

MEMORANDUM

FINAL

June 7, 2007

A l'attention de : Mr. Peter Strauss
Mr. George Bermann
De la part de : Pierre Kirch

Objet : The Administrative Law of the European Union - Workplace Legislation

I. INTRODUCTION.....	2
II. PLACE OF THE EUROPEAN COMMISSION IN WORKPLACE LEGISLATION	3
A. Structure	3
B. Functions.....	3
III. THE MAKING OF WORKPLACE LEGISLATION IN THE EU	4
A. Directives in Labor Law	4
1. Initiation of directives.....	5
2. Consultation procedures with regard to proposals.....	9
3. Impact assessment	11
4. Participation in expert groups / advisory groups	14
B. Public notice.....	15
C. The Social Dialogue.....	16
1. Procedures involving Social Partners	16
2. Consultation and negotiation	17
3. Negotiation and implementation procedure pursuant to Article 139 EC.....	19
4. Agreements implemented in accordance with Article 139 (2) EC	21
Synthesis Chart on procedures pursuant to Articles 138 and 139 EC	22
IV. IMPLEMENTATION OF COUNCIL DIRECTIVES IN LABOR LAW	23
A. Implementation by the Member States	23
B. Comitology	23
C. The role of Social Partners as implementers	26
V. SOFT LAW.....	28
1. Initiation	29
2. Notice	31
3. Participation.....	32
VI. ANNEXES.....	33
A. Synthesis chart of the procedure pursuant to Article 137 EC.....	34
B. DG Employment organization chart	35

C. Legal Service organization chart	36
D. Relevant provisions of the EC Treaty	37
E. List of European Social Partners organizations consulted under Art. 138 EC	40
F. Provisions of the Draft Constitutional Treaty of 2004 [not ratified]	42

I. INTRODUCTION

1. In this memorandum, we describe the procedures used by the European Community to regulate the workplace. They concern both legislation and soft law and reflect the compromise found between the need for coordination at Community level and the essential flexibility needed to face country-specific issues at national level. The role of the Social Partners¹ in these procedures will specifically be explored since they constitute an important specificity of this area of the law.

The Social Partners, broadly speaking are the trade unions and the employers (or their representative organizations) engaged in what is called the European “Social Dialogue”. Social Partners are all those organizations consulted by the European Commission when it wants to submit proposals in the field of workplace regulation. The consultation process and its outcomes are altogether referred to as the “Social Dialogue”.

The idea of social partnership is strongly founded in many European models of industrial relations and is now adopted across the European Union. The Social Partners have unique powers in the context of EU law, since they can, under some conditions, take the legislative initiative and also implement agreements reached between them at EU level. The three main Social Partners are: the European Trade Union Confederation (ETUC), the Union of Industries of the European Community (UNICE) and the European Centre for Public Enterprise (CEEP). These are sometimes referred as the “*European Social Partners*” and are by far the most representative ones. Concretely, they are the most active Social Partners on the legislative scene of the EU, especially at the negotiation and implementation stages. However, there is no legal distinction between them and the many other Social Partners that are merely consulted. The important tasks that Social Partners can assume, together with the issue of their representativeness of the “real labor world”, are tackled in depth in Section III, paragraph C and in Section IV, paragraph C below.

2. The term “workplace regulation” is a broad term, detached of connotations of a particular national jurisdiction and should be considered as covering all potential legal aspects of the workplace. It pertains to legislation relating to employment, social affairs and equal opportunity, which are also the subject matters dealt with by the Directorate General for Employment and Social Affairs (DG EMPL) of the European Commission. In particular, it includes:
 - The legislation on employment, quality of work, productivity and approximation of Member States’ national legislations regulating the labor market;

¹ In a European workplace context, the word “social” has entered into the English language under French influence to designate “workplace” as well as, in particular, relations between management and labor: “Social Partners”, “social dialogue”, etc. In order to preserve the nuances of the European approach to workplace dialogue, this European style of language is used in this memorandum.

- The legislation on social protection and social exclusion, with the aim of reinforcing co-operation between Member States, drawing up legislation and running programs to counter discrimination, promoting fundamental rights and enhancing the integration of disabled people;
 - The legislation on equality between men and women, including all the legislation aimed to improving equal opportunity for women and men and ensuring that the gender issue is taken into account in all fields of Community action.
3. At Community level, workplace regulation derives from both legislation and soft law procedures. With regard to legislation, Article 137 of the EC Treaty sets out a specific labor law procedure for the adoption of measures. It allows the Community to set out minimum requirements by means of directives. Moreover, the European Employment Strategy and the Open Method of Coordination are soft law tools which provide for a flexible approach. The combination of both tools is a source of great complexity in terms of procedure.
4. Social Partners have an important role to play since they are given a triple role as initiators, consultants and implementers of workplace legislation. Nevertheless, their role remains subject to guidance from the Commission and modifies the customary institutional balance within the decision-making procedure.

II. PLACE OF THE EUROPEAN COMMISSION IN WORKPLACE LEGISLATION

A. Structure

5. Within the European Commission (“the Commission”), the Directorate General in charge of workplace regulation is the Directorate General for Employment and Social Affairs, “DG EMPL”. Mr. Vladimír Špidla from the Czech Republic is currently the Commissioner for employment, social affairs and equal opportunities and thus in charge of DG EMPL. Within DG EMPL,² directorates (i) D, “Employment Lisbon Strategy, International Affairs”, (ii) E, “Social Protection and Integration” (iii) F, “Social Dialogue, Social Rights, Working Condition and adaptation to change” and (iv) G, “Equality between Men/Women, Action against Discrimination, Civil Society” provide technical support on Community-level questions. Directorate F is the part of DG EMPL mostly involved with the issues treated in this study, especially its unit F-2, “Labor Law and Work Organization”.

B. Functions

6. The role of the Commission dominates and characterizes the initiation of the decision-making procedure in workplace issues. The Commission is responsible for the identification of the sectors and subject matters likely to be tackled at Community level and, once a relevant question has been identified, for the drafting of a proposal.
7. Through its proposals, the Commission also influences the social agenda and the negotiations between the Social Partners. The Commission has been directed pursuant to Article 138 EC to

² See **Annex A** for the organization chart.

“promot[e] the consultation of management and labor at Community level” and to “take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties” and can intervene in any stage of the procedure.

8. The Commission also has a major role in the production of soft law and, in particular, in the procedure under the European Employment Strategy, “EES”, which represents the principal soft law procedure in the labor field, initiated on the basis of the Amsterdam Treaty and now provided for by Article 128 EC³.

III. THE MAKING OF WORKPLACE LEGISLATION IN THE EU

A. Directives in Labor Law

9. The main rules on European labor legislation are provided for by Articles 137, 138 and 139 of the EC Treaty (Title XI on “Social Policy”). Article 137 EC sets out the specific procedure in the field of labor law based on the principle of subsidiarity. In this regard, the Community “supports and complements” the activities of the Member States. To achieve this role, the Council of the European Union (formerly called the Council of Ministers, the “Council”) may adopt legislation, by means of directives, through the co-decision procedure or the consultation procedure, depending on the subject matter. Article 138 EC aims at promoting consultation of management and labor, and provides that the Commission shall consult management and labor before submitting a proposal as well as on the content of the proposal. Article 139 EC provides that consultations of management and labor may lead to agreements, which shall be implemented in accordance with the procedures indicated by Article 137 EC.
10. For the adoption of labor law directives, Article 137 EC provides for the use of both the co-decision and the consultation procedures. For matters assessed under the co-decision procedure of Article 251 EC, the Council and the European Parliament (“the Parliament”) act after consulting the Committee of Regions “CoR” and the European Economic and Social Committee “EESC”. In this case, the Council decides by qualified majority. For the matters listed in Article 137 (1) (c), (d), (f), and (g) EC the Council acts unanimously on proposal from the Commission after consulting the Parliament and said committees.
11. Within the Parliament and the Council, specific committee bodies provide technical expertise concerning the domain of labor law. The specialized Parliament body is the “Committee on Employment and Social Affairs”⁴ while the Council has the “Employment, Social Policy, Health and Consumer Affairs Council” “EPSCO”.
12. Although the provisions on social dialogue fall outside the scope of Article 95 EC, and cannot therefore be the subject of harmonization under the co-decision procedure, it is possible to lay down harmonization rules under Article 94 EC (which requires unanimity voting at the Council). Subject matters may be broken down as follows (Article 137 EC):

³ See **Annex D** for the text of all relevant EC Treaty articles mentioned here..

⁴ The Committee is responsible for employment policy and all aspects of social policy such as working conditions, social security and social protection; health and safety measures at the workplace; the European Social Fund; vocational training policy, including professional qualifications; the free movement of workers and pensioners; social dialogue; all forms of discrimination at the workplace and in the labor market except those based on sex; relations with: the European Centre for the Development of Vocational Training (Cedefop), the European Foundation for the Improvement of Living and Working Conditions, the European Training Foundation, the European Agency for Safety and Health at Work; as well as relations with other relevant EU bodies and international organizations.

Qualified Majority (co-decision by Council with Parliament)	Unanimity (Council unanimity with consultation of Parliament)	Outside of scope of Article 137 EC (but within the scope of EU law)
<ul style="list-style-type: none"> ▪ Worker's health and safety ▪ Working conditions ▪ Information and consultation of workers ▪ Integration of persons excluded from the labor market ▪ Equality between men and women ▪ Protection of workers where their employment contract is terminated ▪ Representation of the collective defense of the interests of workers and employers ▪ Conditions of employment for third-country nationals 	<ul style="list-style-type: none"> ▪ Social security and social protection of workers ▪ Protection of workers where their employment contract is terminated ▪ Representation of the collective defense of the interests of workers and employers ▪ Conditions of employment for third-country nationals 	<ul style="list-style-type: none"> ▪ Pay ▪ Right of association ▪ Right to strike or right to impose lock-outs ▪ Various employment rights such as the right to lay off workers

1. Initiation of directives

13. Pursuant to Article 138 EC, the Commission initiates the legislative process in the social policy field through its proposals. However, before submitting any proposal, the Commission must consult the Social Partners. Moreover, pursuant to Article 139 EC, upon request of the Social Partners, it is possible for the Social Partners at Community level to conclude agreements which may be submitted to the Council for a decision on a proposal from the Commission (for instance, see Council Decision 1999/70/EC of June 28, 1999, concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP).
14. The Commission publishes its annual Work Program containing the planned major legislative and policy initiatives at the start of each calendar year on its website⁵. It sets out major political priorities and identifies legislative initiatives, executive and other acts that the Commission intends to adopt for the realization of these priorities. The European Commission's 2006 Work Program⁶ includes links to the published roadmaps for each expected proposal.
15. Roadmaps are a relatively new Commission initiative, designed to give stakeholders an overview of what each proposal will seek to achieve, what the policy options are, what impact assessment work is planned and, crucially, what consultations with stakeholders are foreseen and when.

