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THIRD REPORT FROM THE COMMISSION
TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE

ON THE APPLICATION OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

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# INTRODUCTION

## INTRODUCTION

The Community Charter of the Fundamental Social Rights of Workers was adopted in December 1989 by the European Council of Strasbourg in the form of a solemn declaration.

Given that the Community has decided to create a vast internal market, this Charter is designed to consolidate progress made in the social domain, to take account of the social dimension of this internal market and to develop the social rights of workers in the Community.

Since this Charter is merely a declaration and does not have the status of a binding legal act, the arrangements for its implementation are set out in Title II of the Charter.

Accordingly, it is emphasised that it is the responsibility of the Member States in accordance with national practices, notably through legislative measures or collective agreements, to guarantee the fundamental social rights of the Charter and to implement the social measures indispensable to the smooth operation of the internal market.

At the same time, the Council invites the Commission to submit initiatives which fall within its powers, as provided for in the Treaties, with a view to the adoption of legal instruments for the effective implementation, as and when the internal market is completed, of those rights which come within the Community's area of competence.

The Commission's response to this invitation was to adopt *the action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers*[1].

It features 47 separate initiatives, not all of which come within the jurisdiction of the Council of Ministers.
For its part, the European Council called upon the Council "to deliberate upon the Commission's proposals in the light of the social dimension of the internal market and having regard to national and Community responsibilities"[2].

The Commission wishes to point out that, in its initiatives presented under the above action programme and aimed at improving workers' living and working conditions, it regards the following three principles as cardinal:

- the principle of subsidiarity, having regard to the specific nature of the social sphere, whereby the type of action has to be matched to the subject matter (e.g. harmonisation, coordination, convergence, cooperation, etc.), and giving due consideration to known needs and to the potential added value of Community action;

- the principle of the diversity of national systems, cultures and practices, where this is a positive element in terms of the completion of the internal market;

- the preservation of the competitiveness of undertakings, reconciling the economic and social dimensions. In each initiative a balance must be sought and reached.

This is the essential background to the Commission's action programme, which seeks to establish a sound base of minimum provisions, having regard on the one hand to the need to avoid any distortion of competition, and on the other to support moves to strengthen economic and social cohesion and contribute to the creation of jobs, which is the prime concern of completion of the internal market.

The method adopted by the Commission for implementing these initiatives features a broad measure of prior consultation of the Member States and of the social partners within the context of advisory committees, ad hoc groups or under the social dialogue.

Regarding the **social dialogue**, the Commission would stress the positive contribution made by the social partners in the implementation of the Social Charter, with the adoption of six joint opinions since the adoption of the Charter in the fields of education, training and the labour market:

- Creation of a European occupational and

geographical mobility area and improving the operation of the labour market in Europe;

- Basic education, initial training, and vocational and adult training;
- Transition from school to adult and working life;
- Adaptability of the labour market;
- Modalities of access to training;
- Vocational qualifications and certification.

Lastly, express mention needs to be made of the important role played by the **European Parliament and the Economic and Social Committee**. There can be no doubt that their opinions have promoted and supported the Community debate on social policy and, as a result, have contributed to its implementation.

In its resolution of December 1992 (A3-0386/92) on the first Report on the Application of the Charter, Parliament called on the Council "to adopt at least those legal texts which are considered priorities by June 1993, to guarantee a perceptible improvement of working and living conditions in the Member States ... these provisions must not erode existing social standards in those Member States which guarantee a higher level of protection".

The Economic and Social Committee has played a constructive role, particularly in the phase leading up to the adoption of the Charter, and its opinions make a positive contribution to the progressive and coherent implementation of social policy. Commenting on the second report, the Committee made the point that it offers a useful overview of developments in this area.

## THE REPORT ON APPLICATION OF THE CHARTER

Point 29 of the Charter stipulates that the Commission shall establish each year a report on the application of the Charter by the Member States and by the European Community.

Point 30 states that the report shall be forwarded to the European Council, the European Parliament and the Economic and Social Committee.

This third report has been drawn up in the same spirit as the two previous reports[3] and is in effect an update of the second report.

The first part is concerned with the implementation at Community level, and the second part covers the application of the Charter by the Member States.
As in previous years, the Member States themselves have drawn up the national reports by replying to the questionnaire annexed to this report.

# Part One

## APPLICATION BY THE EUROPEAN COMMUNITY OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

## LABOUR MARKET

In 1993, the employment situation in the European Community continued to worsen, to the point where, according to the *1993 Employment in Europe* report, the employment situation is one of the worst seen for many years. A deep recession has hit the labour market, and the unemployment rate is now over 10% of the working population in the Community.

Consequently, the Commission took the initiative of proposing a *"Community-wide framework for employment"*[4]. This proposal, which is in keeping with the conclusions of the Copenhagen Council, is an important contribution from the Commission to the area covered by the White Paper on Competitiveness, Growth and Employment. It is designed to set in place a framework and a strategic process leading to more collective and more concerted action by all the Community institutions and the Member States for encouraging a form of growth which generates more jobs. To this end, the Commission intends to present analyses and proposals for action in a certain number of areas.

The objective of job creation is also supported, at Community level, by the work of the European Social Fund and by experimental programmes of action and research, pilot projects and the dissemination of best practices.

**European Social Fund**: in February and March 1993 the Commission of the European Communities adopted proposals for amending the rules on the operation of the structural Funds. In July 1993 Council adopted the new rules on the European Social Fund[5]. The aim of the reform is to ensure that the work of the ESF is better adapted to the increase in unemployment among young people, in long-term unemployment and in the risks of social exclusion.

The objectives of combating long-term unemployment and facilitating the integration of young people into working life have been brought together under one objective, Objective 3, which is also concerned with combating all forms of social exclusion. A new objective, Objective 4, has been introduced in order to "facilitate the adaptation of workers to industrial change and to changes in production systems".

The objectives of the ESF are also pursued under *Community initiatives*[6]. There are three of them and they concern human resources:

The EUROFORM initiative is designed to promote the new types of vocational training and the new methods of job creation resulting from the completion of the internal market.

NOW is designed to promote equal opportunities for men and women.

HORIZON promotes access to the labour market for handicapped persons and members of other minority groups.

A network of national employment coordinators has been set up with the dual role of devising a procedure for discussion on certain employment-related subjects and involving national authorities in the work of collecting information.

There are also a range of programmes seeking to enhance the effectiveness of Community and national measures designed to help specific groups or regions. Typical of these are the **Leda** (local employment development action) programme and the **Ergo** action-research programme, which is designed to identify successful programmes and projects which benefit long-term unemployed adults and young people, and **Spec** (support programme for employment creation), which was launched in 1990 and is designed to deal with changes resulting from completion of the internal market.

Finally, the Commission has sought to encourage the free movement of workers by improving the machinery for providing people with information on job vacancies in other Member States.

The second part of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community concerns *"clearance of vacancies and applications for employment"*. In other words, it lays down the arrangements for a system of job vacancy clearance and for cooperation between the central employment services of the Member States and the

Commission with a view to facilitating worker mobility within the Community.

The shortcomings and limitations of the system, known as SEDOC (European System for the International Clearing of Vacancies and Applications for Employment) have become evident over the years, which is why, on 5 September 1991, the Commission adopted the proposal for a revision of the second part of Regulation (EEC) 1612/68 on freedom of movement for workers within the Community[7].

One of the aims of this exercise is to provide a guarantee to job seekers looking for work in a different Member State of the provision by the central employment service in their country of residence of a service of a standard and rapidity at least equivalent to the kind of service they would obtain if they were to move to the Member State where they are seeking work.

The Council adopted the amendments to Regulation (EEC) 1612/68 in its Regulation (EEC) 2434/92 of 27 July 1992[8].

The system is now called *EURES* (European Employment Services). It comprises a network of Euroadvisors from European public employment services, of structures of associated partners dealing with specific target groups, and of socio-economic partners. A database and a telematics communications system will make it possible for the Euroadvisors to exchange information.

## EMPLOYMENT AND REMUNERATION

In its action programme relating to the implementation of the Community Charter, the Commission took the view that "faced with the considerable development of very varied forms of employment contracts other than those of an open-ended type, there should be a Community framework ensuring a minimum of consistency between these various forms of contract in order to avoid the danger of distortions of competition and to increase the transparency of the labour market at Community level".

Hence, in application of the Charter and as announced in its action programme, the Commission has proposed a set of fundamental provisions in respect of certain employment relationships. This is a general approach, paralleled by specific instruments to meet three specific needs:

- to improve the functioning of the internal market and to make the labour market more transparent within the context of economic and social cohesion (legal basis Article 100a of the EEC Treaty);
- to improve living and working conditions for workers (legal basis Article 100 of the EEC Treaty);
- to protect the health and safety of workers at work[9] (legal basis Article 118a of the EEC Treaty).

The Commission takes the view that there can be no question here of casting doubt on the need for these particular forms of employment relationship, which are held to be essential in terms of a coherent strategy for growth and jobs. The point here is to defined a number of basic provisions which on the one hand respect the need for businesses to be flexible, and on the other take into account the aspirations of workers, allowing for the wide range of situations in the Member States and the bargaining autonomy of the two sides of industry.

To avoid a disproportionate level of administrative expenditure, the Commission has proposed that the two directives concerning approximation of Member States' provisions in respect of the above employment relationships in terms of working conditions (Article 100) and distortions of competition (Article 100a) should not apply to employed persons whose average working week is less than eight hours.

Of the three proposals, only that based on Article 118a has so far been adopted by the Council of Ministers - on 25 June 1991[10].

Work on the proposal based on Article 100a is progressing slowly, and very little progress has been made on the proposal based on Article 100 of the EEC Treaty. This latter Commission proposal has been rejected by the

European Parliament.

The Charter reaffirms the principle under which all employment must be fairly remunerated, pointing out that "in accordance with arrangements applying in each country, workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living". Consequently, and respecting in full the principle of subsidiarity, the Commission intends neither to enact legislation nor to propose binding instruments on pay. It does, though, take the view that it would be apposite to pinpoint a number of basic principles regarding equitable pay, bearing in mind social and economic realities and making use of the usual instruments of economic and social policy, particularly those designed to stimulate economic growth, boost productivity, combat discrimination and ensure solidarity between the various social groups.

In this context, the Commission presented, on 12 December 1991, a draft opinion on an *equitable wage*[11], a draft which was revised subsequent to the opinion of the Economic and Social Committee delivered on 20 May 1992.

Although Article 118 of the EEC Treaty on which the draft opinion is based does not require the European Parliament to be consulted, the Commission nonetheless thought it right to await Parliament's opinion before setting down its definitive opinion.

In its opinion of 9 March 1993, the European Parliament, while supporting the Commission's approach, wanted to see further development, in particular in the areas of minimum wages and binding legislation at Community level.

In its definitive opinion adopted on 1 September 1993, the Commission took account of the opinion of the European Parliament and of the opinion of the Economic and Social Committee[12].

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

In recent years, there has been an increasing trend towards dissociating individual working time from plant operating hours in most of the Member States. Thanks to this tendency, which has helped to increase capacity utilization and improve access to services with longer opening hours, firms are free to adapt to changing market conditions and to make more flexible use of productive equipment while at the same time cutting unit production costs. This same phenomenon also enables workers to organize their working time to suit their personal social and cultural needs and aspirations. By, in many cases, allowing variations around an average working time laid down in collective agreements, the trend towards reduced working time has helped to dissociate plant operating hours and individual working time.

This is why the proposal for a Council Directive concerning certain aspects of the *organization of working time*[13] contains a basic set of minimum provisions regarding minimum daily rest periods, and minimum conditions regarding a maximum 48 hour working week, minimum paid annual leave (4 weeks), night work and health and safety protection for workers subject to changes of rhythm in their working hours.

On 23 November 1993, the Council adopted this Directive.

