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European Commission

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Social Europe guide | Volume 6

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European Commission

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Foreword

László Andor

Commissioner for Employment, Social Affairs and Inclusion

The on-going economic and financial crisis has put labour market rules across the EU under severe pressure. Rising unemployment, especially among the young, together with continuing global competition, has led a large number of governments to review social rules especially in the areas of job protection, working time and collective bargaining. The need for labour market reforms is obvious, especially in the countries hardest hit by an economic downturn, but by labour market reforms I do not mean a race to the bottom implying a generalised lowering of labour standards. I mean fairness for those in and out of work, proper responsibilities for employers, education and training reforms and removing barriers to employment.

Indeed, the EU has a crucial supporting role to play to avoid that the necessary reforms lead to a massive reduction of the quality of work. It is especially in times of recession that labour protection is of vital importance to provide a safety net for individuals and households, underpinning aggregate demand in the economy, and to prevent the marginalisation of vulnerable groups. This serves both social and economic objectives, encompassing Europe 2020 Strategy's objectives of smart, sustainable and inclusive growth. Labour protection and economic growth go hand-in-hand. There is ample evidence suggesting that the EU's most productive and competitive economies are those that have been able to combine comparatively high levels of social regulation and protection with flexibility-enhancing measures and a dynamic social dialogue. Indeed, EU rules on working time, health and safety at work and working conditions have been shown to have lead to higher productivity and less absenteeism by preventing accidents and work-related diseases. Good and healthy working conditions are not only a core social right, they are an important competitiveness factor.

Like all EU legislation, EU labour law and rules on safety and health at work are Treaty-based. They form an integral part of the law of the Member States, and the Commission plays an important role as the Guardian of the Treaties in ensuring that agreed rules on employment and working conditions are correctly implemented and applied across the Member States.

A level playing field on employment and working conditions is an essential aspect of the Single Market. But the European Union stands for more than that: labour law and rules on health and safety at work have become a cornerstone of Europe's social dimension. The EU is a "social market economy" underpinned by a core of social values and goals, including social protection, improvements in Europeans' living and working conditions and social dialogue.

It should be kept in mind that the Union does not pluck the EU labour law standards out of thin air. They have built upon the rich heritage of national labour legislation as well as the longstanding collective-bargaining tradition in many Member States. In addition, they have been inspired by the body of minimum standards on employment, established by the International Labour Organisation, which have been the reference for the working world for almost a century now.

In the debate on the future of EU labour law we cannot ignore the very important role of Member States, both in the implementation of common EU rules and in their enforcement in practice. The European Semester is by now a well-established framework for coordination of national labour market reforms: country-specific recommendations have been addressed to a number of Member States over the recent years. We must ensure, though, that these reforms do not result in a race to the bottom in terms of labour standards and that the social partners at national level are properly informed and consulted before key decisions are taken. This is an important aspect of the Commission's effort to strengthen the social dimension of the Economic and Monetary Union: national reforms need to be seen in context, with their aggregate and distributional impacts considered. If some reforms have a contractionary economic impact, our coordination mechanisms should help us ensure that this can be offset through other measures.

With over 240 million workers throughout the Union, EU rights concerning working conditions and health and safety at work are of direct benefit to a great amount of citizens and have a positive impact on one of the most important and tangible areas of their daily lives. EU law guarantees them a number of rights: minimum rights to holidays; a limitation of working time; to be consulted and informed about decisions of their employers that affect them; the right to protection in case of insolvency of their employer; the right to protection against abusive successions of fixed-term employment; the right to non-discrimination; the

right to work in workplaces that are safe and healthy and to work with safe equipment, regularly maintained and checked; the right to information and training that is relevant to aspects of their health and safety at work... to name but a few. Of course, Member States can adopt more protective requirements than those laid down in the EU rules, but by setting these EU minimum requirements I am convinced that the EU has made the European labour market in general a better place to work while at the same time contributing to a higher productivity and competitiveness of the EU economy. For anyone who wants to have a deeper understanding of the history, purpose and current evolution of EU law and policy on employment and working conditions, this Social Europe Guide can be an easy but comprehensive source of information.

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CHAPTER 1

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Why the European Union has a role in labour law and working conditions

When people think and the media report about the European Union, the focus is often on big political issues such as the economic crisis, free trade, migration into the EU and mobility between EU countries, or contributions to the EU budget and investments financed from it. However, in reality, for many people their closest contact with the EU's activity probably comes at the workplace. Across the Union, EU law guarantees minimum rights for workers, from health and safety to information and consultation, from working hours to maternity leave.

The European Commission, as Guardian of the Treaties, plays a central role in ensuring that these rights are correctly implemented and applied across the Union. Furthermore, it regularly evaluates the rules and policies to ensure that they remain effective and appropriate, taking account of the EU's 'Smart Regulation' principles, and if necessary proposes changes to modernise the framework.

In this chapter, we look at why the EU has come to legislate on such diverse workplace matters as annual holidays, the conditions of temporary workers, carrying heavy loads or consultations over planned redundancies.

The EU's objectives

The European Union has certain explicit values and upholds rights and freedoms, including in the labour and social fields. Its Member States are committed to moving towards an 'ever closer union', whose aims include promoting the wellbeing of its peoples, and which is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and human rights. The EU is not just a Single Market or an economic and monetary union. It explicitly links its economic aims to social progress. The EU Treaties provide that the Union shall:

- work for Europe's sustainable development, based on balanced economic growth and price stability, and on a highly competitive social market economy, aiming at full employment and social progress (Article 3 of the Treaty on European Union, TEU);
- combat social exclusion and discrimination, and promote social justice and protection, gender equality, solidarity between generations and protection of children's rights (Article 3 TEU);
- promote economic, social and territorial cohesion, and solidarity among EU countries (Article 3 TEU);

- ensure economic and social progress by common action to eliminate barriers that divide Europe (Preamble to the Treaty on the Functioning of the European Union, TFEU); and
- have an essential objective of constantly improving people's living and working conditions (Preamble TFEU).

The rights, freedoms and principles recognised by the EU are set out in the Charter of Fundamental Rights of the European Union, which has the same legal value as the EU Treaties (the Charter applies to EU institutions and to Member States when they implement EU law). The Charter draws on the constitutional traditions of the Member States and on international instruments such as the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms and European Social Charter (see below under 'The EU and international law').

The Charter's rights cover human dignity, basic freedoms, equality, solidarity, citizens' rights and justice. A number of these rights are of direct relevance to labour law and working conditions – see box 1.1 – and inform the EU's action in this field.

Box 1.1 Key workplace rights guaranteed by the Charter of Fundamental Rights of the EU

- Every worker has the right to working conditions that respect his or her health, safety and dignity (Article 31).
- Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave (Article 31).
- Every worker has the right to protection against unjustified dismissal (including dismissal for a reason connected with maternity) (Articles 30 and 33).
- The employment of children is prohibited. The minimum age of admission to employment may not generally be lower than the minimum school-leaving age. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and harmful work (Article 32).
- No one shall be required to perform forced or compulsory labour, or held in slavery or servitude (Article 5).
- Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15).
- Every EU citizen has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State (Article 15).
- Nationals of non-EU countries who are authorised to work in the EU are entitled to working conditions equivalent to those of citizens of the Union (Article 15).
- Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other

opinion, membership of a national minority, property, birth, disability, age or sexual orientation, is prohibited (Article 21).
- Equality between women and men must be ensured in all areas, including employment, work and pay (Article 23).
- People with disabilities have a right to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community (Article 26).
- Everyone has the right to freedom of association, which implies the right to form and to join trade unions for the protection of interests (Article 12).
- Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices (Article 27).
- Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in the event of conflicts of interest, to take collective action to defend their interests, including strike action (Article 28).

The Single Market

At the core of the European Union is a single internal market without borders. Today, this market, which was established in its current form in 1993, covers 28 countries, over 500 million consumers and more than 20 million businesses.

The basic role of EU law in the Single Market is to guarantee the 'four freedoms' – the free movement of goods, services, capital and workers. It does this by, for example, ensuring that there are no barriers to trade among countries, and that national authorities do not have in place discriminatory, restrictive or protectionist measures. With regard to workers, the EU has sought to ensure their free movement (which is an integral aspect of the Single Market) principally by:

- prohibiting any discrimination based on nationality between EU workers in employment, remuneration and other conditions of work;
- giving workers the right to take up jobs in other EU countries, move freely within the Union for this purpose, stay in another country while working and remain there after being employed;
- abolishing national procedures and practices, and qualifying periods for eligibility for employment, that present an obstacle to free movement; and
- ensuring social security rights for workers moving between EU countries.

However, the free movement of labour is not the only work-related aspect of the Single Market. The foundation of the market is that **competition should be fair**, with a playing field that is level for all

involved. To ensure this level playing field, the EU's role, as the market's 'referee', is to remove distortions of competition, such as unfair or artificial advantages given by national law or practice to businesses in a particular country.

Labour law is one of the areas where there are considerable differences among the EU countries, with higher levels of protection of workers in some Member States than in others. At the same time, businesses from the various EU countries compete freely in the Single Market for goods and services, regardless of these different labour standards. Consequently, as higher labour protection might entail higher costs for businesses, companies in Member States with high levels of worker protection could find themselves at a competitive disadvantage vis-à-vis businesses from EU countries with lower labour law standards. As such, companies and national authorities may be tempted to compete on the basis of a lowering of their labour standards, rather than on factors such as productivity and efficiency, or the quality and innovation of their goods and services. If this occurs, other firms and countries in the Single Market may be prompted to follow suit, triggering a downward spiral in standards that is often referred to as a **'race to the bottom'**. If price competition in the Single Market for goods and services provides an incentive to lower labour standards, this would not be compatible with the EU's mission to have a *social* market economy (see above under 'The EU's objectives').

The EU can play a role in preventing such a race to the bottom, by establishing a level playing field in the form of common labour standards applicable to all businesses operating in the Single Market. The extent to which the EU should play this role, harmonising aspects of labour law and thus preventing distortions of competition or providing minimum labour standards, has been debated since the early years of the European Economic Community (EEC). Since the late 1980s, there has also been a widespread view that the Single Market should be accompanied by a platform of minimum EU-wide social rights. In practice, the approach taken has been to adopt EU legislation that sets minimum standards in a number of important areas, while promoting an overall improvement in working conditions (see below under 'The specific objectives of EU labour law').

The various practices whereby companies and governments may seek to exploit differences between countries in labour costs, and in the stringency of labour


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legislation, in order to obtain an unfair competitive advantage are often referred to as **'social dumping'**. An example might be where a company based in a country with a comparatively low level of labour protection and costs exercises its freedom to provide services in other EU countries, for instance by winning a contract to build a road in a country with higher protection and costs. If the company then sends its own workforce to carry out the work in the other country, but continues to provide them with the (lower) pay and conditions that apply in their home country, thereby undercutting standards in the destination country and enjoying a competitive advantage not available to local companies, social dumping would be considered to occur.

In addition to adopting labour legislation that sets **minimum EU-wide standards** in various areas, the Union has responded specifically to this threat of social dumping, notably through a directive that sets a floor of basic employment rights for workers posted temporarily by their employer to work in another EU country (see Chapter 3).

The EU and international law

The EU does not exist in isolation. Its law and values, and those of its Member States, are influenced by wider international standards which Europe has also helped formulate. At the global level, all EU countries are, of course, members of the **United Nations** (UN). The UN's basic principles and aims, as set out in its Charter, include the promotion of universal respect for human rights and fundamental freedoms, higher standards of living, full employment, and economic and social progress. Respect for the principles of the UN Charter is built into the EU Treaties.

All EU Member States are also members of the **International Labour Organization** (ILO), a specialised UN agency with a tripartite constituency, established in 1919 to pursue a vision based on the premise that universal, lasting peace can be established only if it is based on social justice. The EU is committed to promoting the ILO's 'decent work' agenda to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.

A key aspect of the ILO's work is to adopt and promote international minimum labour standards, notably in the form of Conventions, which are legally binding international treaties that may be ratified by the ILO's member countries. ILO Conventions cover a wide range of work-related issues, including:

- freedom of association and collective bargaining;
- equality and non-discrimination;
- child labour and forced labour;
- the employment relationship;
- employment security;
- wages;
- working time; and
- occupational health and safety.

All EU countries have ratified the core labour standards – that is, the fundamental ILO Conventions on freedom of association, collective bargaining, forced and child labour, equal remuneration and the elimination of discrimination. EU countries have also ratified the ILO 'governance Conventions' on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO Conventions.

While ILO standards cover a wider range of areas than those in which the EU is competent to legislate (see Chapter 2), and EU law often goes beyond the minimum provisions of ILO Conventions, the principles that underlie the action of both organisations are similar. There is much common ground in the content of EU directives and ILO Conventions, with EU law reinforcing ILO standards. Directives on issues such as working time and young workers (see Chapter 3) explicitly seek to take into account relevant ILO standards.

The Council of Europe (CoE) predates, and is separate from, the EU, though all EU countries are among the Council's 47 members. The CoE's European Convention for the Protection of Human Rights and Fundamental Freedoms**,** commonly referred to as **European Convention on Human rights**, is arguably Europe's most important human rights treaty and its fundamental rights constitute general principles of EU law. The Convention has some relevance to the area of labour law, notably in guaranteeing freedom of association and prohibiting discrimination. In addition, the CoE's **European Social Charter** deals in detail with employment-related rights, such as workers' rights to:

- just conditions of work (eg, in terms of working hours, annual leave, rest periods);
- safe and healthy working conditions;
- fair remuneration;
- special protection, in the case of children and young people;
- equal opportunities and treatment;
- be informed and consulted, including on collective redundancies;
- take part in the determination and improvement of working conditions and the working environment; and
- protection of their claims in the event of their employer's insolvency.

There is an interplay between EU labour law, the European Social Charter and ILO Conventions: EU law, in particular the Charter of Fundamental Rights, takes into account the European Social Charter and ILO Conventions and in turn influences the evolving content and monitoring of the latter instruments.

More details on the relationship between the EU and the ILO and Council of Europe, and on the international law issues touched on here, are provided in Chapter 5.

The specific objectives of EU labour law

In the context outlined above, the EU has, since its inception as the EEC in 1957, had

explicit objectives in the field of labour law and working conditions. These objectives, and the means of achieving them, are set out in a specific 'social policy' title of the Treaties (currently the Treaty on the Functioning of the European Union, TFEU). The objectives and means have changed over the years, notably in the light of the full implementation of the Single Market and the move from an economic Community to a Union. The objectives have expanded to take in new areas and considerations, while the means of achieving them have become more concrete, with greater scope for legislative action in some areas. Further, the role of the social partners and social dialogue in this field have been given explicit recognition (see Chapter 2).

The EU's social policy objectives are now set out in Article 151 TFEU, which is reproduced in box 1.2. Competence for social policy in these areas is shared by the Union and the Member States.

Box 1.2 Article 151 TFEU – the EU's social policy objectives

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 harmonisation 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 implement measures which take 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's economy.

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

The Treaty thus sets an objective of **upward development** of living and working conditions, to be achieved in part by harmonisation linked to the functioning of the internal market itself, and in part by the approximation of national provisions, while taking account of national differences and the need to keep the EU as a whole competitive. This objective is underpinned by the workers' rights set out in international and EU law (see above).

Article 153 TFEU sets out in detail the fields in which the Union may act with

a view to achieving its social policy objectives. These fields, and the type of action that the EU may take, are examined in Chapter 2.

Since the 1970s, to achieve its social and economic policy objectives, and to avoid a 'race to the bottom', the EU has adopted a series of directives on health and safety, working conditions, and the information, consultation and participation of workers, which are explored in detail in Chapters 3 and 4. These directives form part of the accumulated body of EU law (the ***acquis communautaire***) that countries must adopt when they join the Union.

Europe 2020 and the current context

EU labour law today finds itself in a new environment, facing new challenges. In particular, the economic and financial crisis and its continuing repercussions pose questions for labour law. With high unemployment, greater insecurity for those in employment, massive company restructuring and increased global competition, is deregulation of the labour market needed in order to enable job creation and improve flexibility and competitiveness? Or are employment protection and high labour standards all the more important in turbulent economic times, when workers face increased insecurity and downward pressure on their living and working standards?

The EU's response to these questions has been to advocate the **modernisation and adaptation of labour law**, in the light of the changing conditions. This does not mean dismantling the body of EU rules, which is widely appreciated for providing a basic floor of guarantees for workers across Europe. The rules retain their key role of preventing social dumping and a race to the bottom, putting into practice recognised fundamental rights, and balancing the concerns of workers and employers.

Since 2010, the EU has been focusing many of its efforts on its 10-year growth strategy, **Europe 2020**, which aims both to tackle the short-term challenges of the economic crisis and to make structural reforms that will create the conditions for long-term, sustainable and inclusive economic growth.

Key to the implementation of Europe 2020 is the **European Semester**, whereby EU

countries each year coordinate their budgetary, economic and employment policies. Through an Annual Growth Survey, the Commission and the Council agree on the strategic objectives to be pursued, and provide overall policy guidance for the drafting by Member States of their own National Reform Programmes. The Commission evaluates these programmes and proposes country-specific recommendations that are endorsed by the European Council. In the labour law field, the Annual Growth Survey and country-specific recommendations focus mainly on: reforms of employment-protection legislation aimed at reducing the segmentation of labour market; the improvement of flexible working-time arrangements to enable greater labour market participation; and adaptations in the functioning of wage-setting systems. The Commission also promotes 'internal flexibility' through collectively bargained arrangements such as hour banking and short-time working arrangements.

In short, the existing body of EU labour law is acknowledged as ensuring minimum standards across the Union (for instance in terms of working conditions, health and safety, and employee involvement), and underpinning fairer competition, high levels of productivity and the creation of good-quality jobs. However, the law and effects of its implementation must be regularly analysed and, where necessary, the EU *acquis* must be adapted to make sure that it remains effective, relevant and easily applicable, and that, more generally, it addresses new emerging issues and needs, such as those related to new working patterns and technologies. A process of reviewing existing labour law and assessing its fitness for purpose is therefore under way, without questioning the need for decent labour standards.

We will return to the most recent and expected future developments in more detail in Chapter 6.

CHAPTER 2

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How the EU deals with labour law and working conditions

In Chapter 1, we examined why the European Union has a role in setting minimum workplace rights and obligations. In this chapter, we look at how it plays this role, outlining the areas where the EU can and cannot act, the nature of its action and the legislative process. We also highlight the links between EU labour legislation and the Union's activity in related fields.

The legal basis for EU action

For the EU to act in a particular area, it needs a 'legal basis' for its action – essentially, a provision in the Treaties that specifically requires or justifies legislation or other European-level measures. In the case of labour law, this legal basis lies mainly in the 'social policy' title (Articles 151 to 161) of the Treaty on the Functioning of the European Union (TFEU).

As we have seen in Chapter 1, Article 151 TFEU sets objectives for the Union in the social field, including the promotion of employment and the promotion of improved living and working conditions, so as to enable their harmonisation while the improvement is being maintained. To achieve these objectives, Article 153 provides for the EU to support and complement Member States' activities in various specified fields. In the area we are concerned with here, these are:

- improvement, in particular of the working environment, to protect workers' health and safety;
- working conditions;
- protection of workers when their employment contract is terminated;
- information and consultation of workers;
- representation and collective defence of the interests of workers and employers, including co-determination (this refers basically to workers' participation, beyond information and consultation);
- conditions of employment for third-country (that is, non-EU) nationals legally residing in the EU; and
- equality between men and women with regard to labour market opportunities and treatment at work.

As well as listing the labour and working conditions fields in which the EU can act, Article 153 identifies three specific areas where it cannot act on the basis of this provision. These are:

- pay – though measures to ensure the application of the fundamental EU principle of equal pay for male and female workers for equal work or work of equal value are specifically permitted (by Article 157);

- the right of association (that is, the right to join trade unions or employers' organisations); and
- the right to strike or to impose lock-outs, although the right of association and the right to strike are guaranteed under the Charter of Fundamental Rights of the EU (see Box 1.1).

In all the fields listed above where the Union is empowered to act, the European Parliament and the Council may adopt, by means of directives, **'minimum requirements for gradual implementation'** (see below under 'The form and extent of EU action').

In most of the fields listed, directives are subject to the 'ordinary' legislative procedure. Broadly, this means that, once the Commission has proposed a directive, the Parliament and the Council decide on the proposal jointly, and the Council acts on the basis of a 'qualified' majority of national governments. However, where the Commission proposes a directive relating to employee protection on termination of employment, workers' and employers' representation and collective defence of interests, or the employment conditions of third-country nationals, a special legislative procedure applies. Under this procedure, the Council, which must act unanimously in such cases, takes the leading role, and the Parliament has only a consultative input.

In the areas covered by this guide, the legal basis for EU action outlined above (which has changed and expanded over the years) has enabled the adoption of substantial


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body of law. Counting the main directives that are currently in force, there are:

- around a dozen directives on working conditions, dealing with matters such as working time, part-time work, fixed-term work, temporary agency work, young workers, posted workers and employer insolvency (see Chapter 3);
- seven directives on the information, consultation and participation of workers, at both national and European level (see Chapter 3); and
- approximately 30 directives on health and safety at work (see Chapter 4).