⁵ http://www.europa.eu.int/comm/atwork/programmes/index_en.htm

⁶ http://www.europa.eu.int/comm/atwork/programmes/docs/wp2006_roadmaps.pdf

16. The identification of matters likely to be tackled at Community level derives either from formal agenda setting or through haphazard awareness of workplace issues, such as through complaint letters from European citizens or written questions from Members of the European Parliament "MEPs". Whatever the source, these matters may be taken forward by the Commission services.

a. Agenda setting

17. Identification of Community-level issues may be fully structured by the settlement of a Social Agenda of the Commission. The Social Agenda is a pluri-annual program of action which allows the Community to act on a long-term basis⁷. It is itself based on a broader framework, namely the Lisbon Strategy, as set out by the European Council in Lisbon on March 2000. The Social Agenda is completed by the Commission's strategic policy plans and by the annual Work Programs. Together, all these tools provide for the overall context for the development of new initiatives.

b. Complaint letters and written questions from European MEPs

18. The Parliament plays an important role in the labor law field as provider of information on potential reforms. MEPs have frequent contacts with their constituents and are thus able to identify the problems encountered by European citizens.

c. Analysis within the Commission's services

19. The services of the Commission check whether a problem constitutes an issue at Community level. The issue is discussed in DG EMPL at directorate general, directorate and unit levels. It can also be dealt with at inter-DG level since most of the reforms in employment fields are trans-sectoral. As a general rule, the impulsion to contemplate legislation may come from:

- A recommendation by the Parliament;
- "Top-down" approach: meeting within the Commission at senior level;
- "Bottom-up" approach: need is identified in internal meetings of Commission officials;
- Complaint letters sent by EU citizens.

d. First consultation with the Social Partners on the possible direction of community action.

20. During the analysis of the opportunity to draft legislation, Social Partners must be consulted. Such a consultation constitutes the first step of the consultation procedure pursuant to Article 138 EC. At this stage, the analysis is intended to ascertain whether the subsidiarity principle justify the appropriateness of action at Community level.

21. When a relevant question has been identified, the Commission drafts a proposal. To reflect upon its contents, meetings at unit, directorate, directorate general and commissioner level may be organized. DG EMPL plays a central role in this procedure. Nevertheless, other DGs may also be involved if the matter requires their presence

⁷ For the current Social Agenda, see point 62.

. e. *Support of the Legal Service*

22. In its task of drafting the legislation, DG EMPL is supported by the Legal Service⁸. The Legal Service is the in-house advisor to the Commission. It consists of teams which roughly mirror the structure of the Commission's directorates general. The 'Employment and Social affairs, Education and Health and Consumer Protection' team in the Legal Service is consulted concerning workplace legislation.

f. *Second consultation with the Social Partners and other bodies on the content of the contemplated proposal*

(i) Social Partners

23. Article 138 EC provides for a second consultation of the Social Partners on the orientations of a possible initiative.

(ii) Committees

European Economic and Social Committee "EESC"

24. Article 137 EC sets out a compulsory consultation of the EESC. It is an institutional assembly of representatives of the various spheres of economic and social activities and a forum for the civil society organizations to represent themselves and express their views.

25. Such a consultation enables the Community's decision-making bodies to gain a better idea of the impact that the Commission proposals are likely to have on those most directly concerned and the changes that might be necessary to enlist wider support.

26. The EESC is composed of three groups (Group I: Employers; Group II: Employees; Group III: Various interests) and can issue three types of opinions:

- Opinions in response to a referral from the Commission, the Council or the European Parliament;
- Own-initiative opinions, which enable it to express its views on any matter of its choice;
- Exploratory opinions by which, at the request of the Commission, it makes suggestions on a given subject, which may later lead to a proposal from the Commission.

27. The EESC Section on "Employment, Social Affairs and Citizenship" provides technical support in the field of labor law. Section opinions are drafted by study groups. They usually have 12 members, including a *rapporteur*. They work with the assistance of experts. The full committee meets in a plenary session ten times a year. At plenary session level, opinions are adopted on the basis of section opinions by a simple majority. They are forwarded to the Community and published in the *Official Journal*. The EESC maintains regular links with regional and national economic and social councils throughout the European Union, aiming to an exchange of information and joint discussions.

⁸ See Annex C for the organization chart.

Committee of the Regions "CoR"

28. The proposal is also analyzed by the CoR which is also a Treaty-based consultative committee. It constitutes a political assembly which provides local and regional authorities with a voice at Community level.

Advisory Committees

29. Some advisory committees can also be consulted to obtain technical support in the drafting task. The main areas in which advisory committees have been established are the following:

- Safety and health at work;
- Vocational training;
- Equal opportunity;
- Freedom of movement for workers;
- Social security for migrant workers.

30. None of these committees has been established through the "comitology" procedure⁹. In effect, their instruments of establishment are diverging, taking into account that some were created earlier than 1999: from use of Article 202 EC, to their establishment being an integral part of a particular act relating to the general policies adopted at the time. In broad terms, they are comprised by 3 or 6 members per Member State, which represent the national government, the trade unions and the employers' associations. The exception to that is the advisory committee on equal opportunities, which, on the trade union and employer association domain is comprised by representatives on a European and not a national level.

31. The work of these advisory committees is accessible on their relevant webpages, usually a sub-page of a DG webpage¹⁰. There is no central register. This is in contrast to the web-based register of comitology of the Commission¹¹, where almost all documents transmitted to the European Parliament by comitology committees are contained, and which can be accessed by any third party.

g. Presentation to the college of Commissioners

32. When a final version of the proposal is ready, it is presented to the college of Commissioners (currently 27, one from each Member State). If the college of Commissioners doesn't agree on the proposed version, the document is reshaped at DG level, and will then work its way back from the level of the unit concerned in DG EMPL to the college of Commissioners, for consideration anew. When the latter reaches an agreement, the proposal is adopted.

⁹ For a short description of "comitology", see point 92 et seq..

¹⁰ See for instance the web page dedicated to the Advisory Committee on safety and Health at work at: http://ec.europa.eu/employment_social/health_safety/acsh_en.htm

¹¹ <http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en>

h. Adoption procedure

33. The text will then be adopted on the basis of the co-decision procedure pursuant to (i) Article 251 EC or to (ii) the consultation procedure, according to the subject matter at hand¹².

i. Transposition in the Member States

34. Two options are possible for the implementation of labor law directives: (i) implementation through the normal Community legislative process, or (ii) implementation pursuant to Article 137 (3) EC. Article 137 (3) EC provides for a special procedure of implementation of labor law directives by the Social Partners: “a Member State may entrust management and labor, at their joint request, with the implementation of directives adopted pursuant to paragraph 2. In this case, it shall ensure that no later than the date on which a directive must be transposed in accordance with Article 249, management and labor have introduced the necessary measures by agreement, the Member State concerned being required to take any measure enabling it at any time to be in a position to guarantee the results imposed by that directive”¹³.

2. Consultation procedures with regard to proposals

35. By Communication COM (2002) 704, the Commission set forth the general principles and minimal standards for the consultation of interested parties by it during the legislative procedure.

36. The minimal standards listed and explained by the Commission in its conclusions are:

- *The clear content of the consultation process:* all communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses.
- *The consultation of target groups:* when defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions.
- *Publication:* the Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the internet and announced at the “Your Voice in Europe” website¹⁴.
- *Time limits for participation:* the Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.

¹² See points 9 to 11.

¹³ See **Annex D** for the full text of the Article.

¹⁴ http://europa.eu.int/yourvoice/index_en.htm

- *Acknowledgement and feedback*: receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the internet.
37. The standards adopted by the Commission appear to have been respected in its practical legislative activity. At the website of DG EMPL, it is possible to consult the legislative processes which have been the object of consultation in the past few years. One of the peculiarities of labor law legislation is that Article 138 EC provides the duty for the Commission to consult Social Partners before submitting its proposal for a directive. Comparing the existing directives with the closed calls for consultation it appears that the Commission has always respected its commitment (and obligation) to call for consultations before submitting its proposals.
38. According to the web site of DG EMPL¹⁵, the consultation procedures closed by the Commission since 2000 are the following:
- Consultation on the active inclusion of the people furthest from the labor market – 2006 (ongoing);
 - Consultation on Simplification of "health and safety at work" directives – 2005;
 - Communication and Consultation on Restructuring and European Works Councils – 2005;
 - Consultation on violence at the workplace – 2005;
 - Consultation on musculoskeletal disorders – 2004;
 - Consultation on European Works Councils – 2004;
 - Consultation on carcinogens, mutagens and reprotoxic substances – 2004;
 - Consultation on working time - 2003/2004;
 - Consultation on stress at work – 2002;
 - Consultation on transferability of supplementary pensions – 2002;
 - Consultation on anticipating and managing change – 2002;
 - Consultation on data protection – 2001;
 - Consultation on health and safety of independent workers – 2000;
 - Consultation on asbestos – 2000;
 - Consultation on modernisation of work organisation – 2000.
39. As a general rule, in order to ensure the clarity of the consultation documentation, the Commission explains the purpose of the consultation, the framework of the activity, as well as providing schedules and figures assessing the state of the art in the sector.
40. With reference to the opportunity for the relevant parties to express their views, it should be noted that the Commission provides in its consultation documents the email addresses where consultations shall be submitted as well as the web site where other parties' contributions can be consulted. As an example, in the Communication from the Commission on working time, the Commission stated as follows: "*In order to involve interested organizations at national level, the Communication will be made available to all interested parties on the Internet site of the Directorate General for Employment and Social Affairs (http://europa.eu.int/comm/employment_social/consultation_en.html). All*

¹⁵ http://europa.eu.int/comm/employment_social/social_dialogue/docs_en.htm

*interested organisations can send their comments and suggestions by e-mail only to the following address: empl-labour-law@cec.eu.int. Comments should reach us no later than March 31, 2004*¹⁶.

41. The same considerations relate to the requirement to make consultations public. All documents regarding consultations can be found at the web sites of DG EMPL and “Your Voice in Europe”.
42. With reference to the time the parties have at their disposal to submit their contributions, it appears that normally they dispose of several weeks. A few examples are:
 - The Commission Communication, in the form of a discussion (“green”) paper entitled, “Confronting demographic change: a new solidarity between the generations”¹⁷, provides that the period of public consultation commences on March 16, 2005 and ends on September 1, 2005.
 - The discussion paper entitled “Equality and non-discrimination in an enlarged European Union”¹⁸ provides that the period of public consultation begins on the June 1, 2004 and ends on August 31, 2004.
 - The Commission Communication for consultation on working time provides that the period for consultation begins on December 30, 2003 and ends on March 31, 2004.
43. While it is not possible to ascertain whether the Commission provides acknowledgement to all contributors, the publication of the contributions on the Commission’s web page is an acknowledgement in itself, taking into account that all contributions are published on the internet, at the web pages of DG EMPL and “Your Voice in Europe”.

3. Impact assessment

44. The impact assessments are synthetic analyses of the likely impacts of intervention by public authority, informing *ex ante* decision makers of the consequences of the policy choices. The Communication from the Commission on impact assessments of June 2002¹⁹ (the “Impact Assessment Communication”) provides the principles for the Commission’s commitment to launch impact assessment as a tool to improve the quality and coherence of the policy development process. Along with the Impact Assessment Communication, the Commission published in 2002 a first series of guidelines on impact assessment, providing detailed information on the practical ways to compose impact assessment, which were recently substituted by the Commission’s Impact Assessment Guidelines of June 15, 2005²⁰.
45. The importance of impact assessment was stressed by the Commission in both its report on impact assessment “Next steps - In support of competitiveness and sustainable development”²¹, and by the Communication, “Better regulation for growth and jobs in the European

¹⁶ COM(2003) 843 final, p.5.

¹⁷ COM(2005) 94.

¹⁸ COM(2004) 379 final.

¹⁹ COM(2002) 276 final.

²⁰ SEC(2005) 791.

²¹ SEC(2004)1377.

Union”²², as an initiative in line with the Lisbon Agenda in order to improve competitiveness and growth in the European Union and in the Member States through better regulation.