On 28 November 1990, the Commission adopted a proposal for a Directive on *provision of a form of proof of an employment relationship*[14].

The essential aim behind this proposal was to create a balance between the interests of workers in being aware of the essential nature and content of their employment relationship and that of businesses searching for new and more flexible forms of employment relationships geared to the needs of a modern economy. The Council adopted this text on 14 October 1991[15]. The Directive thus makes a contribution to improving the transparency of a labour market which is undergoing change with potential for altering the situation of workers in the kind of employment relationship which generally falls outside the traditional pattern.

Apart from the renewed potential for "black work", we are now witnessing the emergence of new forms of distance work, work experience schemes and mixed employment-

training contracts, more flexible forms of part-time and full-time working and, in more general terms, the development of new forms of work which tend to obscure the situation of large numbers of workers, making it confused, uncertain and unstable. As a result, conventional concepts of what is meant by workers, employed persons, working time, etc. are no longer covered by conventional labour law.

Under the Directive, all workers have a right to know for whom and where they are working and what the essential conditions of the employment relationship are.

On 18 September 1991, the Commission adopted a *proposal for a Directive amending Directive 75/129/EEC concerning the approximation of Member States' legislation on collective redundancies*[16].

Fifteen years of Directive 75/129 and the impact of the internal market on business restructuring made it necessary to amend the original Directive. With transnational business restructuring gathering pace on the eve of completion of the internal market, redundancies are increasingly being decided at a higher level of business than that of the direct employer, i.e. by a company exercising control over a group, whether it be situated in the same Member State as the employer or in an entirely different one, or by the central management of a multiple-branch undertaking, with the actual employer being located in a different Member State entirely.

The Council adopted these amendments on 24 June 1992[17].

The Directive widens the field of application of Directive 75/129/EEC as regards redundancies decided by such decision-making centres, but ensures that such centres supply employers with all the information they need to inform and consult workers' representatives and notify the competent public authority of the plans. The Directive also seeks to extend workers' rights as regards information and consultation to cases of redundancy resulting from a court decision.

The need to refocus Community attention on the immigration issue was brought out at the Hanover European Council of June 1988, which called on the Commission to draw up a report on the social integration of migrant workers.

The European Council of 8 and 9 December 1989 called in turn for an inventory of national positions on immigration with a view to preparing the ground for a discussion of the matter in the Council.

As regards the social and legal situation of immigrants from non-member countries in each of the Member States, the report on the *"social integration of migrants from non-member countries residing permanently and legally in the Member States"*[18] gave a first indication of the legal and de facto situation of immigrants.

A second report entrusted by the Commission to a group of experts and entitled *"Policies on immigration and the social integration of migrants in the European Community"*[19] made a major contribution to a more in-depth look at this question.

The European Council of 14 and 15 December 1990 took note of this latter report and asked the General Affairs Council and the Commission to "examine the most appropriate measures and actions regarding aid to countries of emigration, entry conditions and aid for social integration...". In addition the Commission adopted a *Communication to the Council and the European Parliament on immigration* on 11 October 1991[20].

## FREEDOM OF MOVEMENT

On 28 June 1991, the Commission put forward a *proposal for a Council Directive concerning the posting of workers in the framework of the provision of services*[21].

The Commission's aims behind this proposal were to have the Council ensure that Member States coordinate their laws to establish a core of rules and regulations affording minimum protection. Such rules and regulations would have to be complied with in the host country by employers sending workers to work temporarily on the territory of the Member

State in which the services are rendered.

The importance of this proposal will be clear to all, especially as its scope extends to undertakings established outside the Community.

Such undertakings are likewise subject to this core of rules and regulations in respect of their workers carrying out temporary work on the territory of a Member State.

Very little progress has been made since 1991 on the adoption of this proposal. The European Parliament has not yet given its opinion.

The lack of coordination, the diversity and multiplicity of supplementary schemes and the fact that they are increasing in importance over statutory social security schemes make it a very complex matter to organize the transferability of rights in the event of worker mobility between the Member States.

This is why the Commission adopted, on 17 July 1991, a *"Communication on supplementary social security schemes"*[22], which takes the form of a consultation and information document intended by the Commission to set in motion a Community-wide debate on supplementary retirement pension schemes.

The analysis proposed by the Commission is presented in terms of the freedom of movement of workers and the coordination of security matters pursuant to Article 51 of the EEC Treaty.

The communication is not intended to make any kind of value judgement on existing national systems, but merely to present an inventory of problems posed by supplementary schemes in respect of worker mobility.

The basic objective is to ensure that transfrontier worker mobility is no more of a problem than mobility within a single Member State.

In other words, the point of the **transferability of supplementary pension rights** is to get rid of obstacles to the free movement of workers caused by the absence of Community provisions protecting such workers from the loss of their rights.

The European Parliament's opinion was adopted on 13 March 1992, followed by the Economic and Social Committee's opinion on 19 May 1992.

The Treaty contains no provisions which would make it possible to eliminate inherent obstacles in the social security system for establishing the freedom of movement of persons who are not workers or members of their families. As a result, it would seem essential to coordinate social security systems applicable to such persons in the interests of the social dimension of the internal market and of a people's Europe.

Given the new context for the coordination rules, the Commission formulated, on 13 December 1991, a *proposal for a Council Regulation amending Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons and members of their families moving within the Community, and Regulation (EEC) 574/72 laying down the application arrangements for Regulation (EEC) 1408/71.*

This extension works in two directions:

- firstly, to include special schemes for civil servants and
- secondly, to facilitate the coordination of schemes applicable to all persons not yet covered by the regulations, in so far as they are insured in a Member State.

Since the first communication on frontier populations (COM/85/529 final) and the impetus imparted by the completion of the single market, the Commission has submitted to the Council a number of ideas on the specific situation of frontier workers.

On 27 November 1990, the Commission adopted a *communication to the Council on the living and working conditions of Community citizens resident in frontier regions, with special reference to frontier workers*[23].

The Commission will pronounce on the revision of Commission Regulation 1251/70 once the Council has completed its

deliberations on the amendment of the first part of Regulation 1612/68/EEC.

## SOCIAL PROTECTION

Solidarity with the disadvantaged sections of the population is primarily a matter for the Member States.

However, since the mid-1970s, the Community has become involved in these matters too. The two Poverty programmes 1975-1980 and 1984-1988 were joined by the Council Decision of 18 July 1989 establishing a new Community programme for the economic and social integration of the least privileged (1989-1994).

There is a very real danger, if we are not careful, that the internal market will make certain sections of the population more vulnerable

On 23 December 1992, the Commission adopted a Communication entitled "*Towards a Europe of Solidarity: Intensifying the fight against social exclusion, fostering integration*"[24].

While respecting the principle of subsidiarity, the Communication proposes overall guidelines for the action which the Community could take in this area.

On 22 September 1993 the Commission adopted a new programme ("*Medium-term Action Programme to Combat Exclusion and Promote Solidarity*")[25], which is designed to follow on from the Poverty 3 programme, which will be terminated in June 1994.

Faced with the persistence of various forms of social exclusion, the Member States have tried to tackle the problem by instituting various forms of guaranteed resources for the worst-off.

In the Resolution passed on 29 September 1989 by the Council and the Ministers for Social Affairs meeting within the Council on the fight against social exclusion, the ministers showed how much importance they attached to supplementing economic development policies by policies of guaranteed resources geared to the situation in the various Member States.

The same desire for solidarity prompted the *proposal for a Council Recommendation on common criteria concerning sufficient resources and social assistance in the social protection systems*[26].

The aim behind this draft Recommendation was to get the Member States to recognize a general subjective right to a guarantee of sufficient resources and benefits, and to organize the ways and means of implementing that right. The Council adopted the Recommendation on 24 June 1992[27].

At the same time, and with a view to promoting harmonization in the levels of social protection, the Commission has proposed, pursuant to its stated aims in the Social Charter action programme, a strategy for the convergence of Member States' social protection policies.

This strategy, set out in the *proposal for a Council Recommendation of 27 June 1991 on the convergence of social protection objectives and policies*, sets out to be flexible, progressive and based on a voluntary approach on the part of the Member States[28].

A strategy of this kind implies the definition at Community level of common objectives as regards the convergence of social protection policies, and sets out to advance the national social protection systems in accordance with the Community's general objectives.

This convergence strategy must be seen not so much as an isolated measure, but rather as part of a wider move towards economic and social integration and the prevention of social exclusion.

The Council adopted the Recommendation on 27 July 1992[29].

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

In presenting its *proposal for a Council*

*Directive on the establishment of a European Works Council in Community-scale undertakings for the purposes of informing and consulting workers*[30], the Commission set out to give priority to transnational situations, while at the same time bearing in mind the principle of subsidiarity as regards the regulatory level and the role of the two sides of industry.

Thus, the proposal has no effect on internal information and consultation procedures within the Member States regarding national undertakings, which remain subject to the legislation and practices of the Member States. The proposal covers only European-scale undertakings and groups of undertakings.

In this field, more so perhaps than in others, it is important to stress the respect shown for the social partners' bargaining autonomy.

The joint opinion adopted in March 1987 within the framework of the social dialogue involving the ETUC, UNICE and CEEP was taken into account not only in terms of the minimum requirements set out in the proposal in respect of information and consultation of workers, but also in terms of the conditions for the setting up of a European Works Council. Here, it is primarily up to the social partners to decide on the nature, composition, functions and powers of any such council, along with its rules of procedure. Only where it proves impossible to reach agreement do the prescribed minimum provisions need to be applied.

There was an exchange of views on the Commission proposal at the Social Affairs Council of 12 October 1993. Since it did not prove possible to reach a political agreement, the Commission announced that, from 1 November 1993 onwards, the proposal would be discussed under the procedures provided for by the Maastricht Treaty (Article 3 of the Social Protocol).

The Community instrument on **equity-sharing and financial participation by workers**, announced in the Commission's action programme, takes due account of the latest developments and of present policies in this area within the Community[31]. It relates essentially to participation by employees in their companies' profits and asset formation and to equity-sharing, and seeks to cover neither all aspects of general capital formation policies nor measures aimed at the population at large or specific categories outside the occupational context.

The choice of the Council Recommendation instrument is justified by the nature of the subject, for which a non-binding instrument appeared to be more suitable[32].

There is a wide disparity in the types of financial participation schemes currently in operation in the various countries. Their legal and tax statuses differ widely, ranging from cash bonuses and profit-sharing and other forms of deferred participation to special equity-sharing schemes, such as the free distribution of shares to employees or the offer of shares on preferential terms, through share purchase option schemes available to all employees or just to executives, to share-holding trusts or company buy outs.

The Recommendation is principally concerned with company-internal collective, continuing and participatory schemes (with direct or indirect involvement) based on company results.

The Recommendation's designated objective is to encourage wide-ranging usage of the various forms of employee participation in company profits and trading results, either by profit sharing or by equity-shareholding or by a combination of the two.

The Council adopted the Recommendation on 27 July 1992[33].

## EQUAL TREATMENT FOR MEN AND WOMEN

Substantial progress has been made since the first action programme on equal opportunities for women in 1982.

A number of directives are already in place and form a complex fabric of legislation which, when incorporated into national laws and regulations, guarantees the formal equality

of men and women.

However, there is still some way to go before formal equality becomes de facto equality.

The Commission's aim is to make the transition from equal treatment to equal opportunities, which explains why the *third medium-term Community action programme on equal opportunities for men and women*, adopted by Commission on 17 October 1990, places less stress on the legal side and more on facilitating access to the labour market, improving the quality of employment, reconciling working life and family responsibility and improving the status of women in society.

The Council adopted its Resolution of 21 May 1991[34], recognizing "the need to adopt an overall integrated approach allowing the policies on equality to be given full effect".

Based on Article 118a of the EEC Treaty, the *proposal for a Directive concerning the protection at work of pregnant women or women who have recently given birth* constitutes an individual directive within the meaning of Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work[35].

