

## MEMORANDUM

**DRAFT NO. 1**  
**FOR DISCUSSION ONLY**  
**13.4.2005**

**A l'attention de :** Mr. Peter Strauss  
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Téléphone : 732 2 641 7460  
**Objet :** The Administrative Law of the European Union workplace Legislation

## 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 partners<sup>1</sup> in these procedures will specifically be explored since they constitute an important specificity of this area of the law.

## EXECUTIVE SUMMARY

2. At Community level, workplace regulation derives from both legislation and soft law. With regard to legislation, Article 137 EC sets out a specific labor law procedure for 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.
3. Social partners have a very important role to play in the area of the law since they are given a triple role as initiators, consultants and implementers of workplace legislation. Nevertheless their role remains subject to guidance of the Commission and deeply modifies the institutional balance within the decision process.
4. The recent European Convention constituted a forum to foresee potential future workplace legislation particularly with regard to the balance of power amongst the institutions in promoting such legislation.

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<sup>1</sup> 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.

**I. EUROPEAN LABOR LAW AND SOFT LAW PROCEDURE PURSUANT TO ARTICLE 137 EC****1.1 European labor law procedure pursuant to Article 137 EC**

5. Article 137 EC (Title XI on “Social Policy”) (**Annex I**) settles the first specific procedure in the field of labor law. It is based on the principle of subsidiarity. In this regards, the Community “supports and complements” the activities of the Member States. To achieve this role, the Council can adopt, by means of directives, minimum requirements. The main procedure pursuant to Article 137 EC is the following:

**1.1.1 Identification of matters to be tackled at Community level**

6. The identification of matters likely to be tackled at Community level derives, as a factual matter, 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 (“MPs”). Whatever the source, these matters may be taken forward by the Commission services.

*a. Agenda Setting*

7. Identification of Community-level issues may be fully structured by the settlement of a Social Agenda of the European Commission. The Social Agenda is a pluri-annual program of action that allows the Community to act on a long-term basis. It is itself based on a broader framework, namely, the Lisbon Strategy, as set out by the European Council in Lisbon on March 2000.
8. On February 9, 2005 the Commission launched its new Social Agenda (2005-2010). This document sets out new key priorities to attain the objectives of the Lisbon Strategy. These priorities are namely (i) employment and (ii) fighting poverty and promoting equal opportunities. It also identifies the available tools to tackle these priorities. In other words, this document clarifies and set out the actions to be taken by the Commission.

*b. Complaint letters and written questions from European MPs*

9. The identification of matters subjects to be tackled at Community level can also follow a more haphazard path through complaint letters from European citizens or written questions from European MPs. The European Parliament has a very important role in the labor law field as provider of information about potential reforms. MPs have frequent contacts with their constituents and are so able to identify the problems encountered by European citizens.

*c. Analysis within the European Commission's services*

10. Each question identified is analyzed by the European Commission services. The competent Directorate General (DG) for these questions is the “Employment, Social Affairs and Equal Opportunities Directorate General” (DG EMP). Mr. Vladimir Spidla of the Czech Republic is the Commissioner in charge of DG EMP. Within DG EMP (see Annex :

organization chart), Directorates A “Employment and European Social Fund Policy Coordination”, D “Adaptability, Social Dialogue and Social Rights” and E “Social Protection and Social integration” provide technical support on Community-level questions. Directorate D is the part of DG EMP most involved in those issues at stake in this study and especially its unit D2, “Labor Law and Work Organization”.

11. The services of the European Commission check whether a problem constitutes an issue at Community level. The question is discussed in DG EMP at DG, 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. But at the end of the day, the decision to tackle an issue at Community level is taken at heads of Directorate level.
12. 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.

### **1.1.2 The European Commission as initiator of European labor law**

#### *a. Initial Proposal*

13. When a relevant question has been identified, the European Commission drafts a proposal. To reflect upon its contents, meetings at Unit, Directorate, DG and Commissioner levels may be organized. DG EMP has a central role in this reflexion. Nevertheless other DGs may also be involved if the matters require their presence.

#### *b. Support of the legal service*

14. In its task of drafting the legislation, DG EMP is supported by the legal service (cf. Annex : organization chart). The legal service is the in-house advisor to the Commission. It consists of ten teams which roughly mirror the structure of the Commission's Directorates-General. In the particular field of workplace regulation, the team “Employment and Social affairs, Education and Health and Consumer Protection” intervenes. Each version of the draft is checked by the legal service.

#### *c. Consultation procedure*

##### *(i) The European social partners*

15. Article 138 EC provided for a second consultation of the social partners on the contents of the proposal.

##### *(ii) Committees*

###### European Economic and Social Committee

16. Article 137 EC sets out a compulsory consultation of the Economic and Social Committee (hereinafter EESC). It is an institutional assembly of representatives of the various spheres of economic and social activities and a forum for representing and informing civil society organizations and expressing their views.