In addition to binding legislation, the EU has a legal basis to take 'softer' initiatives (see Chapter 3 for more details). In all the social policy fields listed above where the EU is empowered to support and complement Member States' activities, the Parliament and Council may adopt measures aimed not at harmonising national laws and regulations, but at **encouraging cross-border cooperation**. Such initiatives may aim to improve knowledge, develop exchanges of information and best practices, promote innovative approaches and evaluate experiences.

Further, the Commission is required by the TFEU to encourage cooperation and coordination by making studies, delivering opinions, arranging consultations, establishing guidelines and indicators, organising exchanges of best practice, and conducting monitoring and evaluation. Specific areas include:

- labour law and working conditions;
- basic and advanced vocational training;
- prevention of occupational accidents and diseases;
- occupational hygiene; and
- the right of association and collective bargaining.

The form and extent of EU action

As discussed above, the Union can act only where the Treaties give it competence to do so in order to meet the Treaties' objectives. In areas where the EU is able to act, such as the abovementioned aspects of labour law and working conditions, this action is subject to the basic principles of 'subsidiarity' and 'proportionality'.

Subsidiarity means that decisions should be taken at the lowest appropriate level. In most areas, the Union can act only if and in so far as the proposed action's objectives cannot be sufficiently achieved by its Member States but can rather, by reason of the proposed action's scale or effects, be better achieved at EU level. For example, minimum labour standards necessary for ensuring fair competition in the Single Market (see Chapter 1) need to be legislated at the level of the EU.

In the field of social policy, a related concept of 'social subsidiarity' is closely linked to the role of the social partners at EU level (see below under 'The role of the social partners'). Social subsidiarity refers to the principle that the social partners should make the first move to arrive at appropriate solutions within their area of responsibility, since employers and trade unions are closer to the realities of the workplace than political bodies. The EU institutions intervene at the Commission's initiative only where negotiations fail.

Proportionality means that the content and form of Union action must not exceed what is necessary to achieve the Treaties' objectives.

In the field of labour law and working conditions, EU law mainly takes the form of **directives**. A directive is a legal act that is binding, in terms of the result to be achieved, upon each EU country, but leaves the

national authorities free to choose the form and methods of achieving this result. Each directive sets a deadline by which all Member States must comply with its requirements, but national authorities can comply in a way that fits with their own legal system and practice. Directives therefore give national authorities considerable flexibility over how to 'transpose' EU standards into national law, but not as regards the specific results to be achieved. If a Member State fails to comply properly by the deadline, it may be subject to legal proceedings which the Commission can initiate at the European Court of Justice. In certain circumstances, directives can also have 'direct effect', in that individuals can enforce their rights under a directive against the Member State concerned in court without the directive having been transposed into national law.

National authorities are obliged to provide for appropriate measures in the event of non-compliance with directives (for example, by employers), with adequate administrative or judicial procedures that enable the obligations deriving from directives to be enforced (for example, by workers and/or their representatives). National authorities must also ensure that there are effective, proportionate and dissuasive penalties in the event of infringements of national provisions implementing EU directives.

Labour law directives are subject to several special conditions set out in Article 153 TFEU. First, they may set only minimum requirements for gradual implementation. They do not prevent countries from maintaining or introducing more protective measures for workers, as long as these are compatible with the Treaties. Indeed, directives typically state that they do not rule out legislative, regulatory or administrative provisions, or collective agreements, that are more favourable to workers, and that a directive's implementation cannot justify a reduction in the general level of protection for workers in the fields that the directive covers.

This means that directives do not impose a uniform labour law across the EU in the areas that they cover. They lay down a **safety net of minimum requirements** that EU countries have to comply with, in a way that suits their particular national legal and industrial relations structures. They are free to exceed these basic requirements if they wish. In practice, directives may require no changes at all to national labour law, as countries' existing provisions may be more favourable than the directive's minimum standards. To take the example of the 2001 framework directive on employee information and consultation (see Chapter 3), this required no, or virtually no, change to existing provisions in around a quarter of EU countries, minor changes in around half of the countries, and major change in only the remaining quarter.

The second distinctive feature of labour law directives is that national authorities may entrust **'management and labour'** – that is, workers, employers and their representatives at various levels – at their joint request, with the implementation of these directives. In such cases, collective agreements between trade unions and employers

would contain the provisions required by the directives. Governments must always be able to guarantee the results required by the directive.

This provision reflects the fact that in some EU countries the social partners play a primary or significant role in regulating workplace matters, with legislation taking a secondary place. In practice, the option of leaving the implementation of directives wholly to collective agreements is not often used in such countries, not least because it is rare for such agreements to cover 100 % of the workers and employers to which a directive's requirements apply. However, agreements have, for example, played the leading role in implementing various information and consultation directives in countries such as Belgium, Denmark and Italy.

Third, all directives on labour and working conditions issues must avoid imposing administrative, financial and legal constraints in a way that would hold back the creation and development of small and medium-sized enterprises (**SMEs**). Again taking the framework information and consultation directive as an example of the practical effects of this rule, this directive seeks to avoid placing constraints on SMEs by applying its requirements only to undertakings with at least 50 employees or establishments with at least 20 employees (the choice is left to individual countries).

The role of the social partners

The social partners – organisations representing employers and workers at European level, either on a cross-industry basis or in a specific sector (see text box 2.1) – have a key part to play in drawing up EU labour law. The provisions of the TFEU stipulating this form of social dialogue are based almost word-for-word on an agreement reached by the cross-industry social partners themselves in 1991.

Box 2.1 The EU-level social partners consulted in the social policy field

- Three general cross-industry organisations - the European Trade Union Confederation (ETUC), Business Europe (mainly representing private sector employers) and the European Centre of Employers and Enterprises Providing Public Services (CEEP).
- Three cross-industry organisations representing certain categories of workers or undertakings – the European Association of Craft, Small and Medium-sized Enterprises (Ueapme), the Council of European Professional and Managerial Staff (Eurocadres) and the European Confederation of Executives and Managerial Staff (CEC).
- Over 60 organisations representing employers in particular sectors.
- Fifteen sectoral European trade union federations.

Under the TFEU, the Union recognises and promotes the role of the EU-level social partners and facilitates dialogue between them, respecting their autonomy, while the Commission has the task of promoting their consultation. Specifically, under Article 154 TFEU the Commission, before submitting proposals in the social policy field, must **consult the social partners** on the possible direction of Union action. This consultation is in two stages.

In the initial consultation, the Commission seeks the social partners' views on both the substantive issue in question and whether Union action is required, and asks if they might consider initiating a dialogue. If, after this first consultation, the Commission considers EU action advisable, it consults the social partners again, this time on the envisaged proposal's content. The second-stage consultation sets out more concrete options for EU action. It asks the partners for their views on the options and whether they want to negotiate on all or some of the issues raised.

In response to either a first- or second-stage consultation, under Article 155 TFEU the social partners can decide jointly to launch EU-level negotiations on the issue in question. If the social partners decide to negotiate, they must inform the Commission, which then temporarily suspends work on the proposal. The partners then have nine months to reach an agreement, unless they agree with the Commission to extend this period.

Where the social partners reach an EU-level agreement, they can decide that the agreement will be implemented by their national member organisations, in ways consistent with the industrial relations systems in each EU country. Alternatively, if the agreement deals with the social policy matters that fall within the EU's competence under Article 153 TFEU, the social partners have the option of asking the Commission to propose a directive, to be adopted by the Council, giving the agreement EU-wide legal force.

If the social partners ask the Commission to propose a directive to implement an agreement reached following treaty-based consultations, the Commission checks the representative status of the signatory organisations, their mandate and the legality of the agreement's content in relation to EU law, as well as the provisions regarding SMEs (in line with the Treaty requirements in this area). (Under Article 155 TFEU, social partners also have the possibility to negotiate agreements outside a formal consultation procedure initiated by the Commission - when social partners request legislation to implement such agreements, the Commission also assesses the appropriateness of EU action in the field.) If it is satisfied, the Commission drafts a directive, which would make the agreement legally binding across the EU. The Council then decides whether or not to adopt the directive (it cannot amend the agreement's provisions). The directive's adoption means that the Commission halts work on its proposal in the specific areas covered by the agreement.

Using the procedure described above, the social partners at both cross-industry and sector levels have reached a number of European agreements since the mid-1990s that have been implemented by EU directives. The value of this approach is illustrated by that fact that in some cases, **social partner negotiations have broken the deadlock** on issues on which national governments could not agree. In the areas covered by this guide, cross-industry agreements on part-time work (1997) and fixed-term work (1999) have been implemented by directives and become part of EU labour law. At sector level, this has applied to agreements on working time in seafaring (1998), civil aviation (2000) and cross-border rail services (2005), implementation of the ILO maritime labour Convention in seafaring (2008) and preventing sharp injuries in hospitals and healthcare (2009).

These examples all show the practical application of the principle of social subsidiarity (see above under 'The form and extent of EU action'). Social dialogue is a pioneering example of improved consultation and the application of subsidiarity in practice and is widely recognised as making an essential contribution to better governance, due to the proximity of the social partners to the world of work.

Labour law's interaction with other EU policy areas

The focus of this guide is on labour law, defined broadly as the body of EU legislation that defines the workplace rights and obligations of workers and employers in respect of working conditions, information and consultation, and health and safety. Labour law is closely related to and overlaps with many other EU policy areas, and action in the various areas is often complementary.

EU action on working conditions and EU action on **equal opportunities and non-discrimination** overlap so extensively that any clear distinction between them is often artificial. Significant workplace rights and obligations arise from directives such as those on:

- implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC);
- a general framework for equal treatment in employment and occupation, prohibiting discrimination on grounds of religion or belief, disability, age or sexual orientation (2000/78/EC);
- implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC); and
- parental leave (2010/18/EU – this directive implements a European agreement between the social partners).

Notably, workers are protected from discrimination on the above grounds in areas such as working conditions (including pay) access to employment, including promotion, and access to vocational training. Further, working parents have a right to at least four months' parental leave.

At the same time, labour law directives contribute to the EU's equality and non-discrimination objectives. For example, the directives on part-time, fixed-term and temporary agency work have a basic aim of preventing discrimination. Further, it is worth noting that, in the case of part-time work, discrimination against the workers concerned is often also discrimination against women. Across the EU, around a third of women work part time, compared with under a 10th of men, while nearly 80 % of all part-time employees are women. The part-time work directive can therefore also be seen as partly a gender equality measure.

The EU's social policy, which includes labour law, is obviously closely linked to its **employment policy**, which is aimed at achieving a high level of employment across the Union. This objective must be taken into consideration in other EU policies, including labour law. The Union has a coordinated European Employment Strategy that promotes a skilled, trained and adaptable workforce and labour markets responsive to economic change. This strategy is currently closely linked to the wider Europe 2020 Strategy, which frames the introduction of any new labour law and the current review of some existing directives (see Chapter 1). Labour law directives also make a specific contribution to the European Employment Strategy. For example, the directives on part-time, fixed-term and temporary agency work meet the strategy's objectives of promoting employment that is both flexible and secure, with strong investment in human capital and reduced labour market segmentation. They support a greater diversity of contractual arrangements, while protecting working conditions.

As we have seen in Chapter 1, labour law plays a vital part in ensuring a level playing field and preventing distortions of competition in the **Single Market**. The two policy areas also have specific overlaps. For example, the free movement of services within the Single Market raises questions about the situation of workers sent to other countries to provide these services, giving rise to the 1996 directive on the employment conditions of such 'posted workers' (see Chapter 3). Further, the free movement of workers within the Single Market is guaranteed by rules that have an impact on the workplace, such as non-discrimination in employment on grounds of nationality, and a system of mutual recognition of professional qualifications.

The Union has a policy on the **labour migration** into the EU of nationals of non-EU countries. This has resulted in several directives that, among other matters, regulate the working conditions of such migrant workers. Notably, a 2011 directive (2011/98/EU) on a single EU-wide application procedure and permit for non-EU migrants wanting to work and live in the Union also establishes a common set of rights for permit-holders. This includes equal treatment with EU nationals in areas such as working conditions, including pay and dismissal, and health and safety.

Such equal treatment is also guaranteed for holders of an 'EU blue card' – a combined residence and work permit for highly-qualified non-EU migrants introduced by a directive in 2009 (2009/50/EC) – and will be in future for non-EU seasonal workers under a draft directive soon to be adopted by the European Parliament and Council. A further proposal awaiting adoption would entitle non-EU intra-corporate transferees (workers transferred temporarily between subsidiaries in different countries by multinational companies) to the terms and conditions of employment applicable to posted workers in a similar situation in the EU country where they work.

The protection, realisation and enforcement of core labour standards as well as the promotion of the ratification and effective application of other up-to-date ILO Conventions underpinning the Decent Work Agenda, are part of a growing number of bilateral agreements between EU and third countries, such as **the new generation of EU free trade agreements** (see Chapter 5). The follow-up mechanisms of these agreements include monitoring mechanisms involving social partners.

Contribution from Eurofound

Menendez Valdes, Director of the European Foundation for the Improvement of Living and Working Conditions

In a nutshell, what have been the key changes in employment and working conditions in Europe since the economic crisis started?

The most obvious consequence of the crisis is the overall increase in unemployment. Most job loss has concentrated on middle-wage jobs, for example in construction and manufacturing, contributing to a polarisation of the labour market in terms of wages.

But the economic crisis has not only had a severe impact on the overall number of jobs. For those at work, there is an inevitable rise in perceived job insecurity in the face of weak labour markets and changes in employment protection. The number of workers who feel it is likely that they will lose their job, or that their working conditions will worsen, has increased in most European countries. Both unemployment and job insecurity have long-term impacts on health.

A number of changes are relevant to employment conditions. Firstly, the numbers working on fixed-term contracts has changed – in different directions and for different reasons. For example, in some countries, such as Spain, which previously had a high rate of such contracts, there has been a decline, which is largely attributable to the downturn. In other countries, changes in labour legislation have facilitated the use of temporary contracts. Over 40 % of young workers in the EU are employed on temporary contracts. Although this could be a stepping stone to employment (as in apprenticeships), the proportion making the transition to permanent positions has declined during the crisis.

In some countries, new contractual arrangements and employment relations have

emerged: for example, the UK has adopted zero-hours contracts, whereby workers remain 'on standby' and in Poland there is a growing number of workers whose employment is fixed by terms other than labour law contracts, as well as new forms of employment such as 'employers' groups' (a form of labour pooling) and 'crowd employment'.

While, on average, working conditions have not changed dramatically, there have been significant changes for particular groups of workers over the past few years.

There have been positive changes regarding some indicators. Small increases can be seen in levels of job satisfaction, even in countries adversely affected by the crisis. In most European countries, accident rates have declined, especially between 2008 and 2009 – possibly linked to both a reduced overall volume of work and changes in the composition of employment.

In other areas, developments in working conditions have been more negative. Intensity of work has gone up in a number of countries. In some cases, this is due to reorganisation and restructuring, undertaken with a view to improved organisational performance. In general, this can provide opportunities for learning, on the one hand, and higher levels of psychosocial risk on the other, particularly if not accompanied by increased autonomy and participation.

With regard to working time, we can distinguish two periods of the crisis. From 2007 to 2009, the implementation of short-time working schemes or partial retirement in several countries and the reduction of activity in some economic sectors led to a general reduction in average weekly working hours. A more diverse trend emerged between 2010 and 2012. In countries such as Hungary, Portugal and Romania, some reforms were implemented to facilitate longer working hours. In other countries, the provisions introduced in a bid to improve productivity include the introduction of staffing pools and the temporary transfer of employees between signatory firms. While overtime has decreased, unpaid overtime has increased in several countries.

Pay cuts and pay freezes, particularly in the public sector due to cuts in public budgets, have resulted in a marked downward pressure on pay. Pay and other conditions of work are increasingly negotiated at a more decentralised level – shifting either from national to industry-level and company bargaining, or from industry-level to company bargaining. Other impacts of the crisis on industrial relations include a drop in the overall volume of bargaining, and shorter agreements.

Our research indicates that there are some 20 % of 'low-quality' jobs in Europe, which combine several detrimental features

likely to impact both on the sustainability of work during the life cycle and on people's health in the future. This issue requires policy attention and follow-up by company actors if we are to tackle the sustainability of work in the context of a shrinking workforce.

Beyond analytical work, what other specific efforts does Eurofound undertake to improve the working conditions in Europe?

Eurofound's mission is to provide knowledge to assist in the development of social and work-related policies. This knowledge, when used for the development of effective policies, can lead to the improvement of working conditions in Europe. In addition to analysis, Eurofound provides easy access to comparative data from its surveys, including the European Working Conditions Survey and the European Company Survey. The Survey Mapping Tool on Eurofound's website allows policy makers to compare the situation in their own country with the other EU Member States and a number of reports analyse in depth these data. Results from other Eurofound monitoring activities, such as the annual review of collectively agreed pay, are also presented in online, searchable databases.

But policy makers also want to know what factors produce positive change – they want to know 'what works'. Eurofound's research helps to identify innovative practices and policies that have resulted in good outcomes. Eurofound's online databases outline, for example, labour law requirements and legal instruments applied in the event of restructuring. They also provide an overview of support measures that governments and social partners have put in place to anticipate and cushion the effects of restructuring.

Other research aims to identify successful approaches to overcoming the crisis – looking at job creation in SMEs and youth entrepreneurship, as well as exploring the conditions for 'win-win' arrangements which benefit companies and employees alike.

Eurofound provides specific information to support policy debates, particularly in the EU Institutions and the European Social Dialogue, but also to national governments and social partners.

To further exchange and mutual learning, Eurofound organises small-scale seminars and networking initiatives. The tripartite nature of the Agency constitutes a distinct added-value in this respect, for example

bringing together expert teams consisting of representatives from trade unions, employers' organisations and governments. In this way, the knowledge gained – for example, on successful active ageing policies, workplace diversity or sustainable work – can be applied directly in the national-level tripartite debate, leading to better informed policies and thus assisting in the improvement of working conditions.

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CHAPTER 3

EU labour law – an overview

This Chapter looks at the development of EU labour law since the 1970s, and gives brief details of the directives that provide a minimum platform of workers' rights and employers' obligations at the workplace across the Union.

For convenience, this guide deals separately with labour law and health and safety. However, it should be mentioned that there is much overlap between the two areas, and some directives fall within both categories. For example, directives on working time and young workers have a strong health and safety aspect, while the health and safety directive on pregnant workers (covered in Chapter 4) also deals with employment rights.

Within the field of labour law, this Chapter distinguishes between working conditions, and workers' information, consultation and participation. Again, there is overlap and, while we classify directives in line with their central themes, some deal with both areas. For example, the transfers of undertakings directive, categorised as an employee involvement directive, also protects employees' jobs and employment conditions.

A timeline of EU labour law

EU labour law has a history going back around 40 years. The history has not been smooth and continuous, or free of controversy, and has featured periods of activity, consolidation and deadlock, influenced by the EU's wider economic and political development.

1970s and 1980s – protecting employees in restructuring

The first labour law directives were adopted in the 1970s, against the background of the deepening of the common market and the economic restructuring that accompanied it. The specific trigger was the economic crisis of the time, marked by the oil shocks and high inflation and unemployment. Thus, the first three directives, adopted from 1975 to 1980, dealt with workers' rights when their employer faces problems or undergoes restructuring, specifically in the case of collective redundancies, transfers of undertakings and insolvency. A key justification for these directives was to narrow differences among national provisions that directly affected the functioning of the common market.

After 1980, a decade went by without any further labour law directives being adopted (though there were developments in the health and safety field – see Chapter 4). Several proposals, notably on employee involvement and on part-time and temporary work, failed to achieve the unanimous agreement required among governments in the Council.

1990s – focus on the Single Market's social dimension

Labour law was given renewed impetus in the late 1980s as the EU started to focus its efforts on the realisation of the Single Market by 1993. A view developed that the market should be accompanied by a platform of minimum EU-wide social rights. The aim was to grant social aspects the same importance as economic aspects in the creation of the Single Market, thereby giving workers a stake in the process, especially because of the economic restructuring inherent in the market's development. The 1986 Single European Act increased the EU's scope to act in the social field and introduced qualified-majority Council voting on some issues, rather than requiring unanimous approval.

These developments led to the adoption in 1989 of the Community Charter of the Fundamental Social Rights of Workers, known as the Social Charter, which recognised and supported rights in areas such as working conditions, employee involvement and health and safety (and was a precursor of the Charter of Fundamental Rights of the EU – see Chapter 1). An accompanying action programme proposed numerous measures aimed at implementing the Charter and creating a social dimension to the Single Market. As a result, various new labour law directives were adopted during the 1990s, including on:

- health and safety for fixed-term and temporary workers (1991);
- informing employees about their employment conditions (1991);
- working time (1993);
- young workers (1994);
- European Works Councils (1994); and
- posted workers (1996).