Its aim is to improve the standard of protection of pregnant women or women who have recently given birth, regarded as a risk group within the meaning of the above Framework Directive, without causing any deterioration in their working conditions and more particularly their situation on the labour market. The measures contained in this proposal relate to leave arrangements, duration of work and employment rights on the one hand, and working conditions, including exposure to agents liable to affect their health, on the other. It also contains a particular reference to the burden of proof in case of a dispute.

This proposal for a Directive is in response to a major and specific need; on a number of occasions, the European Parliament has underlined the urgency of this initiative as contributing significantly to the promotion of health and safety of workers at work.

The Council adopted the definitive text on 19 October 1992[36].

Reconciling child care and child education obligations with parents' employment and training is essential if there is to be true equality of opportunity for men and women.

In all the Member States, demand for child care facilities exceeds supply, with the lack of good-quality and affordable facilities constituting a major obstacle to women finding jobs and playing their full part in work and vocational training.

The Commission intends to take steps to encourage child care facilities and has already drawn attention to the fact that finance is available in this field under Community support frameworks.

However, going beyond specifically targeted measures, the Commission has sought to draw up Community guidelines for a comprehensive policy on the part of the Member States on child care, along with a programme for the consistent and gradual application of this policy. This resulted in a *proposal for a Council recommendation on child care, adopted by the Commission on 4 July 1991 and presented to the Council on 8 July 1991*[37].

The Recommendation was adopted by the Council on 31 March 1992[38].

## VOCATIONAL TRAINING

Community action programmes in the field of vocational training have made enormous progress since 1987 in the wake of the adoption of the COMETT programme. The adoption in the meantime by the Council of a series of other action programmes demonstrates the importance attached throughout the Community to vocational training as an instrument of economic and social policy.

These programmes have been consistently supported by the European Parliament and the Economic and Social Committee and now form

a complex fabric which is, however, still somewhat lacking in coordination.

To deal with this shortcoming, the Commission put forward a *memorandum on the rationalization and coordination of vocational training programmes at Community level*[39].

The element common to all programmes such as Comett, Eurotecnet, Erasmus, Lingua, Tempus, PETRA, IRIS, Force and the exchange of young workers programme is that they centre on the development of training measures, be they initial or continuing.

In addition, there are other Community programmes which comprise training elements or have implications for training policy[40].

The action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers pointed out that "the challenges faced by the Community as a whole with the creation of the internal market, against a background of continuing technological, social and demographic change, makes concerted action in the training field indispensable".

The aim of the memorandum is precisely this: to establish an overall framework of reference which can be used in future in locating and managing all Community initiatives and actions in the context of the development of the common vocational training policy based on Article 128 of the Treaty and in ensuring a well-coordinated approach to the development of Community measures designed to improve the quality of human resources in the Community and in the wider Europe. This framework is intended to streamline the Commission's different training initiatives, and also to enable the Commission to ensure the necessary interrelationships and coordination with other Community policies which contribute to the general objective of improving the skills of people throughout the Community, so as to master economic, technological, social and cultural chan·.

Taking account of the challenges in respect of vocational training and the need to promote a European dimension, more particularly by offering the chance of international exchange schemes to young people undergoing initial vocational training (other than at university level) and to young workers, the Commission proposed consolidating and extending the PETRA programme to include an exchange programme for young workers[41].

In so doing, the Commission was not only responding to the right to training for young people as laid down in the Charter, but also taking account of the European Parliament Resolution of 16 February 1990 on Community education and training programmes, which deplored the fact that "young people do not have equal opportunities in this area since existing Community programmes are geared mainly to university students rather than young people at school or following vocational training courses, who are in the majority"[42].

On 22 July 1991 the Council formally adopted Decision 91/387/EEC, based on Article 128 of the EEC Treaty, which had ben approved at the Luxembourg Council on 25 June 1991.

This decision, *amending Decision 87/569/EEC concerning an action programme for the vocational training of young people and their preparation for adult and working life (PETRA)*, became operational from 1 January 1992 and comprises a three-year programme with ECU 177.4 million funding[43].

Lastly, the Commission proposed a *Recommendation on access to continuing vocational training*[44]. The objective of this Recommendation is to encourage Member States to focus their vocational training policies so that all workers in the Community can have access to continuing vocational training throughout their working lives without suffering any form of discrimination.

This Recommendation was adopted by the Council on 30 June 1993[45].

Finally, in a working document of 5 May 1993, the Commission set out the guidelines that it intends to follow as regards training and education.

## HEALTH AND SAFETY PROTECTION FOR WORKERS

Although the Community has for some time had a set of binding provisions giving a wide

measure of protection for the health and safety of workers at work, the action programme implementing the Charter included a series of new proposals for binding instruments covering fields where the safety problem is of some concern.

In addition to other proposals for directives on the safety and health aspects of working conditions and employment, the action programme includes ten proposals for individual directives, most of which come under framework Directive 89/391/EEC.

All the sectors covered by these proposals are characterized by high accident and risk rates.

The other two initiatives concern occupational diseases and the creation of a health and safety agency.

As regards occupational diseases, the Commission has updated its Recommendations of 23 July 1962 and 20 July 1966[46] establishing a European schedule of occupational diseases and setting out the principles for compensation.

In its *Recommendation of 22 May 1990 concerning the adoption of a European schedule of occupational diseases*, the Commission stated that, after a period of three years, it intended to look into whether binding legislative provisions were needed, and placed the emphasis on preventing occupational risks with a view to encouraging measures to reduce workplace nuisances[47].

With regard to the *proposal for a regulation on the establishment of a health, hygiene and safety agency*, the Commission presented its final proposal on 30 September 1991[48]. Parliament has not yet given its opinion.

Several of the proposals presented by the Commission under the action programme implementing the Social Charter and included in the chapter dealing with the health and safety of workers have been adopted by the Council[49].

The Commission presented three proposals for Directives in late 1992/early 1993:

- one *on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents*[50],
- another on *the protection of the health and safety of workers from the risks related to chemical agents at work*[51],
- the last on *the minimum safety and health requirements for transport activities and workplaces on means of transport*[52].

The Council has adopted three directives:

- *Directive on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries*[53],
- *Directive concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling*[54].

Lastly, on 23 November 1993, the Council adopted a Directive concerning the minimum safety and health requirements for work on board fishing vessels.

## PROTECTION OF CHILDREN AND YOUNG PEOPLE

Children and young people still constitute an important labour force reserve, the size of which varies from one Member State to another. In many cases, this is an "invisible" labour force which is not adequately covered by official statistics. According to Eurostat's 1989 labour force survey, there were 397 000 young people aged between 14 and 19 at work in Portugal, compared with 563 000 in Spain, 2 128 000 in the United Kingdom and 743 000 in Italy. Between 90 000 and 200 000 children aged less than 15 were at work in Portugal in the early 1980s according to the International Labour Organisation. In more global terms, according to Eurostat (1989), almost 2 million young people of 15 years of age are at work in the Community, over a third of whom are employed in the distributive services and in the hotel and catering trade. Most of the working youngsters are to be found in the United

Kingdom (with more than a third of the total), Germany (15%) and Italy (12%).

It was only logical, then, for the Community Charter of the Fundamental Social Rights of Workers to devote special attention to the protection of children and young people (paragraphs 20-23). Paragraph 22 sets out the principal objectives, e.g. that "appropriate measures must be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met", limitations on the duration work and a ban on night work for workers of under 18 years of age. Paragraph 20 says that "the minimum employment age must not be lower than the minimum school-leaving age and, in any case, not lower than 15 years".

Similarly, in Chapter 11 of its action programme relating to the implementation of the Charter, the Commission affirmed its determination to protect young people from conditions of work and employment which might damage their health, safety and development. The Commission's aim then is to get the Council to adopt a directive on the protection of young people. The Commission adopted the proposal on 17 March 1992[55]. Parliament gave its opinion on 17 December 1992[56].

Following this opinion, on 5 February 1993 the Commission adopted an amended proposal[57], which gives a very precise definition of certain terms. Accordingly, "young person" means any person under 18 years of age, "adolescent" means any young person of at least 15 years of age who is no longer undergoing full-time compulsory education, and "child" means any young person who is less than 15 years of age or who is still undergoing full-time compulsory education.

The proposal for a Directive provides for a ban on work carried out by children, in accordance with the Charter. The Commission believes that this is justified because above this threshold there is a balance between the various elements which contribute to the health of young people. The World Health Organisation gives a broader meaning to this concept which corresponds to social as well as physical and moral well-being. While the Commission rejects work by children, it has nevertheless shown flexibility in providing for exceptions, in particular for cultural activities and for children aged 13 and 14 years who carry out light work.

The proposal for a Directive obliges employers, when they apply the general provisions of the framework Directive, to take account of any specific risk resulting from the employment of young people, an evaluation of these risks being compulsory for the agents, processes and working conditions included in a non-exhaustive list annexed to the proposal.

As regards the duration of work, the proposal for a Directive provides for limits for children who are still in full-time education: in order to ensure that their attendance at school and consequently their long-term development are not jeopardised by excessively long daily work, adolescents and children may do no more than 12 hours work per week and two hours on a school day.

The time spent by a young person on vocational training must be counted as working time.

Working time for adolescents and young persons participating in a combined work/training scheme may not exceed eight hours per day or 40 hours per week. However, it is possible for derogations to apply to these limits under certain specific conditions.

The proposal for a Directive also bans work between 20.00 hours and 06.00 hours for children or between 23.00 hours and 07.00 hours for young people, with some possible derogations for the latter.

The Council reached a common position on this draft Directive on 23 November 1993.

## THE ELDERLY

The substantial increase in elderly and very old people between now and the end of the century has made the problem of integrating such people into society acute throughout the Community, not to mention the economic and social implications of the ageing process.

Enacting legislation would not have been the appropriate response given that different Member States have different approaches, cultures and traditions.

However, population ageing, the shift in the ratio of the working to the non-working population and the change in family structures are likely to have major social and economic implications. This is why the Commission has presented a communication on the elderly, together with a proposal for a Council Decision on Community actions for the elderly[58].

In the wake of this measure, the Council adopted a *decision dated 26 November 1990 on Community actions for the elderly*[59].

Among the wide range of measures proposed for the elderly, those encouraging sharing of experience are particularly important. To these must be added the Council decision proclaming 1993 "European Year of the Elderly and of Solidarity between Generations".

On the basis of the Commission's proposal of 10 January 1992[60] the Council adopted, on 24 June 1992, a decision on the organisation of the European Year of the Elderly and of Solidarity between Generations (1993)[61].

## DISABLED PEOPLE

There are something like 30 million people in the Community who are affected by a physical, sensorial or mental handicap. The European Community has set itself the task of integrating these people economically and socially within the general context of improving the quality of life of all Community citizens.

The Community's original contribution to national efforts was to concentrate on technical exchanges of experience; this has now shifted to a comprehensive and consistent policy centred on a number of Community instruments in favour of disabled persons.

On the basis of a Commission report, the Council adopted, on 12 June 1989, its conclusions on the employment of disabled people, the aim being to give such people equal opportunities as regards access to vocational training and jobs by stimulating the participation of all parties concerned.

Going beyond the Community Charter of the Fundamental Social Rights of Workers, the Council of Ministers adopted, on 31 May 1990, a resolution on the integration of children and young people with disabilities into ordinary systems of education.

An important stage was reached on 18 April 1988 with the adoption by the Council of the second Community action programme covering the period 1988-1991[62], known as HELIOS *(Handicapped people in the European Community Living Independently in an Open Society)*. Its aim was to follow up and build on the activities of the previous programme, stressing the promotion of independent living for the disabled.

Thanks to the advances and progress made in previous programmes, the situation of disabled people has been improved significantly, but it is important not to let up in these efforts in a period of major upheaval and difficult economic and social conditions.