17. Such a consultation enables the Community's decision-making bodies to gain a better idea of the impact of the Commission proposals are likely to have on those most directly concerned and what changes may be necessary to enlist wider support.
18. 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 it thinks fit;
  - 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.
19. The EESC Section on "Employment, Social Affairs and Citizenship" (SOC) 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. Institutions and are published in the *Official Journal*. The EESC maintains regular links with regional and national economic and social councils throughout EU. These links involve exchange of information and joint discussion.

#### *Committee of the Regions*

20. The proposal is also analyzed by the Committee of the Regions ("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*

21. 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:
  - health and safety at work,
  - vocational training,
  - equal opportunity,
  - freedom of movement for workers,
  - social security for migrant workers

#### *d. Presentation to the college of Commissioners*

22. When a final version of the proposal is ready, it is presented to the college of Commissioners (there are currently 25 commissioners, one coming from each Member State). If the college of Commissioners doesn't agree on the version proposed, the document is reshaped at DG level, and will then work its way back up from the level of the unit concerned in DG EMP back up to the level of the college of Commissioner, for consideration anew. When the latter reach an agreement, the proposal is adopted.

*e. Adoption procedure*

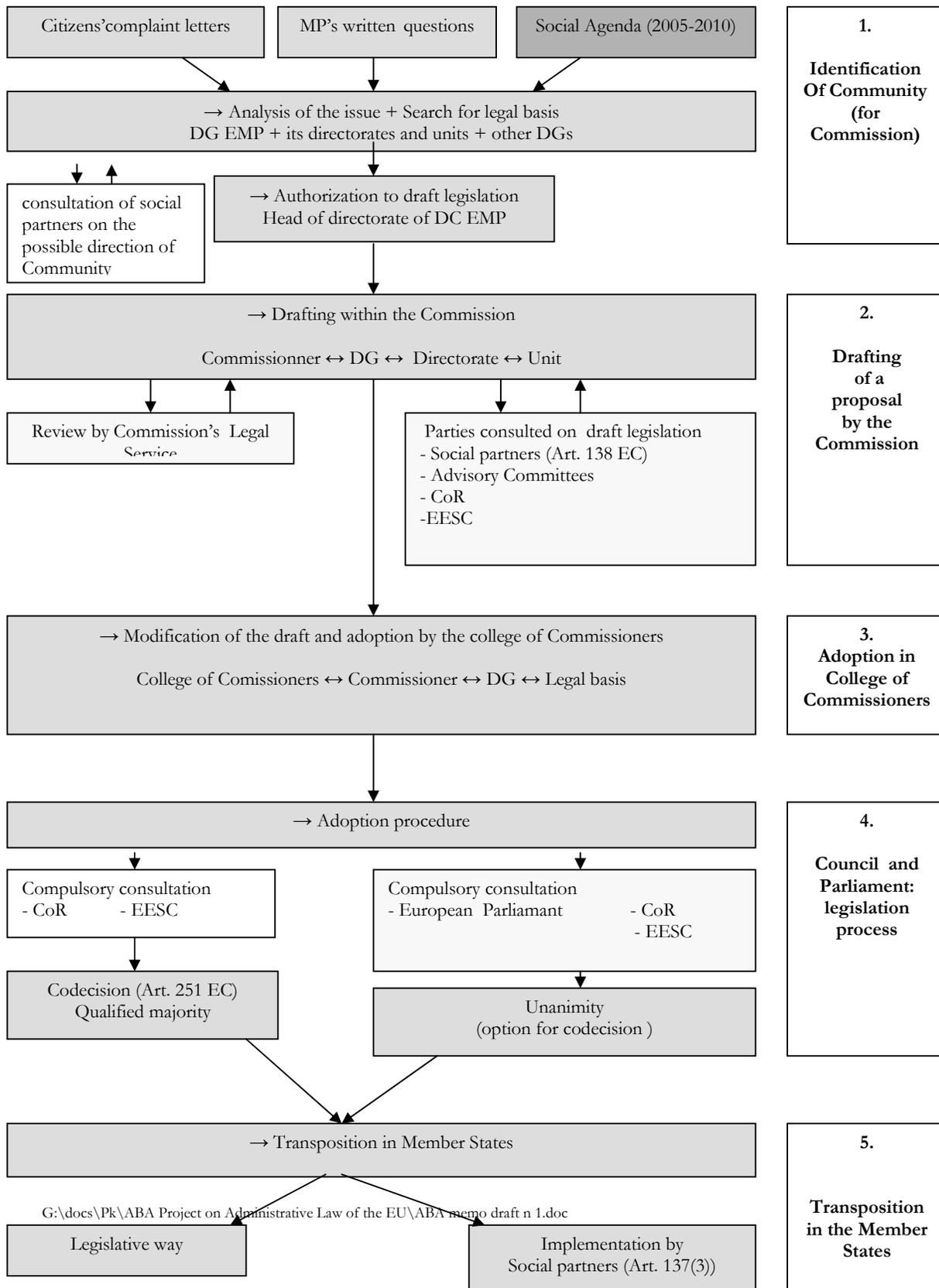
23. Article 137 EC set provides for the use both of the co-decision procedure and that of consultation. For matters assessed under the co-decision procedure of ( Article 251 EC), the CoR and the EESC are consulted before the decision of the Council and the Parliament. In this case the Council decides at qualified majority. Within the Parliament and the Council, specific committee bodies provide technical support, when labor law provisions have to be adopted. The specialized Parliament body is the “Committee on Employment and Social Affairs” and the Council specialized body, the “Employment, Social Policy, Health and Consumer Affairs Council” (EPSCO).
24. In the case of the consultation procedure, the Parliament, the CoR and the EESC must be consulted before the final decision of the Council (adoption by unanimous decision).
25. Subject matters may be broken down as follows (Article 137 EC):