The 1992 Maastricht Treaty further expanded the labour law competence of the EU and made more areas subject to qualified-majority voting (a process continued in subsequent treaty revisions between 1997 and 2010). It also gave the EU-level social partners a new role, enabling them to negotiate agreements on certain issues that could be given legal force by directives (see Chapter 2). These new provisions were initially included in an Agreement on Social Policy annexed to the Treaty and did not apply to all Member States, as one country, the UK, did not wish to participate. The first legislation adopted on the basis of the new arrangements (and thus not applicable to the UK at the time of adoption) was the 1994 European Works Councils directive. The Agreement on Social Policy was incorporated into the Treaty proper in 1997, with the UK ending its 'opt out' and signing up to directives previously adopted under the Agreement.

The cross-industry social partners successfully started using their new role in respect of several issues arising from the Social Charter, reaching agreements on part-time work (1997) and fixed-term work (1999) that were implemented by directives.

The social partners in several industries also negotiated agreements, implemented by directives, which adapted the 1993 working time directive to the specific situation of their sectors. Other directives (not based on social partner agreements) dealt with working time in road transport in 2002, and extended the 1993 directive to other sectors and activities in 2000.

The 2000s – employee involvement to the fore

Since the early 2000s, labour law directives have mainly focused on the information, consultation and participation of workers. A framework directive on information and consultation at national level was adopted in 2002. At transnational level, the EU introduced the European Company and European Cooperative Society in 2001 and 2003, accompanied by directives laying down rules for employee involvement in these new forms of EU-wide organisation. In 2005, a directive on cross-border company mergers contained provisions on the arrangements for board-level employee representation in some merged companies. The EWCs Directive was revised in 2009.

Employee involvement aside, the only significant entirely new EU labour legislation of the 2000s has been the 2008 directive on temporary agency work and a 2009 directive (based on a social partner agreement) that implements the ILO maritime labour Convention (see Chapter 5).

Keeping labour law up to date

The changing economic, political and social context can create circumstances that were not considered when labour law directives were adopted. Further, over time, the national transposition of directives often reveals practical problems in implementation, such as gaps or unclear requirements, while European Court of Justice (ECJ) case law can alter the legal framework. Some directives have therefore been adapted over the years to better achieve their objectives in a new environment. This is true of the earliest directives, on redundancies, transfers of undertakings and insolvency, which were amended in 1992, 1998 and 2002 respectively, and also applies to the European Works Councils Directive in 2009.

The original and amending directives on various issues have been merged into single 'codified' directives. Such consolidated directives were adopted on collective redundancies in 1998, transfers of undertakings in 2001 and insolvency in 2008. Similarly, the 1993 working time directive and the 2000 directive applying it to some transport sectors were consolidated in 2003. When the 1994 EWCs Directive was amended in 2009, the original Directive was repealed and the amendments included in a new 'recast' Directive.

Attempts to amend labour law directives are not always successful. Notably, in 2004 the Commission proposed a revision

of the working time directive, in the light of ECJ case law and various other developments, but the Parliament and Council were unable to agree on the changes, and the initiative ended in failure in 2009. The Commission then consulted the social partners on the matter, and the partners decided to negotiate over a review of the directive. However, these talks also failed in 2012, and the matter remains unresolved.

Working conditions directives

Working time

The **EU working time directive** was primarily conceived as a health and safety measure, because factors such as excessive working hours, inadequate rest and unregulated night work have damaging health effects. The directive's main points are as follows:

- Workers' average weekly working time (including overtime) must not exceed 48 hours. Weekly hours may be averaged over a period of four to 12 months. Countries have the option of exempting workers from the 48-hour maximum working week, if workers agree to this individually.
- If their working day is longer than six hours, workers are entitled to a rest break.
- Workers must have a minimum daily rest period of 11 consecutive hours, and a minimum weekly rest period of 35 hours.
- Workers have a right to paid annual leave of at least four weeks.
- Night workers must not generally work for more than eight hours per shift on average, and must be subject to special health and safety protection.

Special working time rules in the directive apply to some mobile and offshore workers. Further, countries may exempt certain workers, such as senior managers, from some of the directive's rules.

Separate working time directives apply to seafarers and to mobile workers in civil aviation road transport and cross-border rail services. Specific rules for these groups include:

- for **seafarers**, either a maximum working time of 14 hours per day and 72 hours per week, or a minimum rest time of 10 hours per day and 72 hours per week;
- in **civil aviation**, a maximum annual working time of 2 000 hours, including maximum flying time of 900 hours (from when the aircraft first moves from its parking position until it comes to rest in the designated parking position and engines are stopped);
- for **mobile road transport workers**, a maximum average weekly working time of 48 hours – actual weekly working time may be as high as 60 hours, as long as the 48-hour average is maintained over a four-month period; and
- in **cross-border rail services**, a maximum daily driving time of nine hours on day shifts and eight hours on night shifts, subject to a maximum of 80 hours' driving time within two weeks.

Most of the sectoral working time directives are based on agreements between the EU-level social partners in the industries concerned. The social partners in the inland waterways transport sector negotiated such a sectoral agreement on working time in 2012 and have requested implementation by directive. The Commission is currently assessing this request.

Box 3.1 Main EU directives on working time

- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
- Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).
- Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation 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).

- Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.
- 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.

Non-standard work

Three main Directives deal with 'non-standard' forms of work that do not conform with the traditional model of full-time employment on an open-ended contract, performed for a single employer. The forms of work concerned are **part-time work** (directive adopted in 1997), **fixed-term work** (1999) and **temporary agency work** (2008). The directives respond to the growth of non-standard work, accepting and encouraging this form of flexibility, but seeking to ensure that it develops in a balanced and high-quality way, taking into account the needs of both employers and workers.

The directives prohibit discrimination against workers in non-standard forms of employment, in line with the Union's general non-discrimination principles, as follows:

- Part-time workers must not be treated, in terms of their employment conditions, less favourably than comparable full-time workers solely because they work part time, unless different treatment is justified on objective grounds.
- Fixed-term workers must not be treated, in terms of their employment conditions, less favourably than comparable 'permanent' workers solely because they have a fixed-term contract or relationship, unless different treatment is justified on objective grounds.
- Temporary agency workers' basic working and employment conditions (those relating to pay, working time and holidays) must, during their assignment at a user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to do the same job.

Other common features of the directives include provisions requiring or promoting:

- the access of non-standard workers to training and, in the case of temporary agency workers to various facilities and amenities provided by user undertakings;
- information for non-standard workers on full-time or permanent vacancies in the undertakings where they work;
- information for workers' representatives about the use of non-standard work; and
- the review of obstacles to, or restrictions on, part-time work and temporary agency work.

All three directives give an important role to the social partners, in terms of both consultations and reaching agreements on specific issues.

The directives also contain distinctive provisions relating to the particular type of work concerned. For instance:

- A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment. As far as possible, employers should consider requests by full-time workers to transfer to part-time work and vice versa, and measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions.
- National authorities must take measures to prevent abuses arising from the use of successive fixed-term employment contracts/relationships, such as limiting their maximum total duration or requiring that the renewal of such contracts/relationships is justified by objective reasons.
- Temporary work agencies may not charge workers any fees in exchange for arranging for them to be recruited by a user undertaking, or for concluding an employment contract or relationship with a user undertaking after carrying out an assignment there.

Fixed-term and temporary agency workers are particularly exposed to **health and safety risks**. A 1993 directive guarantees that they have the same level of health and safety protection as other workers, and are not treated differently because of their employment status. It provides that fixed-term/temporary agency workers must be informed in advance of the risks they face and receive sufficient job-specific training. While agency workers are on an assignment, the user company is responsible for their health and safety.

Box 3.2 Main EU directives on non-standard work

- Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.
- Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.
- Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship.

Insolvency

The insolvency directive requires EU countries to have a 'guarantee institution' to cover the **payment of employees' outstanding claims arising from employment contracts or relationships if their employer becomes insolvent**. Governments may limit the institution's liability and cap the payments it makes to employees. The directive also protects employees if their employer failed to pay social security contributions prior to insolvency. The directive, which dates back to 1980, has been amended since. As well as the central aim of protecting employees in the event of their employer's insolvency, one of the directive's objectives is to reduce differences in national rules that affect the Single Market's operation.

Information on employment conditions

A directive adopted in 1991 **obliges employers to inform employees about the conditions applicable to their employment contract or relationship**. It helps to enact a basic right for workers to have their employment conditions clearly set out in law, a collective agreement or an employment contract.

The directive aims to protect employees against infringements of their rights and create greater transparency on the labour market. It requires employers to inform employees in writing, within two months of starting employment, about certain essential employment conditions, such as the workplace, type of work, remuneration, working hours, paid leave and notice periods for termination. Extra information must be provided if the employee is to work abroad.

Young workers

The directive on the **protection of young people at work is** partly a health and safety measure, based on the relevant treaty provisions; and partly a human rights measure, prohibiting child labour and protecting young people's education and development, with reference to the 1989 Social Charter and ILO principles.

The main points of the directive are as follows:

- The minimum working age must not be lower than the age when compulsory schooling ends, or 15 years in any event. Exemptions are possible, for example for children aged at least 14 on work-experience schemes, and for those aged at least 13 performing light work.
- Employers must take special measures to protect the safety and health of young people (those under the age of 18), in areas such as the physical work environment, work organisation, training, and health monitoring.
- Young people must be protected from risks to their safety, health and development arising from their lack of experience, risk-awareness or maturity. They must not do work that is harmful or beyond their capacity.

- Adolescents aged 15 to 17 must not generally work more than eight hours a day and 40 hours a week. Stricter limits apply to under-15s, where they are allowed to work.
- Young people must not generally perform night work.
- Adolescents must have a daily rest period of at least 12 consecutive hours. Where under-15s work, their daily rest period must be at least 14 consecutive hours.
- Young people must generally have a minimum weekly rest period of two days, consecutive if possible.
- Where their daily working time exceeds four and a half hours, young people are entitled to a rest break of at least 30 minutes.

Posted workers

The 1996 **posted workers directive** has a different background than the other working conditions directives; it has its legal basis in Articles 53(1) and 62 TFEU, which deal with the provision of services. The Directive aims to reconcile two objectives: the exercise of the freedom to provide cross-border services on the one hand; and guaranteeing an appropriate level of protection of the rights of workers temporarily posted abroad for that purpose on the other. The transnational provision of services means that companies, when providing services in another Member State, may need to post employees temporarily to work in an EU country other than the one where they are habitually employed. The directive seeks to ensure that transnational service provision occurs in a fair competitive environment and respects workers' rights. It aims both to protect businesses' basic internal market freedom to provide services in other Member States and to prevent social dumping (see Chapter 1). Therefore, when companies send their employees temporarily to other EU countries to provide services, the directive gives these workers the basic employment rights that apply in the country to which they are posted. These relate to:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay – though it should be noted that the Directive does not oblige Member States to set minimum wages if they do not already exist in the country in question;
- the conditions for hiring out workers, in particular by temporary work agencies;
- health and safety;
- protection for pregnant women, women who have recently given birth, and minors; and
- equal treatment and non-discrimination.

The European Parliament and Council are currently discussing an 'enforcement directive' which the Commission proposed in 2012 to clarify and improve the way in which the 1996 posted workers directive is applied.

Box 3.3 Other EU Directives on working conditions

- Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (codified version).
- Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.
- Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Directives on information, consultation and participation

Employee involvement at national level

The earliest EU directives on **worker information and consultation (I&C),** originally adopted in the 1970s, guarantee minimum prior notice and input for employees when their jobs are under threat or their employer changes hands. The two directives focus on specific issues – collective redundancies and business transfers – and stipulate a procedure and timetable for employee involvement, relying on workers' representatives (such as trade unions or works councils) as the primary I&C channels.

Collective redundancies are defined as a certain number of dismissals for reasons not related to the individual workers concerned over a certain period. EU countries may choose between applying the directive to:

- over a period of 30 days, at least 10 redundancies in establishments employing 21-99 workers, redundancies affecting at least 10 % of the workforce in establishments employing 100-299 workers, and at least 30 redundancies in establishments employing 300 or more workers; or
- over a period of 90 days, at least 20 redundancies, whatever the number of workers employed in the establishment.

An employer envisaging collective redundancies must consult representatives of the workers in good time with a view to reaching an agreement. These consultations must, at least, cover ways of avoiding or reducing the redundancies, and of mitigating the consequences. The employer must, in good time during the consultations, inform workers' representatives about:

- the reasons for the projected redundancies;
- the number and categories of workers to be made redundant;
- the period over which the planned redundancies are to be effected;

- the proposed criteria for selecting workers for redundancy; and
- the method of calculating any additional redundancy payments.

The employer must notify the competent public authority about projected collective redundancies, which cannot take effect earlier than 30 days after this notification.

While the collective redundancies directive deals with I&C, the **transfer of undertakings** directive also protects employees' rights more generally. The key employment-protection provisions are as follows:

- When an undertaking is transferred to another employer, the rights and obligations arising from employment contracts or relationships must be transferred from the 'old' employer (the transferor) to the 'new' employer (the transferee).
- A transfer must not in itself constitute grounds for an employee's dismissal by the transferor or the transferee. However, this does not prevent dismissals for economic, technical or organisational reasons.
- After a transfer, the transferee must observe the terms of any collective agreement that applied to the transferor, until the agreement expires or a new one comes into force.

On I&C, the directive requires both the transferor and transferee to inform in good time representatives of the employees affected (or, in the absence of representatives, the employees themselves) about:

- the date of and reasons for the transfer;
- the legal, economic and social implications for the employees; and
- any measures envisaged in relation to the employees.

Where the transferor or transferee envisages measures in relation to employees, it must consult their representatives in good time with a view to reaching an agreement.

The original rationale for the collective redundancies and business transfers directives was to protect workers in the context of the restructuring that accompanied the development of the common market, and to reduce distortions of competition in this market. As the directives were amended and adapted over the years, they also grew to reflect the fact that employee involvement had in itself come to be regarded as an important EU value and an appropriate issue for EU legislation. This was expressed very clearly with the adoption in 2002 of the directive **establishing a general framework of principles, definitions and arrangements for informing and consulting employees at national level**, primarily through their representatives. This directive also linked to the European Employment Strategy, promoting dialogue over the anticipation and management of restructuring and change.

The directive sets out minimum requirements for employees' I&C rights that apply to undertakings with at least 50 employees or establishments with at least 20 employees. It provides for:

- information on the recent and probable development of the undertaking/

establishment's activities and economic situation;
- I&C on the situation, structure and probable development of employment, and on any anticipatory measures envisaged, in particular where there is a threat to employment; and
- I&C, with a view to reaching an agreement, on decisions likely to lead to substantial changes in work organisation or in contractual relations.

The timing, manner and content of information must be such as to enable employees' representatives to conduct an adequate examination and, where necessary, prepare for consultation. The timing, manner and content of consultation must be appropriate, and must enable employees' representatives to meet the employer and obtain a reasoned response to any opinion they might formulate.

The directive leaves it to the EU countries to determine the practical arrangements for exercising the above I&C rights, and gives them the option of allowing management and labour to negotiate agreements on these arrangements, which may differ from those laid down by the directive.

Employee involvement at transnational level

The **European Works Councils (EWCs)** Directive allows for the establishment of EWCs or procedures for I&C on transnational matters in multinational companies with at least 1 000 employees in the European Economic Area (the EU plus Iceland, Liechtenstein and Norway) and at least 150 employees in each of at least two Member States. I&C are defined in a similar way to the national framework directive, with an emphasis on timeliness and allowing employee representatives to make assessments and express opinions.

The directive, adopted in 1994 and amended and recast in 2009, is partly based on the EU treaty objective of promoting dialogue between management and labour. It specifically promotes I&C over company restructuring that may arise from the operation of the Single Market, given that national provisions in this area

Box 3.4 Main EU Directives on employee involvement at national level

- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.
- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.
- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

are often not geared to the specific situation of multinationals.

Under the directive, the establishment of an EWC may be triggered by a request from employees or their representatives, or a management initiative. In such cases, a special negotiating body (SNB) made up of employee representatives must negotiate with central management over the establishment of an EWC or an I&C procedure. Where the SNB negotiations lead to agreement, the EWC's composition and operation, and the content of I&C are not specified by the directive but left to be decided by management and the SNB in each multinational. Only in the absence of an agreement may statutory 'subsidiary requirements' for EWCs apply, which provide for standard form of EWC and for I&C on specified matters, such as:

- the situation and probable trend of employment;
- investments;
- substantial organisational changes;
- the introduction of new working methods or processes;
- transfers of production, mergers, cutbacks and closures; and
- collective redundancies.

In 2001, an EU regulation (No. 2157/2001) created a **Statute for a European Company**. This measure aims to strengthen the Single Market by giving firms the option of creating a European Company (known as a Societas Europaea, or SE) governed by EU law directly applicable in all Member States, rather than national law. Using the SE form, companies can operate throughout the EU on the basis of a single set of rules, thereby potentially gaining benefits in terms of reduced administrative costs, a single legal structure and unified management and reporting systems. SEs can be set up by two or more EU-based companies by merger, or by formation of a joint holding company or subsidiary. An individual company can also transform itself into an SE, under certain conditions.

To ensure that the creation of SEs does not deprive employees of the involvement rights that apply in companies based on national legislation, the regulation is accompanied by a directive that sets out rules for employee involvement in SEs. Employee involvement arrangements – I&C, plus board-level employee participation in some circumstances – must generally apply in all types of SE, though some aspects differ depending on the way the SE was created. These arrangements are, in the first instance, agreed between the companies setting up the SE and an SNB of employee representatives. Such an agreement should set up an EWC-like 'representative body', or an I&C procedure. If the parties decide, and compulsorily in some cases, the agreement may also provide for board-level participation. If no agreement is reached, statutory 'standard rules' apply, providing for the creation of a standard representative body and, in certain circumstances where this existed in the participating companies, for board-level participation.

The SE is aimed mainly at public limited companies. To offer similar opportunities of European-scale operation to cooperatives and similar organisations, a 2003 regulation (No.1435/2003) introduced a **Statute for a European Cooperative Society** (Societas Cooperativa Europaea, SCE). As with the SE statute, the regulation was supplemented by an employee involvement directive. This lays down involvement rules for most types of SCE that are almost identical to those that apply to SEs.

In 2012, the Commission proposed a further Statute, this time for a European Foundation, which would allow public-benefit foundations to operate on a European scale. The draft statute contains EWC-like employee involvement provisions. The Council is currently discussing the proposal.

A 2005 directive facilitates **cross-border mergers** between companies based in different EU countries, thereby helping them to benefit from the Single Market. In general, when such a merger occurs, the directive provides that employees' rights are governed by the relevant provisions of existing national law in the countries where the companies are based (including the national provisions implementing the various EU I&C directives). The exception is that the directive lays down specific rules on board-level employee participation in the merged company, which apply in certain circumstances.

Box 3.5 Main EU Directives on employee involvement at transnational level

- Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).
- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.
- Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

Other forms of EU action

The focus of this Chapter has so far been on directives – EU laws that set binding outcomes that must be achieved by the Member States. We are currently in a quiet period in terms of the adoption of new

'hard' law of this sort. In the past decade, hardly any substantive new labour law directives have been adopted, and few are in the legislative pipeline.

There are various reasons for the present lack of hard law activity. The economic and financial crisis, with its accompanying high unemployment, has shifted the focus of the Union's employment-related action towards job maintenance and creation, and to some extent away from improving working conditions. At a time when many companies face uncertainty about future demand for their products or services, protection of employment and working conditions often tends to be viewed more as a 'cost' (relevant for short-term competitiveness) than as an investment in workforce productivity and social cohesion (relevant for longer-term competitiveness). Moreover, a relatively substantial body of European labour law has already been developed and, where there are gaps in this framework, these often relate to issues where consensus is unlikely – not least because the Union now consists of 28 Member States, with different economic situations and outlooks.

The current period is therefore largely marked by **consolidating, 'fitness-checking' and ensuring the proper implementation of existing directives**. For example, following a fitness check (completed in 2013) of the three EU Directives on I&C at national level (see above under 'Employee involvement at national level') and in the light of the 'REFIT' exercise of streamlining legislation and reducing regulatory burdens (see Chapter 6), the Commission is currently considering a possible consolidation of these Directives. With regard to improving implementation, examples include the 2009 amendment and recast of the European Works Councils directive (though this revision went beyond solely implementation issues), and the 2012 draft 'enforcement directive' on the posting of workers, currently under negotiation, that seeks to ensure a better and more uniform application and enforcement of the original 1996 directive.

Moreover, directives have never been intended as the only way that the EU pursues its objectives in the field of labour law and working conditions (see Chapter 2). Other legal acts at the disposal of the Council and the Commission include **recommendations and opinions**. These instruments cannot be enforced in court (though recommendations do have some legal effect and may play a role in interpreting EU law) but advocate a particular course of action or express a view on an issue. Their effect is one of 'soft' law, influencing the policies and practices of national governments and the other parties to which such instruments are addressed.

