works councils may, under certain conditions, conclude work agreements.

49. Trade Unions, their federations and confederations must meet certain legal criteria of representativeness, establishment or organization to negotiate and conclude agreements. Exceptions are Portugal, the Netherlands, Italy and Denmark where statutory law does not impose any requirements of that sort.

The Legal Effect of Collective Agreements

50. As regards the legal effect of collective agreements in Belgium, Spain, France and Luxembourg collective agreements are binding "erga omnes" so that they apply equally to all workers in a firm or industry whether or not they are members of the trade unions bound by the agreement. Under the systems of the Federal Republic of Germany, the Netherlands, Portugal, Greece and Italy collective agreements are only binding on the contracting employers or members of the signatory associations or federations and on workers who are members of the contracting trade unions. Although in the United Kingdom and Ireland, collective agreements are not legally binding, unless certain strict conditions are met, some of their clauses may have a normative effect if expressly or implicitly included in the employment contracts of relevant employees, whether or not they are members of the trade unions concerned.

51. The extension of collective agreements, a statutory device by which a given collective agreement is applied to workers of particular industries or sectors not originally covered by it, is legally foreseen in all countries with the exception of Italy, Denmark and the United Kingdom.

Collective Bargaining

52. Although bargaining takes place at different levels (plant, enterprise, industry, inter-industry) there are noteworthy differences, which also change with time. In Denmark, the Federal Republic of Germany, Greece and the Netherlands, the most important negotiations are carried out at industry level. In the Federal Republic of Germany these negotiations are often regionalized. In the United Kingdom and Ireland, on the other hand, the main focus of bargaining is at plant and company level. Ireland also has a tradition of nation-wide agreements. Single-employer bargaining, either centralized or decentralized, is quantitatively more important than multi-employer bargaining in both these countries. In other countries bargaining may take place at different levels depending on the case, sometimes at more than one level at once. In Luxembourg negotiations take place either at the level of the enterprise or at sectoral level and in Portugal the level at which bargaining takes place depends among other things on the level of organisation of the employers.

III. CONCLUSIONS

54. It is extremely difficult to identify - by way of this analysis - groups of Member States which have implemented similar statutory and/or collective provisions or have in common corresponding practices for all the subjects treated in this comparative report. The following general findings may nevertheless be taken into consideration:

I) statutory labour law plays a fairly generalized role with regard to rules governing working conditions depending on the Member State and the area covered. Mutual areas of competence have evolved in the sphere of collective agreements;

II) collective agreements are in all Member States an important source of regulations governing working conditions. Their significance depends to a great extent on the legal frameworks established by the State and on the relations developped between both sides of industry in the course of time. The level of collective negotiation as well as the degree of the binding effects of such agreements vary among Member States, a fact, that, among other things, determines how important collective agreements are as an instrument of labour law;

III) depending on the development of industrial relations and the more or less established role of the State with regard to rules governing working conditions, case-law has in some areas and/or in some Member States an important role to play in creating or interpreting such rules.

55. These general observations have to take into account the fact that, as stated in the introduction, this report does not cover certain aspects of working conditions (health and safety at the workplace, training, social security legislation). Under these conditions it is therefore important to pursue the analysis and, above all, to follow the development of labour law in its widest sense in the Community both at the level of the Member States and with regard to the interaction between national provisions and Community legislation.

The results of the present study can however already play a very useful role with regard to the recent preliminary Commission proposal on a Community Charter of Basic Social Rights, especially in that they make it possible to identify - in the areas covered - objectives, ways and means of possible convergence of rules on working conditions in the process of creating a Community labour market.