<b>Qualified Majority (co-decision with Parliament)</b>	<b>Unanimity (Council unanimity with consultation of Parliament)</b>	<b>Outside of scope of EU law</b>
<ul style="list-style-type: none"> <li>▪ Worker’s health and safety</li> <li>▪ Working conditions</li> <li>▪ Information and consultation of workers</li> <li>▪ Integration of persons excluded from the labor market</li> <li>▪ Equality between men and women</li> <li>▪ Combating of social exclusion</li> <li>▪ Modernization of social protection systems</li> <li>▪ Protection of workers where their employment contract is terminated</li> <li>▪ Representation of the collective defense of the interests of workers and employers.</li> <li>▪ Conditions of employment for third-country nationals.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Social security and social protection of workers</li> <li>▪ Protection of workers where their employment contract is terminated</li> <li>▪ Representation of the collective defense of the interests of workers and employers</li> <li>▪ Conditions of employment for third-country nationals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pay</li> <li>▪ Right of association</li> <li>▪ Right to strike or right to impose lock-outs</li> </ul>

f. Transposition in the Member States

- 26.** Two options are possible for the implementation of labor law directives: (i) implementation through the normal Community legislative process, (ii) implementation pursuant to Article 137 (3) EC. Article 137 (3) provides for a special procedure of implementation of labor law directives by the social partners: “a Member States 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.”

**Synthesis Chart of the procedure pursuant to Article 137 EC Treaty**



**1.2. Soft Law**

27. In the field of labor law an important role is given to soft law. Procedures establishing soft law provide flexible tools to settle “*de minimis* rules” on highly sensitive and country-specific issues. The European Employment Strategy (“EES”), initiated on the basis of the new provisions of the Amsterdam Treaty provides for the principal labor soft law procedure.

**1.2.1. Procedure under the EES pursuant to Article 128 EC***a. Background*

28. The EES procedure provides a framework for action involving all levels and all players on a voluntary basis (**Annex II**). Such a procedure delivers a rolling programme 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 European Commission, the European Council agrees every year on a series of guidelines setting out common priorities for Member States’ employment policies.
  - National Action Plans (Article 128(3) EC): every Member State draws up an annual National Action Plan which describes how these Guidelines are put into practice nationally.
  - Joint Employment Report (JER) (Article 128(1) EC Treaty): the European Commission and the Council jointly examine each National Action Plan, which refers to the Employment Guidelines and present a JER to the European Council. That report contains country-specific information as well as a comparison and synthesis of developments from a European point of view. The European 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 draw on the findings from the European Commission’s examination of the National Action Plans. They identify the key labor market challenges facing each Member State. 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 course of action: (i) the recommendation may be maintained because the measures taken by the Member State to address identified concerns it 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 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-to-long term ; (iii) the recommendation may be dropped, because the steps undertaken by the Member State are sufficient.

29. In 2004, most of the 52 existing recommendations were 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*

30. The EES initiated a new procedure at Community level, which was to become known as the "open method of co-ordination". This instrument can be implemented only where the Community does not have legislative competence or where the Community has competence only for defining the minimum rules. It is based on five key principles: (i) subsidiarity, (ii) convergence, (iii) management by objectives, (iv) country surveillance, (v) integrated approach. Each is briefly described below:

- (i) The method is based on the principle of subsidiarity. It establishes an equilibrium between European Union level co-ordination and Member States' responsibilities in deciding the detailed content of action. The definition of the means and conditions under which programmes 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 outcomes 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 evaluation of progress.
- (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 that this creates 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 Member States, especially in their National Action Plans on Employment.
- (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.