In the field of labour law, recommendations and opinions have a long history, often being used when there is insufficient consensus or a lack of EU competence for a directive. In practice, they have sometimes in effect laid the groundwork for later binding instruments when political conditions have changed or treaty changes have increased the EU's labour law powers. For example, Council recommendations have dealt with issues such as hours of work and paid holidays (1975), employee financial participation (1992) childcare (1992) and access to continuing vocational training (1993). The Commission has issued recommendations or opinions on topics such as the protection of young workers (1967), an equitable wage (1993) and the ratification of ILO Conventions on home work (1998), seafarers' working hours (1999) and child labour (2000).

As well as formal legal acts, EU soft law on work-related matters may take the form of **policy coordination, exchanges of good practice, benchmarking, frameworks of action and codes of conduct**, aimed at shaping consensus and creating incentives for national or company-level action. The EU-level social partners at both cross-industry and sector level may also contribute through agreeing joint texts of this nature, and through agreements that they implement themselves, rather than asking for them to be given legal force by a directive. Examples include cross-industry agreements on telework (2002), work-related stress (2004) and harassment and violence at work (2007).

Current action on youth employment and trainees

A notable recent example of the soft law approach is an April 2013 Council recommendation on establishing a **Youth Guarantee**, in response to Europe's worsening youth employment situation, and the rising number of young people not in employment, education or training. The core of the initiative is a recommendation that governments ensure that everyone under the age of 25 receives a good-quality offer of employment, continued education, or an apprenticeship or traineeship within four months of becoming unemployed or leaving formal education. This should be accompanied by action in areas such as:

- increased cooperation and partnership, involving the public employment services, education and training institutions, youth support services, career guidance providers, employers, trade unions and young people;
- early intervention and activation, for example through outreach work, personalised guidance and tailor-made individual support schemes; and
- support for labour market integration, such as measures to enhance skills,

boost recruitment prospects amongst young people (for example, through targeted subsidies) and promote mobility.

The Youth Guarantee is a structural reform in the field of employment policy, primarily aimed at enabling every young person to get a foothold in the labour market so that they can obtain a good-quality job later on. As such, the initiative can help to alleviate not only unemployment and exclusion but also the precarious working conditions currently faced by many young people.

A related measure with clear implications for working conditions is a Council recommendation on a Quality Framework for Traineeships, proposed by the Commission in December 2013. Traineeships are limited periods of work experience with an organisation undertaken by young people who have recently completed their education. The proposed EU-wide Framework would require Member States to adapt their regulatory framework in order to improve the quality of traineeships, by recommending among other things that traineeships should:

- not replace regular jobs or constitute a form of precarious work;
- be based on a written agreement setting out their duration, learning objectives, working hours, social security coverage and information on remuneration;
- include well-defined objectives with a high-quality learning content and supervision; and
- be concluded with a certificate or letter of reference issued by the employer, recognising the knowledge, skills and competences acquired by the trainee.

Contribution from the Lithuanian EU presidency

Interview with Algimanta Pabedinskienė, Minister of Social Security and Labour

In December 2013, after many months of negotiations, the Council succeeded in agreeing a common position on the enforcement directive on posting of workers. How would you explain the importance of this compromise?

Provisions of the Enforcement Directive offered by the Council, first of all, enable Member States to apply administrative requirements and national control measures, which are necessary while implementing the 1996 Directive (96/71/EC) on the posting of workers and providing Member States with a regulatory options to apply new measures in the event the list of the existing ones is insufficient. It is important to ensure that new measures are justified and balanced, and legal certainty and transparency for service providers exist.

The provisions with regard to liability related to subcontracting acknowledge the importance of reliability in case of posting of workers and enable Member States to more flexibly apply the existing means and measures or choose other means and measures in case of non-payment of wages to a posted worker. Moreover, the liability of sub-contracting operates as a preventive measure, which ensures protection of workers from deceit and struggles against economic profiting of enterprises in chains of subcontracting.

This Enforcement Directive is also aimed at drawing up a non-finite list of elements enabling to evaluate whether posting took place under 1996 Directive thus providing enterprises with legal certainty and facilitating activities of responsible institutions dealing with violations, especially with "letter-box" companies. It also aims to ensure a clear mechanism of efficient implementation of administrative sanctions imposed for non-compliance with provisions of 1996 Directive and the Enforcement Directive in a different Member State, to

improve defence of violated rights of posted workers by assisting trade unions and other organisations, to set principles of measures of control and monitoring, which allow reducing the administrative burden and unifying the application of measures of control by adhering to principles of non-discrimination and proportionality.

What were the main areas of disagreement between Member States, and what key issues remain to be discussed with the European Parliament?

Provisions of the Enforcement Directive ensuring more efficient and unified practical implementation of the currently valid 1996 Directive (96/71/EC) on the posting of workers and contributing to fair competition and at the same time improving protection of posted workers by preventing violations of rights, are relevant and useful for all 28 EU Member States irrespective of whether a Member State is the posting or the accepting state.

We believe that the agreement on articles 9 and 12 of the Enforcement Directive reached in the course of negotiations with the European Parliament will be extremely important. Discussions on Article 3 establishing actual elements of posting and the relation of 1996 Directive and the Enforcement Directive to the Regulation on the law applicable to contractual obligations (the so-called Roma I Regulation) and Articles 6, 7 and 18 providing for cooperation between Member States using various mechanisms including the Internal Market Information System may also take place.

What other aspects of EU law on employment and working conditions preoccupied you during Lithuania's Presidency of the Council? What do you consider to be the main 'unfinished work' in this field?

The Lithuanian Presidency made a considerable progress in the field of EU law on working conditions in terms of the Chemicals Directive. At the trilogue between the Council, the Parliament and the Commission the agreement was reached.

The main unfinished work is Community occupational safety health policy coordination initiative (Community health and safety strategy for 2013-2020), which was to be presented to the European Council on 2013. On the period of implementation Community health and safety strategy for 2007-2012, Member States recognized that the safety and health issues contribute to increasing productivity, growth of economy and employment. Huge costs are related with health and safety problems and this causes economic slowdown and affects the competitiveness of EU enterprises. Most of the health and safety problems, already observed in the previous period, become more and more important. Occupational safety health policy coordination at the EU level should contribute to safety and health promotion, would help to keep workers longer in the labour market and create conditions for transparent competitiveness.

CHAPTER 4

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Health and safety at work

The EU has developed a comprehensive body of law aimed at providing workers with protection against a wide range of health and safety risks at work. This is based on a 1989 framework directive and 23 related directives, covering areas as diverse as manual handling of loads, use of computer screens and personal protective equipment.

Directives also ensure health and safety in specific situations such as on construction sites, for those working in extractive industries or on fishing vessels, and ensure protection against exposure to physical, biological and chemical agents. This body of law has made a significant contribution to improving the health and safety of workers in Europe by providing minimum standards at European level that must then be transposed into the national legislation of EU Member States. These directives also place a range of obligations on employers, such as the requirement to carry out risk assessments and then to eliminate or reduce to a minimum the risks uncovered, to provide personal protective equipment and adequate signage to workers, to carry out health checks on workers in some circumstances, to provide appropriate training, and to inform workers about developments connected with health and safety issues at work.

This body of legislation is currently under review at European level, as part of the European Commission's Regulatory Fitness and Performance (REFIT) process, which aims to streamline legislation and reduce regulatory burden, taking into account in particular the needs of SMEs. In the area of health and safety, the aim is to **improve regulation without reducing health and safety protection**. The Commission is carrying out a full ex-post evaluation of EU health and safety legislation, which includes specific consultations with social partners. The conclusions of this are expected to be available by the end of 2015.

The European Union's overall direction in the field of workplace health and safety and the priority areas of focus are contained in its multi-annual health and safety strategies. The most recently completed strategy relates to the period from 2007 to 2012. While aiming to build on the previous strategy, which ran from 2002 to 2006, it set a quantitative target of a 25 % reduction in the total incidence rate of accidents at work by 2012. It has been difficult to assess whether this target has been met in all countries, due to difficulties in obtaining recent data, but it is clear that the incidence rate of accidents at work has demonstrably decreased overall since the strategy has been in place.

The **European Agency for Safety and Health at Work** (EU-OSHA), based in Bilbao, was set up in 1996 with a mission to make Europe a safer, healthier and more productive place to work and to promote

a culture of risk prevention. The Agency carries out a wide range of activities, such as disseminating information on the importance of health and safety, or designing and developing tools to help enterprises to assess workplace risk and enabling them to share knowledge and good practice. It works with national governments, social partners, a range of EU bodies and networks and with private companies. It also carries out research to identify new and emerging risks at work. OSHA runs Healthy Workplaces Campaigns in order to raise awareness around Europe of specific health and safety topics: the most recent Campaign focused on working together for risk prevention. Other prominent EU-OSHA tools and activities include the Online Interactive Risk Assessment Project (OiRA), which is a web application for creating online risk assessment tools, and the ESENER (European Survey of Enterprises on New and Emerging Risks), which is an EU-wide survey exploring the views of managers and worker representatives on how health and safety risks are managed in their workplace.

OSH directives

The Framework directive

The Framework directive on **health and safety at work** (89/391/EEC) sets out the basic principles for the protection of the health and safety of workers. It lays down obligations both for employers and workers, aimed at limiting accidents at work and occupational diseases. It also aims to improve information and consultation of workers on health and safety and promote and improve training on health and safety.

The directive places a number of general obligations on employers. For example, it states that employers should ensure the health and safety of workers in every aspect related to work, including situations related to the use of external companies or individuals. To this end, the employer should carry out prevention, information and training activities to avoid risks or manage unavoidable risks, encourage the use of protective measures, and adapt working conditions, equipment and working methods in order to ensure health and safety protection.

In situations where workers from different organisations are working in the same place (for example on a construction project), the directive states that the relevant employers should cooperate and coordinate their health and safety measures. It is the employer's responsibility to appoint trained workers to ensure that the protective and preventative services that have been established are followed, or to call external services if necessary.

Employers must also consult workers and their representatives about all issues related to health and safety at work. These representatives can make suggestions to employers on health and safety measures and have the power to contact national health and safety authorities if the employer does not fulfil their duty with regard to health and safety.

The directive places an obligation on workers to take care of their own health and safety and that of those affected by their actions. Workers are also obliged to use work-related equipment, tools, substances and personal protective equipment correctly, refrain from disconnecting, changing or removing safety devices fitted, and immediately inform the employer of any work situation which represents a serious and immediate danger.

Directives relating to workplaces

In addition to the 1989 directive described above, there are a number of specific directives that contain provisions relating directly to occupational health and safety at the workplace. The main provisions of these are set out below.

The directive on **minimum safety and health requirements for the workplace** (89/654/EEC) places a number of health and safety obligations on the employer. Specifically, employers must ensure that emergency exits are kept clear and can be used at all times, that the workplace and all relevant equipment are maintained, and that hygiene conditions are adequate. Employer must also ensure that there are regular maintenance and checks of safety equipment and that workers are informed of all health and safety measures.

Three directives deal with health and safety in specific industries. The directive on the implementation of **minimum safety and health requirements at temporary or mobile construction sites** (92/57/EEC) aims to prevent risks by establishing a chain of responsibility linking all the parties involved in health and safety on such sites. Most specifically, it states that the client or project supervisor should nominate a person to be responsible for the coordination of health and safety at sites where several firms are present, although the project supervisor or client would remain responsible overall for safety and health. The client or project supervisor must also ensure that a health and safety plan is drawn up before work starts at the site.

Specific duties of those responsible for coordination on the site include ensuring that employers and self-employed workers apply general prevention principles, organising health and safety cooperation between employers, checking that the working procedures are being implemented correctly and ensuring that no unauthorised persons enter the site.

The directive on **improving the safety and health protection of workers in the mineral-extracting industries through drilling** (92/91/EEC) and the directive on **improving the safety and health protection of workers in surface and underground mineral-extracting industries** (92/104/EEC) oblige employers to ensure that workplaces are designed, constructed, equipped, commissioned, operated and maintained in such a way as to enable workers to carry out their work without endangering health

and safety. Employers must also ensure that work takes place under the supervision of a person in charge and that work involving a special risk is undertaken only by competent staff and carried out according to employer instructions. Further, employers must make sure that safety instructions are comprehensible to all workers, appropriate first-aid facilities are provided and that relevant safety drills are performed regularly.

Further sector-specific health and safety rules have recently been negotiated by the European social partners in the **hairdressing** sector, who have asked the Commission for the implementation of their agreement by directive. The Commission is currently assessing this request, but it will not table a proposal before the end of the current Commission's term of office (end 2014).

The final two directives in this section relate to health and safety at sea. The first is the directive on **safety and health requirements for work on board fishing vessels** (93/103/EC), which provides that Member States oblige owners to ensure that their vessels are used without endangering the safety and health of workers. Any events at sea that affect or could affect the safety or health of workers should be described in a report that is then forwarded to the relevant competent authorities and must also be recorded in the ship's log. Vessels should also be checked regularly by health and safety authorities.

The directive also obliges the employer to inform workers of all measures that relate to safety and health on board vessels. Workers must also be given suitable training on accident prevention, covering fire fighting, the use of life-saving and survival equipment, the use of fishing gear and hauling equipment and the use of signs and hand signals. In addition, the directive on **safety and health requirements for improved medical treatment on board vessels** (92/29/EEC) aims specifically to improve medical assistance at sea, on the basis that a vessel represents a workplace involving a wide range of risks. Its provisions cover issues such as obliging vessels to carry appropriate medical supplies and equipment and a watertight medical chest. Further, larger vessels with 15 or more workers should have a sick bay and vessels with 100 or more workers on an international voyage of more than three days must have a doctor on board.

Directives relating to work equipment

There are a number of directives that set out minimum health and safety provisions relating to work equipment. These cover issues such as personal protective equipment, manual handling of loads, computer display screens and health and safety signs at work.

On **personal protective equipment** (PPE), directive 89/656/EEC sets out minimum requirements for its assessment,

selection and correct use. It states that PPE must be used when risks cannot be avoided or sufficiently limited by technical means of collective protection or work organisation. The PPE must take account of ergonomic requirements and the worker's state of health, and must fit the wearer correctly after any necessary adjustment. Employers must provide the equipment free of charge and ensure that it is in good working order and a hygienic condition and that it complies with the requirements of the directive.

Knowing how to handle loads is an important part of health and safety at work, and a main contributing factor to avoiding injury. Directive 90/269/EEC on the **manual handling of loads** where there is a risk particularly of back injury to workers obliges employers to take appropriate measures, including the use of mechanical equipment, to avoid the need for the manual handling of loads by workers. If this cannot be avoided, the employer must take appropriate steps to reduce risks. For example by organising workstations in such a way as to make such handling as safe as possible, assessing in advance the health and safety conditions of the type of work involved, and examining the characteristics of loads, taking into account in particular the risk of back injury to workers. Employers must also inform workers about relevant measures they are taking and make information available on the weight of a load and on the centre of gravity of the heaviest side when a package is eccentrically loaded. Employers must also ensure that workers receive training and information on how to handle loads correctly and the risks they might incur if these tasks are not performed correctly.


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As a significant number of workers use computer screens for a major part of their work, minimising the risk that this poses to health and safety is a key concern. Directive 90/270/EEC on **safety and health requirements for work with display screen equipment** obliges employers to carry out an analysis of workstations, focusing in particular on possible risks to eyesight, physical problems and mental stress. The employer must then take appropriate measures to remedy the risks found and ensure that workstations meet the directive's minimum requirements. Employers must also plan the worker's activities in such a way that work on a display screen is periodically interrupted by breaks or changes of activity.

The directive also states that workers should be informed about safety and health as it relates to their workstation and that they are given training on how to use

the workstation. Most specifically, it entitles workers to an eyesight test before starting display screen work and afterwards at regular intervals, or if they are having visual difficulties.

Signage is an important aspect of health and safety at work, and is regulated by directive 92/58EEC on the **provision of safety and/or health signs at work**. This directive obliges employers to provide or ensure that safety and/or health signs are in place where hazards cannot be avoided or reduced. Employers must also inform workers about all measures taken concerning health and safety signs and must offer instruction about these signs.

Finally, **work equipment** is regulated by directive 2009/104/EC, which obliges employers to ensure the safety of the work equipment used by workers. Employers must also maintain this equipment and provide for its inspection and testing. If a risk associated with equipment cannot be eliminated, the employer must seek to minimise it by means such as restricting access to its use. Employers must also provide workers with information on the work equipment and ensure that workers receive adequate training.

Regulation involving groups of workers

Two directives provide health and safety protection for workers on a collective basis. The first is directive 91/383/EEC on **safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship**, which aims to ensure that workers with these types of employment relationship are afforded the same level of protection, including in the area of health and safety, as that of other workers. In particular, Member States may prohibit the use of temporary workers to perform tasks that are particularly dangerous, especially work requiring special medical surveillance. Where Member States do not use this option, they must ensure that all workers who are called on to perform work requiring special medical surveillance have access to this.

In the case of **pregnant workers**, directive 92/85/EEC provides for a range of health and safety protection measures. These include protection against chemical, physical and biological agents and industrial processes deemed to be dangerous for pregnant employees, and protection relating to physical movements and postures, mental and physical fatigue and other types of physical and mental stress. It also provides that pregnant workers should not be obliged to work night shifts.

Physical agents directives

There are five directives providing protection against exposure to physical agents: electro-magnetic fields; explosive atmospheres; mechanical vibration; noise; and artificial optical radiation.

Electromagnetic fields: directive 2013/35/EU covers all known direct and short-term biophysical effects and indirect effects caused by electromagnetic fields, obliging employers to carry out a risk assessment of electromagnetic fields at the workplace and to eliminate or reduce to a minimum any risks found. There is also an obligation on employers to train and inform workers adequately about possible risks and to carry out health surveillance. The occupations affected by electromagnetic fields include power line repairers, welders, workers who use radar and healthcare professionals using magnetic resonance imaging machines.

Explosive atmospheres: directive 1999/92/EC obliges employers to carry out a risk assessment on the likelihood that explosive atmospheres will occur in the workplace (for example if there is coal dust or other types of dust in the air that could be ignited by an electrical short-circuit) and the scale of the likely effects of this. The directive obliges the employer to take measures to prevent the formation of explosive atmospheres or avoid the ignition of explosive atmospheres, and reduce the effects of an explosion so that the health of workers is not at risk. The employer must also inform workers and offer training.

Mechanical vibration: directive 2002/44/EC aims to provide timely detection of adverse health effects arising or likely to arise from exposure to mechanical vibration (for example in manufacturing, mining and construction) and in particular musculo-skeletal disorders. It defines exposure limit values for hand-arm-vibrations and whole-body-vibrations on the basis of a standardised eight-hour reference period. It obliges employers to assess and measure levels of exposure to mechanical vibration. Following this, action should be taken to reduce risks, or reduce exposure if this is found to exceed limits. Workers exposed to risks from vibration at work should be informed and trained appropriately.

Noise: directive 2003/10/EC seeks to protect workers from risks to their health and safety arising or likely to arise from exposure to noise (for example in the case of those working in mining, quarrying, construction and transport) and in particular the risk to hearing. It obliges employers to assess and if necessary measure the levels of exposure to noise to which workers are exposed. The employer must then seek to eliminate or minimise these risks, by means such as using working methods or equipment that require less exposure to noise, providing instructions on the correct use of equipment, technical measures (shields or noise-absorbing coverings) or organisational measures in order to reduce duration and intensity of exposure. If the risk cannot be eliminated, the employer must provide hearing protectors.

Artificial optical radiation: directive 2006/25/EC sets out limit values for exposures of workers to artificial optical radiation to eyes and skin, such as lasers, laser radiation and non-coherent radiation. It does not, however, cover exposure to natural optical

radiation (eg sunlight, moonlight or light from volcanic eruptions). Workers in metalworking, pharmaceuticals, glass manufacture, motor vehicle repair workers and health workers may all be potentially at risk from artificial optical radiation. The Directive obliges employers to carry out a risk assessment on the level, wavelength range and duration of exposure to artificial sources of optical radiation, special circumstances such as multiple sources, indirect effects (blinding, explosion, fire), particularly sensitive risk groups of workers and possible effects resulting from workplace interactions between optical radiation and photosensitising chemical substances. Employers should then eliminate or minimise these risks.

Biological agents directives

There are two main directives that relate to biological agents. The first is a general directive (2000/54/EC), which aims to **protect workers from risks related to exposure to biological agents at work**. It classifies biological agents into four groups according to their level of risk of infection[(1)]. Employers should avoid using a harmful biological agent by replacing it, if possible, with one that is not dangerous or less dangerous to workers' health.

(1) Group 1 is unlikely to cause human disease; group 2 can cause human disease and might be a hazard to workers but is unlikely to spread and there is usually treatment available; group 3 can cause severe human disease and present a serious hazard to workers and may spread, but there is usually treatment available; group 4 causes severe human disease, is a serious hazard to workers, may have a high risk of spreading and there is usually no effective treatment available.