A N N E X E S

CONFIDENCIAL VERTROULICH RISERVATISSIMO CONFIDENTIEL CONFIDENTIAL EMBARGO VERTRAULICH CONFIDENTIEL

TABLE . GENERAL MINIMUM AGE TO WORK LEGALLY

COUNTRY	
France, Spain, U.K.	18
Denmark, Belgium, Greece, the Federal Republic of Germany, Ireland, Luxembourg, Italy, Netherlands	15
Portugal	14

TABLE 2 QUOTA SYSTEMS FOR THE EMPLOYMENT OF HANDICAPPED PERSONS

COUNTRY	QUOTA	
Italy	15	x
France	6	x (1991)
Fed. Rep. of Germany	6	x
Ireland (voluntary, public sector)	3	x
The Netherlands	2-7	x
Spain	2	x
United Kingdom	3	x
Greece (public service)	2	x
Luxembourg	2	x

TABLE 3

DURATION OF PROBATION PERIOD

COUNTRY	TIME	CATEGORY	NOTICE REQUIRED
Belgium	14 Days	Blue Collars	NONE
	6 Months	White Collars	NONE
	12 Months	White Collars earning more than 780.000BF	NONE
Denmark	3 Months	White collars	4 DAYS NOTICE
France	3 Months	Commercial Travellers	NONE
	2 Weeks or 1 Month depending on duration of contract		NONE
	The Term fixed in individual or collective agreement or custom.	Other Workers	NONE
Greece	2 Months	All Workers	NONE
Italy	6 Months	All Workers	NONE
Federal Republic of Germany	2 Weeks 6 Months	Blue Collars White Collars	
Luxembourg	2 Weeks(minimum)	All Workers	2 WEEKS/ MAX
	6 Months (max.)	All Workers	NONE
The Netherlands	2 Months	All Workers	NONE
Portugal	15 Days	Most Workers	NONE
	6 Months	Highly qualified personnel	NONE
	2 Months	Domestic Service	NONE
Spain	6 Months	Leading personnel	NONE
	6 Months	Technical workers	NONE
	3 Months	Other qualified personnel	NONE
	2 Weeks	Unqualified personnel	NONE
Ireland	No statutory regulation		
United Kingdom	No statutory regulation		

TABLE 4 STATUTORY MINIMUM WAGES

Age	France	Luxembourg	Netherlands	Portugal	Spain
23			adult 1987,90FL		
22			85.0%		
21			72.5%		
20			61.5%	adult 30.000Esc	
19			52.5%	75%	
18	adult 4860.44FF	adult 31.989LF.	45.5%	75%	adult 44.040Pts
17	90%	80%	38.5%	50%	+ 60%
16	80%	70%	34.5%	-	+ 40%
15	-	60%	30.0%	-	-

Statutory regulation of working time in the Member States

Country	working week	overtime	night work hours
BELGIUM	40 hours	65 hours per 3 months	20 to 6
DENMARK	no legislation	governed by collective agreement	no legislation
FEDERAL REPUBLIC OF GERMANY	48 hours	2 hours a day for up to 30 days a year on the basis of 48-hour week	20 to 6
GREECE	5-day week 40 hours in private sector	3 hours a day, 18 hours a week, 150 hours a year	22 to 7
SPAIN	40 hours	80 hours a year	22 to 6
FRANCE	39 hours	9 hours a week, 130 a year plus more when authorized	22 to 5
IRELAND	48 hours	2 hours a day, 12 hours a week, 240 hours a year	no legislation
ITALY	48 hours	no legislation	24 to 6
LUXEMBOURG	40 hours	2 hours a day	no general legislation nursing mothers and pregnant women 22 to 6
NETHERLANDS	48 hours	between 1/2 and 3 1/2 hours a day	20 to 7
PORTUGAL	48 hours	2 hours a day, 160 a year	20 to 7, at least 7 hours in this pe
UNITED KINGDOM	no general legislation	no legislation	no general legislation

Statutory Public Holidays and paid annual leave in the Member States

Country	Public Holidays	Paid Annual Leave	
		Statutory	Collective Agreements
BELGIUM	10	24 days	
DENMARK	no legislation	30 days	
FED. REP. GERMANY	10 - 14	18 days	5 to 6 weeks
GREECE	13	24 days	
SPAIN	14	30 days	
FRANCE	11	30 days	
IRELAND	8	three weeks	4 weeks
ITALY	4 national plus 11 others	no specific number of days	5 to 6 weeks
LUXEMBOURG	10	25 days	26 to 28 days
NETHERLANDS	6 plus one every five years	four weeks	5 to 6 weeks
PORTUGAL	12	21 to 30	
UNITED KINGDOM	no legislation	no legislation	20 to 27 days