46. The Impact Assessment Communication provided that impact assessments would be implemented gradually as from 2003, being fully operational in 2004 and 2005, and it relates to all major initiatives, i.e. the ones listed in the Annual Policy Strategy or in the Work Program of the Commission. According to the Impact Assessment Guidelines, the key analytical steps in impact assessment are (i) identification of the nature, magnitude and evolution of the problem, (ii) definition of the objectives pursued by the Union, (iii) identification of the main policy options for reaching those objectives, (iv) analysis of the economic, social and environmental impacts of those options, (v) comparison between the options, identifying advantages and disadvantages and (vi) outline of the organization of future monitoring and evaluations. In order to pursue those steps, the Commission deems essential to gather opinions and information from interested parties.
47. The Impact Assessment Communication also provides that the impact assessment procedure is divided in two stages: a preliminary and an extended impact assessment.
48. The preliminary impact assessment gives a first overview of the problem identified and serves as a filter to identify the proposals that will be subject to an extended impact assessment. On the basis of the results of the preliminary impact assessments the Commission will select the major proposals for extended impact assessments in the Annual Policy Strategy. At this stage, the impact assessment will consist of a short statement, focusing on (i) the “*identification of the issue/objectives and desired outcome*” (ii) the “*identification of the main policy options available to achieve the objective,*” and (iii) the “*description of the preparatory steps already undertaken and foreseen, [...] and indication of whether an extended impact assessment is needed*”²³.
49. The Commission, as grounds for the results of the preliminary impact assessments, decides, in the Annual Policy Strategy or in the Work Program, (i) which proposals will be subject to an extended impact assessment, (ii) whether the proposal i.e. results in terms of substantial economic, environmental and/or social impacts, has a significant influence on major interested parties and if it represents a major policy reform in one or several sectors.
50. The extended impact assessment consists of an in-depth analysis of the potential economic, social and environmental impact without strictly focusing on a cost-benefit analysis²⁴. During this second stage, interested parties and relevant experts need to be consulted. The Impact Assessment Guidelines of June 15, 2005 set out the contents and procedures to be applied at this stage.
51. In order to assess the extent to which the labor sector has followed the Commission’s instructions on impact assessment, focus is placed on the extended impact assessments, due to their greater importance in the legislative procedure.

²² COM(2005)97.

²³ COM(2002) 276 final, point 13.

²⁴ COM(2002) 276 final, points 15 and 16.

52. Since the Commission has committed to pursue an extended impact assessment in all cases, this procedure is required in the Work Program in order to identify the extent to which the labor sector has honored the Commission's instructions.
53. According to the Work Program of 2003 (the first year of implementation of the Impact Assessment Communication), the following two projects were to undergo an extended impact assessment:
- Review of the European Employment Strategy (2003/EMPL/11).
 - Recasting of gender equality directives (2003/EMPL/34).
54. The Work Program of 2004²⁵ contains a list of legislative proposals and non-legislative acts and requires an extended impact assessment for the following five proposals:
- Follow up to the Commission Communication on working time (2004/EMPL/004).
 - Revision of the European Works Councils directive (2004/EMPL/005).
 - Extending the scope of directives on carcinogenic agents (2004/EMPL/007).
 - Prevention of violence at work (2004/EMPL/008).
 - Integration of persons excluded from the labor market (2004/EMPL/01).
55. The Work Program of 2005²⁶ includes the following roadmaps on workplace regulation:
- Draft Decision establishing a European year of mobility for workers – Towards a European labor market (2005/EMPL/032).
 - Livre vert sur le changement démographique et la solidarité entre générations (2005/EMPL/030).
 - Social Agenda (2005/EMPL/014).
 - Communication on restructuring and employment (2005/EMPL/029).
 - Integration of persons excluded from the labor market (2005/EMPL/031).
 - Communication on the fight against discrimination – policy approach” (2005/EMPL/028).
56. Finally, the Work Program of 2006²⁷ provides for the four following roadmaps on workplace regulation:
- Roadmap on gender equality (2006/EMPL/001).
 - Health and safety at work strategy 2007-2012 (2006/EMPL/002).
 - Green Paper on the evolution of labor law (2006/EMPL/003).
 - Communication on the demographic future of Europe (2006/EMPL/004).

²⁵ <http://europa.eu.int/eur-lex/en/com/pdf/2003/act0645en01/2.pdf>

²⁶ http://europa.eu.int/comm/off/work_programme/20050128_clwp_roadmaps.pdf

²⁷ http://europa.eu.int/comm/secretariat_general/impact/docs/ia_2006/wp2006_roadmaps.pdf

57. The information about the Commission's work as accomplished to date is provided by the web page on impact assessment of the Secretariat-General²⁸. DG EMPL produced ten extended impact assessment to date. These are:

EMPL	2003/01/14	Review of the European Employment Strategy	Communication	COM(2003)6
EMPL	2003/11/05	Directive on non-discrimination on the basis of sex (art. 13)	SEC(2003)1213	COM(2003)657
EMPL	2004/07/14	Regulation on the European Social Fund	SEC(2004)924	COM(2004)493
EMPL	2004/04/21	Recast of the gender equality Directives	SEC(2004)482	COM(2004)279
EMPL	2004/09/22	Directive amending Directive 2003/88/EC concerning certain aspects of the organization of working time	SEC(2004)1154	COM(2004)607
EMPL	2005/02/09	Communication on the Social Agenda	SEC(2005)177	COM(2005)33
EMPL	2005/06/01	Communication on Non-discrimination and equal opportunities for all - a framework strategy	SEC(2005)689	COM(2005)224
EMPL	2006/03/01	Roadmap on Gender Equality	SEC(2006)275	COM(2006)92
EMPL	2006/04/26	Implementing the Community Lisbon programme: Social services of general interest in the European Union	SEC(2006)516	COM(2006)177
EMPL	2007/02/21	Communication on the Community strategy 2007-2012 on health and safety at work	SEC(2007)214	COM(2007)62

4. Participation in expert groups / advisory groups

58. The Commission has created a number of expert groups and subgroups as well as other advisory bodies²⁹ to assist it in its right of initiative and in its coordination and monitoring tasks. There are essentially four categories of expert groups:

- Consultative and scientific groups (or committees) which have been formally established by a Commission Decision published in the *Official Journal*;
- Permanent groups, the creation of which has been authorized by the Commission for a duration of more than five years;
- Temporary groups, the creation of which has been authorized by the Commission for a duration of less than five years;

²⁸ http://europa.eu.int/comm/secretariat_general/impact/practice_en.htm

²⁹ For a short description of comitology, see point 92 et seq.

- Other advisory bodies established by the Community legislator.
59. In 2005, for the first time, the Commission made available a list of the expert groups divided by directorate general. For DG EMPL alone, there are some 170 groups and subgroups of experts and advisers, according to the following typology:
- Advisory groups (14 groups and sub groups)
Example: Advisory Group on the Equality of Opportunity between Women and Men
 - Permanent expert groups (95 groups and subgroups)
Example: European Network of Employment Services
 - Temporary expert groups
Example: Group on Workplace Rights and Conditions

Additionally, the Commission created the “Register of Expert Groups”³⁰, which is a centralized register for all non-comitology expert groups created by the Commission irrespective of the directorate general they are working for. Although the register and the information included are in English, the names of the groups are exclusively in French. A search for DG EMPL groups in March 2006 produced 55 groups, subgroups not included. The details that can be seen on the register include, apart from the name and abbreviation, (i) the policy area, (ii) the directorates general and the other associated directorates general, (iii) the group’s mission, (iv) its tasks, (v) its type as well as its composition and (vi) its contact information. Additional information includes the creating act and rules of procedure, as well as its subgroups and links to its website.

B. Public notice

60. The European legislation is permeated by the general principle of access to documents. Legislative acts and binding decisions are published in the “L” series of the *Official Journal* of the European Union in its 23 official languages, while the information, notices and preparatory Union legislation may be found in its “C” series³¹. Access to documents of preparatory acts is provided for by PreLex³², the Commission website monitoring the decision-making process and it is possible in all the official languages, or by OEIL³³, the legislative observatory of the European Parliament, available in English and French.
61. Within the preparatory acts, calls for consultations are also published on the Commission website. With particular reference to employment issues, a comprehensive list of calls for consultations by the Commission may be found on the European Social Dialogue web page³⁴.
62. Moreover, as described in point 15, the identification of Community-level issues may be fully structured by the settlement of a Social Agenda of the Commission.
63. On February 9, 2005 the Commission launched its new Social Agenda (2005-2010). This document sets out new key priorities in order to attain the objectives of the Lisbon Strategy.

³⁰ http://europa.eu.int/comm/secretariat_general/regexp/index.cfm

³¹ <http://europa.eu.int/eur-lex/lex/JOIndex.do?ihmlang=en>

³² <http://europa.eu.int/prelex/apcnet.cfm?CL=en>

³³ <http://www.europarl.eu.int/oeil/>

³⁴ http://europa.eu.int/comm/employment_social/social_dialogue/docs_en.htm

These priorities are namely (i) employment and (ii) fighting poverty and promoting equal opportunities. It also identifies the available tools to tackle these priorities, by clarifying and setting out the actions to be taken by the Commission.

64. Commission programs may also be published in formal work programs, green papers and white papers.
65. Green papers are discussion papers published by the Commission with regard to a specific policy area. They are primarily documents addressed to interested parties, organizations and individuals, who are invited to participate in a process of consultation and debate. In some cases they provide an impetus for subsequent legislation. The consultations can be accessed on the "Your Voice in Europe" website.
66. White papers are documents containing proposals for Community action in a specific area. They sometimes follow a green paper published to launch a consultation process at European level. While green papers set out a range of ideas presented for public discussion and debate, white papers contain an official set of proposals in specific policy areas and are used as vehicles for their development.

In employment matters, the Commission published in March 2005 the green paper "Confronting demographic change: a new solidarity between the generations"³⁵, in which it called for a consultation on the relation between demographic changes and employment in Europe.

C. The Social Dialogue

1. Procedures involving Social Partners

67. In the field of labor law, and especially when it comes to the role of Social Partners, procedures have a major impact. As Emilio Gabaglio, former head of the European Trade Union Confederation "ETUC", put it in his book entitled "Qu'est-ce que la CES (Confédération européenne des syndicats)?", "*The procedures themselves prevail upon the contents of the agreements*"³⁶. They reflect the structure of management and labor organizations at Community level. The workplace dialogue procedures have been built as a flexible, efficient, non-confrontational means for making adjustments and overcoming the obstacles of modernization.
68. Such procedures reflect political choices going back to 1985. At that time, various federations and unions representing both employers and employees (private and public sectors), the Social Partners, first decided to launch a dialogue which could bring about progress through broad agreements, paving the way to the adoption of the Agreement on Social Policy which was adopted on October 1, 1991 and constituted the most important decision-making reform in European labor law. It was subsequently integrated into the Protocol on Social Policy, which was itself annexed to the Maastricht Treaty. It was signed by 11 of the then 12 Member States of the European Community. The non-signatory was the UK government which decided to "opt out" of the Social Chapter, arguing that its provisions constituted unnecessary and damaging intervention into the operation of the labor market and the relationships between

³⁵ COM(2005) 94 final.