The employer should carry out risk assessments and if they reveal a risk to workers' health or safety, employers must, if requested to do so, make appropriate information available to the competent authority. The directive also obliges employers to ensure hygiene and individual protection by prohibiting eating or drinking in working areas, providing protective clothing and appropriate toilet and washing facilities, and maintaining protective equipment properly. Employers should give workers appropriate training on working with biological agents and provide written instructions and display notices of the procedure to be followed in case of a serious accident or the handling of biological agents in group 4.

The second relevant directive (2010/32/EU) provides workers with protection against **sharp injuries in the hospital and healthcare sector**, and gives legal force to an agreement reached by the EU-level social partners in the healthcare sector. It aims to prevent injuries to workers that are caused by all medical sharps, including needlesticks and protect workers at risk of these injuries, so as to minimise the risk of exposure to blood-borne infections such as HIV/AIDS. It also aims to encourage an integrated approach to this issue, based on risk assessment, risk prevention, training, information, awareness raising and monitoring.

Employers must carry out a thorough risk assessment when injury, blood or other potentially infectious material is possible or present, focusing on how to eliminate

these risks. This includes procedures such as safe disposal, eliminating unnecessary sharps use, providing safety-engineered medical devices, prohibition of recapping, coherent prevention policy, training and information, personal protective devices and offering vaccination. Workers should report any accident; the accident should be investigated and the victim treated.

Dangerous substances directives

Workers in some occupations may be exposed to risk from substances that could harm their health. There are therefore a number of directives that provide protection from potentially harmful substances such as chemical agents, carcinogens, mutagens and asbestos.

Chemical agents: directive 98/24/EC provides for the drawing up of **indicative and binding occupational exposure limit values and biological limit values**, which must then be established at national level. The employer is obliged to determine whether hazardous chemical agents (for example toluene, which is used in making paints, paint thinners, fingernail polish, lacquers, adhesives, and rubber and in some printing and leather tanning processes) are present at the workplace, and assess their risk to safety and health. If there is a risk, the employer should try to eliminate or minimise it, preferably by substitution. The employer should also draw up action plans to be implemented in the event of emergencies related to the presence of hazardous chemical agents at the workplace. Workers should be informed about these emergency arrangements, in addition to the results of risk assessments, and the presence of hazardous chemical agents at the workplace. Employers should also provide appropriate training on dealing with hazardous chemical agents.

Workers at risk from chemical agents must have access to health surveillance and must be informed by a doctor if they are found to have a disease or adverse health effect associated with exposure at work to a hazardous chemical agent or a binding biological limit value is found to have been exceeded. Four directives implement this directive by laying down indicative occupational exposure limit values: directive 91/322/EEC establishes values for a reference period of eight hours for 10 chemical substances; directive 2000/39/EC establishes values for a reference period of eight hours time-weighted average and also for a short-term period of 15 minutes for 61 chemical agents; directive 2006/15/EC adds 33 chemical agents to the list; and directive 2009/161/EU a further 19 chemical agents to the list.

Carcinogens or mutagens: Directive 2004/37/EC provides **protection for workers against exposure to carcinogens or mutagens at work**. Employers are obliged to assess and manage risks of exposure to these agents (for instance asbestos, although also covered by a separate directive – see below – and the industrial solvent benzene) eliminating or reducing the risk to a minimum, ideally by substitution. Other ways of reducing the

risk include keeping the number of workers exposed as low as possible, designing work processes to minimise the substance release, and using individual protection measures if collective measures are not sufficient. Employers must also prohibit eating, drinking and smoking in contamination risk areas, provide appropriate protective clothing and separate storage places for work clothes and normal clothes, and appropriate and adequate washing facilities. Employers must offer appropriate training to workers, and inform them and/or their representatives about objects containing carcinogens or mutagens (and label them clearly) and on abnormal exposures as quickly as possible.

Asbestos was for a long time used for fireproofing and insulation in commercial buildings and homes. Although its use is now banned, it can still be found in older buildings: workers can be exposed during renovation or demolition work. Exposure to asbestos poses one of the most severe long-term threats to workers' health, causing asbestos-related lung cancer, mesothelioma (a cancer of the lining of the lungs) and asbestosis (scarring of the lungs), and directive 2009/148/EC contains provisions that aim to offer protection. It **applies to activities in which workers are or may be exposed to dust from asbestos or materials containing asbestos**. If this is likely, the employer must carry out a risk assessment and activities that involve exposure to asbestos dust must notified by the employer to the responsible national authority. Employers must ensure that exposure to asbestos is reduced to a minimum, including: minimising the number of persons exposed, prioritising dust-free work processes, cleaning buildings and ensuring that materials are properly stored, transported and labelled.

The directive sets a single maximum limit value for airborne concentration of asbestos; if this is exceeded, the employer must identify the reasons and take measures to remedy the situation. Work may not


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continue before measures are taken. If limit values cannot be kept by technical measures, following consultation with workers, the employer should ensure protection, such as providing personal protective equipment, putting up warning signs and preventing the spread of asbestos dust.

Employers are obliged to provide appropriate training for workers on topics related to working with asbestos and inform workers on all aspects of working with asbestos. Employers must also ensure that workers' health is assessed, including a chest examination, prior to exposure to asbestos, and subsequently at least once every three years during exposure.

OSH strategies

EU policy on occupational safety and health is contained in its Community strategies on health and safety at work. The two most recent strategies cover 2002-2006 and 2007-2012.

The 2002-2006 strategy was based on an overall approach to wellbeing at work which took account of changes in the workplace and the emergence of new risks, in particular those of a psychosocial nature. The formal evaluation of this strategy noted that it had been successful in relaunching prevention policies at national level, promoting partnership to achieve objectives in the health and safety field, and raising public awareness of the importance of health and safety at work. It also saw a significant fall in the rate of accidents at work: between 2000 and 2004, the rate of fatal accidents at work in the EU fell by 17 % and the rate of workplace accidents resulting in absences of more than three days fell by 20 %.

The 2007-2012 strategy aimed to build on this progress, centring on the goal of reducing the total incidence rate of accidents at work by 25 % per 100 000 workers in the EU27 by 2012, by means such as improving health and safety protection. The strategy hoped to achieve this by encouraging the following activities: guaranteeing proper implementation of EU legislation; supporting SMEs in implementing legislation; adapting legislation to changes in the workplace and simplifying it where possible, particularly with reference to SMEs; promoting national strategies; encouraging changes in the behaviour of workers and employers; developing methods for identifying and evaluating new risks; improving progress tracking; and promoting health and safety at international level. It called upon relevant parties at all levels, such as European, national, local and workplace level, to help with implementation.

The strategy also identified a number of ongoing challenges to health and safety. These included the fact that, according to the fourth European survey of working

conditions, published in 2007, almost 28 % of workers in Europe said that they suffer from non-accidental health problems which are or may be caused or exacerbated by their current or previous work. Further, 35 % of workers felt that their job put their health at risk in some way.

The strategy also identified a number of remaining challenges, such as the fact that some categories of workers are still overexposed to risk – in particular young workers, those in insecure employment, older workers and migrant workers. SMEs have fewer resources to put into place complex worker protection systems, and certain sectors carry higher occupational risk, such as construction, civil engineering, agriculture, fishing, transport, health care and social services. In addition, it stated that challenges such as the ageing population, an increase in self-employment, outsourcing, increasing levels of employment in SMEs and an increase in flows of migrants into Europe, will need to be met in order to protect the health and safety of workers in Europe.

The Commission's **evaluation of the 2007-2012 strategy** was published in May 2013, noting that it had been highly relevant for the EU, its goals had been achieved and there was evidence of significant EU value added. It also highlighted the positive effect of having a quantitative target of a 25 % reduction in the incidence of accidents at work, which helped to increase the visibility given to the OSH policy area. Further, the existence of the quantitative target helped EU countries with a high incidence of accidents at work to focus more clearly on reduction measures. However, the downside was that this target – focused on accidents – may have diverted attention from the prevention of occupational diseases.

Although the economic climate has been difficult since the strategy was put into place, the evaluation shows that it has been effective. Action has been taken under all areas listed above, and results have been achieved, particularly in developing national strategies and fostering a preventive culture. Nevertheless, the evaluation has also found that more improvement is needed at the level of individual companies, in particular among SMEs.

In terms of impact, because of a lack of recent data across the EU, it was not possible to establish with any accuracy whether the strategy's goal of achieving a 25 % reduction in the incidence rate of occupational accidents had been achieved. However, the evaluation states that it is likely that a significant reduction

has been achieved in this area and that the goal may have been broadly reached. At the same time, available data suggests that the goal of reducing the incidence of work-related diseases has not been achieved.

Therefore, despite overall progress, a number of challenges remain for the future. Firstly, there is concern that the **incidence of occupational diseases** has not decreased. Further, **new possible risks** to health and safety keep emerging, such as nano-materials and electromagnetic field hazards.

More broadly, the **ageing** of the EU's workforce will mean that there will be an increasing need to retain workers and therefore a greater need for a focus on health and safety and a safe working environment. It is also clear that the implementation of the legal framework on health and safety in **SMEs and microenterprises** remains a major challenge, as these companies are faced with the same type of risk as larger employers, but often do not have the same level and depth of expertise on OSH matters. Finally, the accuracy and comparability of statistical tools at both EU and national levels in the area of **monitoring occupational diseases** remains a key challenge for future OSH strategy.

Advisory bodies

Three main EU-level advisory bodies are helping with the development, monitoring and adaptation of workplace health and safety policies. The first is the **Advisory Committee on Safety and Health at Work** (ACSH), a tripartite body that was formed in 2003 out of a merger of two previous health and safety bodies[2]. Its main task is to help the European Commission to prepare, implement and evaluate activities in the field of safety and health at work. In particular, it gives opinions on EU OSH initiatives, including new legislation, helps identify EU priorities and establish policy strategies, and acts as an interface between the national and EU level in terms of facilitating the exchange of views and experience. It is made up of one representative from each of government, trade unions and employers from each EU Member State and currently has 84 members.

The ACSH holds two plenary meetings a year, has three interest groups and is chaired by a Commission representative. Its activities are coordinated by a bureau made up of two representatives from the Commission and the spokespersons and coordinators designated by the interest groups. The bureau also prepares the

(2) The former Advisory Committee on Safety, Hygiene and Health Protection at Work (established in 1974) and the Mines Safety and Health Commission for safety and health in the coal mining and the other extractive industries (established in 1956).

Committee's annual work programme. The Committee also currently has 12 working parties, which deal with specific technical issues and organise workshops and seminars on specific topics.

The second advisory body is the **Scientific Committee on Occupational Exposure Limit Values** (SCOEL), which was set up in 1995 in order to advise the European Commission on occupational exposure limits for chemicals in the workplace. Its main activity is to prepare scientific recommendations for the Commission, which are used to underpin regulatory proposals on occupational Exposure Limit Values (OELVs) for chemicals in the workplace. The Committee comprises up to 21 members from the EU Member States, who are independent experts in the fields of chemistry, toxicology, epidemiology, occupational medicine and industrial hygiene.

The third EU-level advisory body is the **Senior Labour Inspectors' Committee** (SLIC), which has been in existence since 1982, when it met informally in order to assist the European Commission in monitoring the enforcement of EU legislation at national level. In 1995 SLIC was mandated to submit opinions to the Commission (at its request or up its own initiative) on all problems that are relevant to the enforcement by the Member States of Community law on health and safety at work. SLIC's main activities cover areas such as defining common principles of labour inspection in the field of health and safety at work and developing methods of assessing national systems of inspection. It also aims to promote improved knowledge and mutual understanding of the different national systems and practices of labour inspection, and the methods and legal frameworks for action.

Further activities of the Senior Labour Inspectors' Committee include developing exchanges of information between national labour inspection services and promoting a labour inspector exchange programme between national governments. It also sets out to develop a system of rapid information exchange between labour inspectorates, establish active cooperation with labour inspectorates in countries outside the EU, and study the possible impact of other Community policies on labour inspection activities in health and safety. The Committee meets every six months and is made up of the Commission and one representative of the labour inspection services of each EU country.

Box 4.1 Key health and safety rights

European directives give European workers a wide range of rights in the area of health and safety. In the workplace, employees have the right to work in surroundings that are safe and hygienic, based on employer risk assessments, and to work with equipment that is safe, regularly maintained and checked.

Workers also have a right to be supplied with personal protective equipment when a risk cannot be avoided or sufficiently limited, and for their employer to minimise risks relating to the manual handling of loads, particularly where there is a risk of back injury. They have a right to information and training that is relevant to aspects of their health and safety at work. Workers are entitled to health surveillance in certain situations, such as those working with visual display screens.

Workers on fixed-term and temporary contracts have a right to the same health and safety protection as other workers. Pregnant workers enjoy a range of enhanced health and safety rights, mainly related to protection against exposure to dangerous substances or harmful processes, and cannot be obliged to work at night.

Finally, workers have the right to be protected against a wide range of agents and substances that could be harmful. These include physical agents such as electromagnetic fields, explosive atmospheres, mechanical vibration, noise and artificial optical radiation, biological agents, sharp injuries, chemical agents, carcinogens, mutagens and asbestos. Workers who are at risk of exposure to asbestos have the right to regular chest examinations.

Contribution from EU-OSHA

Christa Sedlatschek, Director of the European Agency for Safety and Health at Work

Does the 21th century bring new major risks to workplace health and safety? Or do we tend to underestimate some of the 'old risks'?

The short answer to this question is that we have to be mindful of both: there certainly are new risks about which we do not have enough information. An example of these would be the risks associated with nanoparticles. And there are emerging risks, those more traditional risks which we know quite a lot about but which are persistent or on the rise. Here, we could mention musculoskeletal disorders or illnesses due to exposure to chemicals. All of these are an important focus for our work.

Currently, two of the most topical and challenging issues in relation to occupational safety and health in Europe are the ageing workforce and work-related stress.

Work-related stress, depression and anxiety represent the second most frequently reported health problem by workers in Europe, after musculoskeletal disorders. Effectively managing work-related stress is not only a legal obligation for employers, but essential if they are to be economically successful and retain and motivate a healthy workforce.

EU-OSHA will launch its Healthy Workplaces Campaign on 'Managing Stress' in April 2014. The campaign will raise awareness about the growing problem with stress and psychosocial risks and about the positive effects of reducing them. It will promote the use and development of simple practical tools for reducing and managing stress and psychosocial risks at work, in particular for micro and small enterprises. Our central message is that stress and psychosocial risks, while challenging, can be successfully managed just like other occupational safety and health risk.

Regarding ageing, it is certainly true that we are living longer, but in Europe more

than half of older workers (aged 55–64) currently leave work before retirement age, for a variety of reasons[3]. Is this trend likely to continue? We need to ensure that it does not: *better and longer working lives* are essential in order to finance and support the ageing European population.

In 2012 the European Parliament set up a pilot project on the health and safety at work of older workers that the European Commission delegated to EU-OSHA. The project will examine occupational safety and health in the context of an ageing workforce, with the aim of informing policy development and providing examples of good strategies and practices for helping older workers stay healthy. European employers need to be encouraged and supported to adopt smart policies aimed at keeping older workers in employment right up their retirement.

How can the EU and national governments help small companies to know what exactly they need to do to comply with workplace health and safety rules? Can we do something better?

Small, medium and micro enterprises are the bedrock of the European economy. At EU-OSHA, we know that when it comes to health and safety, a level playing field is essential and that is why European legislation is very important. And it is particularly true for SMEs because they can least afford the costs associated with health-related poor performance, illness, absenteeism or accidents. Our own ESENER study shows that they typically have lower awareness and lack expertise and have fewer resources to dedicate to health and safety. They are particularly vulnerable.

It is clear therefore that small and micro enterprises need support in ensuring that they meet the requirements. We take that very seriously - that's why these small and micro enterprises are a central focus for our work and our main target.

Our online interactive risk assessment tool (OiRA) is developed specifically for small businesses. OiRA is a free online software tool that gives micro and small businesses the means to carry out workplace risk assessments and efficiently manage risks in a straightforward and cost-effective way. The project is rolling out across several Member States with the support of the Social Partners. Our aim is to demystify the whole risk assessment process and in doing so demonstrate to SMEs what the evidence clearly shows: health and safety is a key dimension of good management and it contributes to long-term business success and to European competitiveness.

For more information about EU-OSHA, visit https://osha.europa.eu

(3) Ilmarinen, J. (2012) Promoting active ageing in the workplace. Available online at: https://osha.europa.eu/en/publications/articles/promoting-active-ageing-in-the-workplace (accessed 17 September 2013).

CHAPTER 5

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The international dimension

The interplay between the EU, its Member States and international social and employment law and policy takes a number of forms. These range from accession and international conventions to formal and informal relationships with global institutions. At the very highest level this interplay includes relationships with governments of countries outside the EU and action in international organisations.

On a global level the EU plays a key role in encouraging the uptake of its values beyond its borders and working with international institutions to share best practices and engage in mutual learning on employment and social policies. It is a major trading force but also a union based on values such as respect for human rights, and therefore it seeks to ensure that globalisation of the economy benefits all workers and citizens and that economic development is socially and environmentally sustainable. To this end, the EU promotes international labour standards and the Decent Work Agenda in international forums and in its relations with partner countries and regions, and shares expertise or provides specific support to them on many aspects of employment and working conditions.

The EU notably cooperates with the United States, China, Japan, India, Brazil, Chile, and South Africa , in policy dialogue and exchange of good practices – e.g. on green jobs, skills and qualifications, social protection, labour relations, inclusion and poverty alleviation or on health and safety at work. Dialogue also takes place on an ad hoc basis with other important global partners such as Canada and within international organisations, such as the United Nations.

Box 5.1 A level playing field across the global economy

The globalised economy requires both a level playing field and a shared approach to common challenges. Social development is part of sustainable development and needs to be underpinned by rights at work, including health and safety standards.

International labour standards coherent with European ones are important both economically and socially. They aim at creating decent work conditions for all so that prosperity is fairly shared and a race to the bottom on social and labour standards is avoided. The mutual sharing of experience and best practices between the EU and its partners plays an important role in this respect.

The external dimension of EU employment and social policy is being created in a number of ways and on multiple levels of intensity. For example, countries seeking to join the European Union have to transpose the EU *acquis* into their own national legal system,

including in the field of employment, social affairs and inclusion, by the time of accession. The EU helps them in this process through policy dialogue and funding. The EU also encourages them to develop employment and social policy reforms to promote an inclusive and efficient labour market. Under the European Neighbourhood Policy, the EU works with the partners to develop democratic, socially equitable and inclusive societies, and offers its neighbours economic integration, improved circulation of people across borders, financial assistance and technical cooperation toward approximation with EU standards (e.g. equal opportunities, access to social services for all citizens, observing healthy and safe working conditions etc.).

Bilateral agreements, notably recently negotiated trade agreements, also contain specific **chapters on trade and sustainable development** with provisions on ratification and effective implementation of international core labour standards and on the promotion of the ratification and application of other up to date ILO conventions, as well as monitoring mechanism involving social partners and other civil society representatives. These agreements promote high levels of labour protection, Corporate Social Responsibility and cooperation in a number of areas related to trade and labour. This is particularly important as supply chains increasingly become global, i.e. products and services include components from increasingly many countries.

Box 5.2 The EU's active involvement with international organisations and other regional bodies

Beyond bilateral relations with its main trading and political partners, the EU also works with the ILO, the Council of Europe, the Organisation for Economic Cooperation and Development, the United Nations as well as other forums. Consistency between economic and social policies is important and the EU is actively involved in joint meetings with the International Monetary Fund and the ILO (the "Oslo process"), and in the G-20. The ILO regional meeting for Europe agreed in April 2013 in Oslo to strengthen activities in those EU Member States that are strongly affected by the financial, economic and social crisis.

The EU also cooperates on employment and social issues with a number of regional entities such as the Community of Latin American and Caribbean States (CELAC) with whom it has a constant dialogue on social cohesion, or through the Asia-Europe Meeting (ASEM), with Asian countries very much interested in the EU's experience in areas including social dialogue and health and safety at work.

International conventions inspire and inform EU social and employment law and policy on many levels: the Treaties themselves, legislation, the 1989 Community Charter of the Fundamental Social Rights of Workers, the EU Charter of Fundamental Rights and the case law of the Court of Justice of the European Union. The instruments most commonly referred to as a source of social and employment rights are the European Social Charter and numerous Conventions of the International Labour Organization (see also Chapter 1).

The Union is required to have in mind fundamental social rights, such as those set out in the Council of Europe's European Social Charter 1961 and the revised Charter of 1996, when formulating and implementing its social policy. The Community Charter of the Fundamental Social Rights of Workers, 1989, has taken source in the European Social Charter while many of the provisions of the more recent Charter of Fundamental Rights of the European Union, accorded Treaty status by the Treaty of Lisbon, correspond to provisions of the European Convention on Human Rights. The equal pay provisions of the original EEC Treaty echo those of Convention No 100 of the International Labour Organisation.