SICKNESS LEAVE IN THE MEMBER STATES

	Length of Leave	Payment
Belgium	52 weeks	60 % earnings
Denmark	91 weeks in three years	90 % average preceding 4 weeks' earnings
Federal Republic of Germany	78 weeks in three years	80 % average preceding 4 weeks' earnings
Greece	26 weeks	50 % earnings, 10 % increase for each dependant (maximum 4)
Spain	2 to 6 months	60 % from 4th to 20th day inclusive, 75 % after that
France	52 weeks in three years	50 % earnings; with 3 children 66.66 % from 31st day
Ireland	52 weeks (or unlimited, if claimant has paid 156 weeks' contributions)	Flat-rate sickness benefits plus proportional supplement. Total not to exceed 75 % weekly earnings
Italy	6 months	50 %, 66.66 % after 21st day
Luxembourg	52 weeks	100 % earnings
Netherlands	52 weeks	70 % daily wage (often topped up by collective agreement)
Portugal	155 weeks	65 % average daily wage of preceding 2 months (100 % if hospitalized and have dependants)
United Kingdom	28 weeks	Flat-rate depending on salary, averages between 52 % and 70 % weekly earnings

Table 6

MATERNITY LEAVE IN THE MEMBER STATES

	Length of Leave	Payment
Belgium	14 weeks total; at least 8 must be taken after the birth	75 % of insurable earnings for first 30 days, 75 % later + maternity grant
Denmark	4 weeks before, 10 after; then 10 additional weeks for either parent, or shared between them (+ 2 weeks for father after birth)	90 % average weekly earnings
Federal Republic of Germany	6 weeks before, 8 after	100 % net wage for insured workers, or fixed sum of DM 100
Greece	6 weeks before, 6 after	50 % of salary + sum for medical costs
Spain	16 weeks	75 % of earnings
France	6 weeks before, 10 after	84 % of salary + post natal allowances
Ireland	at least 4 weeks before, 4 after, + additional 6	70 % of salary + maternity grant
Italy	8 weeks before, 20 after	80 % of earnings
Luxembourg	8 weeks before, 8 after	100 % of earnings + maternity grant
Netherlands	6 weeks before, 6 after	100 % earnings + maternity grant
Portugal	90 days total, at least 60 must be after	100 % daily wage + maternity grant
United Kingdom	11 weeks before, 7 after	£ 31.30 per week-6 weeks maternity pay at 90 % earnings, maternity grant

MINIMUM TERMS OF NOTICE IN THE MEMBER STATES

	BELGIUM	GERMANY	FRANCE	UK	LUXEMBOURG	IRELAND	ITALY	NETHERLANDS	PORTUGAL	SPAIN
EMPLOYEES										
Seniority										
Terms										
				6 months	1 month	2 months	13 weeks	5 years	one week per	3 months
				1 month	2 years	1 year	1 week	2 months	year service	after ten
				2 years	one week	1 month	15 years	5 years	maximum	years
				2 months	(then one	20 years	8 weeks	5 months	13 weeks +	service
					week per	26 months		10 years	one week per	
					year			6 months	year service	
					service				above age 65	
					maximum				maximum :	
					12 weeks				13 weeks +	
									one week per	
									year service	
									maximum :	
									26 weeks	
BLUE COLLAR		(CB)								
Seniority										
Terms		-20 years	2 weeks				FCBB			
		28 days	+5 years							
		+20 years	1 month							
		56 days	+20 years							
		(+ CB)	3 months							
			(+ CB)							
WHITE COLLAR										
Seniority										
Terms		3 months	6 months	3 weeks			15 days to			
		per year	1 month	+5 years			6 months			
		period of	9 years	3 months						
		5 years	6 months	+12 years						
		seniority		6 months						
PUBLIC FUNCTION										
				1 months						
				(custom)						
FCBB = collective bargaining							6 months			
							or more			
							(CB)			

PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES IN THE MEMBER STATES

COUNTRY	MEDIATION AND CONCILIATION	ARBITRATION
Belgium	special conciliation committees of joint sectoral committees, often being chaired by government officials	
Denmark	bargaining between parties assisted by public conciliation service	compulsory arbitration laid down by collective agreement over the interpretation of collective agreements
Fed. Republic of Germany	in most cases special mediation agreements concluded with conflict-settlement procedures, state mediation possible	conflicts between works councils and employer submitted to arbitration committee
Greece	mediation administered by the Ministry of Labour	after failure of mediation each party may request official arbitration which becomes obligatory; in serious cases the Minister can call directly upon arbitration, proposals to make procedures more optional are being discussed
Spain	'Committee of Agreement' set up by both sides; conciliation services provided by government	voluntary private arbitration is rarely used, both parties may request public arbitration
France	permanent conciliation committees provided for in agreements; rarely used possibility of official conciliation	
Ireland	conciliation services provided for by the Labour Court, its recommendation is binding, if only unions asked; non-binding, if both sides called upon Labour Court	
Italy	conciliation procedures in agreements; public conciliation services	
Luxembourg	legislation provides for obligatory conciliation; parties are free to accept proposed solution	arbitration is voluntary
Netherlands	solution by bargaining with the help of ad-hoc committees; no formal machinery	
Portugal	legal machinery for voluntary conciliation on the request of one or both parties to be carried out by the Ministry of Employment and Social Security	
United Kingdom	solution by bargaining, assisted by the Advisory, Conciliation and Arbitration Service (ACAS) with the consent of both parties	ACAS may provide for arbitration provided that at least one party requests it and both parties consent; disputes are also referred to the Central Arbitration Committee, whose decision is not legally binding but normally followed

Explanation s . . e .

suspension of individual employment contract

Rules for strikes and lock outs in the Member States

	STRIKES						LOCK OUTS
Country	political strike	socio-political strike	professional strike	sympathy strike	actions short of strike	effects	
BELGIUM	legality contested		legal	legal	not legal	s . . e .	permitted under restrictive condition
DENMARK	same rules for professional strikes		legal, reasonable proportion end-means, only in conflict of interest	legal, if provided in collect. agreem	generally not legal	breach of employment contract	legal but to be with strike, breach of employment contract
FED. REP. OF GERMANY	not legal		only legal if respects peace obligation, secret ballot, fair	only exceptionally legal	not legal	s . l . e .	defensive lock-out may be justified
GREECE	not legal	allowed	legal	legal, if linked to the interests of professional strikers		s . l e . c .	forbidden by law
SPAIN	not legal	allowed	legal	legal, if linked to the interests of professional strikers	not legal	s . l e . c .	defensive lock-out recognized under exceptional circumstances
FRANCE	not legal	allowed	legal	legal		s . l . e . c .	lock not normally unlawful, except in emergency cases
IRELAND			immunity system depends on the collect. agreem what action is lawful	probably lawful	not necessarily unlawful	unclear, whether contract is bro ken or suspended	not of legal relevance, any mean breach or interruption of contract
ITALY	legal under certain circumstances	allowed	legal	legal if related to professional strikers	not legal	s . l . e . c	retaliatory lock out may be lawful
LUXEMBOURG	most probably not legal		legal, if preceded by conciliation	doubtful legality	doubtful legality	s . l e . c .	recognized, but legal status uncertain
NETHERLANDS	not legal	allowed	legal, provided all employees concerned participate proximity element important	doubtful legality	doubtful legality	s . l e . c .	not regulated legal status uncertain
PORTUGAL	not legal	allowed	legal, provided certain conditions fulfilled		doubtful legality	s . . e .	forbidden in its forms by constitution
UNITED			immunity system limited	lawful under		no liability breach of employment	no of legal relevance