³⁶ Emilio Gabaglio, *Qu'est-ce que la CES (Confédération européenne des syndicats)?* L'archipel, Paris, 2003, p.12.

employers and employees, a position it changed in 1997 and signed up to it. The Social Dialogue provisions of the Agreement were incorporated into the Amsterdam Treaty, and, upon ratification, became part of the EC Treaty as Articles 138 and 139 EC. With this text, Social Partners were given an advisory role (Article 138 EC), plus a role as initiators (Article 139 EC) in workplace rulemaking. On this latter point the text provides that agreements negotiated by the European Social Partners could be given legal effect by a Council decision and transposed into the national legislation of the Member States.

2. Consultation and negotiation

69. The Social Partners play the main roles during consultation and negotiation.

a. Consultation procedure under the Open Method of Coordination

70. The Social Partners make a dual contribution with regard to the Open Method of Coordination. First, the Social Partners are regularly consulted on the guidelines to be adopted and on the whole process: each area under the Open Method of Coordination forms the subject of organized dialogue with the Social Partners. Second, on contents, the Social Partners are sometimes in a position to provide themselves responses to guidelines determined in the context of the Open Method of Coordination. This is particularly relevant as regards employment, notably in relation to the promotion of vocational training, social protection, combating exclusion and modernizing employment relations.

71. Social Partners have encountered some difficulties in taking up the entire breadth of opportunity offered to them, in adapting and disseminating in the Member States the guidelines adopted by the Council, in collecting information on initiatives taken in the Member States and in enterprises work on assessment and exchange. The “Factors for Success” compendium, issued by the cross-industry Social Partners in November 2000, gives practical examples of contributions to implementation of the employment guidelines. It is thought that this initiative could help the Social Partners at all levels to draw inspiration for their relations in the context of labor bargaining.

b. Consultation procedure pursuant to Article 138 EC

(i) Description of the procedure

72. Article 138 EC provides for the compulsory and systematic consultation of Social Partner organizations at European level on a range of issues concerning employment and social affairs³⁷. The Article 138 EC procedure sets out a compulsory two-stage consultation procedure, as already outlined:

- At the first stage, the Commission consults Social Partners (for an opinion or a recommendation) on the possible direction of an initiative;
- At the second stage, the focus is on the content of the initiative. Social Partners provide the Commission with an opinion or, where appropriate, a recommendation.

³⁷ See Annex E.

73. On the occasion of this latter consultation, Social Partners may initiate the procedure set out in Articles 138 (4) and 139 EC, namely the initiation of a Social Dialogue at Community level which can lead to agreements. If they wish to do so, they must inform the Commission. In this case, the procedure may not exceed nine months, unless the management and labor concerned and the Commission jointly decide to extend it. The outcome may be an independent (Article 139 EC), a multisectoral or a sectoral Social Dialogue, and ultimately, agreements which may subsequently be incorporated into Community law. This is a practical application of the principle of subsidiarity as applied to the workplace sector. It is for the Social Partners to make the first move to reach appropriate solutions coming within their area of responsibility. The Community institutions intervene at the Commission's initiative only when negotiations fail.
74. If neither stage of the consultation results in a decision by the Social Partners to enter into bipartite negotiations, but the Commission still considers Community action to be desirable, the Commission will undertake the preparation of a Community initiative. For example, the Commission proposed in September 2004 a reforms package to revise the Working Time Directive. It made the proposal after employers and trade unions were unable to find sufficient common ground to start talks on a negotiated deal.
75. Such consultation is unique because the opinions of the interested parties on the impact of the potential legislation can be taken into account in the earliest stages of reflection.

(ii) Social Partners organizations consulted under Article 138 EC

76. The consultation pursuant to Article 138 EC is restricted to representative organizations. A list of the currently consulted organizations has been published in 2004 and is updated regularly³⁸. The legitimacy and effectiveness of the social partner consultation is based on the representativeness of the Social Partners concerned. The requirements in respect of representativeness may vary in accordance with the nature of the responsibilities conferred on the players. They are limited in the event of a simple consultation as is the case in the procedure pursuant to Article 138 EC, but more binding where the Social Partners can lay down rules which become law as in the procedure pursuant to Article 139 EC.
77. No procedure for applying and receiving the designation of "representative" exists, although a study was carried out in 1992-93 concerning the different systems on formal and mutual recognition of Social Partners on each member state. The existence of particular organizations today has no bearing on the possible inclusion of others in the future.
78. The Commission has defined criteria of representativeness. More than 50 organizations have been consulted on the basis of these criteria³⁹. In order to be eligible for consultation, the Social Partner organizations must:
- Represent a cross- section of industry, or relate to specific sectors or categories and be organized at EU level;

³⁸The list is contained in the Commission Communication COM (2004) 557 final annex 5, 'Partnership for change in an enlarged Europe - Enhancing the role of European Social Dialogue', see **Annex E**.
http://europa.eu.int/comm/employment_social/social_dialogue/docs/consulted_organisations_138_en.pdf

³⁹http://www.ec.europa.eu/employment_social/social_dialogue/docs/consulted_organisations_138_en.pdf

- Consist of organizations which are themselves recognized Social Partners at Member States level disposing of the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
- Have adequate structures to ensure the effective participation in the consultation process.

(iii) Results of the consultation

79. Examples of Social Partners consultations:

- Consultation on violence at the workplace – 2005;
- Consultation on European Works Councils – 2004;
- Consultation on working time - 2003/2004;
- Consultation on stress at work – 2002;
- Consultation on health and safety of independent workers – 2000;
- Consultation on modernization of work organization – 2000.

3. Negotiation and implementation procedure pursuant to Article 139 EC

80. Article 139 EC recognizes the Social Partners' ability to undertake an independent Social Dialogue, that is to say, to independently negotiate agreements which become law. They may also assume responsibility for transposing directives into national law⁴⁰.
81. The field of Social Partners' initiative is not restricted to specific matters. Indeed, Social Partners have the possibility to choose the matters they want to discuss and agree about. The only limit they encounter is that of the Community competence in the field of social policy, as pointed out by Article 137 EC. The Community indeed can only "*support and complement the activities of the Member States*" to realize the objectives laid down in Article 136 EC. For instance, the Social Partners cannot sign and implement an agreement to regulate the right to strike in the Community, as this is not permitted by Article 137 (6) EC. This latter limitation is not explicitly recalled in Article 139 EC, but the basic principle of attributed competence of the EU (enshrined in Article 5 EC) prevents the Social Partners from taking initiatives at Community level in fields where action is foreclosed to the EU institutions.
82. However, pursuant to the Article 139 EC procedure, management and labor organizations can initiate the rule-making process. Such a provision constitutes an important power given to Social Partners. It is one of the rare cases in European law where the Commission is not the only initiator of future European legislative texts. The commonly adopted procedure is the following:
- The Social Partners reach an agreement;
 - The Commission makes a proposal on the basis of this agreement;
 - The Council can either accept or refuse the proposal but has no right to amend it. If it does so, the Commission can withdraw its proposal;
 - The European Parliament is consulted during the process of transformation of the agreement into a directive.

⁴⁰ See Section IV below.

83. As mentioned above, the participation of Social Partners in the European Social Dialogue is restricted to representative organizations and the criteria of representativeness vary with the role given to the organizations. Article 139 EC gives management and labor an important role as initiators and implementers of European workplace rules. As a result, the criteria that apply to determine the representativeness of the organizations are tougher than in the procedure pursuant to Article 138 EC. The question of the representativeness is fundamental as it constitutes the basis of the organizations' legitimacy to negotiate and enter into agreements.
84. The parties that negotiate and implement an agreement should respect the same standard of representativeness spelled out above (point 78) for consultation:
- Represent cross-sections of industry (save where an established sectoral dialogue exists) and relate to specific sectors or categories and be organized at EU level;
 - Consist of organizations which are themselves recognized Social Partners at Member States level disposing of the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
 - Have adequate structures to ensure their effective participation in the consultation process.
85. However, outside of the Sectoral Social Dialogue (discussed below), only three organizations have been allowed to take part in the European Social Dialogue at the negotiating and implementing stage :
- ETUC (European Trade Union Confederation): established in 1973, the ETUC currently groups together 77 member organizations in 35 European countries, as well as 11 European industry associations of trade unions, and has a total of 60 million members. Other trade union structures, such as Eurocadres (representing managerial staff) and FERPA (European Federation of Retired and Older People) operate under the auspices of the ETUC.
 - UNICE (Union of Industrial and Employers' Confederations of Europe): established in the interests of European industry and business circles vis-à-vis the European institutions. Another structure, the UEAPME which represents small and medium-sized companies participates in the European Social Dialogue as part of the UNICE delegation.
 - CEEP (European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest): created in 1961, it deals with the activities of enterprises with public participation and enterprises of general economic interest.
86. The three above-mentioned organizations have been recognized at European level as Social Partners and listed in the Commission Communication COM (98) 322 final of May 20, 1998, as "general cross-industry organizations". The aforementioned recognition was reiterated in a

judgment of the Court of First Instance (CFI) on an appeal by UEAPME against the directive based on the framework agreement on parental leave⁴¹.

87. Article 139 EC allows for negotiation and implementation of autonomous agreements also at sectoral level, thanks to the working of specialized sectoral committees. These committees have been laid down by Commission Decision 98/500/EC, and now reach the number of 33. The Commission's publication, "Recent Developments in the European Sectoral Social Dialogue" (2006), states that the sectoral committees listed therein "*can all lay claim to their representativeness that is continuously monitored in sectoral studies. This, together with their social mandate, gives them the authority to negotiate and, where it is appropriate, to reach agreements*". Concretely though, only the sectoral committee on railways gave rise in 2004 to two effective agreements between the Social Partners. One of them, namely the "Agreement concerning the working conditions of mobile railway workers assigned to cross-border interoperability services", was transformed into a Council decision in 2005 and will apply to all railway enterprises⁴².

4. Agreements implemented in accordance with Article 139 (2) EC

88. The texts adopted pursuant to Article 139 EC establish minimum standards and entail the implementation of certain commitments by a given deadline.