**1.2.2 Streamlining of procedures**

31. As new elements have often been added on an *ad hoc* basis without necessarily taking the wider picture fully into account, the present framework has arguably become complex and more difficult to understand and explain. This situation is not conducive to the formulation and effective communication of EU policy guidance (presuming that such guidance should be coherent both over time and across the various processes). In addition, it contributes to a situation in which the attention given to the formulation of policy guidance is not matched by that given to its implementation. Therefore, in 2000 and 2001, in Lisbon and Göteborg, the Community made a decisive shift to streamline and synchronize the relevant policy co-ordination processes and orient them more decisively towards the medium- and longer-term.
32. In September 2002, following the Barcelona Council, the Commission adopted its Communication on streamlining the annual economic and employment policy co-ordination cycle. The main idea was to re-organize existing EU co-ordination processes around a few key points to make the co-ordination cycle more transparent and intelligible and thereby strengthen its visibility and impact. 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 process strengthens the role of the European Council in giving direction to the overall EU strategy. The new policy cycle is built on the following annual tools (month of annual issuance is shown in parenthesis):
  - a. *The "Implementation Package" (January)*
    33. The European Commission presents the conclusions of its review of the implementation of EU policy guidance in the form of an "Implementation Package", together with and in support of its annual report to the Spring 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 (it is prepared with a view to the so-called "Spring Meeting" of the European Council). It continues to highlight the main issues and present the European Commission's strategic policy priorities for the EU.
  - b. *The "Guidelines Package" (April)*
    34. 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 action plans or reports in the course of the second semester.

35. Concluding on this point, although the applicable Community procedures with respect to workplace regulation are mostly unknown outside of a closed circle of involved officials and other concerned parties, it can be said that two main instruments are available in terms of procedures in the field of European labor law, namely hard and soft law procedures. The superposition of both elements make the whole structure highly complex but provides as well-suited procedure to highly sensitive issues. Soft law could emerge one of the most important instrument for the coordination of employment policy in Europe.

## II. ROLE OF THE SOCIAL PARTNERS

36. 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, head of the ETUC (European Trade Union Confederation), put it in his book entitled *Qu'est-ce que la CES ?*, "The procedures themselves prevail upon the contents of the agreements". They reflect the structuration 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.
37. 31. 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) (in Europe parlance, these would be referred to as "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 employers and employees. 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 (**Annex 3**). 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.

### 2.1. Procedures involving social partners

Two main roles are given to social partners : consultation and negotiation.

#### 2.1.1 Consultation

##### a. *Consultation procedure under the open method of coordination*

38. The social partners make a dual contribution with regard to the open method of coordination. *First*, on the guidelines and the process itself, the social partners are regularly

consulted. Each area under the method of open 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 coordination method. This is particularly relevant as regards employment, notably in relation to the promotion of vocational training, social protection, combating exclusion and modernizing employment relations.

39. 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 undertaking 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

40. 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 affairs (**Annex III**). Article 138 procedure sets out a compulsory two-stage consultation procedure:
- at the first stage, the European 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 European Commission an opinion or, where appropriate, a recommendation.
41. 35. 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 decide jointly to extend it. The outcome may be independent social dialogue (Article 139 EC), multisectoral or sectoral, and ultimately, therefore, agreements which may subsequently be incorporated into Community law. This is a practical application of the principle of subsidiarity as applied to the workplace. It is for the social players to make the first move to arrive at appropriate solutions coming within their area of responsibility; the Community institutions intervene, at the Commission’s initiative, only where negotiations fail.
42. If neither stage of the consultation results in a decision by social partners to enter into bipartite negotiations but the European Commission still considers that Community action to be desirable, the Commission will undertake the preparation of a Community initiative. For example, the Commission proposed in September 2004 a package of reforms 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.

43. Such consultation is unique because the opinions of the interested parties can be taken into account in the earliest stages of reflexion and the impact of any legislation assessed. The Commission can thus formulate policies which are appropriate, in form and substance, to the problems dealt with and incorporate the aim of social modernization and improving companies' competitiveness.

(ii) Social partner organizations consulted under Article 138 EC

44. The consultation pursuant to Article 138 EC is restricted to representative organizations (**Annex IV**). 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 simple consultation as it 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 (see procedure pursuant to Article 139 EC, as described below).

45. The European Commission has defined criteria of representativeness<sup>2</sup>. In order to be eligible for consultation, the social partner organizations must:

- be cross-industry, or relate to specific sectors or categories and be organized at European level;
- consist of organizations which are themselves an integral and recognized part of Member States' social partner structures and with 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

46. 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

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<sup>2</sup> Communications of the Commission 1993 (COM (93) 600 final), 1996 (COM (96) 448 final) and 1998 (COM (98) 322 final).