On the legislative front, Directive 94/33 on the protection of young people at work, and Directive 2003/38 on the organisation of working time both state in their preambles that account should be taken of the principles of the ILO regarding the protection of young people at work and the organisation of working time.

Many aspects of the working conditions of seafarers are established by Directive 2009/13, which implements an agreement reached between EU sectoral social partners and reflects the provisions of ILO Maritime Labour Convention of 2006. Directive 97/81 implementing the European social partners' Framework Agreement on Part-time Work was influenced by ILO Convention No 175 (1988) on Part-time Work. Both the Race Equality Directive and the Employment Equality Directive refer, in their respective preambles, to a number of international conventions.

Box 5.3 Interpretation of international conventions

The Court of Justice of the European Union regularly uses international conventions while interpreting and applying EU law. In ***Defrenne v Sabena*** the Court referred to Article 2 of ILO Convention No 100 (1951) on equal pay in concluding that Article 119 EC, now Article 157 TFEU, should be interpreted in the light of that provision to include the principle of equal pay for work of equal value.

In Commission v United Kingdom the Court interpreted the concepts of 'health' and 'safety' in Article 118a EC, now Article 153 TFEU, in the light of the meaning given to those concepts in the preamble to the Constitution of the World Health Organization whose members comprise all the Member States.

Relationships with international organisations

The EU has long-standing, strategic relationships with certain international organisations including the ILO and the Council of Europe, the OECD and the WHO. It has also forged relations more recently with other international organisations.

The objectives and the results of these relationships are set out below.

The EU and the ILO

An exchange of letters in 1958 began what has become an ever closer relationship with the International Labour Organisation (ILO). This exchange of letters is periodically renewed, the most recent being in 2001 and high level meetings set annual priorities for cooperation.

185 countries are member of the ILO which has a unique, tripartite structure that brings together workers, employers and governments. Each member country is represented by two government, one employer and one worker representatives. Established in 1919, it is the oldest United Nations' Specialised Agency and it is mandated to promote social justice. It develops, promotes and supervises labour standards and provides technical assistance to its members.

The co-operation between the ILO and the EU is growing stronger both within and outside the EU. The EU actively participates in discussions and negotiations at ILO meetings in Geneva, notably on the adoption of conventions, recommendations, resolutions and other important texts. It notably contributed to the adoption of the 2008 ILO Declaration on Social Justice for Fair Globalisation, of the 2012 framework for action on fundamental principles and rights at work and the 2013 framework for action on social dialogue. The ILO contributes to internal and external EU issues such as the cooperation between the EU and other regions and both develop joint projects together in areas such as safety and health at work, migrant domestic workers, measuring decent work or the impact of trade on employment.

Cooperation on a regional and country level, under the strategic partnership, consists of programmes and projects aimed at promoting core labour standards, corporate social responsibility, social dialogue, poverty reduction and employment, migration and development. Gender equality issues are to be addressed in all the areas in which the partnership is active.

The Decent Work Agenda

The EU works with the ILO to promote decent work for all both internally and in its external relations. The Decent Work Agenda is based on an integrated approach covering productive and freely chosen employment, full respect for rights at work including core labour standards, social dialogue and social protection which encompasses health and safety at work. Anti-discrimination and

Box 5.4 ILO and the European Union – a strategic partnership

In 2004 the ILO and the European Commission further strengthened their links through the establishment of a strategic partnership in the field of development cooperation. The purpose of this partnership is to work together towards the shared goal of reducing poverty. This they set out to do by strengthening the social dimension of development cooperation through the achievement of the UN's Millennium Development Goals and the Decent Work Agenda.

The EU played a key role in cooperating closely with emerging economies, developing countries and social partners. This is highlighted by its adoption of the June 2008 ILO Declaration on Social Justice for Fair Globalisation and of the Global Jobs Pact in 2009. The later was adopted unanimously at the ILO Summit on the Global Jobs Crisis of June 2009.

gender equality are cross-cutting issues. The EU encourages and supports the worldwide ratification and implementation of the ILO fundamental Conventions.

The EU itself cannot ratify any ILO Convention because only States can be a party to such conventions. On the other hand, Member States need the green light of the EU to ratify ILO Conventions, where parts of these Conventions fall within EU competence.

The ratification of ILO Conventions by EU countries sends an important signal as to the coherence of the Union's policy in improving labour standards worldwide. Over the past decade the Council has authorised member countries to ratify five ILO Conventions, parts of which fell within EU competence:

- The Seafarers' Identity Documents Convention No 185
- The Maritime Labour Convention, 2006
- The Work in Fishing Convention n°188
- The Chemicals Convention n°170
- The Domestic Workers Convention n°189

By 1 January 2014, 20 EU Member States had ratified the Maritime Labour Convention. This has contributed, to a significant extent, to attaining the threshold of 30 ratifications needed to bring the Convention into force.

The EU sectoral social partners also concluded an agreement on the Maritime Labour Convention, which was implemented as Council Directive 2009/13/EC. The Directive goes beyond the standards laid down in the Convention by including more favourable conditions in areas such as health and safety at work. The enforcement of the Convention within the EU is also secured through further EU legislation on flag State and port State control, adopted in 2013, to ensure that the Convention's provisions are applied and enforced on board all ships calling at EU ports, regardless of the nationality of the seafarers.

The social partners have recently reached an agreement on the transposition into EU law of the Work in Fishing Convention, 188. They have asked the Commission for an implementation of their agreement by directive. The Commission is currently assessing this request.

In November 2012 the Commission published a proposal for a Council Decision, adopted by the Council in January 2014, authorising the Member States to ratify ILO Convention No, 170 concerning Safety in the use of Chemicals at Work. The purpose of this Convention is to reduce incidents of chemically induced illnesses and injuries at work, but its effect will be felt beyond the workplace as compliance with its provisions will enhance the protection of the general public and the environment.

In March 2013 the European Commission presented a proposal for a Council Decision, adopted by the Council in January 2014, authorising EU countries to ratify the Convention concerning **decent work for domestic workers** (Convention No 189 of 2011), which entered into force in September 2013. The provisions of the convention are intended to help to curb the abuse and exploitation of people performing work in or for a household within an employment relationship.

ILO Member States ratifying the Convention are required to take measures to ensure fair and decent working conditions and to prevent abuse, violence and child labour in domestic employment. They must ensure equal treatment between domestic workers and other workers as regards compensation and benefits, for example maternity benefits. The Convention also introduces the obligation to inform workers of the terms and conditions of their employment. Further provisions require that domestic workers are protected against discrimination, are offered decent living conditions and have access to complaint mechanisms.

The EU and the Council of Europe

The Council of Europe is an intergovernmental organisation. Founded in 1949, it seeks to ensure that fundamental values such as human rights, democracy and the rule of law are respected throughout Europe. The Council of Europe has 47 member countries and represents 800 million people, thus covering almost the entire European continent. All 28 EU countries are members.

As with the ILO, the framework for the relationship between the EU and the Council of Europe has been defined by means of several exchanges of letters and is regularly discussed in high-level meetings.

Since 1993, the Council of Europe and the EU have developed Joint Programmes in pursuit of common aims with regard to the protection of fundamental rights, fundamental freedoms and the rule of law in Europe. The European Commission and the European Committee of Social Rights, the supervisory system of the European Social Charter, have intensified their dialogue on social and economic rights.

Box 5.5 Swift response to work place disasters and decent work deficits beyond the EU

In July 2013, in the wake of the Rana Plaza factory collapse in which more than a 1 000 workers died, the EU, the government of Bangladesh and the ILO accompanied by trade unions, employers' organisations and other relevant stakeholders launched a "sustainability compact". This set out time-bound commitments to improve labour rights, working conditions, factory safety and to promote responsible business conduct in the garment industry in Bangladesh. The US associated itself with the initiative.

Amongst the concrete commitments to achieve these objectives were the amendment of the Bangladeshi labour law in July 2013 and its entry into force by the end of the year; the recruitment of 200 additional factory inspectors by the end of 2013, and the inspection of building and fire safety in factories by 2014. In addition, to date 150 major EU brands and buyers of ready-made garment signed up to the "accord on factory and building safety" with international trade unions (www.bangladeshaccord.org). This is a concrete example of a comprehensive and partnership approach involving all stakeholders to promote better working conditions across global supply chains.

The EU and the OECD

The Organisation for European Economic Development (OECD) is an international organisation of developed countries sharing a system of democratic government and market economy. The OECD has 31 member countries of which 21 are Member States of the EU. The Organisation regularly publishes studies and statistics in various policy areas notably on its Member States.

Through the additional Protocol n°1, annexed to the Convention of the Organisation for Economic Cooperation and Development (1960), signatory countries decided that the European Union, through the European Commission, would take part in the work of the OECD.

Being a quasi-member of the OECD offers many benefits to the EU, and especially to EU countries which are not members of the OECD in their own right. Through its surveys of community policies and of the eurozone, and its regular production of statistical data and economic comparisons, the OECD provides the material required to analyse and monitor the EU's economic, employment, social and environmental policies. Thus, the EU can draw on the OECD's unique reservoir of expertise, including peer reviews, and can access all of the research and analysis conducted by the Secretariat of the OECD.

Cooperation between the Commission's DG Employment, Social Affairs and Inclusion and the OECD is based on annual High

Level Meetings and joint management projects on different topics of mutual interest, like quality jobs, skills, tax and benefits, social protection and international migration. DG Employment represents the EU at the OECD's Employment, Labour Market and Social Affairs Committee.

The United Nations

Whilst the EU's has traditionally worked with the ILO, the specialist UN agency, it has increasingly forged contacts with the UN itself, in particular the Commission for Social Development. In 2012 Commissioner Andor addressed the 50th Session of this UN body on 'youth employment issues'.

The EU is contributing to the ongoing debate on the future Post-2015 Development Agenda.The EU is of the position that this framework should work towards sustainable development to eradicate poverty in all its dimensions, including ending extreme poverty in a single generation, and to ensure sustainable prosperity and well-being of all people within planetary boundaries and integrate the three interrelated dimensions of sustainable development, (economic, social and environmental) in a balanced way to ensure basic living standards, including decent work and social protection floors for all[4]. Advocating for these objectives, the EU has contributed to the work of the Open Working Group on Sustainable Development Goals, including in particular employment and decent work for all, social protection, youth, sustained and inclusive economic growth and promoting equality, including social equity.

(4) The Overarching Post 2015 Agenda - Council conclusions, 25 June 2013 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137606.pdf

The EU on the global stage

Trade agreements

The EU negotiates free trade agreements with individual countries and regions which now systematically contain a Chapter on trade and sustainable development, i.e. on labour and aspects relating to the environment which are important for, or affected by, trade relations.

These chapters include the commitment of the Parties to ratify and to effectively implement the ILO fundamental conventions, as well as to promote the ratification and application of other more recent ILO conventions. The Parties also commit to strive towards high levels of labour protection, to effectively enforce their domestic labour legislation and to refrain from lowering labour standards in order to attract trade or investment. The trade and sustainable development chapters also envisage an overseeing mechanism which – in addition to governments – involves social partners and other civil society representatives. The chapters also envisage the promotion of Corporate Social Responsibility and cooperation between the Parties in a number of areas related to trade and labour, including the Decent Work Agenda.

Box 5.6 A milestone in EU-UN relations

On 23 December 2010 the EU ratified the **United Nations Convention on the Rights of Persons with Disabilities** (CRPD). This was an historic moment as it was the first time that the EU became a party to an international human rights convention.

The Convention requires parties to take all appropriate steps to ensure that 'reasonable accommodation' is provided with respect to the right to liberty and security of the person, the right to education and the right to work and employment. The definition of 'reasonable accommodation' is stronger and wider than that currently used in EU law.

'Accommodation' means requiring the necessary and appropriate modifications and adjustments to the workplace and the built environment to be made for the purpose of ensuring persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Whilst the obligation of 'accommodation' will generally be applicable to the physical environment, the CJEU has recently held that, in the context of the Framework Employment Directive, it can be extended to the adaption of working hours to enable a disabled person to take up and maintain employment. The obligation to accommodate the disabled to ensure their equal participation both in the world of work and beyond, to civil society is not unlimited: it is subject to the principle of proportionality. Alterations and adaptations are required to be made only where it is reasonable to make them. The CRPD has had a major influence on the content of the European Disability Strategy 2010-2020, which effectively implements the Convention in the EU and brings consistency between it and EU disability policy.

The EU and the World Health Organisation (WHO)

The WHO regards the EU as an important partner both in Europe and beyond. Geographically, more than half of the WHO's European Region's Member States belong to the EU or are actively seeking to join it. The EU has a strong voice on health matters both within its borders and on a global level. In March 2010, for example, the Council adopted a position on the role of the EU in global health to make its contribution more effective, particularly in working towards Millennium Development Goals. The WHO's Representation to the European Union works closely with the European Commission, the Council, the European Parliament and a number of EU agencies working in the health area such as the European Medicines Agency (EMA), The European Centre for Disease Prevention and Control (ECDC) and the European Agency of Health and safety at Work (EU-OSHA).

Agreements containing such provisions have been concluded with countries such as Republic of Korea, Columbia and Peru, and Central America and initialled with Singapore, Georgia and the Republic of Moldova[5]. Many more of these 'new generation' trade agreements are being negotiated, notably with India, Canada, the US, Mercosur, Malaysia, Vietnam, Thailand, Japan and Morocco.

The EU also promotes core labour standards through trade by means of the Generalised System of Preferences (GSP) which is a unilateral instrument whereby the EU grants trade preferences in order to facilitate access to the EU market for products originating in developing countries. Respect for international core labour standards is taken into consideration by the EU when granting preferences under GSP+ arrangement for sustainable development and good governance. GSP+ enables the EU to grant additional preferences to developing countries which are vulnerable and which have ratified and are effectively implementing international core labour standards and other international conventions in the area of human rights, environment and good governance.

Bilateral cooperation

Increasingly, the EU is establishing bilateral relations with regions or countries. The EU closely involves EU social partners in this outreach. Here is a rundown on some of the key players.

(5) Negotiations have also been concluded with Ukraine and Armenia.

China

The EU has strong relations with China, a country of some 1.3 billion inhabitants and a major force in the global economy. On the employment and social front, both face a number of common challenges, for example population ageing and the need for adequate and sustainable support of older people.

Both China and the EU have put in place strategies to support the reintegration into the labour market of vulnerable groups. Both share a common interest in up-skilling the workforce as a means to productivity growth and sustainable economic development. In the long term, China and the EU both face challenges linked to climate change. The movement towards a low carbon economy is expected to transform jobs and skills demand. The economic potential of improvements in resource-efficiency is significant but the shortage of 'green talent' is a common problem that needs to be addressed.

The European Commission services have signed a number of **Memoranda of Understanding (MoU)** in the field of employment and social affairs with the Chinese government, establishing regular dialogues regarding employment policies, occupational safety and health or social security. MoUs have notably been signed with the Chinese Ministry of Human Resources and Social Security (2005), the Chinese Academy of Social Sciences (2008) and the Chinese State Administration for Work Safety (2009), providing for the

organisation of annual meetings between EU representatives and experts and Chinese authorities to exchange good practices and learn from each other's experiences.

Japan

The European Commission has, since 1991, established regular dialogue with Japan on employment and social policies. More than a dozen formal meetings (or Symposia) have taken place between the EU and Japan to discuss concerns of mutual interest, such as employability, adaptability and improvements in labour market functioning as well as policy responses to demographic challenges and the related issues of gender equality, work/life balance and active ageing. The diversity of EU experience, and a range of best practices to draw upon, makes the EU an interesting interlocutor for Japanese policy makers. In turn, the Japanese demographic situation, and the wide range of public policies put in place in response, is instructive for Europe.

India

A Memorandum of Understanding signed in 2006 set up the EU-India dialogue and cooperation on employment and social policy. Until end of 2013 six joint seminars have been held in which both sides exchange experience and good practices. Participants included officials, social partners, NGOs, academia and external experts form the EU and India as well as ILO and OECD. The most recent seminar was held in Brussels in June 2013. The subjects of the seminars covered: skills development, training and employment; social security and social protection, labour relations and resolution of conflict; skills and employment policy in the context of recovery from the global jobs crisis; occupational

health and safety. The seminars were always held in a tripartite format. They were also accompanied by tripartite programmes (visits of workers', employers' and government representatives from India to Europe and vice versa).

Brazil

Social cohesion and employment are also important areas of the EU-Brazil Joint Action Plan 2012-2014.

In April 2008, the European Commission signed a Memorandum of Understanding with the Brazilian Ministry of Social Development and Fight against Hunger and Ministry for Social Security. On this basis, the EU and Brazil have engaged in sharing knowledge of legislation, policies and programmes in the social sector, exchanging best practice in areas such as: human and social development; poverty reduction; the human right to adequate food; social inclusion; inclusive labour markets; extending social protection coverage; equal opportunities and corporate social responsibility. In April 2013, an EU-Brazil employment dialogue focusing on health and safety at work (in the construction sector) took place in Brussels, Luxembourg and Bilbao.

Multilateral and regional relations

Increasingly, the EU is forming multilateral relations either at regional or institutional level. This enables the effective externalisation of EU employment and social policy and exchanges of mutual learning and best practices.

EU involvement in the Asia-Europe meeting

The EU is one of the most important trading partners for Asian countries. In 2012 Asian partners accounted for 29.8 % of EU imports and 21.4 % of exports. Four Asian countries are amongst the EU's top ten trading partners. China 12.5 % takes the top spot, followed by Japan (3.4 %), India (2.2 %) and South Korea (2.2 %). Singapore follows closely (1.5 %). The EU is also a major investor in Asia and is currently finalising its commitment to the region for the 2014-2020 period. This will see a continuation of the EU's engagement with a particular focus on poverty eradication through the Development Cooperation Instrument.

The Asia-Europe Meeting (ASEM) has provided a forum for dialogue between Europe and Asia since 1996. Together the members represent around 58 % of the world's population, half of global GDP and more than 60 % of international commerce. Heads of government meet every two years to set the ASEM agenda. Each year between the summits, over 50 ministerial and officials' meeting take place, maintaining dialogue in a wide range of matters including social values, employment and global governance. Outside the government-level meetings, ASEM brings together lawmakers, businesses and civil society.

Over the last years, the employment and social dimension have been very visible within the Asia-Europe dialogue, highlighted by recent ASEM Summit conclusions which reflected key messages from labour ministers. The regular Labour and Employment Ministers' Meeting (LEMC) provides a platform for dialogue and commitments in the areas of employment, decent work/labour standards, social protection and health and safety at work.

Ministers also review the progress of concrete ASEM employment and social cooperation projects (such as symposia or expert networking), for example in areas of social protection and health and safety at work. Each of these projects has been hosted by one EU and one Asian country, with support by the European Commission.

Regional dialogue within ASEM LEMC also helps to shape debates at global level, for example in the framework of the ILO.

During the 4th ASEM Labour and Employment Ministers' Meeting in Hanoi in October 2012, ASEM partner countries agreed on projects in five areas: Social Protection, co-led by India and the Netherlands; Youth Employment (China/Poland); Health and Safety at Work (Malaysia, Korea/France); Skills Policies (Philippines/Finland) and Social Dialogue on working conditions – (Indonesia/Belgium).

EU involvement with Latin America and Caribbean countries

The fight against poverty, inequality and exclusion in order to reach or increase social cohesion is a key policy priority of the strategic partnership between the EU and the Community of Latin American and Caribbean States (CELAC).

In 2006, at the occasion of the 4th EU-Latin America/Caribbean Summit held in Vienna, the leaders of the two regions agreed to periodically organise a Forum on Social Cohesion. This stimulates policy dialogue and cooperation between the EU, Latin America and the Caribbean on equality, eradication of poverty and social inclusion. Now, the EU-CELAC Social Cohesion Forum is a bi-regional event, which takes place every two years in preparation of the EU-CELAC Summit. The most recent one took place in October 2012 in Argentina, focusing on the coherence between economic growth, employment and social inclusion, youth employment, social protection and green jobs.

G20

The EU has played a leading role in bringing employment and social policies issues to the heart of the G20. Since April 2010, G20 Labour and Economic Ministers have met every year. Despite the wide diversity of challenges across the G20 countries,

(developed countries being concerned primarily with job creation and employment whilst emerging economies have focused on reducing the size of the informal labour market), consensus was reached on common priorities.

The European Commission has contributed to the G20 agenda with policies such as the Employment Package and the Youth Guarantee.

The EU also encourages its social partners to develop the social and employment dimension of the G20 by exchanging best practices on priorities such as promoting quality jobs for youth by boosting economic demand and developing apprenticeship schemes or developing safer workplaces.

Another key priority is better coherence between macroeconomic, employment and social policies. The first ever joint meeting of G20 Finance and Labour Ministers on 19 July 2013 in Moscow was an important step forward in this regard.

Aligning European and global approaches to Corporate Social Responsibility

Internationally recognised Corporate Social Responsibility (CSR) guidelines and principles cover issues related, among other things, to human rights, international core labour standards, environment protection and good governance.