Being able to draw on bases and criteria established for strengthening and pursuing a comprehensive and consistent policy for the school, economic and social integration of the disabled, and with heightened attention and appropriate measures, the Commission proposed the adoption of a five-year programme, known as Helios II.

A new action programme is particularly necessary as the disabled continue to be generally disadvantaged in terms of educational, employment and leisure conditions[63]. Estimated at some 10% of the total population of the Community, handicapped people have tended to be more affected by the structural changes which have taken place over recent years. Economic and social changes have put a large number of people into a difficult - not to say dramatic - situation, and the positive aspects of past measures are sufficient justification for setting out on a new programme. Helios II thus has to contribute to the economic and social cohesion of the Community and help to optimize positive measures in favour of the disabled.

Parliament gave its opinion on 30 October 1992. In its amended proposal, the Commission included the amendments suggested by the European Parliament and the Economic and Social Committee.

Helios II was adopted by the Council on 25 February 1993[64].

This programme, which was set up for a period of four years (1993-1996), is concerned with the exchange of information and the promotion of original experiments for integrating handicapped people. The new programme has five main priority areas: integration into schools and the education system in general, functional rehabilitation, vocational training, economic integration, social integration and independent living.

In the four years of the Helios II programme, the Commission, which manages the programme, is responsible for facilitating exchanges of experience and promoting the dissemination and transfer of effective practices.

Since 1989, a variety of directives adopted by the Council have included provisions regarding workers with a mobility handicap[65]. These concern the design of workplaces, accessibility, internal mobility arrangements and sanitary facilities. However, although Community regulations cover certain risks run by handicapped workers at the place of work, they do not cover the journey to and from work.

This is why the Commission set out to fill the gap by adopting the *proposal for a Council Directive on minimum requirements and safe transport to work of workers with reduced mobility*[66].

For this category of persons, access to the place of work by public transport is often fraught with difficulties and plays an important part in determining whether or not a person obtains and keeps a job. As a result, occupational integration is directly linked to the development of transport and infrastructure facilities which help to make disabled workers more mobile.

The aim of the proposal is not to modify all means of transport to make them accessible to workers with a mobility handicap, but to ensure that such workers can travel in safety and thus to help them integrate into the work process.

## CONCLUSION

Nearly four years after the adoption of the Charter, the Commission has presented almost all of the proposals announced in the action programme and, by so doing, has sought to guarantee at Community level the social rights of the Charter. The Commission has sought to consolidate and extend the action programme by making additional proposals in various areas.

1993 has been the year of the ratification of the Treaty on European Union.

In the Protocol on Social Policy annexed to the Treaty, the "High Contracting Parties" noted that "11 Member States wish to continue along the path laid down in the 1989 Social Charter; that they have adopted among themselves an Agreement to this end; that this Agreement is annexed to this Protocol."

The Agreement will make quite significant changes to Community social policy, since it extends qualified majority voting and establishes the bases which make it possible, for the first time in the Community legal system, for the social partners to establish collective agreements at European level. The Treaty on European Union entered into force on 1 November 1993.

On 17 November 1993 the Commission agreed a Green Paper about the future lines of social policy in the European Union.

This Green Paper will be circulated to interested parties in all Member States who wish to contribute to the next stage of social development within the Union.

Reactions to the Green Paper will be taken into account by the Commission in drafting a White Paper which will contain specific policy proposals in the second half of 1994.

(1) COM(89) 568 final, Brussels, 29 November 1989.
(2) Presidency Conclusions, European Council, Strasbourg, 8 and 9 December 1989.
(3) COM(91) 511 final (first report)
COM(92) 562 final (second report).
(4) COM(93) 238 final of 26.05.93.
(5) Council Regulation (EEC) No 2083/93, OJ L 193 of 31.07. 1993.
(6) OJ C 327 of 29 December 1990, p. 3.
(7) COM(91) 316 final, SYN 359, Brussels, 5 September 1991;
OJ C 254 of 28.9.1991, p. 9.
(8) OJ L 245 of 26.8.92, p. 1
(9) COM(90) 228 final - SYN 280 and SYN 281 of 13 August 1990.
(10) Council Directive of 25 June 1991 (91/383/EEC) 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.
OJ L 206 of 29.7.1991, p. 19.
(11) SEC(91) 2116 final
(12) COM(93) 388 final
(13) COM(90) 317 final - SYN 295 of 20 September 1990.
(14) COM(90) 563 final, 8 January 1991.
(15) Council Directive 91/533 of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288 of 18.10.1991, p. 32
(16) OJ L 48 of 22.2.1975, p. 29.
(17) OJ L 245 of 26.8.92, p. 3
(18) SEC(89) 924 final of 22 June 1989.
(19) SEC(90) 1813 final of 28 September 1990.
(20) SEC(91) 1855 final
(21) COM(91) 230 final - SYN 346; OJ C 225 of 30.8.91, p. 6.
(22) SEC(91) 1332.
(23) COM(90) 561 final.
(24) COM(92) 542 final
(25) COM(93) 435 final
(26) COM(91) 161 final of 13 May 1991; OJ C 163 of 22.6.1991, p. 3.
(27) OJ L 245 of 26.8.92, p. 46
(28) COM(91) 228 final of 27 June 1991; OJ C 194 of 25.7.1991, p. 13.
(29) OJ L 245 of 26.8.92, p. 49
(30) COM(90) 581 final, Brussels, 25 January 1991.
(31) COM(91) 259 final, Brussels, 3 September 1991.
(32) Proposal for a Council recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation); OJ C 245 of 20.9.1991, p. 12.
(33) OJ L 245 of 26.8.92, p. 53
(34) OJ C 142 of 31.5.1991, p.1.
(35) OJ L 183 of 29.6.1989, p.1.
(36) Council Directive 92/85/EEC of 19 October 1992, OJ L 348 of 28.11.92.
(37) COM(91) 233 final, OJ C 242 of 17.9.1991, p. 3.
(38) OJ L 123 of 8.5.92, p. 16
(39) COM(90) 334 final, Brussels, 21 August 1990.

(40) cf. a full analysis in the memorandum on the rationalization and coordination of vocational training programmes at Community level in COM(91) 334 final.

(41) Proposal for a Council Decision amending Decision 87/569/EEC concerning an action programme for the vocational training of young people and their preparation for adult and working life:
COM(90) 467 presented to the Council on 15 November 1990; OJ C 158 of 17.6.1991, p. 329 and C 181 of 12.7.1990, p. 175.

(42) OJ C 68 of 19.3.1990. p. 175.

(43) OJ L 214 of 2.8.1991, p. 69.

(44) COM(92) 486 final

(45) OJ L 181/37 of 23.7.93.

(46) OJ No 80 of 31.8.1962 and No 147 of 9.8.1966.

(47) OJ L 160 of 26.6.1990, p. 39.

(48) OJ C 271 of 16.10.1991, p. 3.

(49) Council Directive 91/382/EEC, OJ L 206 of 29.7.91, p. 16
Council Directive 92/29/EEC, OJ L 113 of 30.4.92, p. 19
Council Directive 92/57/EEC; Council Directive 92/58/EEC, OJ L 245 of 26.8.92, p. 23.

(50) COM(92) 560 final

(51) COM(93) 155 final

(52) COM(92) 234 final

(53) Council Directive 92/104/EEC, OJ L 404 of 31.12.92.

(54) Council Directive 92/91/EEC, OJ L 348 of 28.11.92.

(55) OJ C 84 of 4.4.1992

(56) OJ C 21 of 25.01.93

(57) COM(93) 35, OJ C 77 of 18.03.93

(58) COM(90) 80 final, Brussels, 24 April 1990.

(59) OJ L 28 of 2.2.1991, p. 29.

(60) OJ C 25 of 1.2.92, p. 5.

(61) OJ L 245 of 26.08.92, p. 43.

(62) OJ L 104 of 23.4.1988, p.38.

(63) Proposal for a Council Decision establishing a third Community action programme to assist disabled people - Helios II (1992-96), presented by the Commission on 8 October 1991, OJ C 293 of 12.11.91, p. 2

(64) OJ L 56 of 09.03.93, p. 30

(65) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183 of 29.6.1989, p.1); Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (OJ L 393 of 30.12.1989, p.1).

(66) OJ C 68 of 16.3.91, p. 7.

# Part Two

## APPLICATION BY THE MEMBER STATES OF THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

# BELGIUM

## FREEDOM OF MOVEMENT

1. There are no restrictions other than those justified on grounds of public order and public health which prevent any worker of the European Community from having freedom of movement in Belgium.

2. The only restriction to freedom of movement for workers is provided for in Article 48(4) of the Treaty (positions of authority) on access to employment in the public service.

   Article 2, § 1, second indent, of the Royal Decree of 18 November 1991 (published in the 'Moniteur belge' of 18.01.1992) states that citizens of the Member States of the European Community may be employed under contract in certain public services for functions which do not involve the exercise of public authority.

   The government has issued the necessary instructions on the application of Article 48(4) in accordance with the decisions of the Court of Justice of the European Communities.

   Generally speaking, it can be said that Belgian legislation complies with the principles of freedom of movement for workers and equal treatment, including the provisions of Regulation 1612/68 (amended by Regulation 2434/92 of 27 July 1992).

   It would therefore not appear to be necessary to take any measures to improve the situation in these areas.

3. A Community citizen who is employed in Belgium may be joined by his spouse and his children under the age of twenty-one years or dependent children even if they are not nationals of a Member State of the European Community.

   The spouse and children referred to in the previous paragraph also have free access to employment.

## EMPLOYMENT AND REMUNERATION

4. Belgian law does not have particular provisions which prevent certain categories of people from being free to choose and engage in an occupation, apart from the regulations governing each occupation.

5. a) The parties are free to set the level of workers' remuneration but must abide by the collective labour agreements.

      Sectoral collective agreements concluded in the joint committees fix the remuneration scales, which depend on the worker's age, seniority, skills and job. These agreements also stipulate the system of linkage to the consumer price index.

      Under the hierarchy of standards, these sectoral collective agreements and the remuneration set by the parties where there is no remuneration scale must comply with the multi-sectoral collective agreements concluded in the National Labour Council which fix a guaranteed mean monthly income:

      - Collective Agreement No 43 of 2 May 1988 (amended and supplemented by Agreements No 43 bis of 16 May 1989, 43 ter of 19 December 1989 and 43 quater of 26 March 1991), which fixes the mean monthly minimum income applicable to all workers aged at least 21 years who work full-time under an employment contract. The current amount is Bfrs 40 843.

- Collective Agreement No 50 of 29 October 1991 on the guarantee of a mean monthly minimum income to workers under the age of 21 years, which provides for a degressive guaranteed income for young workers between the ages of 16 and 20 years. This minimum income is therefore equivalent to a certain percentage of the income guaranteed to workers aged 21 years and over.

b) Collective Agreement No 35 of 27 February 1981 states that part-time workers are entitled to a mean monthly income calculated pro rata on the basis of the amount of time worked in the company and is proportional to the average monthly minimum income of a full-time worker. This agreement also stipulates that a part-time worker must receive remuneration which is proportional to that of a full-time worker for the same work or work of an equivalent value.

c) Remuneration may be withheld by the employer only in the cases of which a limitative definition is given in Article 23 of the Law of 12 April 1965 on the protection of remuneration. Moreover, the total deductions may not exceed one-fifth of the portion of each remuneration paid in cash, after the amounts required by tax legislation and legislation on social security have been deducted.

As regards the seizing and transfer of remuneration, the Code Judiciaire (Legal Code) lays down the limits within which the remuneration may be seized or transferred for a creditor of the worker concerned, the aim being to ensure that the worker and his family have a minimum income. The proportion which can be seized and transferred increases progressively by income, for each calendar month.

6. Any citizen of the European Community who is resident in Belgium or the frontier zone and any migrant worker who is properly established in Belgium may register as a job seeker with the public employment offices.