**2.1.2 Negotiation and implementation procedure pursuant to Article 139 EC**

47. Article 139 EC recognizes social partners' ability to undertake independent social dialogue, that is to say, to negotiate independently agreements which become law. They may also assume responsibility, at their request, for transposing directives into national law.

*a. Presentation of the procedure*

48. Article 139 EC provides that if management and labor organizations choose to do so, social dialogue at Community level may lead to contractual relations including agreements. 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. Pursuant to this 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 the European law scheme where the European Commission is not the only initiator of future European texts. The procedure is the following:

- social partners reach an agreement;
- the European Commission makes a proposal on the basis of this proposal;
- [the Council is then consulted: it can either accept or refuse the proposal but has no right to amend it. If he does so, the Commission can withdraw its proposal];
- the European Parliament is consulted during the process of transformation of the agreement into a directive.

*b. Role as an implementer*

49. Two options exist for the implementation of agreement 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, gives birth to "Autonomous Agreements".

*(i) Implementation by Council decision*

50. The first kind of agreement consists of those which are implemented at the joint request of the signatory parties by a Council "decision" (thus for, such decision have been implemented by use of directives as the legal instrument) upon a proposal from the Commission and after presentation to the European Parliament for its opinion. 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 European Commission on implementation reports.

51. This category of agreement has included in the past, the three cross-industry framework agreements on parental leave<sup>3</sup>, part-time work<sup>4</sup> and fixed-term contracts<sup>5</sup>, as well as the maritime transport and civil aviation<sup>6</sup> sector agreements on working time, and the railway sector agreement on the working conditions of mobile workers assigned to cross-border interoperable services.
52. The three cross-industry framework agreements were negotiated as a result of a Commission consultation under Article 138, whereas the sectoral agreements make use of the space left to the social partners by the "Directive concerning certain aspects of the organization of working time"<sup>7</sup> to adapt the Community provisions to the specific needs of the sector.
53. The responsibility for ensuring that agreements implemented by Council decision 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"*

54. With regard to the second type of agreement – those implemented in accordance with the procedures and practices specific to management and labour and the Member States - it is the social partners themselves who are responsible for implementing and monitoring these agreements. The framework agreement on telework<sup>8</sup> of July 2002 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 stress<sup>9</sup>, which was also the result of an Article 138 consultation. However, at the time of publication, the agreement had not yet been formally approved. 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" (emphasis added), which implies that there is an obligation to implement these agreements and for the signatory parties to exercise influence on their members in order to implement the European agreement.

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<sup>3</sup> Council Directive 96/34/EC of 6 June 1996 on Parental Leave and Leave for Family Reasons, based on the Framework Agreement concluded on 14 December 1995 by UNICE, CEEP and the ETUC (article 4 Protocol on Social Policy).

<sup>4</sup> Council Directive 97/81/EC of 15 December 1997 concerning a Framework Agreement on part-time working concluded by UNICE, CEEP and the ETUC (article 139 EC Treaty).

<sup>5</sup> Council Directive 99/70/CE of 28 June 1999 concerning the Framework Agreement on Fixed-term Work concluded by UNICE, CEEP and the ETUC (article 139 EC Treaty).

<sup>6</sup> Council directive 2000/79/EC of 27 November 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 (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA).

<sup>7</sup> Directive 93/104/EC concerning certain aspects of the organization of Working Time (OJ L 307, 13.12.1993).

<sup>8</sup> Framework Agreement on Telework, 16/07/2002, (ETUC, UNICE, UEAPME, CEEP).

<sup>9</sup> Framework Agreement on Work-related Stress, 8/10/2004 (ETUC, UNICE, UEAPME, CEEP).

55. 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. cf Communication from the Commission of June 26, 2002, "The European social dialogue, a force for innovation and change".

## 2.2. Stakeholders

56. 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 agreement.
57. Only three organizations are allowed to take part in the European Social Dialogue:
- **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 1958, it groups together the employers' organizations of 27 European countries, and represents 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.