The Commission promotes CSR through its external policies and endeavours to disseminate internationally recognised CSR guidelines and principles more widely. It does this though its trade and development agreements but also proposes to address CSR issues in established dialogues with partner countries and regions.

The renewed EU Strategy 2011-2014 for Corporate Social Responsibility (CSR) promotes respect for internationally recognised principles and guidelines on CSR, requiring EU enterprises to renew their efforts in respect of these. The Commission intends to monitor the commitment made by European enterprises with more than 1 000 employees, to incorporate internationally recognised CSR principles and guidelines. At the same time it invites all European enterprises to make a commitment by 2014, to take account of one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises or the ISO 26 000 Guidance Standard on Social Responsibility. At the same time the Commission invites all European-based multinational enterprises to make a commitment by 2014 to respect the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

The UN Guiding Principles on Business and Human Rights cover three pillars: the duty of the state to respect human rights; the corporate responsibility to respect human rights and the need for access to an effective remedy. In 2013, the Commission published human rights guidance for three industrial sectors, as well as guidance for small and medium sized enterprises based on the UN Guiding Principles.

The external dimension of EU social security coordination

In a globalised economic environment, labour mobility both within the EU and between the EU and the rest of the world is a growing reality and necessity. Social security coordination is a system of rules aimed at facilitating such mobility. The EU has a system of social security coordination dating from 1959. It ensures that people who exercise their right of free movement do not loose acquired social security rights, or rights in the process of being acquired. It guarantees social security benefits can be exported beyond the national territory to wherever the claimant or his family is residing. It is a vital tool in achieving free movement. A 2010 Regulation extends the co-ordination to third country (non-EU) nationals legally resident in the EU who move within the EU. The family members and survivors of such people are also covered if they are in the EU.

Whilst the social security rights of EU nationals moving within the EU are coordinated, social security coordination with the rest of the world has hitherto been organised in two ways: either through association agreements, which govern the co-ordination of social security rules for workers and their families who move between an EU country and the associated country, or, in the case of countries with which the EU has no association agreement, bilateral agreements between Member States and selected non-EU countries.

This fragmented approach is somewhat unsatisfactory as it leads to an incomplete network of agreements with variable content. The EU is presently developing a fresh approach to social security coordination with countries outside the Union, also known as 'third countries'. In March 2012, the Commission adopted a Communication on the external dimension of EU social security coordination. It recognises the Member States' competence in concluding bilateral agreements on social security but it also highlights the challenges which a complex web of bilateral agreements means for workers and businesses.

The Commission would like to see enhanced cooperation between the Member States and increasing transparency about the agreements they have entered into. It has also invited the Member States to explore a possibility of EU social security agreements, in particular with the EU's strategic partners, with whom there are significant movements of labour. Given its long and unique experience of social security coordination among Member States, the EU has also been contributing to evolving international discussions on cross-border social security matters, whose importance is rising as transnational movement of workers and their families grows with globalisation.

The ILO International Labour Conference of 2011 called upon ILO Member States to consider concluding agreements to provide equality of treatment for migrant workers, as well as access to social security rights, and their preservation and/or portability. Discussion on social protection norms and social security coordination with other regions of the world is growing.

Contribution from the ILO

Guy Ryder, ILO Director-General

Is the EU still a leader in promoting decent work across emerging markets and developing economies? Could it do more for the rest of the world?

Among all regions, the EU still enjoys the most comprehensive institutions for labour market policies and social protection. It is also a leader in terms of ratification of international labour standards. Historically, these policies have served the region well in terms of ensuring high living standards, fair distribution of the gains from economic growth and stable political systems. This is why other regions have long regarded the European approach to labour market and social policies as a model.

However, in recent years, the European social model has been challenged on the grounds it would hamper external competitiveness while also entailing excessive costs to the public purse. This is particularly the case in countries that have been strongly hit by the crisis – Greece, Ireland, Portugal, Spain and a number of Baltic and Eastern European countries. But the challenge goes beyond these countries.

It is therefore crucial to reaffirm the relevance of decent work goals for the EU. Of course social protection and labour market institutions need to be effective and reforms are needed in some countries. However such reforms should not mean dismantlement but strengthen the European social model by facilitating its adaptation to the new economic environment and ensuring its long term sustainability. A recent ILO report on Portugal, well received by government, employers and workers, provides a case in point.

What changes in labour law and working conditions in Europe do you expect to result from the on-going negotiations of free trade agreements such as the Transatlantic Trade and Investment Partnership between the EU and the US?

Past experience shows that gains expected from trade agreements do not necessarily translate into improved working conditions and higher incomes for the majority of people. They often lead to job gains in some sectors and job losses, as well

as deteriorated working conditions, in other sectors. Likewise, trade agreements may exacerbate income inequalities. It is therefore crucial to devote particular attention to these issues in the context of EU-US negotiations, which are likely to affect job-rich service sectors. So the size of employment effects are likely to be much larger than in the case of North-South agreements, which typically focus on manufacturing and, to some extent, agricultural products.

It is therefore essential to put in place policy measures that magnify the positive impacts of trade agreements and reduce social costs. Well-designed labour regulations and social protection as well as skills training are of paramount importance in this respect. Social dialogue during the various phases of the agreement is crucial to help ensure agreements are beneficial to all concerned.

Both the US and the EU have a tradition of including labour provisions in their bilateral and regional trade arrangements. The Transatlantic Trade and Investment Partnership (TTIP) negotiations are an opportunity to set an example and enhance global coherence on the inclusion of labour considerations in international trade and investment relations. The ILO, which has recently published a mapping of labour provisions in trade agreements, stands ready to support that process.

Are EU labour law, workers' rights and quality of working conditions under threat because of persistently growing differences between EU countries' economic situations?

European Union Labour Law remains one of the most advanced in the world, with more than 80 directives or legislative instruments covering movement of labour; workers' rights; equal opportunities for women and men; and health and safety.

However the global economic and jobs crisis has led to a growing North-South divide across European Member States. Harsh austerity measures implemented in Southern Europe have in some countries led to a continued deterioration of workers' rights and working conditions.

The crisis has induced a large-scale deregulation of labour law in Europe; reforms have rendered existing labour law provisions more flexible and loosened minimum standards. Greater flexibility has led in most countries to an increased share of non-standard employment, higher job insecurity, and did not lead to an improvement on the employment front.

Basic workers' rights have been another victim of the crisis, including limitations on the right to strike in a number of countries. In addition the weakening or dismantling of national and sector-level bargaining in the

majority of countries in Southern Europe has led to the rapid decline in collective bargaining coverage.

A large number of legislative changes have been introduced with only limited social dialogue.

The result of these changes has been a degradation of working conditions: rising job insecurity, less choice for workers, wage freezes and wage cuts. Increased layoffs have also led to greater work intensity and increasing stress and depression at work.

In contrast, countries in Northern Europe have fared better, mainly through the use of social dialogue to negotiate short time working schemes as an alternative to lay-offs. In some of these countries, social partners continue to be consulted on labour market and pensions issues.

A joint ILO/EC conference to be held in Brussels on 27-28 February will address these issues, precisely with a view to strengthening social cohesion across Europe and maintaining the overarching principles of the European Social Model.

CHAPTER 6

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The way forward

The future of EU law and policy on employment, working conditions, and safety and health at work will likely be shaped by two main trends. Firstly, existing legislation and policy instruments will continue being consolidated and modernised to increase their effectiveness whilst respecting the principles of proportionality and subsidiarity. Secondly, more 'soft' law is likely to be used to respond to new challenges and to further fairness and social progress in Europe before new 'hard legislation' is considered.

The 'soft law' approach is exemplified by country-specific recommendations issued during the European Semester of policy coordination and quality framework measures where legislative initiative on a Member State level is more appropriate or a wider approach is preferable. Recent examples include the Recommendation on the Youth Guarantee, the Quality Framework on Traineeships and the Quality Framework for Anticipation of Change and Restructuring. All of these require serious follow-up at national level and are accompanied by monitoring from the European Commission's side and peer pressure from other Member States.

However, speaking about 'consolidation' and 'modernisation' in the field of hard legislation does not necessarily mean that quiet times are ahead. Significant progress has been achieved through intense political negotiations on the issue of posting of workers, where the Council has found a common position on the proposed enforcement directive that aims to improve the way the applicable rules under the original Posting of Workers Directive are enforced in practice. After negotiations with the European Parliament are finalised and the directive hopefully adopted, it is then for the Member States to ensure good implementation of posting rules on the ground. Another big endeavour is the currently on-going impact assessment on the future of the Working Time Directive, which is part of the Commission's Work Programme for 2014.

Review of the Working Time Directive

In September 2009, President Barroso announced at the European Parliament that the Commission would launch a new review of the Working Time Directive. The new review would be based on a two-stage consultation of the social partners at European level and a detailed impact assessment paying attention to both social and economic aspects. Previous efforts to amend the Directive (2004-2009) had ended and Parliament and Council were ultimately unable to reach agreement on a draft amending proposal, despite long negotiations and a conciliation procedure.

The review has been undertaken to address fundamental changes in the world of work over the past twenty years (the first version of the Working Time Directive was adopted in 1993). These changes include the impact of technological change, globalisation, a much more diverse workforce, work intensification, increasing variation in individual working time patterns and greater competitive pressures. Employers, broadly speaking, wish to see more flexibility in working time rules, while workers' organisations, generally, seek more effective protection of health and safety. Some questions remain unclear, and there are difficulties for some Member States in implementing aspects of the rules. The Commission's review aims at finding sustainable solutions to these challenges, which would be capable of enjoying broad-based support.

The Commission carried out two stages of consultation with the social partners at European level, adopting consultation papers in the form of Communications in March 2010 and December 2010, as well as undertaking and publishing extensive evaluation studies focusing both on legal and economic and social aspects.

In reply to the second consultation, the main cross-sectoral social partners indicated in May 2011 their interest in negotiating between themselves a review of the Directive, with the aim of reaching an agreement which could be implemented by a Council Directive under Article 155 TFEU.

Their negotiations were formally launched on 14 November 2011, with meetings from December 2011 to December 2012. However, they announced the blockage of their talks in December 2012 and after meeting the main negotiators on 19 February 2013, it was concluded that the negotiations had definitively ended.

The Commission had, in view of the negotiations between the cross-industry social partners, suspended the preparation of the legislative revision for 2 years. It is however committed to pursuing the review of the Working Time Directive, by the announcement of the President in 2009 and by the conclusions of its communication of December 2010.

The Commission is currently carrying out a thorough impact assessment on the different options for the future of the Directive, which should be completed by end of summer 2014.

The posting of workers in the EU

The EU's single market gives companies the freedom to provide services in other Member States, including the possibility to post workers to other Member States. This enables companies to offer their specialised services throughout the EU Single Market, contributing to greater efficiency and economic growth.

Posted workers do not enter the host country's labour market, as they remain employed by their company in the sending Member State.

Each year, around 1.2 million workers are posted by their employers across EU borders to provide services (0.5 % of the EU workforce). The biggest "sending" countries are Poland, Germany, France, Luxembourg, Belgium and Portugal. Posted workers play an important role in filling labour and skill shortages in various sectors and regions like construction, agriculture and transport. Posting is also important for providing specialised, high-skilled services, such as information technology.

To facilitate the posting of workers and to ensure fair competition as well as guaranteeing an appropriate level of protection of posted workers, the Posting of Workers Directive defines a core set of employment conditions which the service provider has to comply with during the posting in the host Member State. This includes, among others, the applicable minimum rates of pay, holidays, maximum working hours and minimum rest periods, as well as health and safety at work. However, the Directive does not oblige Member States to set minimum wages if they do not exist.

In practice, these core employment conditions are sometimes incorrectly applied or not enforced in the host Member State. Posting can be abused by companies artificially establishing themselves abroad, just to benefit from a lower level of labour protection or lower social security contributions. Posted workers are often more vulnerable given their situation abroad, and not always aware of their rights. On the other hand, businesses which do not respect the rights of posted workers may achieve illegally low wage costs that, in turn, feeds into low production costs. This creates unfair competition for legitimate businesses that do follow the rules.

Worker protection and fair competition are the two sides of the EU single market's coin, yet findings suggest that minimum employment and working conditions are too often not respected. To make the EU single market work better for workers as well as for business, the Commission proposed in 2012 new rules, namely an 'Enforcement Directive' that does not change the original 1996 legislation on posting of workers but seeks to improve its implementation and enforcement.

The Enforcement Directive aims to increase the protection of posted workers by tackling abuses where workers are prevented from enjoying their full rights, for example in terms of pay or holidays (especially in the construction sector). It also foresees better monitoring of how rules on the posting of workers are applied. In particular the proposal contains positive developments for SMEs and micro-enterprises, such as risk–based inspections, more readily available legal information on Member States' requirements and grants legal certainty regarding possible control measures introduced by the host Member State.

Box 6.1 A snapshot of the Enforcement Directive on posting of workers

In brief, the Enforcement Directive intends to:

- set more ambitious standards to inform workers and companies about their rights and obligations;
- establish clear rules for cooperation between national authorities in charge of posting;
- clarify the notion of posting and improve monitoring to avoid the multiplication of "letter-box" companies that use posting as a way to circumvent employment rules;
- define the supervisory scope and responsibilities of relevant national authorities, and
- improve the enforcement of workers' rights, including by better handling of complaints and introduction of a limited system of joint and several liability for the construction sector for the minimum rates of pay of posted workers.

Seafarers

Although EU labour law generally applies to all workers in all sectors, until now certain labour Directives allowed Member States to exclude seafarers from their right to information and consultation. This has led to seafarers being treated differently in several EU Member States – one of the issues identified during the legislative 'fitness check', carried out under the REFIT process discussed later in this chapter.

Accordingly, in November 2013 the Commission proposed to include seafarers within the scope of five EU labour law

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Directives. The proposal would give seafarers, in all 28 EU Member States, the same information and consultation rights as onshore workers in cases of collective redundancies and transfers of undertakings. They would also have the right to participate in European Works Councils. Consequently, the living and working conditions of seafarers should improve and working in the maritime sector should become more attractive for young and qualified people. This is important as the number of EU seafarers has been steadily decreasing over the last few years and the sector is threatened with labour shortages. A third important benefit of the proposal is that it would ensure fairer competition in the fisheries and shipping sectors within the EU as operators would have the same obligations in all EU Member States. The proposal will now go to EU's Council of Ministers and the European Parliament for adoption.

Health and Safety

In Chapter Four we discussed the results of the EU's 2007-12 Strategy on Health and Safety at Work. In summer 2013 the Commission undertook a public consultation on the EU's new policy framework in this field. Together with other elements such as opinions of the Advisory Committee on Safety and Health at Work and Senior Labour Inspectors' Committee, and the results of the evaluation of the previous Strategy, this consultation is a basis for the establishment of the priorities of the next EU Strategic Framework on health and safety at work.

In addition, the Commission is carrying out a full ex-post evaluation of EU health and safety legislation, whose results will be available before the end of 2015. The specific conditions of the ex-post evaluation are laid down in Article 17a of the Framework Directive, which was amended to that effect in 2007. It contains several, significant elements of a fitness check – covering relevance, effectiveness and coherence of the legislation as well as administrative burdens.

Due to its broader scope and specific regulatory regime under the Framework Directive, the ex-post evaluation covers a broader range of issues. It aims at a wider evaluation of the legislation including in terms of benefits, of research and new scientific knowledge. It will have a special focus on SMEs. Therefore the results may lead to initiatives to improve the operation of the regulatory framework, including possible simplification of the *acquis* where unnecessary regulatory burden has been identified, as well as additional measures needed to protect workers against, for example, chemical substances and new and emerging risks.

The results of the ex-post evaluation can trigger improvements to the legislative framework or the way it is implemented. As required by the Treaty, any proposal for legislative changes would of course be preceded by a two-stage consultation of the European social partners (see Chapter Two).

Reducing the amount of undeclared work

Undeclared work is a complex phenomenon which prospers due to different factors such as high tax levels and labour costs (or the perception of them being high), the lack of appropriate control measures, lack of regular jobs on the labour market and high levels of social exclusion and poverty.

On a national level, undeclared work has serious budgetary implications through decreased tax and social security revenues. On an individual level it has negative effects on employment, productivity and working standards, skills development and lifelong learning. Undeclared work also makes it more difficult for the workers concerned to acquire pension rights and access health care.

Preventing and deterring undeclared work are primarily tasks of the Member States. Member States mostly adopt a deterrent approach with measures such as strict sanctions and the reinforcement of labour inspection activities to discourage undeclared work. In addition, Member States are using preventive measures, such as tax incentives, amnesties and awareness raising, to decrease the incidence of undeclared work and support compliance with the existing rules.

Box 6.2 What exactly counts as undeclared work?

At EU level undeclared work is defined as, "any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account the differences in the regulatory systems of the Member States" (Communication from the Commission "Stepping up the fight against undeclared work" (COM (2007) 628 Final).

All illegal activities are excluded from this concept of undeclared work.

However, Member States do not have to do everything alone. EU-level studies have led the European Commission to conclude that greater cooperation at EU level would help Member States to tackle undeclared work in more effectively and efficiently.

Between July and October 2013 the Commission consulted EU-level social partners on possible EU action in this field. One possible way of enhancing cooperation between enforcement authorities at EU level is the establishment of a European Platform against undeclared work which would comprise the representatives of Member States' enforcement authorities, such as labour inspectorates, tax and social security authorities and other interested parties.

In parallel to the possibility of setting up such a European platform, the European Commission continues, in agreement with the Council, monitoring developments and providing guidance to the Member States in the context of the European Semester. Moreover, to further explore the phenomenon of undeclared work it carried out a joint project with the ILO in 2012-2013, on labour inspections' strategies for combating undeclared work in Europe. The project covered seven Member States: Spain, Italy, France, Ireland, Belgium, Romania and the Netherlands.

Youth Unemployment and the measures to combat the problem

Youth unemployment is a serious problem throughout the EU. In some Member States such as Spain and Greece it is more acute than others. In September 2013 there were 5.6 million young people unemployed in the EU-28 area. This represents an average unemployment rate amongst the young of 23.5 %. More than one in five young Europeans on the labour market cannot find a job: in Greece, Spain and Croatia it is one in two. This situation is serious and unacceptable. A generation is about to be lost to the world of work. The social and economic consequences of this are as yet unknown, but they cannot be negligible and in all probability will prove to have a tangible impact on generations to come. The EU is acutely aware of the need to tackle this problem and is taking steps to do so working in tandem with the Member States.

Box 6.3 What is the EU doing?

The EU is determined to tackle low employment levels amongst the young thorough a number of initiatives. The potential of job mobility – moving the youth to where the jobs are – could potentially be developed. Out of a workforce of 216.1 millions only 7.5 are working in another Member State. EU surveys show that youth are the most likely population group to move: they have been born into borderless Union. Many have availed themselves of EU financed and organised educational opportunities outside their Member States. Many are multilingual, keen to travel and unencumbered by family responsibilities. In short, moving is, at least theoretically, perfectly feasible. But there remain obstacles to free movement and the EU is committed to tackling these.

The Youth Guarantee is a commitment on the part of the Member States and the EU to tackling youth unemployment. It seeks to ensure that Member States offer all young people up to the age of 25 years a quality job, continued education, an apprenticeship or traineeship within four months of leaving formal education or becoming unemployed. The logic of the Youth Guarantee is obvious: to ensure young people are actively helped by public employment services either to find a job corresponding to their level of education

and training, skills and experience or to acquire the education, skills and experience that employers need.

The Youth Guarantee is one of the most crucial and urgent commitments that the EU is supporting Member States to adopt. And the Member States are embracing it. The Youth Guarantee proposed by the European Commission in April 2013 was endorsed promptly in June 2013 by the European Council – with 19 Member States preparing and submitting their plans to the European Commission to implement the guarantee.

Young people who happen to be in neither education, employment nor training (NEETS) will be an investment priority for the European Social Fund, in particular the through the proposed Youth Employment Initiative (YEI). €6 billion has been ring-fenced in the EU's budget in order to support youth employment, in particular through the Youth Employment Guarantee. €3 billion is being made available overall. At least 90 % of this sum will be available in 2014 and 2015 to countries or regions where the youth unemployment rate exceeded 25 % in 2012. Further funding from the ESF is envisaged in the years up to 2020, bringing the total amount invested in combatting youth unemployment to around €17 billion for the years 2014 – 2020. This represents a serious commitment on the part of the EU and the Member States.

Box 6.4 Which areas will qualify for funding?

Although youth unemployment is widespread within the EU, the levels are more acute and more concentrated in southern countries and regions. Youth unemployment is at 40 % in Spain and Greece, all of southern Italy and southern Portugal, which means that all of these countries and areas will qualify for funding for their Youth Guarantees. Certain regions and areas of other Member States, such as France and the United Kingdom, where youth unemployment is running at above 25 %, will also qualify.

The European social partners have also reaffirmed the importance of combating youth unemployment by adopting a Framework of Actions on Youth Employment on 11 June 2013. This Framework, adopted as part of the autonomous social dialogue of European social partners, aims at proposing solutions in order to ease the transition to the labour market for young people. Proposals cover how to improve the education system, foster entrepreneurship and create employment. It sets common objectives and guidelines for social partner actions and reforms and will be promoted for implementation at national level.