Citizens of other European countries may seek employment by means of the EURES network of their home country, which sends their file to our EURES branch office.

The employment offices look for jobs on the labour market and then inform job seekers of any vacant posts; the job seeker does not pay for this placement service.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. a) Article 19 of the Law of 16 March 1971 on work stipulates that the amount of time worked may not exceed eight hours per day or 40 hours per week. Lower limits may be set by collective agreement. For this reason, in most sectors the amount of time now worked per week does not exceed 38 hours.

Apart from the structural and ad hoc derogations from the normal limits on the duration of working time provided for by the labour law, collective agreements may change working time by introducing flexible working hours or new working arrangements. Flexitime makes it possible for the working time to be exceeded within certain limits and

also makes it possible for the working hours to be varied in line with the requirements of the company concerned. The new working arrangments make it possible for the company's operating time to be adapted by permitting derogations from a number of laws on working time (the duration of work, rest on Sundays, public holidays); these new working arrangements may be introduced only if they have a positive effect on employment in the company.

b) There are three other types of work contract mentioned in Articles 7 and 11 (ter) of the Law of 3 July 1978 on work contracts:

- the fixed-term contract, a clause of which indicates when the contract will end;
- a contract for a clearly-defined piece of work, which is terminated when the work for which the worker has been employed is completed;
- the replacement contract which is concluded to replace a worker whose contract has been suspended. This type of contract, which may not last more than two years, may depart from the rules on contract duration and the period of notice.

It is possible to employ workers part-time in each of these types of contract. The overriding principle is that part-time workers should have the same rights as full-time workers in proportion to the amount of time worked.

The amount of time worked must be no less than three hours per day (as in the case of full-time workers) and no less than one third of the working week of full-time workers.

c) The provisions on collective redundancies apply to companies with more than 20 workers. Collective redundancies are deemed to have taken place if, over a period of 60 days, at least ten workers are made redundant in companies with between 20 and 100 workers, 10% of the staff are made redundant in firms with between 100 and 299 workers and 30 workers are made redundant in firms with at least 300 workers. Royal Decree of 24 May 1976 on collective redundancies and Collective Agreement No 24 of 2 October 1975 stipulate that workers and the competent authorities must be informed and consulted, in principle 30 days before workers are made redundant. Moreover, provision is also made for the payment of an allowance to workers who have been made redundant as part of a collective redundancy.

8. The legislation on the annual leave of salaried employees is also applicable to members of the social security schemes for manual workers, miners and similar workers and sailors in the merchant navy.

The duration of leave is proportional to the amount of time worked. This is calculated on the basis of the number of days of actual work and of days of inactivity taken as such for the reference year for leave, i.e. the calendar year preceding the leave year. Twelve months of work or the equivalent number of days in the reference year for leave produce an entitlement to 24 days of leave in the following year (for those who work a six-day week) or 20 days (for those who work a five-day week). Additional days of leave may be provided for by collective

agreement.

The holiday pay of manual workers is paid by the Caisse de vacances to which the employer is affiliated. It is equivalent to 14.80% of the remuneration in the reference year for leave used to calculate the social security contributions.

For the years 1993 and 1994, manual workers who are in employment on 30 June of the leave year are entitled to receive from their employer an additional benefit for their double holiday pay from the third day of the fourth week of leave onwards, which is equivalent to 2.57% of gross holiday pay.

The holiday pay of salaried employees is paid directly by the employer. It is equivalent to the normal remuneration in respect of the days of leave plus a supplement of one-twelfth of 85% of the gross remuneration of the month in which the leave is taken for each month worked or each equivalent month in the reference year for leave.

For the years 1993 and 1994, salaried employees who are in employment on 30 June of the leave year are entitled to receive from their employer an additional benefit for their double holiday pay from the third day of the fourth week of leave onwards, which is equivalent to 5.59% of the statutory double holiday pay to which they are entitled.

The annual leave of sailors in the merchant navy is governed partly by the legislation on annual leave and partly by collective agreements. Miners and employees working under subsidised contracts have a special leave system.

As regards the weekly day of rest, the Law of 16 March 1971 stipulates in Article 11 that it is prohibited to make people work on Sundays. This ban is a public order measure accompanied by penal and administrative sanctions.

Provision has been made for derogations for certain companies or for the execution of certain types of work.

In all cases in which workers are employed on Sundays, the rules provide for compensatory rest to be granted in the six days following the Sunday on which the work was done.

9. The working conditions of salaried employees are defined in various provisions, including the following:

- collective agreements for the sector or company concerned which may determine certain working conditions, notably the duration of the working week and the minimum remuneration level;

- the employment regulations, a written document which the employer must draw up and communicate to his workers. This document sets out certain working conditions which are specific to the company, notably working hours, dates on which the company is closed, the type and place for the payment of remuneration, etc.;

- lastly the work contract which sets out working conditions specific to the worker concerned.

The hierarchy of the various provisions defining working conditions is as follows:

- the mandatory provisions of the law;
- collective agreements which have become obligatory;
- collective agreements which have not become obligatory but to which the employer is a signatory or is affiliated to an organisation which is signatory to the agreement;

- the written work contract;
- collective agreements which have been concluded in a joint committee and have not become obligatory when the employer, although not a signatory or affiliated to a signatory organisation, comes under the joint committee which concluded the agreements;
- the employment regulations;
- the complementary provisions of the law;
- the verbal individual agreement;
- practice.

## SOCIAL PROTECTION

10. a) Social protection for workers is basically funded by contributions from employers and employees.

These contributions which are used to fund the classes of insurance (sickness and invalidity, unemployment, old age and premature death, family allowances and annual leave) are collected together by a central body - the Office National de Sécurité Sociale (National Social Security Office), which distributes the sum total of these contributions between the various bodies which provide insurance services. These five classes of insurance together constitute what is known in Belgian positive law as "social security" in the strict meaning of the term. The regulations on occupational accidents and diseases are also included in social security, as are, in a broader sense, the regulations on a secure existence and even those on the disabled.

The various classes of social security are managed on a joint basis by public bodies, with the exception of the branch concerned with occupational accidents, which is managed by private business companies. However, although these bodies manage the various branches they do not generally regulate social security, since the establishment of social policy remains the prerogative of the Minister concerned, who is assisted by the specialised units in his department.

There are three main separate social security schemes, namely the scheme for employees (manual and non-manual), the scheme for the self-employed and the scheme for civil servants. The scheme for employees, which is by far the most important in terms of the number of persons covered and the level of expenditure, is itself subdivided into three separate schemes: the general scheme and the specific schemes for miners and sailors in the merchant navy.

Naturally, these different social security schemes have developed as a result of the specific working conditions of the above occupational categories.

The general scheme, which is by far the most important, is not applied uniformly. Accordingly, there are cases, albeit exceptions, in which certain categories of workers are covered only against certain risks, while other groups of workers are subject to specific rules of application, for example in the case of deductions from remuneration.

For certain risks, civil servants are covered under the branches of the general scheme (for example health insurance) or receive benefits under the same conditions but payable directly by the employer (for

example, family allowances), while other branches are specific to civil servants (for example, pensions, invalidity, occupational accidents) and are an integral part of their conditions of employment. These workers have job security and are therefore not covered by unemployment insurance apart from in certain circumstances.

b) The links between the right to social security and a particular working environment are becoming less and less rigid and this right is being extended to the whole population. Whereas social security used to be mainly concerned with protecting employees when their capacity to work is reduced, it can be seen that protection from the financial consequences of certain events (unemployment, the birth of a child) has been given and certain services (health care) have been granted to people who could certainly not be considered to be employees. Thus students and disabled people may obtain family allowances for their children, and students who do not find work when they have completed their studies are entitled to unemployment benefits after a certain period of time. In the same way, insurance for health care is accessible to everybody.

In this way, the whole population can be covered either in a compulsory manner (because of work) or in a voluntary manner (in the case of certain branches).

In the meantime there has been an improvement in the quality of protection against risks which has led to fairer redistribution of national income. Benefits have been linked to variations in the consumer price index, thereby ensuring that they retain their purchasing power. Certain social benefits are linked to changes in the general well-being of society. This means that the employee is not only protected from being in need, but is also guaranteed a certain standard of living.

c) Reference should be made to the various laws on assistance which are designed to ensure that each person is given a minimum level of protection, regardless of whether or not he is involved in the production process. To a certain degree this has already been achieved by means of the legislation on disabled people, the law on guaranteed family allowances and the right to a minimum level of subsistence or income.

The system of guaranteed family allowances provides means-related benefits for children who are not covered under the family allowances system for employees or under the family allowances system for the self-employed.

Every Belgian (or stateless person, refugee or person covered by the regulations on freedom of movement for workers within the Community) who is currently resident in Belgium, but who does not have sufficient means and is not in a position to obtain them by personal effort or in any other way, is entitled to a minimum income.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. Under Belgian legislation, freedom of association in the occupational sphere is governed not by specific texts but by

provisions applicable to all kinds of associations.

There is complete freedom to establish trade union groups. Prior authorization, registration or approval are not required apart from in a few rare cases, such as the payment of unemployment benefits by a trade union organization. There is one particular legal form: the Union Professionnelle (professional association). However, the use of this legal form is optional and in no way affects the rights and obligations concerned.

Trade unions have a right of association, even at international level.

The trade unions have complete freedom of operation and action. The management and liquidation of organizations other than professional associations or non-profit-making associations are governed by the organizations' own rules.

The authorities may not intervene to appoint managers, monitor revenue and its allocation, or influence the organizations' programmes or their activities.

Lastly, certain functions have been granted to the trade unions in the social area, regardless of their legal status.

However, these functions have been granted only to trade unions which are considered to be "representative". For example, the 1968 Law on collective labour agreements and joint committees gave the representative organizations (i.e. those which are organized on a national basis and are represented in the Conseil central de l'économie (Central Economic Council) and the Conseil national du travail (National Labour Council) and have at least 50 000 members) the right to be a party to legal proceedings:

a) in all disputes resulting from the application of legislation;

b) to defend the rights of their members arising from collective labour agreements concluded by the trade unions.

Every worker is free to join or not to join an organization pursuant to the Law of 24 May 1921 on freedom of association.

People are free to choose their union. There are no official trade unions or trade unions supported by the authorities. Workers also have the right not to belong to such organizations.

Although the opportunities and advantages given by law to trade unions and workers belonging to trade unions might be considered to encourage trade union membership, no sanctions or harm result from the decision not to join such organizations.

12. Collective labour agreements can be concluded either within or outside joint bodies but usually the former is the case. Belgian law has established a hierarchy of these joint bodies and hence also of the collective agreements concluded by them.

    1. The collective labour agreement concluded at the National Labour Council covers all branches of economic activity in the country.

    2. The collective labour agreement concluded in a joint committee normally covers all persons and companies that fall within the scope of the committee, except in cases where the agreement limits its own scope.

    3. The collective labour agreement concluded in a joint sub-committee has the scope laid down by the decree which established the sub-

committee. A supervisory role may be taken by the overall committee.

4. The collective labour agreement concluded outside a joint committee applies only to the contracting parties. These are generally company-level agreements.

There are certain rules governing the form and publication of a collective labour agreement. It must be drawn up in writing, bear various signatures and use certain compulsory formulations. The agreement must also be submitted to the Ministry of Employment.

When the agreements are concluded by a joint body, it is necessary to inform the people affected, which is done by an announcement in the 'Moniteur belge'.

When the collective agreement is made compulsory by Royal Decree, it is published in full in an annex to the Decree and in the two national languages.

A collective labour agreement is defined as "an agreement concluded between one or more organizations of workers and one or more employers, which determines the individual and collective relations between employers and workers within companies or a branch of economic activity and which regulates the rights and obligations of the contracting party".