Agreements implemented in accordance with Article 139(2) EC: minimum standards	
Type of agreement	Examples
<i>Agreements implemented by Council decision</i> Implemented by Council decision, monitored by the Commission	<ul style="list-style-type: none">- Framework agreement on parental leave, 1995- Framework agreement on part-time work, 1997- Framework agreement on fixed-term work, 1999- European agreement on the organization of working time of seafarers, 1998- European agreement on the organization of working time of mobile workers in civil aviation, 2000- European agreement on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services, 2004- European agreement concerning the working

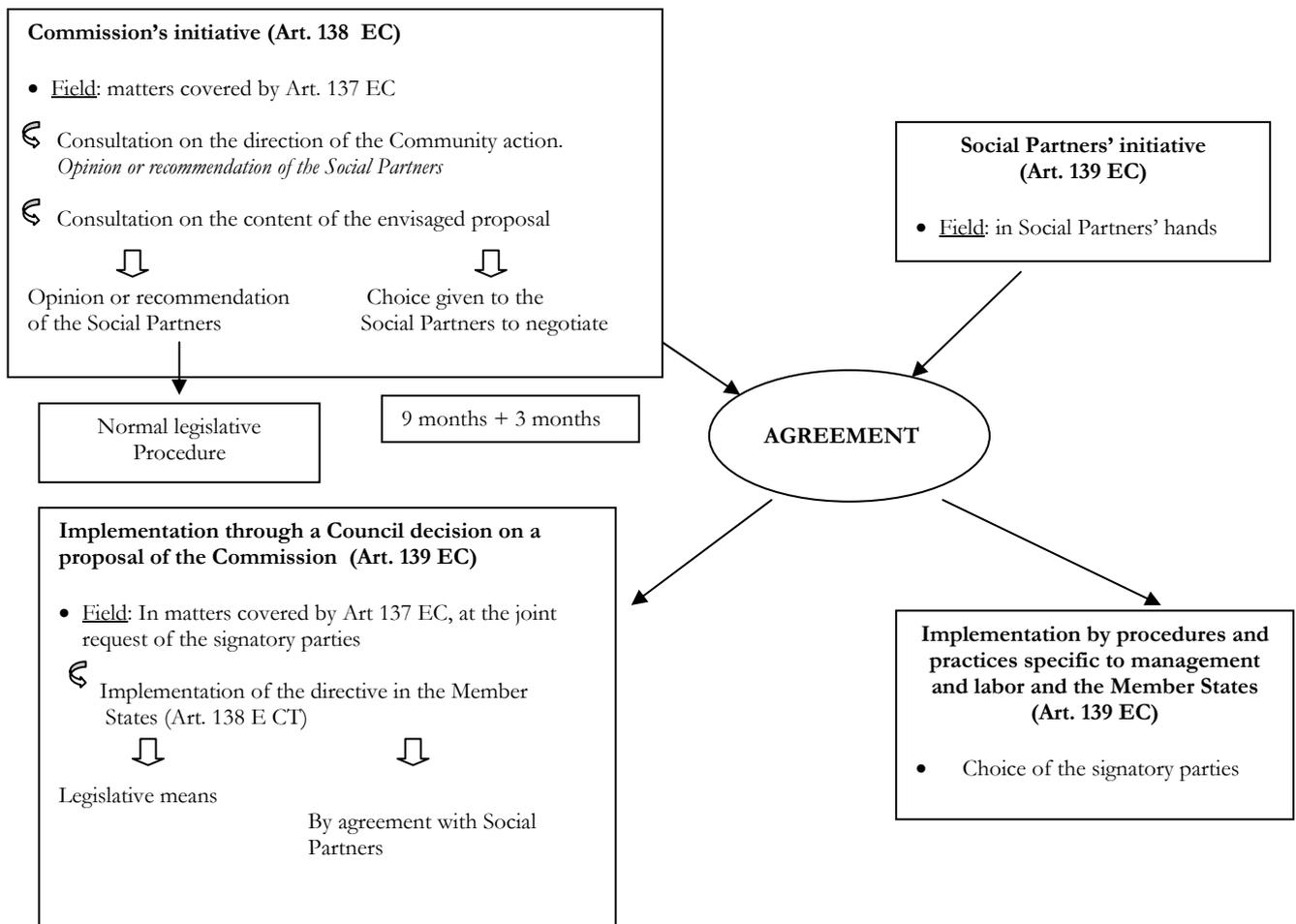
⁴¹ Order of the Court of First Instance (Fourth Chamber) of 18 March 1997, Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) v Council of the European Union, Case T-135/96, European Court Reports 1997 Page II-00373.

⁴² The second one is the "Agreement on the European licence for drivers carrying out a cross-border interoperability service". See the Publication "Recent developments of the European sectoral Social Dialogue", December 2005, p. 64., available at http://ec.europa.eu/employment_social/social_dialogue/docs/sectoral_sd_2006_en.pdf.

	conditions of mobile railway workers assigned to cross-border interoperability services (Sectoral agreement)
Autonomous agreements implemented by the procedures and practices specific to management and labor and the Member States	<ul style="list-style-type: none"> - Framework agreement on telework, 2002 - Framework agreement on work-related, stress, 2004 - Agreement on the European license for drivers carrying out a cross-border interoperability service, 2004
Implementation and monitoring by the Social Partners	

Source: Communication from the European Commission: "Partnership for change in an Enlarged Europe – Enhancing the contribution of European Social Dialogue". COM (2004) 557 final

Synthesis Chart on procedures pursuant to Articles 138 and 139 EC



Source: <http://www.ena.fr/tele/sem04dialsoc/sem0408europe.pdf>

IV. IMPLEMENTATION OF COUNCIL DIRECTIVES IN LABOR LAW

89. Labor law directives can be implemented through three different methods: (i) by the individual implementation by all the Member States through the production of national legislative acts conform to the minimum requirements fixed by the Directive, (ii) by the Comitology Procedure and (iii) by the Social Partners as provided for in Article 149 EC.

A. Implementation by the Member States

90. Pursuant to Article 137 EC, in order to attain the aims of the European social policy, the Community may adopt, by means of directives, minimum requirements for gradual implementation. The eventual implementation need not to be uniform in all Member States, as far as the minimum principles required are provided for by the national implementing legislations. Normally, in labor law, the directives require that Member States inform the Commission, within a determined period, about the implementation progress. Once the information has been submitted, the Commission presents its comments on the implementation progress. For instance, Directive 89/391/EC on Safety at work states that:

“Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of employers and workers.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work”⁴³.

91. Reports by the Commission on the implementation progress, including analysis and comments on the level of implementation by Member States of single directives, are published on the website of DG EMPL⁴⁴.

B. Comitology

92. The word “comitology” refers to the legislative procedures involving committees composed of representatives of the governments of the Member States at the level of civil servants. This practice already existed in the 1960s, but the term was apparently coined in the European Parliament in 1987⁴⁵. The discipline of “comitology” is provided by Decision 1999/468/EC on the implementing powers conferred on the Commission (the so-called “comitology decision”) as amended in July 2006⁴⁶ to strengthen the powers of the Parliament.
93. Committees assist the Commission in the exercise of its implementing competences. They are created by the Council and the Parliament in accordance with the legislative procedures in force at the time of adoption of the basic instrument under which they are established, namely the (i)

⁴³ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, Art. 18 (3).

⁴⁴ Implementation reports on the labor law Directives,
http://www.europa.eu.int/comm/employment_social/labour_law/implreports_en.htm

⁴⁵ Dr. Georg Haibach, *Council decision 1999/468 – A New Comitology decision for the 21th century?*, Eipascope 99/3, http://www.eipa.nl/Eipascope/99/folder_scop99_3/scop99_3_2.pdf, quoting Bradley, “Comitology and the Law: Through a Glass, Darkly”, *Common Market Law Review*, 1992, p. 693, Fn.7.

⁴⁶ Council Decision 2006/512/EC.

cooperation procedure, (ii) advisory procedures, or (iii) the co-decision procedure⁴⁷. The 2006 amendments to the "comitology decision" were introduced to give the Parliament a right to overview and even call back the implementing measures taken by the Commission in cases where the basic legislative act is an act adopted with the co-decision procedure. The changes introduced in 2006 do not concern any of the committees involved in workplace regulation.

94. The Commission reported the figures of the committees related to Employment and Social Affairs of 2004, showing that in this policy sector only six committees have been appointed, which have delivered to date (April 2007) a total of 6 favorable opinions. A total of 10 meetings took place (with no instrument being adopted in 2004). Figures on comitology are published on the web page of the Secretariat-General⁴⁸.
95. The detailed statistics are published in yearly reports by the Commission. The last report available⁴⁹, "Report from the Commission on the working of Committees during 2005" sets out the following information:

DETAILED INFORMATION FOR EMPLOYMENT AND SOCIAL AFFAIRS

Committee	Nr of meetings	Nr of days	Procedure	Favourable opinions	Unfavourable opinions	No opinion	Measures adopted by the Commission	Referred to Council	Cases in which EP has adopted a resolution according to ART. 8 of Council Decision 1999/468/EEC
(1) Committee for the implementation of the Programme relating to the Community framework strategy on gender equality.	2	2	-	0	0	0	0	0	0
(2) Committee for the technical adaptation of legislation on the introduction of measures to encourage improvements in the safety and health of workers at work.	0	0	Regulatory	0	0	0	0	0	0
(3) Committee for the technical adaptation of legislation on the minimum safety and health requirements for improved medical treatment on board vessels.	0	0	Regulatory	0	0	0	0	0	0
(4) Committee of the Community Action Programme to combat discrimination.	2	4	Several: Advisory, Management	1	0	0	0	0	0
(5) Committee of the Community action programme to encourage co-operation between Member States to combat social exclusion	4	4	Several: Advisory, Management	0	0	0	0	0	0
(6) Employment Incentive Measures.	2	2	Several: Advisory, Management	5	0	0	0	0	0
TOTAL:	10	12		6	0	0	0	0	0

⁴⁷ COM (2004) 860 final.

⁴⁸ http://europa.eu.int/comm/secretariat_general/regcomito/?CL=en

⁴⁹ As of April 2007.

96. In April 2007 there were four operating committees: (i) Committee for the technical adaptation of legislation on the introduction of measures to encourage improvements in the safety and health of workers at work; (ii) Committee for the technical adaptation of legislation on the minimum safety and health requirements for improved medical treatment on board vessels; (iii) Advisory committee on the European year of equal opportunities for all; (iv) Committee for the implementation of the Community Program for employment and social solidarity - PROGRESS - 2007-2013⁵⁰. Only the Committee for the technical adaptation of legislation on the introduction of measures to encourage improvements in the safety and health of workers at work contributed to give rise to a legislative act, this being Directive 2006/25/EC of April 5, 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents.
97. A concrete description of comitology work may be made by analyzing the work of the “Committee of the Program to Combat Social Exclusion”, from its appointment in 2001 to date.
98. The Program to Combat Social Exclusion (the “Program”) was created by Decision of the 50/2002/EC December 7, 2001 (the “Social Exclusion Decision”)⁵¹ to be implemented between 2001 and 2006. The Social Exclusion Decision, which describes the main ongoing issues in the social exclusion field, stresses the necessity for the Commission to be supported by a specialized committee. The objectives of the program (the improvement of understanding of social exclusion, the organization of exchanges on policies which are implemented and the comparison between national policies) is to be attained through the sharing of specific tasks between the Commission and the Member States. Thus, the Commission will ensure the implementation of Community actions covered by the program, have an exchange of views with NGOs and Social Partners, make information available to them and promote dialogue between all the actors. Moreover, the Commission, in cooperation with Member States, will take the necessary measures to promote the involvement of the parties concerned, ensure the dissemination of the results of the program and provide information and follow-up on actions supported by the Program.
99. The Program Committee is made up of government representatives from the EU Member States and other participating countries (candidate countries, EFTA/EEA countries). Its role is to provide political guidance to the Commission on the implementation of the Program. The members of the committee are officials of the Commission as well as officials of the public administration of the different Member States whose names and contact details have been made public⁵².
100. The web site of the Secretariat-General sets out information on all of the meetings attended by the Committee. In particular, the relevant information made public gives an insight on the ongoing activity, including a report on the implementation of the 2004 work plan, providing information on the studies made and on the main policies adopted, giving notice of the launch of a new call for proposal to interested parties on the “Guidelines for the Social Inclusion

⁵⁰ http://ec.europa.eu/transparency/regcomitology/include/comitology_committees.pdf

⁵¹ Decision 50/2002/EC.

⁵² http://europa.eu.int/comm/employment_social/social_inclusion/docs/rit_sep_address_en.pdf

Process” and providing a report of the main contributions from the members of the Committee, together with non-governmental expert reports on national reform programs⁵³.

C. The role of Social Partners as implementers

101. Pursuant to Article 139 EC, two options exist for the implementation of agreements concluded at Community level:

- Implementation by Council decision;
- Implementation in accordance with the procedures and practices specific to management and labor and the procedures and practices used in the Member States, giving rise to “Autonomous agreements”.