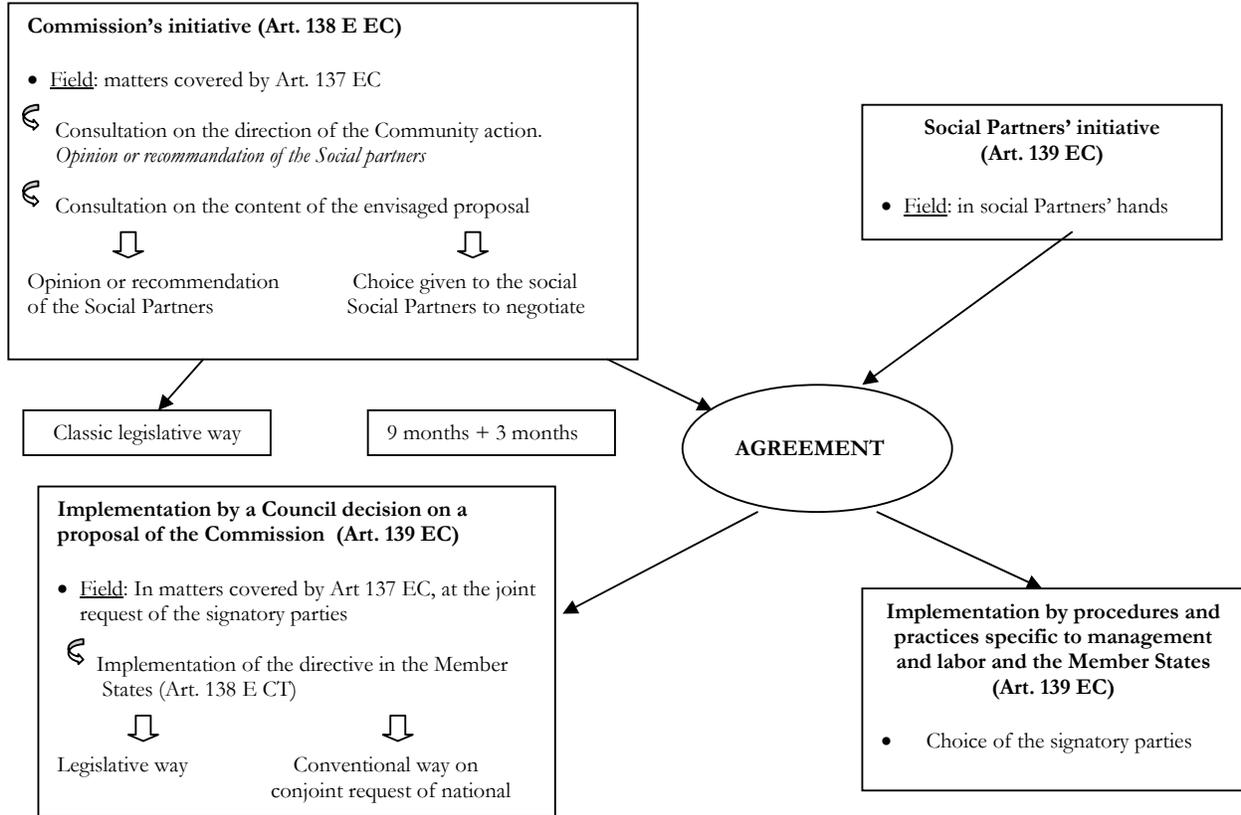
**2.3. Agreements implemented in accordance with Article 139(2) EC**

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

<b>Agreements implemented in accordance with Article 139(2): minimum standards</b>	
<b>Type of agreement</b>	<b>Exemples</b>
<p><b><i>Agreements implemented by Council decision</i></b></p> <p>Implemented by Council decision, monitored by the Commission</p>	<ul style="list-style-type: none"> <li>– Framework agreement on parental leave, 1995</li> <li>– Framework agreement on part-time work, 1997</li> <li>– Framework agreement on fixed-term work, 1999</li> <li>– European agreement on the organization of working time of seafarers, 1998</li> <li>– European agreement on the organization of working time of mobile workers in civil aviation, 2000</li> <li>– European agreement on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services, 2004</li> </ul>
<p><b><i>Autonomous agreements implemented by the procedures and practices specific to management and labor and the Member States</i></b></p> <p>Implementation and monitoring by the social partners</p>	<ul style="list-style-type: none"> <li>– Framework agreement on telework, 2002</li> <li>– Framework agreement on work-related, stress, 2004</li> <li>– Agreement on the European license for drivers carrying out a cross-border interoperability service, 2004</li> </ul>

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

**2.4. Synthesis Chart on procedures pursuant to Articles 138 and 139 EC**



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

### **III. LIMITS OF THESE PROCEDURES**

#### **3.1 Improving the impact and follow-up of the European social dialogue**

59. 51. If it is true that European social partners have been able to have their say in discussions, in most cases, the texts they adopted did not include any provision for implementation and monitoring; they were responses to short-term concerns. They are not well known and their dissemination at national level has been limited. Their effectiveness can thus be called into question. Moreover, in recent years the social partners have increasingly discussed and adopted so-called “new generation” texts (charters, codes of conduct, “autonomous agreements”) containing commitments to implementation in the longer term, which seem likely to raise problems.

##### *a. Guidelines or frameworks for action*

60. 52. Special consideration should be given to the question of how to implement the texts adopted by the European social partners. The open method of coordination could be an interesting framework for implementation. The social partners could apply some of their agreements (where voluntary, not regulatory) by establishing goals or guidelines at European level, through regular national implementation reports and regular, systematic assessment of progress achieved. The recent “framework of actions for the development of lifelong competences and qualifications” adopted by the cross-industry social partners at the Barcelona Social Summit is based on that approach.