The Law of 5 December 1968 gave considerable legislative freedom to the parties concerned: the two sides of industry are permitted to solve all problems of industrial relations. These collective labour agreements may therefore also cover the area of social security, for example.

The only restrictions on the freedom of negotiation concern the hierarchy of sources: clauses which conflict with the binding provisions of legislation and royal decrees and those which are contrary to clauses in the agreements concluded at a higher level are considered to be null and void.

In the public sector, the Law of 19 December 1974 provides for certain subjects to be negotiated in the negotiation committees by the competent administrative authorities and the representative trade union organisations.

The following committees have been set up:

- a committee of national, community and regional public services which is responsible for the staff in government and other State services (including educational establishments, departments of the judiciary, public services, and the Executives of the communities and the regions;

- a committee of local and provincial public services which is responsible solely for the staff of these services. Two sub-committees have been set up;

- a single committee for all public services, which negotiates every two years for an agreement on supplementary improvements in conditions of employment for all sectors.

The subjects for negotiation are as follows:

- basic rules laid down by Royal Decree on:

  *administrative conditions of employment (including leave)
  *financial conditions of employment
  *the pensions scheme
  *relations with trade union

organisations
*the organisation of social services;

- general internal measures and rules concerning the distribution of posts and the duration and organisation of work;

- draft laws or decrees on any of these subjects.

However, the King may authorise "emergencies or other cases" in which negotiations are not compulsory.

The results of negotiations are recorded in a protocol setting out the positions of the parties as precisely as possible and stating whether or not an agreement has been reached so that the negotiations proper can concentrate on the main problems.

13. Under Belgian law strikes are neither recognised per se nor defined in law.

However, the freedom to strike is seen as legitimate, provided that the freedom and rights of other persons and the legal provisions and regulations which may restrict the exercising of this freedom are respected.

Nevertheless, there are a number of relevant texts:

a) The Law of 19 August 1948 on the provision of public services in peace-time stipulates in Article 1 that:

"the joint committees provided for by the Law of 5 December 1968 on collective labour agreements and joint committees shall determine and define, for the companies under their jurisdiction, the measures or services to be guaranteed in the event of a collective and voluntary cessation of work or in the event of collective redundancies in order to meet vital needs, to carry out certain urgent work on machines or equipment, to perform certain tasks in cases of "force majeure" or an unexpected need, etc.";

The purpose of the legislation is to limit possible damage by strikes to the fundamental interests of the country.

b) Regulations referring to strikes and designed to protect workers who participate in them or suffer from the disadvantages normally resulting from the lack of provision of services during the strike.

These texts treat days of strike action as days of work for the purposes of social security, in a broad sense of the term. In most cases, the strike has to be recognised by the trade union organizations.

c) There are also regulations on the commencement of strike action, providing for a prior conciliation procedure. They include the following:

- the Regent's Decree of 12 March 1946 which lays down the conditions and procedure for obtaining unemployment benefits in the event of a strike or a lock-out;

- the Law of 5 December 1968 on collective labour agreements and joint committees and its executory decision of 6 November 1969.

The Law of 5 December 1968 stipulates in Article 38(2) that the tasks of the joint committees and joint sub-committees include "preventing or solving any

dispute between employers and workers". The Decree of 6 November 1969 adopted pursuant to this Law deals with conciliation in Chapter III and stipulates that the joint committee may set up a conciliation committee within the joint committee. The conciliation committee comprises a chairman, secretary and an equal number of workers' and employers' representatives.

A meeting of the conciliation committee is called by the chairman, normally within 7 days of the date on which a request was presented by the party to an existing or potential conflict who was the first to take action. Minutes are taken at all conciliation meetings.

- the numerous collective labour agreements concluded in joint committees (the majority of which have been made binding by Royal Decree pursuant to Article 28ff. of the Law of 5 December 1968) which include clauses that provide for a conciliation procedure prior to the start of the strike. This procedure may be laid down by an internal regulation of the joint committee.

d) Lastly, the Law of 11 July 1990 (Moniteur belge of 28 December 1990) approved the European Social Charter and its Annex signed in Turin on 18 October 1961. The Law incorporates these texts into Belgian legislation, in particular Article 6(4) of this Charter, which stipulates that the contracting parties recognise:

"the right of workers and employers to take collective action in the event of a conflict of interests, including the right to strike, subject to any obligations resulting from collective agreements in force."

14. There have been major controversies over the right to strike in the civil service.

The traditional view is that strikes are prohibited because of the need to provide continuity of public services and the principle that the general interest, for whose protection the civil service was set up, must take precedence over the individual interests of the worker. Article 7 of Royal Decree of 2 October 1937 on the rules governing State employees stipulates that "State employees may not cease performing their duties without prior authorization", in the same way that Article 112 provides for the compulsory dismissal without notice of those who stop work and do not return for more than 10 days without a valid motive.

Absence from work is treated as non-activity and hence is not paid. In practice, only minor disciplinary sanctions may be imposed depending on the nature of the service and the rank of the person concerned, unless the strike has given rise to behaviour which is liable to penal sanctions. The offence of "conspiracy of civil servants to prevent the implementation of laws or decrees" (see Article 233 of the Penal Code) has never been invoked in the event of a strike. The Law of 11 July 1990 approving and incorporating into Belgian Law the European Social Charter and its Annex, which were signed in Turin on 18 October 1961, gives civil servants the same right to strike as other workers. Article 16(3) of the Law of 4 January 1975 on discipline in the armed forces stipulates that

"military personnel may not strike in any way".

## VOCATIONAL TRAINING

15. a) Following the Belgian institutional reform, the responsibility for vocational training has been transferred to the communities, which have drawn up their own rules in this area.

The following regulations govern access to vocational training:

- the Decree of the Executive (regional government) of the French-speaking community of 12 May 1987 (Article 3);
- the Decree of the Executive of the Flemish community of 21 December 1988 (Article 81);
- the Decree of the Executive of the German-speaking community of 12 June 1985 (Article 3).

In all three communities, vocational training is open to any person who is registered as a job seeker with a public employment office. In addition, the following people are entitled to vocational training:

- workers who undertake such training at the request of their employers;
- workers who undertake training outside of working hours (French-speaking community's definition) or after 6pm or on Saturdays and Sundays (Flemish and German-speaking communities' definition).

The French-speaking and German-speaking communities have delegated the task of vocational training to FOREM, and the Flemish community has assigned it to VDAB.

b) There is no discrimination on grounds of nationality for access to vocational training courses.

c) The above-mentioned decrees stipulate that the aim of vocational training is to provide in-service training or to develop further existing work-related knowledge or abilities.

To this end, the conditions of access to training are extremely generous (see above). In addition, the courses organised in the vocational training centres are constantly being adapted to the needs of the labour market. Moreover, employers may apply to the competent sub-regional employment service asking it to admit one or more of their workers to a training centre managed by the vocational training office for the community in question (FOREM or VDAB). After a detailed examination of the application in order to evaluate correctly the real needs, a specific programme of training is drawn up in cooperation with the company in question.

## EQUAL TREATMENT FOR MEN AND WOMEN

16. a) The Belgian constitution has two articles (Article 6 "Belgians are equal in the eyes of the law" and Article 6 bis "there must be no discrimination in the enjoyment of rights and freedoms granted to Belgians") which may be cited in this context.

Belgian legislation has been supplemented by international legislation and texts of limited scope so that it now guarantees equal treatment for men and women in the area of employment.

Mention should be made of the following measures:

- Collective labour agreement No 25 of 17 October 1975 (made binding by Royal Decree of 9 December 1975) guarantees the principle of equal remuneration for male and female workers;

- Title V of the Law of 4 August 1978 on the redirection of the economy guarantees the implementation of Directive 76/207 in Belgium; Title V affirms the principle of equal treatment for men and women as regards working conditions and access to employment, training, promotions and access to a professional occupation;

- in order to apply the principle of equal treatment in the sphere of social security, many amendments have been made to existing rules on the various classes of social security (family allowances, unemployment insurance, sickness and invalidity insurance, retirement pension, survivor's pension and annual leave).

b) the Royal Decree of 14 July 1987 on measures for promoting equal opportunities for men and women in the private sector calls on companies to take positive action in favour of women by means of equal opportunity programmes drawn up for a given branch of economic activity or a given company. Under the terms of the Royal Decree of 27 February 1990 on measures to promote equal opportunities between men and women in the civil service, each public service must draw up a plan for equality of opportunity.

c) In recent years many measures have been taken to help workers of both sexes to reconcile their occupational and family commitments.

Achievements in this area include the following:

- total or partial career breaks lasting between 6 months and five years; more flexible arrangements apply to career breaks for the birth of a child;

- the extension of maternity leave;

- leave in special circumstances without loss of salary, in particular for family reasons (birth, marriage, adoption);

- leave in emergencies which allows workers in the private sector to take unpaid leave for a maximum of 10 days per annum in unforeseeable circumstances requiring the worker's attention (e.g. child's illness) unrelated to work;

- leave in emergencies or unforeseen circumstances in the family (for the civil service);

- various measures to facilitate part-time work.

d) The Programme Law of 30 December 1988 introduced an employer's contribution of 0.18 % on the total wage of workers, which was to be

paid into the Employment Fund. This contribution was increased to 0.25% by the multi-sectoral agreement of 27 November 1990 covering the period from 1 January 1991 to 30 December 1992. The contribution is used for training and employment measures for the benefit of groups at risk, which are defined by the multi-sectoral agreement and include women returning to the labour market.

Section 1, Chapter XI, Title II of the Law of 29 December 1990 relating to social matters, which is entitled "Measures to assist groups at risk" (*Moniteur Belge* 09.01.1991), explains in legal terms the multi-sectoral agreement mentioned above.

The most recent multi-sectoral agreement covering the period from 1 January 1993 to 31 December 1994 renews the provisions of the previous agreement concerning employers' contributions without redefining the groups at risk.

The ministerial order of 18 February 1991 implementing Article 2, point 4, of the Royal Decree of 2 January 1991 concerning career-break allowances ('Moniteur Belge' of 22.02.1991) sets out the rules for considering persons returning to the labour market when it comes to replacing people who are leaving for a career break. This possibility applies only to non-profit-making services and institutions in the non-market sector.

e) Article 10 of Collective Labour Agreement No 38 of 6 December 1983 of the National Labour Council concerning the recruitment and screening of workers has been amended by Collective Labour Agreement No 38 bis of 29 October 1991.

During the recruitment procedure, employers may not discriminate against candidates, but must treat them all equally. They may not make distinctions on the basis of personal factors when these factors are not related to the operations or nature of the enterprise, except when authorised or obliged to do so by law. Accordingly, in principle, employers may not make distinctions on the basis of age, sex, marital status, medical history, race, colour, ancestry or native or ethnic origin, political or philosophical beliefs or membership of a trade union or any other organisation.

f) In order to promote the equal treatment of men and women at work and to try to prevent undesirable behaviour, the Royal Decree of 18 September 1992 on the protection of workers against sexual harassment at work (*Moniteur Belge* of 07.10.1992) obliges employers:

- to include a statement of principle in the rules of service banning sexual harassment;
- to designate the person or department to whom/which cases of sexual harassment should be reported;
- to set out the procedure and sanctions in the event of sexual harassment.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. Belgium's current legislative framework does not offer a system of information,

consultation and participation for workers in companies established in two or more Member States. The draft directive on the establishment of a European works council will make it possible to have consultations of this nature.

18. Information, consultation and participation of workers takes place in the conseil d'entreprise (works council) for companies with more than 100 workers, and in the committee for occupational health and safety and the improvement of the working environment for companies with at least 50 workers, and, if there is no such committee, by the trade union delegation.

The head of the company must provide the works council with information on productivity and general data on the operations of the company (Article 15 of the Law of 20 September 1948 on the organization of the economy and Royal Decree of 27 November 1973 on the economic and financial information to be given to works councils).