(i) Implementation by Council decision

102. As already explained at point 80 et seq., agreements may be implemented at the joint request of the signatory parties by a Council “decision” (thus far, such decisions have been implemented by use of directives as legal instrument) upon a proposal from the Commission and after submission to the European Parliament for its opinion. This should happen especially when the agreements concerns areas covered by Article 137 EC, as pointed out by the Commission in its Communication on “The European Social Dialogue - A force for innovation and change”⁵⁴. The Member States associate the Social Partners in their transposition at national level. The management and labor organizations which have signed the agreement are also systematically consulted by the Commission on implementation reports.

103. The Commission, in its Communication on Partnership for change in an enlarged Europe⁵⁵ shows its favor for implementation through a Council decision “...where fundamental rights or important political options are at stake, or in situations where the rules must be applied in an uniform fashion in all Member States, and coverage must be complete...”. In addition, the alternative way of implementation through autonomous agreements (see next paragraphs) is also “not appropriate for the revision of previously existing directives adopted by the Council and the European Parliament through the normal legislative procedure”⁵⁶.

104. Agreements implemented by way of Council decision include the three cross-industry framework agreements on parental leave⁵⁷, part-time work⁵⁸ and fixed-term contracts⁵⁹, the maritime transport and civil aviation⁶⁰ sector agreements on working time, and the railway

⁵³ http://europa.eu.int/comm/employment_social/social_inclusion/naps_rep_en.htm

⁵⁴ COM(2002) 341.

⁵⁵ COM(2004) 557 final.

⁵⁶ COM(2004) 557 final, p.3.

⁵⁷ Council Directive 96/34/EC of June 6, 1996 on Parental Leave and Leave for Family Reasons, based on the Framework Agreement concluded on December 14, 1995 by UNICE, CEEP and the ETUC (article 4 Protocol on Social Policy).

⁵⁸ Council Directive 97/81/EC of December 15, 1997 concerning a Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC (article 139 EC Treaty).

⁵⁹ Council Directive 99/70/CE of June 28, 1999 concerning the Framework Agreement on Fixed-term Work concluded by UNICE, CEEP and the ETUC (article 139 EC Treaty).

⁶⁰ Council directive 2000/79/EC of November 27, 2000 concerning the European Agreement on the Organization of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation

sector agreement on the working conditions of mobile workers assigned to cross-border interoperable services⁶¹.

105. The three cross-industry framework agreements were negotiated as a result of a Commission consultation under Article 138 EC, whereas the sectoral agreements make use of the leeway of the Social Partners by the Working Time Directive⁶² to adapt the Community provisions to the specific needs of the sector.
106. The responsibility for ensuring that agreements implemented by Council decisions are transposed and implemented lies with the Member States, even in cases where the provisions are implemented through collective bargaining by the Social Partners. Responsibility for monitoring these agreements lies with the Commission, although the Social Partners are systematically consulted on the implementation reports.

(ii) *“Autonomous agreements”*

107. With regard to agreements implemented in accordance with the procedures and practices specific to management and labor of the Member States, it is the Social Partners themselves who are responsible for implementing and monitoring these agreements. The Framework Agreement on Telework of July 16, 2002⁶³ is the first cross-industry example of this type of agreement and was the result of an Article 138 EC consultation. In May 2004 the cross-industry Social Partners concluded their second agreement of this type on the topic of work-related stress⁶⁴, which was also the result of an Article 138 EC consultation. The agreement was approved in December 2005 and published on the website of DG EMPL. Effective implementation and monitoring is important in the case of agreements of this kind, particularly if they have been negotiated subsequent to a Commission consultation under Article 138 EC. Article 139(2) EC states that the Community level agreements “shall be implemented”, which implies that there is an obligation to implement these agreements and thus the signatory parties have to exercise influence on their members in order to achieve the implementation.
108. Social Partners are obliged to assess the contribution of industrial relations to implementation of the Lisbon strategy. Work out, input and result indicators are intended to be set up to develop genuine benchmarking of the quality of industrial relations in Europe. The goals to be attained can be compared with the already mentioned Communication from the Commission on “The European Social Dialogue, a force for innovation and change”.
109. The Commission in its proposal for a Council decision establishing a Tripartite Social Summit for Growth and Employment states that *“the European agreement is brought into effect in accordance with the Social Partners' and Member States' own procedures and practices. This option was chosen, for example, by the negotiators on the improvement of paid employment in agriculture and on telework at cross-*

(ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA).

⁶¹ Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

⁶² Council Directive 93/104/EC concerning certain aspects of the organization of Working Time.

⁶³ Framework Agreement on Telework, 16/07/2002, (ETUC, UNICE, UEAPME, CEEP).

⁶⁴ Framework Agreement on Work-related Stress, 8/10/2004 (ETUC, UNICE, UEAPME, CEEP).

industry level. In that case, the Commission calls on the Social Partners to strengthen substantially the procedures for on-the-spot monitoring and to prepare regular reports on implementation of the agreements signed. These reports should outline progress on the content of the implementation of agreements and their coverage. Such structured reporting is particularly necessary where the agreement negotiated by the Social Partners follows Commission consultation under Article 138 of the Treaty. The Commission can review with the Social Partners the technical and logistic facilities required for such monitoring, either by using existing budgetary tools or by introducing new mechanisms. The Dublin Foundation might play a role for that purpose through increased exploitation of the Industrial Relations Observatory (EIRO). Looking ahead and in the medium term, the development of the European social dialogue raises the question of European collective agreements as sources of law. The discussions on the forthcoming reform of the Treaty should take this into consideration”⁶⁵.

(iii) Criteria to choose the appropriate implementation procedure

110. Finally, concerning the choice of the implementation procedure, a distinction is made in the Commission Communication 2002/341 on European Social Dialogue⁶⁶. According to the Communication, the autonomous agreements under Article 139 EC that pursue one of the matters falling under Article 137 EC should be implemented through a Council decision; all the others can be implemented by the Social Partners *“in accordance with the procedures and practices specific to management and labour of the Member States”*⁶⁷.
111. Concretely though, it seems that the agreements that have been implemented insofar according to the “procedures and practices specific to management and labor and the Member States”, could clearly have all fallen within one of the areas listed in Article 137 EC and therefore could have been submitted to implementation through a Council decision.
112. Different matters should theoretically lead to different and clearly defined implementation procedures but practice has showed that probably this distinction has a purely theoretical importance.

V. SOFT LAW

113. Two main instruments are available in terms of procedures in the field of European labor law, “hard” and “soft” law procedures. The superimposition of the two elements creates a complex framework but provides indeed with a suitable procedure for highly sensitive issues. Soft law could emerge as one of the most important instruments for the coordination of employment policy in Europe.
114. The term “soft law” includes any system of regulation different from the traditional process grounded on a democratically elected legislature making laws, which is then enforced through court proceedings. Procedures establishing soft law give instead flexible tools to settle general objectives on highly sensitive and country-specific issues. The major example of soft law in the employment sector is the already mentioned European Employment Strategy, “EES”, initiated on the basis of the provisions of the Amsterdam Treaty.

⁶⁵ Council Decision 2003/174/CE establishing a Tripartite Social Summit for Growth and Employment, p. 3.

⁶⁶ COM(2002) 341.

⁶⁷ COM(2002) 341, paragraph 2.4.2.

115. “European Employment Guidelines” are decided each year by the Council following a proposal from the Commission. These Guidelines have to be taken into account in National Reform Programs (National Action Plans until 2005), which are assessed through the Joint Employment Report from the Commission and Council, with a view to set the next Guidelines. Since 2000, the Council, following a proposal from the Commission, issues specific recommendations to Member States, in order to complement the Employment Guidelines. From 2005, the Employment Guidelines are integrated with the macroeconomic and microeconomic policies and are set for a three year period.

1. Initiation

The procedure under the EES pursuant to Article 128 EC is developed as follows:

a. Background

116. The EES procedure provides a framework for action involving all levels and all players on a voluntary basis⁶⁸. Such a procedure delivers a rolling program of yearly planning, monitoring, examination and re-adjustment. It is built around several components:
- Employment Guidelines (Article 128 (2) EC): following a proposal from the Commission, the European Council agrees every year on a series of guidelines setting out common priorities for the Member States’ employment policies. In the context of the revamp of the Lisbon Strategy, a new governance of the EES has been proposed, intended to remain in place for three years and integrating employment policies with microeconomic and macroeconomic policies. There are currently (April 2007) eight Employment Guidelines that fit within three priorities: (i) attract and retain more people in employment and increase labor supply and modernize social protection systems, (ii) improve adaptability of workers and enterprises, and (iii) increase investments in human capital through better education and skills.
 - National Reform Programs (Article 128 (3) EC): every Member State draws up an annual National Reform Program that describes the progress achieved in that Member State over the last 12 months and the measures planned for the coming 12 months. The National Reform Programs are now included as the ‘Employment’ section of the Member States’ reform plans in the broader context of the Lisbon Strategy.
 - Joint Employment Report (JER) (Article 128 (1) EC): the Commission and the Council jointly examine each National Reform Program which refers to the Employment Guidelines and present a Joint Employment Report to the European Council. The report contains country-specific information as well as a comparison and synthesis of developments from a European point of view. The Commission shall present a new proposal to revise the Employment Guidelines accordingly for the following year. It is the main instrument for conveying key policy messages on employment and labor market measures to the spring European Council.

- Recommendations (Article 128 (4) EC): the Council may decide, by qualified majority and after consultation of the Employment Committee, to issue country specific recommendations upon a proposal of the European Commission. The recommendations concern appropriate lines of action to assist Member States in addressing those challenges as effectively as possible, in the framework of the EES. To reflect the different stages of implementation and compliance with the Employment Guidelines of the different Member States, the Commission may decide between three courses of action: (i) the recommendation may be maintained because the measures taken by the Member State to address identified concerns are clearly insufficient ; (ii) the recommendation may be amended to take account of progress made by the Member State, with a call to pursue efforts or to monitor further progress and assess the impact - this is the appropriate response where measures taken by the Member State only partly address the recommendation and more effort is needed, or where a comprehensive plan has been laid down, but results will be visible only in the medium or long term; (iii) the recommendation may be dropped, because the steps undertaken by the Member State are sufficient.

117. Most of the existing recommendations are maintained either in their entirety or in an amended form, since their implementation exceeds the timeframe of a single year and requires progress monitoring and impact assessment over the medium and long term.

b. The Open Method of Coordination

118. The EES initiated a new procedure at Community level, which was to become known as the "Open Method of Coordination". This instrument can be implemented only where the Community does not have legislative competence or where the Community has competence only to define the minimum rules. It is based on five key principles: (i) subsidiarity, (ii) convergence, (iii) management by objectives, (iv) Member State surveillance, (v) integrated approach. Each is briefly described below:

- i. The method is based on the principle of subsidiarity. It establishes a balance between coordination at the European Union level and Member States' responsibilities in deciding the detailed content of action. The definition of the means and conditions under which programs and policies are implemented is left to a large extent to individual Member States, which are responsible for their employment policy.
- ii. The strategy strives to achieve commonly agreed employment objectives through concerted action, where each Member State contributes towards raising the European average performance (for instance, full employment was confirmed as a prevailing goal of the Union).
- iii. The success of the strategy relies on the use of quantified measurements, targets and benchmarks, to allow for a proper monitoring and progress evaluation.
- iv. Annual reporting leads to the evaluation and comparison of progress made and to the identification of possible best practices amongst Member States. It is considered to create peer pressure to improve the quality and effectiveness of policy. More specifically a Peer Review Program was established in 1999. Its objective is to promote the

identification and exchange of good practices in employment policies, and the potential for their successful transfer to other Member States. The basic idea is that it is likely that a Member State can learn from the experiences of other Member States, which may have already found answers to similar problems. Good practices in the employment field are identified on the basis of information provided by the Member States, especially in the Employment section of their National Reform Programs.