##### *b. “Autonomous Agreements”*

61. 53. With increased autonomy comes the obligation to ensure successful execution in the Member States. The more the social partners opt to implement their negotiated solutions themselves instead of using legislation, the more they will be relying on their national affiliates to carry out their promises. But this may be problematic, especially within the enlarged Union, because of poor collective agreement coverage in some Member States and the weakness of certain employer and trade union national affiliates. Effective implementation will depend on the political will of national affiliates to enforce agreements at Community level as well as their technical capacity to do so. Without this, these agreements will have little clout. As a result, it could be important to set up procedures to the action of national affiliates of all the social partners in the context of growing autonomy. It could be advisable for the social partners to strengthen the procedures for on-the-spot monitoring and to prepare regular reports on implementation of the agreements signed. Structured reporting, in particular, could be useful where the agreement negotiated by the social partners follows Commission consultation under Article 138 EC.

##### *c. Lack of publicity*

62. 54. To have efficient procedures it is fundamental to have a give access to make the information on social dialogue easily available. Nevertheless the contribution of the European social partners – at both multisectoral and sectoral levels- is little known and

poorly publicized, above all the outcome and achievements of the social dialogue, including the agreements concluded since 1993 which have subsequently been converted into directives. Nevertheless it is very important that all the information on the players, fora and output of the European social dialogue should be readily accessible in all the Member States.

63. 55. The main instrument launch by the Commission to change such a situation is the new website on Social Dialogue. It was launched on February 1, 2005 and contain databases of all the agreements and joints texts reached between management and labor at European level under the social dialogue process supported by the Commission. It provides explanations of the social dialogue process.

### **3.2 The omnipresence of the European Commission**

#### *a. The Commission as promoter of European Social Dialogue*

64. 56. The influence of the Commission in this procedure should not be underestimated. Practice shows that the role given to management and labor as social partners depends heavily on the framework offered by the European Commission. Such an influence is actually not surprising since it is expressly mentioned in article 138 (1) EC:

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

65. 57. The Commission provides important material support to management and labor. For example, it provides financial support through the organization of seminars and training sessions. It is in charge of the Secretariat of the Committee of Social Dialogue, which is the main forum of bipartite social dialogue at European level. It originated the creation of social partners organizations: on this particular point the Commission decided in 1998 on the establishment of sectoral dialogue committees<sup>10</sup>. Moreover, the Commission serves as a “checks” upon the representativeness of the organizations “that are consulted and are able to sign agreements.

#### *b. The Commission as initiator*

66. More ideologically, the European Commission influences the agenda setting of social partners and the progress of their negotiations through its proposal. In terms of agenda setting, a good example can be found in the Pluriannual Programme (2003-2005) adopted by social partners in Laeken. Ironically, this text which advocates more autonomy for social partners is actually fully influenced by the European Commission’s Agenda.

#### *c. Commission action as a framework to the social partners’ action*

67. 59. In the case of autonomous agreements implemented in accordance with Article 139(2) EC, the Commission has a particular role to play if the agreement was the result of an Article 138 EC consultation, *inter alia* because the social partners’ decision to negotiate an

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<sup>10</sup> Communication from the Commission « Adapting and Promoting Social Dialogue at Community level”, COM(1998)322 final of 20 May 1998.

agreement temporarily suspends the legislative process at Community level initiated by the Commission in this domain. The Commission publishes autonomous agreements and informs the Parliament and the Council, after undertaking an ex-ante assessment as it does for Article 139(2) EC agreements to be implemented by Council decision.

68. Upon the expiry of the implementation and monitoring period, while giving precedence to the monitoring undertaken by the social partners themselves, the Commission undertake its own monitoring of the agreement, to assess the extent to which the agreement has contributed to the achievement of the Community's objectives. Should the Commission decide that the agreement does not succeed in meeting the Community's objectives, it will consider the possibility of putting forward, if necessary, a proposal for a legislative act. The Commission may also exercise its right of initiative at any point, including during the implementation period, should it conclude that either management or labor are delaying the pursuit of Community objectives.
69. As a result the social partners were given in 1991 an important power to intervene in the process of workplace rulemaking at Community level, nevertheless in practice such a power is used through the spectrum of the European Commission.