The works council gives its opinion and may submit suggestions on any measures which could affect the organization of work, working conditions and the output of the company (cf. the above-mentioned Article 15).

Moreover, collective labour agreements concluded in the National Labour Council (which therefore apply to all workers) stipulate that the works council must be informed or consulted in a certain number of areas. For example, Collective Labour Agreement No 9 of 9 March 1972 concluded in the National Labour Council, which coordinates the national agreements and collective labour agreements on works councils, provides that the works council must be informed and consulted in any matters relating to employment in a company, in particular when the structure of the company is to be modified.

Mention should also be made of Collective Labour Agreement No 24 of 2 October 1975 concluded in the National Labour Council on the procedure for informing and consulting workers' representatives on collective redundancies, and Collective Labour Agreement No 39 of 13 December 1983 concluded in the National Labour Council on informing and consulting the works council about the consequences for the staff of the introduction of new technology.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19. a) The provisions on occupational hygiene for workers, safety at work and protection of the health of workers are coordinated in the General Regulations on occupational safety.

Experience has shown that Community Directives on health and safety at work refine or supplement the provisions of the Belgian General Regulations.

The application or imminent implementation of the Community Directives means an improvement in the protection of workers at work in various areas.

As regards the "social directives" (Article 118a of the Treaty of Rome), a reworking of regulations with, where appropriate, the placing of technical standards in annexes has been carried out or is imminent for the following directives:

- measures to encourage improvements in the safety and

health of workers at work (framework directive);

- minimum safety and health requirements for work with display screen equipment (individual directive);

- minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (individual directive);

- minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (individual directive);

- the protection of workers from the risks related to exposure to carcinogens at work (individual directive);

- minimum safety and health requirements for the workplace (individual directive);

- the approximation of the laws of the Member States relating to machinery.

As regards the "economic directives" dealing with the placing on the market of machines, equipment and plant (Article 100a of the Treaty of Rome), it is probable that the essential requirements, coupled with increasing reliance on a wide range of European standards, will make it possible to provide workers with equipment that improves their level of safety at work.

b) Belgium is acknowledged as a long-time believer in consultation of the two sides of industry, especially in the area of the health protection of workers.

This consultation takes place in national bodies and individual companies.

- A council for safety, hygiene and the improvement of the workplace has been set up at national level under the Ministry for Employment and Work.

  This committee draws its members from the most representative organizations of employers and workers, occupational physicians and civil engineers not employed by the authorities, experts competent in the areas concerned and officials of the various authorities for health and safety at work.

  It is responsible inter alia for issuing an opinion on proposals for new provisions in the area of health and safety at work and the protection of the health of workers and for studying all problems in these areas.

- National occupational committees for safety, hygiene and the improvement of the workplace have also been set up. They are active in the main branches of economic activity, such as the construction industry, the diamond, glass, wood and steel construction industries, the chemicals industry, the ceramics industry and firms involved in agriculture, horticulture and forestry.

  These committees have members from the most representative employers' and workers' organizations, experts in

occupational safety and health for the appropriate branch of economic activity and officials from the competent authorities.

Their remit includes making proposals to the Committee for occupational safety and hygiene and the improvement of the working environment for amending or supplementing the rules on health and safety in the sector in question.

- The National Labour Council is a joint body which, where appropriate, may issue an opinion on the proposals for laws or royal decrees in the area of health and safety at work.

- The joint committees draw up collective labour agreements, which may include certain provisions on the safety and health of workers.

- In compliance with the Law of 10 June 1952 on the health and safety of workers and the health conditions at the workplace, employers who normally employ an average of at least 50 workers must set up a committee for occupational safety and hygiene and the improvement of the working environment, which must meet at least once per month.

  The members of these committees are elected for a period of four years from the lists of candidates put forward by the organizations representing workers.

  The basic task of these committees is to study and to propose to the employer any ways of actively promoting measures to ensure that work is carried out in the best possible conditions of safety, hygiene and health.

  In order to carry out this task, the Committee must issue opinions and draw up proposals on: the policy for preventing occupational accidents and diseases; the annual action plan produced by the head of the company; any amendments to it; its application; and the results produced.

  The Committee is also responsible for drawing up an opinion in advance on all new projects and measures which, directly or indirectly, in the short or long term, may have consequences for the safety, hygiene or health of workers, and on any planned measures for adapting working techniques and conditions to the worker.

  However, the decision on whether or not to adopt a given safety or health measure is the sole responsibilty of the employer and does not concern the Committee, which has a purely advisory role.

## PROTECTION OF CHILDREN AND ADOLESCENTS

20. The reply to this point is included in the reply to question 23.

21. Workers under 21 years of age who are employed on a part-time basis are guaranteed a mean monthly minimum

income under Collective Labour Agreement No 23 of 28 February 1978.

This minimum income is determined as a percentage of the income guaranteed to workers aged 21 years and over. The rates are as follows: 92.5% at the age of 20, 85% at the age of 19, 77.5% at the age of 18, 70% at the age of 17 and 62.5% for those aged 16 and under.

This Agreement applies to all branches or activities which are not covered by a joint committee or which are covered by a joint committee which has not yet been formally recognized.

22. The Law of 16 March 1971 provides for various special measures to protect workers under the age of 18 years.

Working hours of workers under 18 are subject to the same limits as for other workers. However, when daily working time exceeds 4½ hours, they must be given a rest of half an hour and if their working time exceeds 6 hours, they must be given a rest of one hour.

Night work, which is work carried out between 8pm and 6am, is prohibited for young workers. However, these limits are reduced for workers over the age of 16 years.

Lastly, there must be gap of at least 12 hours between the end of one working day and the beginning of the next, no exceptions being permitted to this rule.

Initial training for young people, which was extended to the age of 18 years in 1983, makes it compulsory for them to attend school on a full-time basis up to the age of 15 or 16 years and then at least part-time up to the age of 18 years. So young people are no longer obliged to attend school full-time after the age of 15/16 years provided that they have completed (not necessarily successfully) the first two years of secondary education. The scheme of part-time compulsory schooling is designed to give additional training of at least 360 hours per year to those under the age of 16 and at least 240 hours per year to those aged between 16 and 18 years.

A young person who has not yet completed his compulsory schooling and who chooses to leave full-time education may:

- follow a course with a reduced timetable or take training officially recognized as meeting the requirements of compulsory schooling. This part-time course or training may be supplemented by part-time work;
- conclude a contract for an apprenticeship in industry;
- take training organized as part of a small business apprenticeship.

Those who remain in full-time education until the age of 18 years may take options in the areas of technical education or vocational training.

A young person who has completed compulsory schooling and is registered as a job seeker may take vocational training courses organized by the public employment services.

## THE ELDERLY

24. There are three major pension schemes in Belgium:

- the public sector scheme which applies to civil servants;
- the scheme for the self-employed

which applies to traders, skilled workers, farmers and members of the professions;
- the employees' scheme, which applies to all workers employed in Belgium under a "contrat de louage de travail" (work contract).

In the case of the last scheme, a person earns the right to retire by calendar year at a rate of a fraction of real, notional and standard remuneration to the amount of:

a. 75% for a worker whose spouse has terminated all occupational activity apart from authorized occupational activity and does not receive an allowance for illness, invalidity or involuntary unemployment under Belgian or foreign social security legislation, does not receive benefit for a career break or a reduction in services or does not draw a retirement or survivor's pension under the pension schemes for employees, the self-employed, the public sector, the SNCFB (Belgian State Railways) or under a foreign pension scheme or a pension scheme applicable to the staff of an institution of public international law.

b. 60% for other workers.

The benefit is adjusted in two ways in order to ensure that it remains adequate:

1. The pension is linked to changes in the consumer price index;

2. The remuneration levels used to calculate the pension are adjusted by applying a coefficient. The remuneration for a given year is multiplied by a coefficient obtained by dividing the consumer price index at which current pensions are paid by the mean of the monthly consumer price indexes for the year under consideration. In addition, on 1 January of each year these remuneration levels are upvalued by a coefficient determined by the King of Belgium.

25. In order to guarantee a decent standard of living to elderly persons, men aged 65 years or over and women aged 60 years or over who do not have adequate resources or do not receive an adequate pension may nevertheless receive the income guaranteed to the elderly provided that they are living in Belgium.

This benefit is completely free, as no contributions have to be paid in order to receive it, it being paid for by the State in accordance with the Law of 1 April 1969.

The person applying for the pension must be a Belgian, but his or her spouse does not have to be a Belgian.

The following are given equivalent treatment:

- stateless persons and refugees as recognised by the Law of 15 December 1980;
- nationals of a country with which Belgium has concluded a reciprocal convention or has recognised the existence of de facto reciprocity in this area;
- those covered by Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;
- persons of foreign nationality who are entitled to a retirement pension or a

survivor's pension for an employee or a self-employed worker in Belgium.

The guaranteed income for the elderly is calculated on the basis of an annual flat-rate amount and may not be granted until a person has been means-tested. The basic guaranteed income is reduced by the amount of the applicant's resources over and above a level established by the King.

Persons who receive the guaranteed income for the elderly need not pay contributions for sickness and disability insurance.

Like widows, invalids, pensioners and orphans, these people pay preferential rates for routine health care and prescriptions.

## DISABLED PERSONS

26. Although both medical and occupational rehabilitation are included in a number of laws on social security and compensation, it was by the Law of 16 April 1963 that the Belgian legislator set out to complete and coordinate efforts made in this area.

This task was entrusted to the National Fund for the Social Rehabilitation of the Disabled.

A. Powers of the communities

This national Fund was wound up with effect from 1 January 1991.

On that date, pursuant to the Law of 28 December 1984 on the restructuring of the National Fund, medical and paramedical services for medical rehabilitation were transferred to the National Sickness and Invalidity Insurance Institute (INAMI), while the remaining areas, namely careers guidance, vocational training, work programmes and social assistance, were handed over to the communities.

As a result, three new bodies were set up to cover these new community responsibilities.

The German-speaking community, by its Decree of 19 June 1990, set up the "Dienststelle der Deutschsprachigen Gemeinschaft für Personen mit einer Behinderung sowie für die besondere soziale Fürsorge" (Office of the German-speaking community for disabled persons and for special social assistance).

The Flemish community, by its Decree of 27 June 1990, set up the "Vlaams Fonds voor Sociale Integratie van Personen met een handicap" (Flemish fund for the integration of the disabled into society).

The French-speaking community, by its Decree of 3 July 1991, set up the "Fonds communautaire pour l'intégration sociale et professionnelle des personnes handicapées" (community Fund for the integration of the disabled into society and the working environment) in order to fulfil these various responsibilities.

Definition of a disabled person

The Law of 16 April 1963 on the social rehabilitation of disabled persons related to all those whose opportunities for obtaining or retaining a job were reduced as a result of physical incapacity of at least 30% or mental incapacity of at least 20%.

This concept of invalidity expressed in terms of a percentage has been abandoned in all of the Decrees.

The Decree of the Flemish community defines a handicap as a long-term major

limitation of a person's social integration resulting from an impairment of his mental, psychical, physical or sensorial abilities.

The new rules on the procedure for making an application for assistance, which entered into force on 1 April 1992, stress the multidisciplinary approach in deciding whether or not the applicant meets the definition contained in the Decree and determining the assistance he requires for his social integration.

The French-speaking community defines a disabled person as anyone whose opportunities for integration into society and work are severely limited as a result of a lack or loss of physical or mental capacity.

The Decree of the German-speaking community understands a handicap to mean any obstacle to a person's integration into society and work resulting from an impairment of mental, physical or sensorial abilities.

Remit

In the Law of 16 April 1963, social rehabilitation meant the integration or re-integration of the disabled into the working environment.

The three communities have expanded this concept to include integration into society.