- v. The Employment Guidelines are by no means restricted to active labor market policies but extend to social, educational, tax, enterprise and regional policies. Structural reforms cannot be obtained through isolated and dispersed actions or measures, but require consistent and concerted action over a wide range of policies and measures.

2. Notice

119. In September 2002, following the Barcelona Council, the Commission adopted its Communication on streamlining the annual economic and employment policy co-ordination cycle⁶⁹. The main idea was to re-organize existing EU co-ordination procedures around a few key points to make the co-ordination cycle more transparent and intelligible and thereby strengthen its visibility. In line with the overall Lisbon Strategy, it was felt that this would also contribute to reinforcing the focus on the medium term and to improving policy coherence. This modified annual procedure strengthens the role of the European Council in giving guidance to the overall EU strategy. The new policy cycle is built on the following tools (annual month of action is shown in parenthesis):

a. *The "Implementation Package" (December)*

120. The Commission presents the conclusions of its review of the implementation of EU policy in the form of an "Implementation Package", together with and in support of its annual report to the Spring meeting of the European Council on economic and social affairs. The Implementation Package includes the Broad Economic Policy Guidelines, "BEPGs", the Implementation Report, the draft Joint Employment Report and the Implementation Report on the Internal Market Strategy. It also contains a detailed assessment of implementation in the various policy areas. The "Spring Report", on the other hand, remains the Commission's strategic input to the European Council with a view to the Spring meeting. It highlights the main issues and presents the Commission's strategic policy priorities for the EU.

b. *The "Guidelines Package" (April)*

121. Following the general political orientations given by the Spring Meeting of the European Council, the Commission defines and presents its proposals for further action in the various policy areas together in a 'Guidelines Package', composed of the BEPGs, the Employment Guidelines (EGs) and the Employment Recommendations. Subsequent to further consideration by the Parliament and the competent Council formations at its June meeting the European Council draws up conclusions. The relevant Council formations adopt the BEPGs, the EGs and the Employment Recommendations, on the basis of which Member States will draw up their National Reform Programs or reports in the course of the second semester.

⁶⁹ COM(2002) 487 final.

122. All those steps are constantly published on the Commission's web site.

3. Participation

123. The development of the European Employment Strategy calls for the contributions of many parties. The Presidency Conclusions of the Brussels European Council of 2005⁷⁰, called for the European Union to mobilize to a greater degree all appropriate national and Community resources – including the cohesion policy – so as to tap into their synergies in a general context of sustainable development. According to the Presidency Conclusions, alongside the governments, all the other players' concerned, i.e. parliaments, regional and local bodies, Social Partners and civil society, should be stakeholders in the Strategy and should take an active part in attaining its objectives. In the same context the European Council, welcomed the Commission Communication, 'Working together for growth and jobs – A new start for the Lisbon Strategy'⁷¹, but also the contributions made in this context by the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Social Partners. The European Council called on the Social Partners to submit a common Work Program for growth and employment in the context of their respective areas of competence. Furthermore, it stressed that the success of the Youth Path (a program for the improvement of young Europeans' working conditions) depends on the involvement of all parties concerned, first and foremost the national, regional and local youth organizations as well as the European Youth Forum, the regional and local authorities and the Social Partners.

⁷⁰ http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/85349.pdf

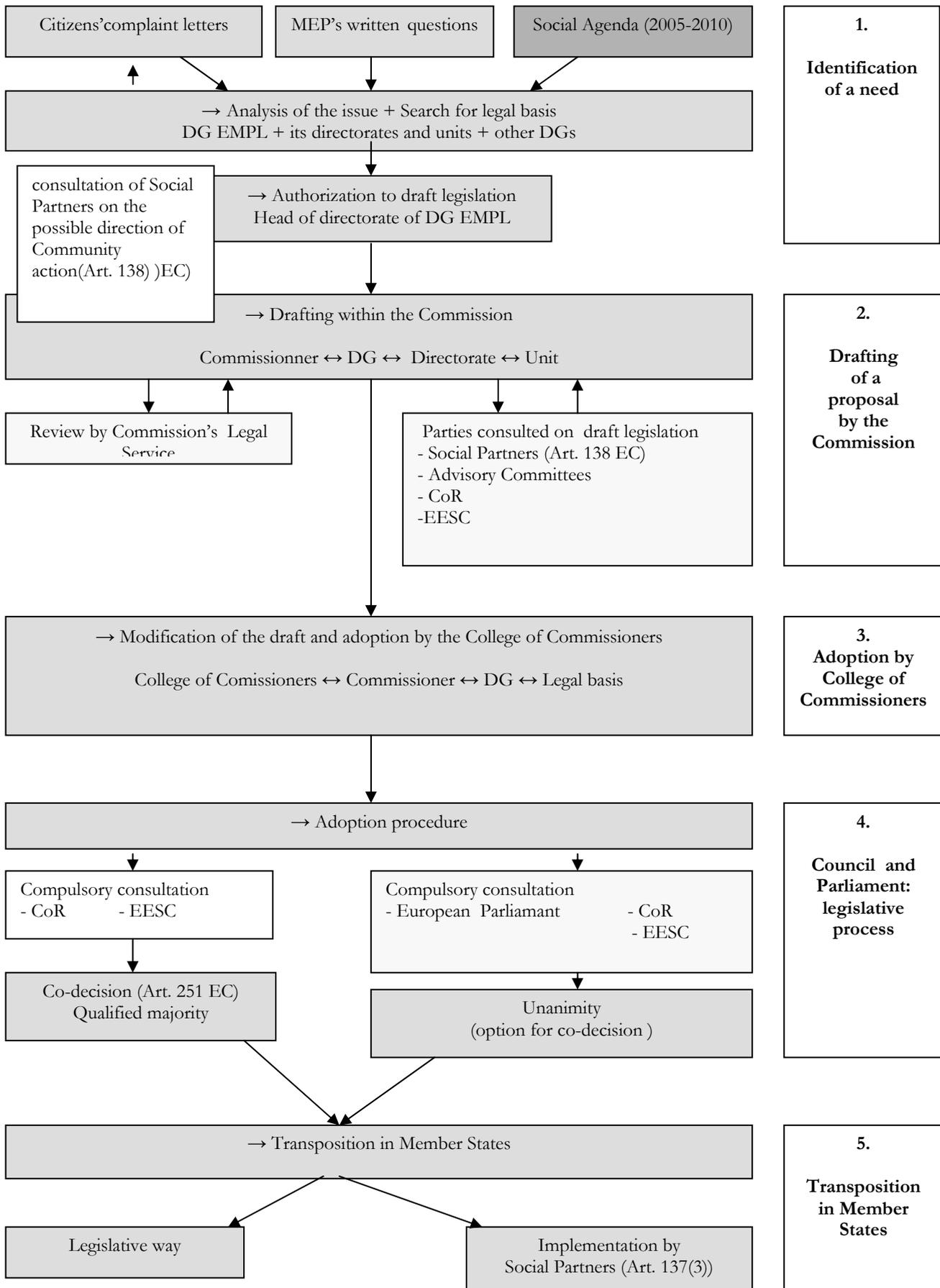
⁷¹ COM(2005) 24 final.