Furthermore, the European social partners have also expressed their commitment to apprenticeships in a joint declaration with the Lithuanian Presidency of the Council of the EU and the European Commission. This declaration was signed at the occasion of the launch of the European Alliance for Apprenticeships on 2 July 2013 and emphasises the efforts that will be made by all signatories to promote apprenticeship schemes.

Quality Framework on Traineeships

Traineeships are understood to be limited periods of work practice spent at a business, public body or non-profit institution by students or young people having recently completed their education, in order to gain valuable, hands-on work experience ahead of taking up regular employment.

Despite the fact that traineeships have a number of benefits not only for trainees, but also for employers, and society as a whole, all the EU institutions have voiced concerns about the effectiveness, availability and quality of traineeships. Low-quality traineeships that do not boost the trainee's employability, that do not offer a minimum level of protection and that are used as a low-cost replacement for existing jobs can discourage young people from investing in traineeships and can distort the labour market. Quality traineeships are one of the key elements of the Youth Guarantee. Improved traineeships can provide young people with a valuable stepping stone into the world of work by helping them to acquire skills and experience that potential employers are looking for.

A recent survey by the European Commission showed that one in three traineeships is not of an acceptable standard. The European Commission believes that there is an urgent need to improve the quality of traineeships by mobilizing the social partners and by providing guidance to Member States. It has therefore proposed quality framework for traineeships which will identify a number of principles that characterize good quality traineeships. The proposed Quality Framework is based upon the principle of transparency. Better working conditions, more solid learning content and enhanced transparency will help trainees to get the most out of traineeships and to get a foothold on the labour market.

Quality Framework on Restructuring

Economic adjustment and restructuring have serious consequences for employment and wider industrial and social implications for cities and regions. A total of 250 restructuring operations were recorded within the EU for the third quarter of 2013, resulting in a net loss of more than 29 000 jobs. Companies undergoing restructuring often react to rather than anticipate the

problems arising out of restructuring. Workers seldom benefit from advance support measures such as training and careers advice to enable them to adapt to changes circumstances brought about by the restructuring. Workers' representatives are frequently engaged at too late a stage to be able to make any meaningful contribution to the situation and management often fails to involve outside organisations, such as regional authorities, which can do much to soften the adverse impact of restructuring.

Following its January 2012 Green Paper, and the adoption by the European Parliament on 15 January 2013 of the Cercas report, in December 2013 the Commission adopted a Communication establishing a Quality Framework for Anticipation of Change and Restructuring (QFR). The Framework offers guidance, based on the real experiences of companies, to companies, workers, trade unions, employers' organisations and public administrations. This focuses on how to facilitate the process of restructuring both for businesses and workers, through anticipatory action and better investment, whilst minimising the social impact. The guidelines cover both measures to anticipate restructuring and the management of specific restructuring processes including the strategic long term monitoring of market developments; continuous monitoring of jobs and skills needs. They also address measures for individual employees affected by restructuring, such as: training, career counselling and assistance to facilitate the transition to other professional activities. The involvement of external actors such as public authorities, universities and training bodies at an early stage so as to maximise their contribution to alleviating the impact of restructuring is also covered. Finally the guidelines offer advice on how to make full use of EU structural funds. The effective application by all the stakeholders concerned will be reviewed by the Commission in 2016.

Related EU-level social policy guidance

European level social policy guidance also exists on providing adequate social protection against unemployment and other risks that may arise in life, as well as investing in people's skills and abilities. In February 2013, the Commission adopted the Social Investment Package. The package urges Member States to step up investments in activating and enabling benefits and services that help to improve people's situations and broaden their opportunities. This includes adequate income support and housing support for those who do not have sufficient resources, job-search assistance, lifelong learning, accessible health services, and helping people to live independently in old age. The package also emphasises the importance of removing barriers to people's labour market participation, such as tax/benefit disincentives,

and the lack of accessible care services for children or long-term care for elderly dependents. The Package also contains a Recommendation on Investing in Children that emphasises the importance of affordable, quality, inclusive early childhood education and care facilities.

The Commission has also issued guidance on how to render pension systems more adequate and sustainable given demographic pressures through its 2013 White Paper on Pensions. The Portability on Pensions Directive also safeguards the supplementary pension rights of employed and self-employed persons moving within the Union. It sets out certain rights and obligations for members of supplementary pension schemes in order to safeguard the entitlements of mobile EU workers and helps to ensure the adequacy of their retirement income.

Helping workers make the most of jobs opportunities wherever they are

A number of initiatives on an EU level are aimed at helping workers optimise the job opportunities brought about by the EU-wide labour market. The TESSE (Transnational exchanges on social security in Europe) project brought together trade unions and security institutions from the EU Member States. They attended a series of four workshops, held between February 2011 and November 2012, to discuss and overcome obstacles that still deter citizens from settling in another EU country. Recommendations were issued to national and European Institutions, taking in to account the best practices collected by European trade unions.

The European Commission, supported by the European Parliament, intends to build on the TESSE project. It sets out a number of pilot experiences to assess the feasibility of a transnational network of information centres, to exchange information and experience to support workers as they relocate around the EU. One pilot action will help equality bodies, established under previous EU legislation, to address specific forms of discrimination against EU mobile workers, including posted workers, who are likely to endure discriminatory treatment in the host labour market.

The pan-European job search network, EURES, facilities the free movement of workers by providing information, advice, recruitment and placement services. EURES has 850 advisers that are in daily contact with job seekers and employers right across Europe, matching needs and skills. In January 2014 the Commission published a proposal for a regulation to improve EURES by increasing its efficiency, making recruitment more transparent and strengthening co-operation between Member States. The new rules would increase the number of job offers on the EURES web

portal, carry out automatic matching of job vacancies and candidates, offer candidates and employers mobility support services to facilitate recruitment, and integrate workers in their new posts outside their home countries. The coordination and exchange of information on national labour shortages and surpluses between Member States will be enhanced, thereby improving the transparency of the EU labour market.

The EU Programme for Employment and Social Innovation (EaSI) is a European level financing instrument managed directly by the European Commission to support employment and labour mobility across the EU. It consists of three axes:

- the modernisation of employment and social policies with the PROGRESS axis (61 % of the total budget);
- job mobility with the EURES axis (18 % of the total budget); and
- access to micro-finance and social entrepreneurship with the Microfinance and Social Entrepreneurship axis (21 % of the total budget).

The total budget for 2014-2020 is **almost €200 million.**

The new modernised system of social security coordination facilities the movement of workers by safeguarding their social security rights when they move country to take up employment. Rights acquired or in the process of being acquired are attached to workers and move with them, thereby enabling them to rely upon their full social security record when claiming benefits.

The export of benefits beyond the Member States in which entitlement arises is also guaranteed. The Electronic Exchange of Social Security Information (EESSI) is an IT system, hosted centrally by the European Commission, which facilities cross border claiming and payment of benefits. It does so by enabling communications between national bodies on cross border social security files, by means of structured electronic documents. These documents are routed through the EESSI to their correct destination. This benefits both claimants and public administrations alike. Claims and the calculation and payment of benefits are speedier and administrations benefit from standardised flows of information and better multilingual communication as a result of structured documents.

Helping the disabled

2013 EU Citizenship Report announced that action will be taken in five areas including the protection of the most vulnerable, by developing an EU disability card which would be mutually recognised across the EU. Eighty million disabled people would be given equal access to specific benefits such as access to transport

(frequently a major cause of unemployment amongst the disabled, who simply cannot get to work), tourism, culture and leisure. This will enable the disabled to integrate into the world of work and civic society.

Corporate Social Responsibility (CSR)

CSR is increasingly important to the competitiveness of enterprises – through it enterprises can build consumer and citizen loyalty. It is relevant to working conditions in so far as it can encourage respect for human rights, including core labour standards, both within enterprises committed to a CSR policy and downstream to their contractor and suppliers. This is important in an age of globalization where manufacturing and service provision can be outsourced to countries whose labour standards may fall short of internationally accepted norms. CSR brings about an awareness of the responsibilities of businesses to ensure respect for such norms, even if indirectly.

Through its 2011 Communication, the Commission gave itself a cross-cutting agenda of activities to implement a policy of encouraging further commitment by companies to CSR. This has been undertaken in full consultation with stakeholders (companies, trade unions, non-governmental organisations, academics, investors, etc.) and with Member States. The Communication will be reviewed in 2014. In the Agenda for Action 2011-2014, set out in 2011, the Commission commits to promoting dialogue with enterprises and other stakeholders on a number of issues including workplace challenges such as diversity management, gender equality, education and training and employee health and well-being.

Europe 2020 and coordination of Member States' policies

Besides further developments in 'hard' and 'soft' law, (and EU-level initiatives to improve administrative cooperation among Member States and spread good practices), employment and working conditions across Europe are also shaped by labour market reforms undertaken in individual Member States and coordinated through the 'European Semester' (see Chapter One).

The annual strategic guidelines for the coordination of economic, employment and social policies in the EU are set out in the Annual Growth Survey. Its 2014 edition, presented by the Commission in November 2013, reiterates that 'tackling unemployment and the social consequences of the crisis' is one of the five key priorities for European and national policies. Among other actions, this should be done by:

- stepping up active labour market measures, notably support and training for the

unemployed, as well as to improve the performance of public employment services, with particular attention to implementing a Youth Guarantee;
- continuing reform efforts on wage-setting systems, employment protection legislation and labour taxation, to support job creation, competitiveness, labour mobility, and equal protection conditions among workers;
- pursuing the modernisation of education and training systems, notably life-long learning and vocation training schemes; and
- improving the performance of social protection systems with particular attention to the most vulnerable.

Member States are expected to reflect these priorities in their National Reform Programmes, which set out how problems such as segmentation of the labour market or precarious working conditions will be tackled. The Commission will analyse the situations and reforms planned in the respective Member States, and propose country-specific recommendation on occasions it considers that more needs to be done in order to move towards the targets set in the Europe 2020 Strategy.

Strengthening social dialogue

EU-level social dialogue plays an essential role in advancing the Union's social market economy, producing benefits for employers, workers, and for the economy and society as a whole. When strengthening economic governance, it is critical to involve the social partners in policy debates and decision-making processes. This is not only to increase the sense of ownership of policies and ensure meaningful implementation; it is also to enhance the effectiveness of policy coordination at euro area level.

Box 6.5 How can social partners help?

Social partners play an important role at national level in setting labour market rules and wages. They have a strong influence in other structural policies through tripartite consultations, such as in the area of social security. On wage setting in particular, there are diverse industrial relations in the EU and the Member States decide how to organise wage bargaining. Social partners are also key players when it comes to implementing measures such as apprenticeships or effective lifelong learning.

There is scope for improving the mechanisms to involve the social partners in the coordination of economic and employment policies at EU level. The European Commission believes that it is possible to involve the social partners more in EU and EMU governance while fully respecting their autonomy.

The European Commission is therefore committed to fostering social dialogue on both an EU and a Member State level. This it intends to do without creating new structures, by better using the existing fora for social dialogue. These include:

- the tripartite social summit (TSS) for Growth and Employment, which is enshrined in Article 152 TFEU as an integral component of social dialogue at EU level. The task of the tripartite social summit is to ensure the highest social dialogue between the European Council, the Presidency of the Council (and the two subsequent presidencies), the Commission and employers' and workers' representatives.
- the biannual macroeconomic dialogue (MED), a high level forum for exchanging views between the Council, the Commission, the European Central Bank and the social partner representations at EU level.
- the European (cross-industry) Social Dialogue Committee , which is the main bipartite social dialogue structure.

The autonomy of social partners and the diversity of national practices must be respected (in line with Articles 152 and 153(5) TFEU). Any involvement of social partners in framing and implementing economic and employment policies needs to be commensurate with the developments in monitoring and coordination mechanisms if reinforced EMU governance is to be effective and inclusive. National-level consultations with the social partners play an important role, in particular during the adoption of national reform programmes and implementation of country-specific recommendations. This consultation is crucial to labour market issues, but also to overall economic and social issues and policies.

There is a broad consensus among the EU institutions on the need to better involve social partners in European governance, in particular in the European Semester process. The European Semester is a yearly cycle of economic coordination which begins when the Annual Growth survey is published. Following that the European Commission undertakes a detailed analysis of the EU Member States' programmes of economic and structural reforms and provides country-specific recommendations for the following 12-18 month period. The social partners have much to contribute to this process.

In October 2013, the Commission proposed to improve the current consultation process so as to involve the social partners from the early stages of the European Semester. It met the EU social partners before adopting the 2014 Annual Growth Survey, in order to obtain their views on the upcoming priorities and their feedback on the outcome of the previous European Semester process.

At the same time it is crucial to strengthen social dialogue at the national level. In other words, Member States need to improve, in line with national traditions, the involvement of their social partners in the discussion, design and implementation of on-going reforms. It is up to national governments to define the arrangements for discussing their National Reform Programmes and country-specific recommendations with social partners, but the Commission strongly encourages the Member States to involve social partners as closely as possible.

Better Regulation: REFIT

Initiatives taken at a European level must demonstrate clear EU added value and be proportionate in their scope and nature. Before the Commission tables any legislative proposal, it undertakes an impact assessment which analyses (ex-ante) the problem to be addressed and the possible options.

Since 2010, as part of the Commission's Better Regulation policy, ex-post evaluation, acting as a 'fitness check' of existing legislation, has been put in place to ensure that policies form a coherent framework, delivering effectively on their objectives as well as being fit for purpose and proportionate. This is known as the Regulatory Fitness and Performance (REFIT) process. Pilot exercises started in 2010 in four areas, one of which was employment and social policy.

By the end of 2014, the Commission will have carried-out or launched 47 evaluations, fitness checks or other reports with a view to reducing regulatory burden (where identified). Five are in the area of employment (three information and consultation instruments, the Agency Workers Directive and the Occupational Health and Safety Directives).

The Commission's 'fitness check' on EU law in the area of workers' involvement examined three Directives related to worker information and consultation at national level[6] (Directives 98/59/EC on collective redundancies, 2001/23/EC on transfers of undertakings and 2002/14/EC on a general framework for information and consultation of workers).

The evaluation, completed in July 2013, concluded that this legislative framework is broadly fit for purpose. The three Directives are generally relevant, effective, consistent and mutually reinforcing. The benefits they generate are likely to outweigh the costs. Moreover, the Directives seem to have contributed to cushioning the shock of the recession and mitigating the negative social consequences of restructuring operations during the crisis.

(6) SWD(2013) 293.

Nevertheless, the evaluation brought to light some gaps and shortcomings relating to the scope and operation of the Directives. The exclusion of smaller enterprises, public administrations, (in contrast to public undertakings, which are covered), and seafarers from the scope of application of the Directives was questioned by some stakeholders who felt they diminished the practical value of the Directives for a significant proportion of the workforce.

The fitness check also drew attention to some factors that may in specific circumstances have contributed to reducing the effectiveness of the Directives, including: the (low) incidence of representative bodies; the quality of their involvement (in particular the way they are consulted, which is often limited or formal); their strategic influence; insufficient awareness of rights and obligations; compliance and law enforcement. As a result, some of the Directives' aims, in particular a reduction in the number of collective redundancies, improved management and anticipation of change, and better adaptability and employability of employees, appear not to have been fully achieved.

Finally, the fitness check pointed to possible inconsistencies between the Directive's manner of informing and consulting workers, in particular regarding definitions. Addressing these shortcomings would help improve restructuring at company level as well.

As far as non-legislative actions are concerned, research has highlighted the importance of establishing a culture of social dialogue, of making both employees and employers aware of information and consultation rights and obligations at company level, and of effectively enforcing these rights in the event of non-compliance.

In terms of a legal framework, the Commission has undertaken to look into the possibility of consolidating the information and consultation Directives. This was confirmed in the REFIT Communication adopted by the Commission in October 2013. The Commission will consult the social partners at European level in accordance with Article 154 TFEU.

Further evaluations of regulatory fitness have been scheduled for 2014 and 2015 on the Health and Safety at Work Directives and the Agency Workers Directive.

The Commission has reviewed, in consultation with the Member States and EU social partners, the application of the Agency Workers Directive. This evaluation is a REFIT initiative as it notably focuses on simplification and regulatory burden reduction, but it also has a broader scope, in line with the requirements of the legal basis in the Directive.

The report shows that, in general, the Directive seems to have been correctly implemented, although its main objectives – to improve the protection of agency workers while contributing to the development of the agency work sector as a flexible option for employers and workers – have not been fully achieved. Besides, most Member States have not identified particular costs that the Directive would place on companies. The Commission report was published at the beginning of 2014.

The entire body of legislative measures – some 24 directives – on Occupational Health and Safety is currently going through a full evaluation, again as part of the REFIT fitness check. The conclusion of this evaluation will be available before the end of 2015.

The Part Time Work and the Fixed-Term Work directives are currently being evaluated to assess their impact on employers, employees and public administrations. The evaluation report will focus on whether the Part-Time Work Directive contributes to greater flexibility to employers in the organisation of working time and whether the Fixed-Term Work Directive brings about greater flexibility for employers in the management of human resources.

In October 2013 the Commission published a Communication on improving and updating evaluation techniques used in the REFIT process. Guidelines will be published to outline and define what constitutes a robust evaluation, as well as what constitutes a good evaluation report.

The international dimension

The EU's work on an international level has been discussed in the previous chapter. Its presence on the global stage has increased in recent years with the EU playing a major role in international meetings and working with international organisations. It is worth highlighting that employment and social policies, including efforts to foster inclusive growth and strengthen the social dialogue, also play an important role in EU enlargement policy.

The interplay between the internal and external dimensions of EU social and employment policy has intensified. This has been driven by the globalised economy and the implications of the global supply chain on EU business and consumers. The EU has been, and will remain, active in promoting core labour standards and internationally agreed norms, through its free

trade agreements and other bilateral and multilateral relations.

Notable also are continuing efforts of the EU to assist the ratification and enforcement of ILO Conventions by the Member States. In areas where the EU has long and unique experience, such as Occupational Safety and Health or social security coordination, its advice and assistance is being actively sought by countries such as China and India, which are seeking to increase worker mobility and raise social standards.

Voice from the European Parliament

Interview with Alejandro Cercas, Member of the European Parliament

Have EU Law and policy on employment and working conditions changed too much or too little during the five years of the economic crisis?

The paradigm of flexicurity, which orientated the EU2020 Strategy, has changed during the last five years towards a project of pure flexibility. Today, 5 years later, we have less and worse employment, and we have gone back in time 10 years in terms of integration and social cohesion in many parts of Europe.

The main problem is that the vision that the European Social Model couldn't overcome the crisis and address the challenges of globalization has won the ideological battle. The values and principles established in the Treaties and in the Charter of Fundamental Rights, as well as the international commitments subscribed by the EU and its Member States have been set aside, due to the urgent macroeconomic imbalances.

However, it is worth stressing that some efforts have been made in order to help those most affected by the crisis, such as the Youth Package with the Youth Guarantee or the European Fund for the Most Deprived, and also to boost investment and job recovery, with the Social Investment Package or the Employment Package.

What do you see as the main challenges for EU labour law and working conditions policies in the rest of this decade?

Europe needs a radical change to place the medium and long term policies back in the discussion so as to boost the creation of sustainable quality employment. We should avoid at all costs the obsession to have a European labour market with a low cost force and low wages, because the only way we can succeed in globalization is through excellence.

Hence, we must promote the agenda of social dialogue and flexicurity to win in productivity, competitiveness and evaluation. This is the only path towards a sustainable future for Europe.

Regarding the reform of our model, we don't have to be reluctant, but smart. We need to transform it into a better, more sustainable and efficient model to respond to social and technological changes and to the international division of labour. And the only way to do it is by facing the two main challenges: the establishment of a true Social Pillar within the Economic and Monetary Union so as to create a healthy and sustainable economy and the improvement of intra EU mobility while assuring effective equal rights for posted workers.

Finally, these changes have to be made through a democratic approach, involving citizens, preserving social dialogue, and not through an exercise of enlightened despotism, since all that is achieved with authoritarian methods increases resistance to change and deteriorates its outcome.

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The Social Europe guide is a bi-annual publication aimed at providing an interested but not necessarily specialised audience with a concise overview of specific areas of EU policy in the field of employment, social affairs and inclusion. It illustrates the key issues and challenges, explains policy actions and instruments at EU level and provides examples of best practices from EU Member States. It also presents views on the subject from the Council Presidency and the European Parliament.

Volume 6 looks at the origin and purpose of labour market rules across the EU. It highlights the importance of ensuring good and healthy working conditions and a level playing field in the Single Market. It explains the respective roles the EU institutions and Member States play in shaping the legislation on employment and working conditions: in general, EU rules help to set minimum standards and requirements to underpin national laws, aiming to ensure the realization of the values set out in the EU's founding Treaties. The guide also explains how EU labour law has been influenced by international standards and the role the EU plays in promoting decent work across the world.

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