### **3.3 Article 139 EC and the institutional balance within the Union**

70. The procedure provided for in Article 139 EC tends to modify the existing balance between the European institutions. The Council and the Parliament have weakened positions in this procedure to the benefit of the Commission.
71. The Council is perhaps left in isolation during the negotiation process and is further weakened during the process of transposition of the agreement into a directive. When an agreement is implemented through a Council decision, the Commission presents a proposal to the Council. In that case, the Council is required to take a decision on the social partners' text without changing the substance. In other words, in this procedure, the Council only has two options: either refuse or accept the text, without any possibility to amend it.
72. The Parliament perhaps left in isolation during the consultation and the negotiation of social partners. It is only consulted by the Commission during the transposition of the agreement into a directive. Unhappy to see its weak role in that procedure, since 1997, the Parliament has considered in several resolutions that the European Social Dialogue could not be a systematic substitute to the legislative procedure in the field of Social Policy<sup>11</sup>.
73. To conclude on this point, social partners have a growing influence in the field of labor law, with their role as initiators, implementers and consultants, they were given important competences why Member States. Nevertheless their role remains fully framed by the European Commission and the contents of the procedures as well of their practice reveals that they still have a lot to gain in terms of autonomy. Further Article 139 EC procedure should not become a way to get round the legislative way but conversely should strengthen democracy within EU rulemaking procedures.

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<sup>11</sup> Resolution on the Commission proposal for a Council Directive concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (COM(97)0392- C40552/97 97/0221 (PRI))

**IV. POSSIBLE FUTURE ORIENTATIONS**

74. The Constitutional Convention in 2002-2003 provided a forum for new ideas on workplace regulation. Although the working schedule of the Convention did not mention any specific debate on “social Europe”, it was thought that such an issue could be dealt with through the review of other issues, such as “economic governance”. Nevertheless, thanks to a motion calling for a debate on social matters and for the creation of a working group, a debate was held and rallied some support. As a result a working group was founded in December 2002. Of all the eleven working groups formed, this one was the largest in membership terms. The working group adopted the following position on several key points:

(i) Community competences

75. All members of the working group agreed that social matters should remain an area of shared competence. Opinions, however, differed on possible extensions of, or reductions to, the existing scope of that competence. In particular, the following issues were dealt with:

*Article 137(5) EC*

76. The working group was unable to reach agreement on the question of amending the exceptions in Article 137(5) EC. A number of working group members felt that these were obsolete and could be deleted. Other members were firmly of the opinion that the exceptions in Article 137(5) EC should continue to apply.

*Article 137(1)EC*

77. Some members mentioned that the scope of the provisions of Article 137(1) EC was too broad and that it was sometimes difficult to envisage what Union legislative initiative could be taken in certain areas (Example: Article 137(1)(f)).

(ii) Qualified majority versus unanimity voting

78. The working group confirmed that co-decision with qualified majority voting should become the rule for the adoption of legislative acts and that exceptions to this rule remain in areas where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for the Member States. The working group debated at length the prospect of amending these provisions by expanding the field of qualified majority voting. The working group was divided into two categories of unequal weight:

- according to an active minority, the discussions which had been held at Nice concerning the extension of the scope of qualified majority voting should not be reopened. The balance achieved at that time was satisfactory.
- conversely, for most members of the working group, it was possible to envisage improvements to the existing arrangements.

- 79.** General use of qualified majority voting was thought to probably be difficult. Nevertheless, some progress, such as the transition to qualified majority voting of subparagraphs (d), (f) and (g) of existing Article 137(1). As such a prospect has already been made possible by the Treaty of Nice, for the purposes of clarification and simplification, it was thought that it could be applied in the future Constitution. A starting point was thought to be that the transition to the procedure in Article 251 (qualified majority and co-decision) for Article 137(1)(d) as provided for in the Treaty of Nice, should apply in the future Constitution. This would leave subparagraph 137(1)(c) still subject to unanimity.
- 80.** The working group agreed that a better clarification of the scope of European action could be envisaged in order to facilitate general use of qualified majority voting. In this context, the scope and language of Article 137 was contemplated as being updated and modernized, in particular as regards matters currently falling under the unanimity rule, in order to address the specific concerns which some argue require the continuation of unanimity.
- (iii) The role of the social partners
- 81.** The working group unanimously welcomed the role of employees and employers federations and the importance of social dialogue in Europe. It generally took the view that this role of employees and employers federations, already included in the treaties, should be recognized, facilitated and – as far as possible –enhanced with horizontal subsidiarity becoming an important consideration. It was agreed that this role should be specified in Title VI of the Constitution, and it was pointed out that this role should be distinct from that played by organized civil society, which should also be recognized.

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## **ANNEX I**

### **Article 137 EC**

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.*

## ANNEX II

### Article 128 EC

- 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.*

### **ANNEX III**

#### **Article 138 EC**

- 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**

- 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.*

## **ANNEX IV**

### **LIST OF EUROPEAN SOCIAL-PARTNER ORGANIZATIONS CONSULTED UNDER ARTICLE 138 OF THE EC TREATY**

#### **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 undertakings**

- 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 (EFCl)
- 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 (EUROMEI)
- European Trade Union Committee for Education (ETUCE)

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

## **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 labour, 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 labour, 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 undertakings.

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.