A l'attention de : Mr. Peter Strauss
Mr. George Bermann

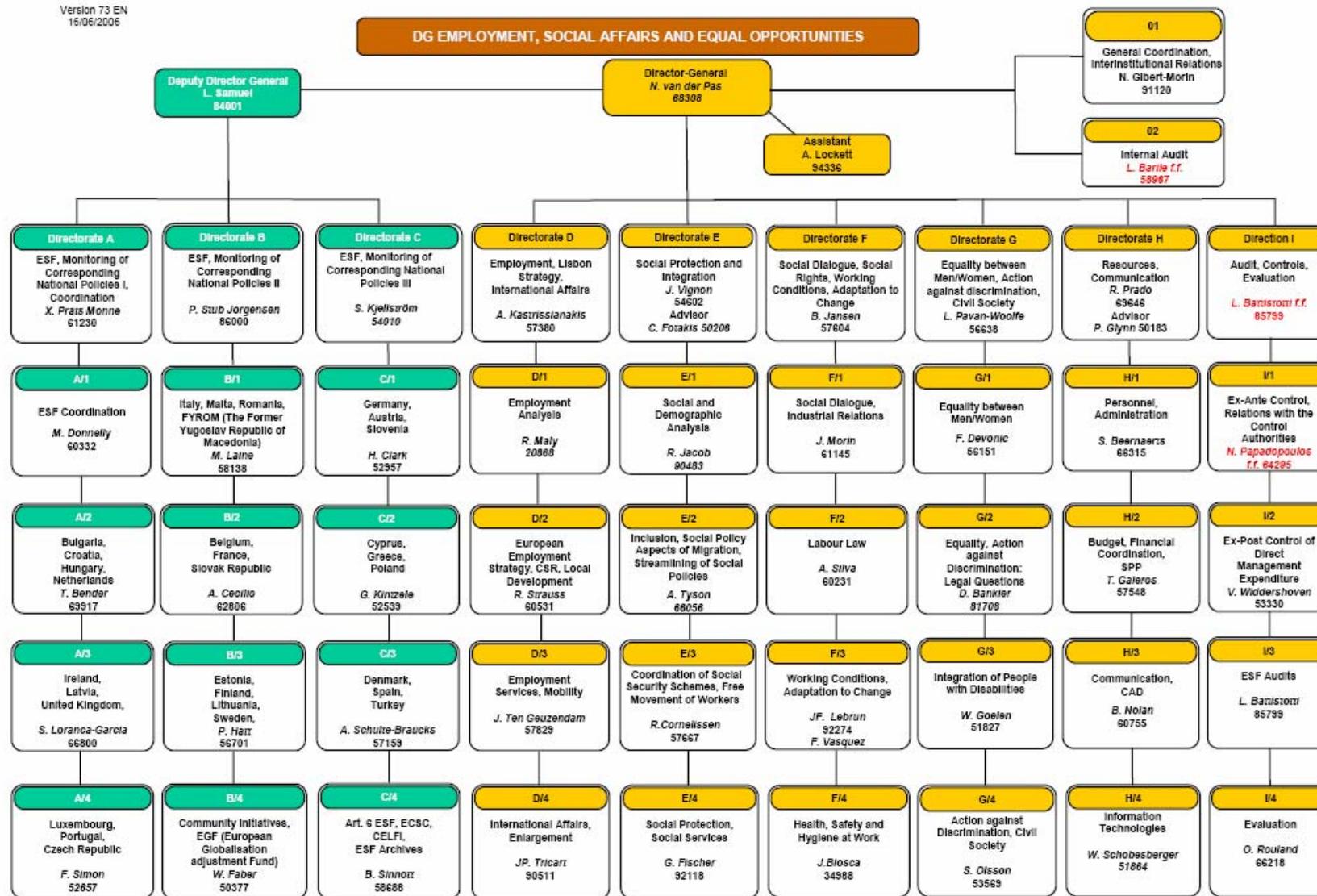
33

VI. ANNEXES

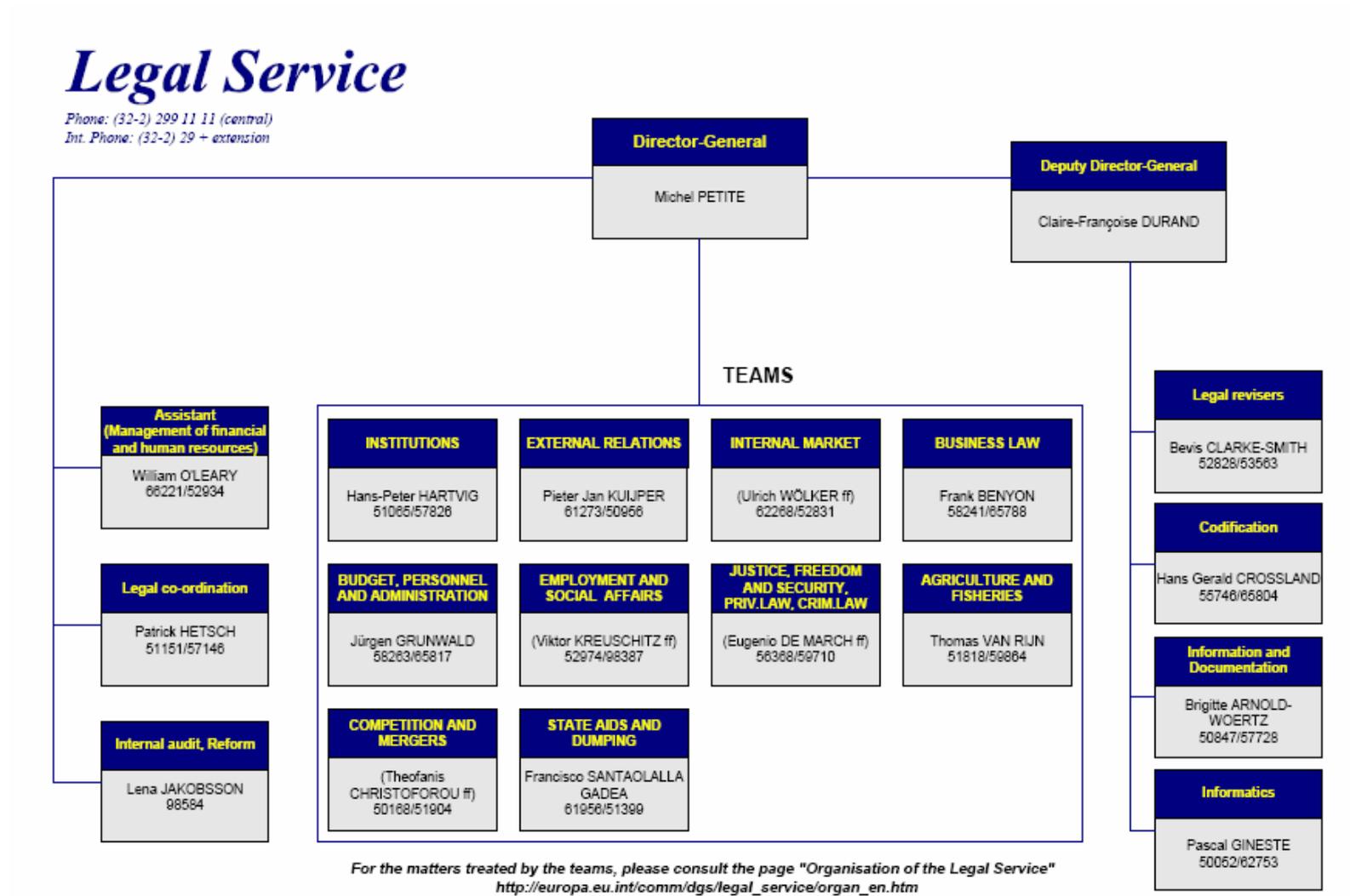
A. Synthesis chart of the procedure pursuant to Article 137 EC



B. DG Employment organization chart



C. Legal Service organization chart



D. Relevant provisions of the EC Treaty

Article 128

1. *The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.*
2. *On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2).*
3. *Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.*
4. *The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.*
5. *On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.*

Article 137

1. *With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:*
 - (a) improvement in particular of the working environment to protect workers' health and safety;*
 - (b) working conditions;*
 - (c) social security and social protection of workers;*
 - (d) protection of workers where their employment contract is terminated;*
 - (e) the information and consultation of workers;*
 - (f) representation and collective defense of the interests of workers and employers, including co-determination, subject to paragraph 5;*
 - (g) conditions of employment for third-country nationals legally residing in Community territory;*
 - (h) the integration of persons excluded from the labor market, without prejudice to Article 150;*
 - (i) equality between men and women with regard to labor market opportunities and treatment at work;*
 - (j) the combating of social exclusion;*
 - (k) the modernisation of social protection systems without prejudice to point (c).*
2. *To this end, the Council:*

(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this article.

3. A Member State may entrust management and labor, at their joint request, with the implementation of directives adopted pursuant to paragraph 2. In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labor have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

4. The provisions adopted pursuant to this article:

— shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,

— shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

5. The provisions of this article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article 138

1. The Commission shall have the task of promoting the consultation of management and labor at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labor on the possible direction of Community action.

3. If, after such consultation, the Commission considers Community action advisable, it shall consult management and labor on the content of the envisaged proposal. Management and labor shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of such consultation, management and labor may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labor concerned and the Commission decide jointly to extend it.

Article 139

A l'attention de : Mr. Peter Strauss
Mr. George Bermann

39

1. Should management and labor so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labor and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2). In that case, it shall act unanimously.

E. List of European Social Partners organizations consulted under Art. 138 EC

1. General cross-industry organizations

- European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)
- European Trade Union Confederation (ETUC)
- Union of Industrial and Employers' Confederations of Europe (UNICE)

2. Cross-industry organisations representing certain categories of workers or enterprisess

- Eurocadres
- European Association of Craft and Small and Medium-Sized Enterprises (UEAPME)
- European Confederation of Executives and Managerial Staff (CEC)

3. Specific organizations

- Eurochambres

4. Sectoral organisations representing employers

- Airports Council International – Europe (ACI EUROPE)
- Association of Commercial Television in Europe (ACT)
- Association of European Airlines (AEA)
- Association of European Cooperative and Mutual Insurers (ACME)
- Association of European Public Postal Operators (PostEurop)
- Association of European Radios (AER)
- Association of National Organisations of Fishing Enterprises in the EU (EUROPECHE)
- Civil Air Navigation Services Association (CANSO)
- Committee of Agricultural Organisations in the European Union (COPA)
- Community of European Railway and Infrastructure Companies (CER)
- Community of European Shipyards' Associations (CESA)
- Confederation of National Associations of Tanners and Dressers of the European Community (COTANCE)
- Council of European Municipalities and Regions (CEMR)
- Employers' Group of the Committee of Agricultural Organisations in the European Union (GEOPA)
- Euracoal
- Euromines
- European Apparel and Textile Organisation (EURATEX)
- European Association of Cooperative Banks (EACB)
- European Association of Potash Producers (APEP)
- European Banking Federation (FBE)
- European Barge Union (EBU)
- European Broadcasting Union (EBU)
- European Committee of Sugar Manufacturers (CEFS)
- European Community Shipowners Association (ECSA)

- European Confederation of the Footwear Industry (CEC)
- European Confederation of Hairdressing employers' organisations (EU Coiffure)
- European Confederation of Woodworking Industries (CEI-Bois)
- European Construction Industry Federation (FIEC)
- European Coordination of Independent Producers (CEPI)
- European Federation of Cleaning Industries (EFCI)
- European Federation of National Insurance Associations (CEA)
- European Federation of Security Services (CoESS)
- European Furniture Manufacturers' Federation (UEA)
- European Industrial Minerals Association (IMA)
- European Regions Airline Association (ERA)
- European Savings Banks Group (ESBG)
- European Skippers' Organisation (ESO)
- European Telecommunications Network Operators' Association (ETNO)
- General Committee for Agricultural Cooperation in the European Union (COGECA)
- Hotels, Restaurants and Cafés in Europe (HOTREC)
- International Air Carrier Association (IACA)
- International Confederation of Temporary Work Businesses (Euro CIETT)
- International Federation of Film Producers' Associations (FIAPF)
- International Federation of Insurance Intermediaries (BIPAR)
- International Road Transport Union (IRU)
- Performing Arts Employers' Associations League Europe (PEARLE)
- Retail, Wholesale and International Trade Representation to the EU (EuroCommerce)
- Union of the Electricity Industry (EURELECTRIC)

5. European trade union organizations

- European Arts and Entertainment Alliance (EAEA)
- European Cockpit Association (ECA)
- European Federation of Building and Woodworkers (EFBWW)
- European Federation of Journalists (EFJ)
- European Federation of Public Service Unions (EPSU)
- European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors and Allied Branches (EFFAT)
- European Metalworkers' Federation (EMF)
- European Mine, Chemical and Energy Workers' Federation (EMCEF)
- European Trade Union Federation: Textiles, Clothing and Leather (ETUF:TCL)
- European Transport Workers' Federation (ETF)
- International Federation of Actors (FIA)
- International Federation of Musicians (IFM)
- Union Network International – Europe (UNI-Europa)
- Union Network International – Media and Entertainment International – Europe (EUROMEDI)
- European Trade Union Committee for Education (ETUCE)

The list is adapted as new sectoral social dialogue committees are set up and/or in light of the study on representativeness.

F. Provisions of the Draft Constitutional Treaty of 2004 [not ratified]

Employment

Article III-203:

The Union and the Member States shall, in accordance with this Section, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labor markets responsive to economic change with a view to achieving the objectives referred to in Article I-3.

Article III-204

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article III 203 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article III-179(2).
2. Member States, having regard to national practices related to the responsibilities of management and labor, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with article III-206.

Article III-205

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

Article III-206

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article III-179(2).
3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.
4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may adopt recommendations which it shall address to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

Article III-207

European laws or framework laws may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall not include harmonisation of the laws and regulations of the Member States.

Article III-209

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favor the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action of the Member States.

Social Policy

Article III-210

1. With a view to achieving the objectives of Article III-209, the Union shall support and complement the activities of the Member States in the following fields:

- a) improvement in particular of the working environment to protect workers' health and safety;
- b) working conditions;
- c) social security and social protection of workers;
- d) protection of workers where their employment contract is terminated;
- e) the information and consultation of workers;
- f) representation and collective defense of the interests of workers and employers, including codetermination, subject to paragraph 6;
- g) conditions of employment for third-country nationals legally residing in Union territory;
- h) the integration of persons excluded from the labor market, without prejudice to Article III-283;
- i) equality between women and men with regard to labor market opportunities and treatment at work;

- j) the combating of social exclusion;
- k) the modernisation of social protection systems without prejudice to point (c).

2. For the purposes of paragraph 1:

(a) European laws or framework laws may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) in the fields referred to in paragraph 1(a) to (i), European framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework laws shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized enterprises.

In all cases, such European laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), (d), (f) and (g), European laws or framework laws shall be adopted by the Council acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

The Council may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act unanimously after consulting the European Parliament.

4. A Member State may entrust management and labor, at their joint request, with the implementation of European framework laws adopted pursuant to paragraphs 2 and 3 or, where appropriate, with the implementation of European regulations or decisions adopted in accordance with Article III-212.

In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, or a European regulation or decision implemented, management and labor have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that framework law, regulation or decision.

5. The European laws and framework laws adopted pursuant to this Article:

(a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium of such systems;

(b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

6. This Article shall not apply to pay, the right of association, the right to strike or the right to impose lockouts.