Nevertheless, the Flemish community and the German-speaking community have given their respective Funds more extensive tasks than those set out in the Law of 16 April 1963. More specifically, so as to make it possible to coordinate measures, they have given their Funds the remits of the National Fund for the Social Rehabilitation of the Disabled and of the Fund for Medical, Social and Educational Care. Accordingly, the Flemish fund for the integration of the disabled into society provides reception/registration, accommodation, educational assistance, careers guidance, vocational training and employment to disabled people, gives guidance to families, places the disabled in families and covers the costs of specific individual assistance. It also has a role to play in prevention and detection. It carries out this remit by approving and subsidising institutions and structures and by direct individual measures to assist disabled people.

The French-speaking community has not combined the remit of the National Fund for the Social Rehabilitation of Disabled Persons with those of other services. Since the same Minister is responsible for these services and the community funds, they can be coordinated without being combined.

Pending the publication of the executory decisions setting out the rules for the application of this Decree, the whole body of legislation developed in application of the national Law of 16 April 1963 will remain in force: thus assistance will continue to be provided during the changeover from the old National Fund to the new community Funds.

The community decrees have confirmed the basic principle that standard methods should be used wherever possible and that special methods should be used only when they can be justified by the nature of the handicap.

Thus, in the area of vocational training, in addition to the apprenticeships in small businesses, industry and the centres for intensive vocational training for the unemployed, the above-mentioned rehabilitation legislation provides for an in-firm training contract for the disabled (Flemish community) and a vocational adjustment contract for the disabled

(French-speaking community), which are forms of "learning by doing" in the sense that they do not yet provide theoretical training. In addition, vocational training centres for the disabled provide training which is more tailored to individual needs and lasts longer than in the above-mentioned centres for the unemployed.

In order to make it more attractive to employ or retain disabled staff, the legislation provides for the following incentives:

- a contribution to the remuneration and the social security charges for a maximum of one year for a disabled worker who is employed in a new post; this is a flat-rate payment which is designed to cover the employer's loss of earnings during the period of adaptation of the new worker;

- the refund of the cost of adapting the workplace (including workplace design or access to the workplace);

- the payment of the additional cost, attributable to the person's handicap, of working clothing or instruments;

- the payment of the additional cost, attributable to the handicap, of transport to and from work for the disabled person.

It should also be pointed out that Collective Labour Agreement No 26 of 15 October 1975 stipulates that, on the basis of the principle of "equal pay for equal work", the disabled worker is entitled to the remuneration laid down by collective agreement and that the competent authorities are to reimburse the employer for the proportion of the remuneration corresponding to the reduced performance as a result of the handicap.

Moreover, in Belgium, sheltered employment is based on the idea that there must be a genuine employer/worker relationship: workers are employed under contract, and a joint committee has been operational in this sector since 18 December 1991.

B. Benefits provided by the national authorities

Even though policy to assist the disabled has been the responsibility of the communities since 1 October 1980, the rules and funding for the individual benefits (income substitution benefit) remain the responsibility of the national government.

The Law of 29 December 1990 concerning social provisions provided for special measures to promote the integration into working life of the "groups at risk", namely the long-term and unskilled unemployed and the disabled. The "disabled" are taken to mean the job-seekers registered with one of the above-mentioned community Funds.

In addition, certain other benefits for easing the social integration of disabled people are included in other legislation, for example:

- a reduced telephone rate for the severely disabled, subject to certain conditions relating to income, age and cohabitation;

- exemption from radio and television fees for certain disabled people;

- reduction in the rate of income tax charged to persons with a degree of invalidity of at least 66%.

The Royal Decree of 14 April 1993 introduced various measures to promote the integration of disabled people into working life:

- any benefits and earnings supplements which a disabled person receives from vocational training, rehabilitation or retraining are not taken into account when determining his entitlement to allowances for the disabled (income replacement allowance and integration allowance);

- a disabled person may earn up to BFR 503 628 per year in income from work actually performed without this affecting his entitlement to integration allowance. This figure keeps pace with the guaranteed minimum wage;

- a disabled person's entitlement to receive allowances for the disabled is not reviewed if he works for a period of less than six months.

# DENMARK

## FREEDOM OF MOVEMENT

1. This area is regulated by the Order issued by the Ministry of Justice on foreigners' stays in Denmark (1984, amended in 1985) which incorporates the provisions laid down in Council Regulation (EEC) N° 1612/68 on freedom of movement for workers within the Community and Commission Regulation N° 1251/70 on the right of workers to remain in the territory of a Member State after having been employed there. Under Article 189 of the EEC Treaty a Regulation is directly applicable in all Member States. The incorporation of the provisions in the above-mentioned Order is thus only a practical measure and does not affect the direct applicability of the above-mentioned Regulations in Denmark.

2. It follows from the provision in the Order that EC nationals are granted a residence permit when they prove they have paid employment in Denmark or that they have established themselves as self-employed or are providing or receiving services. Residence permits are granted only to EC nationals, while non EC nationals may be granted residence and work permits. The average time taken to deal with applications for EC residence permits is around one month. In 1992 a total of 1 872 new EC residence permits were issued, 870 were renewed and in 37 cases renewal was refused. In 133 cases the conditions for issuing an EC residence permit were not satisfied. In 1992 residence permits were also granted to 408 members of EC residence permit holders' families, 110 family members had their permits renewed, 10 had their applications for renewal rejected, and 10 were refused a residence permit in the first place.

3. Normally, no evaluation takes place of the character or nature of the work, and there is nothing to prevent a worker who has availed himself of his right to freedom of movement from occupying a post under the same conditions as a national. However, reference should be made in this connection to the special rules concerning appointment of public servants, according to which nationals of other EC countries can be employed on terms similar to those applying to Danish public servants.

4. Amendment of part of EEC Regulation No 1612/68 by Regulation No 2434/92 means that workers are entitled to have their applications for employment forwarded to other Member States via specialist services designated by the Member States - in most cases the state employment agencies.

   The EURES programme for the exchange between Member States of information on living and working conditions, job vacancies and employment seekers is currently being set up and is expected to be implemented by a Commission Decision in the course of this year.

## EMPLOYMENT AND REMUNERATION

5. In Denmark there is no legislation restricting, for certain groups of persons, the freedom of choice and the freedom to engage in an occupation, save for special provisions regulating specific occupations.

6. In Denmark there are no laws or - as far as the Ministry of Labour is aware - collective agreements containing provisions on fair or equitable wages. It is considered that the state should not interfere in the question of wages, which are fixed by individual agreement or by reference to a collective agreement between the employer or an employer's organisation on one side and a trade union on the other. The wage fixed in the collective agreement is often a minimum

which forms the basis for local agreements. Formally, collective agreements are only binding on the parties, but in actual practice they often determine the wage level which is generally considered equitable. "Equitable wage" is not a widely used concept. In principle, there is no difference between fixed-term employment or open-ended employment as regards wage terms.

Persons employed in private companies are employed under agreement-based pay and working conditions. Similarly, persons employed in public posts are employed under agreement-based pay and working conditions, although remuneration in the public sector may not exceed Dkr 80/hour excluding holiday pay, etc.

In the case of persons employed in private companies or on employment projects with the help of wage subsidies, pay and working conditions must similarly be in line with the relevant agreement or the normal conditions for such work. Young persons under 25 years of age in receipt of cash assistance and employed on employment projects receive a special training allowance which varies partly according to age and previous "activation" (involvement in work generation and training schemes).

7. Under the Administration of Justice Act, property required to keep up a modest home and living standard for a debtor and his household may not be seized. This provision is supplemented by the rules laid down in the Social Assistance Act whereby employees and their families have a right to temporary assistance in certain cases.

The Act on the Public Employment Service and the Unemployment Insurance System ensures that the public employment service is available free of charge to all job seekers.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

8. Working time in Denmark is, as a general rule, laid down in collective agreements, which cover the bulk of the labour market. The areas which are not covered directly by agreements traditionally follow the same rules on working time as those which are.

At the moment normal weekly working time is 37 hours.

Terms of employment are mainly fixed by collective agreements supplemented by collective arrangements at company, local, regional, federation or central organisational level. Terms of employment are not normally dependent on whether or not employees are employed in major sectors/occupations or on whether or not their employment is temporary or part-time.

As regards procedures connected with collective agreements, Denmark has implemented the Directive of 17 February 1975 on collective redundancies (75/129/EEC) by adopting legislation in this field. The provisions of the relevant Act are summarised below.

If an employer intends to proceed with collective dismissals he is required to start negotiations with the employees or their representatives as soon as possible. The employer must provide the employees with any information relevant to the case and give written information on the grounds for the redundancies, the number of persons to be dismissed, the number of persons normally employed by the undertaking and the period over which dismissals are expected to take place.

If the employer still intends to proceed with the dismissals after negotiations with the employees are completed, he must

notify the regional labour market board thereof. The dismissals may not become effective earlier than 30 days after submission of such notification.

In the event of bankruptcy or winding-up proceedings, the Employees' Guarantee Fund will cover claims from employees up to a ceiling set at present at DKR 75 000. Payment is made when the claim has been filed and duly substantiated to the Fund, cf §4 of the Employees' Guarantee Fund Act.

9. Under the Working Environment Act, working time must be so organised as to allow employees a rest period of at least 11 consecutive hours. Employees are also entitled to 24 hours off work each week, in direct continuation of a daily rest period of 11 hours.

Under the Holidays Act all employees in Denmark are entitled to annual holidays with pay or a holiday allowance corresponding to the wages earned. For public servants this right follows from an agreement in accordance with the Public Servants Act.

The Holidays Act and Public Servants Act entitle employees to 30 days' holiday, corresponding to 5 weeks. No conditions apply to holiday entitlement, but the right to payment during holidays is conditional upon qualifying for such through employment during the calendar year preceding the holiday year (the holiday year runs from 2 May to 1 May the following year).

10. In Denmark there is no general requirement for employment contracts to be drawn up in writing (mutully binding written agreement). However, there are a number of areas where employees are always entitled to an employment contract, including those covered by the Seamen's Act, the Public Servants Act, the School and Church Officials Act, and the Family Workers Act.

Act No 392 of 22 June 1993 on an employer's obligation to inform employees of the conditions applicable to an employment relationship represents Denmark's transposition of EC Directive No 91/533/EEC.

This Act requires employers to provide information in writing on the conditions which apply to an employment relationship. As a general rule, formal notice of these conditions must be given no later than one month after the commencement of the employment relationship.

The obligation to provide information covers the most important aspects of the employment relationship.

The Act applies to all employees whose employment relationship has a duration of more than one month and whose average weekly working time exceeds 8 hours.

It the employer fails to comply with the Act, the courts may award the employee compensation of up to 26 weeks' pay.

The Act does not apply where the employer is required to provide an employee with information on the employment relationship under the terms of a collective agreement containing provisions which are at least as favourable as those laid down in Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. In the most recent collective agreement negotiations in the spring of 1993, the Directive was incorporated into the agreement covering certain specific areas within central administration, the financial sector and industry.

## SOCIAL PROTECTION

11. The Danish social security system comprises a number of general schemes which apply to all persons who have their permanent residence in Denmark. Early retirement pension, old-age pension and sickness insurance are financed out of taxation, and entitlement to benefits is not dependent upon prior employment or income.

Only Labour Market Supplementary Pension and unemployment benefit are based on contributions from employees.

Membership of an unemployment insurance fund is voluntary.

If an employee loses his job, is not entitled to unemployment benefit as a member of an unemployment insurance fund and does not have sufficient means to support himself or his family, assistance may be granted under the Social Assistance Act. Under this Act the public authorities are required to grant assistance to any person residing in Denmark who needs guidance or practical or financial assistance for himself or his family. However, if a person needing permanent assistance is not a Danish national and has not been living in Denmark for at least three years with a view to taking up permanent residence, a decision may be taken to repatriate that person.

The general rules on unemployment insurance are laid down in the Act on the Public Employment Service and the Unemployment Insurance System, etc.

The unemployment insurance system is voluntary and is administered by the unemployment insurance funds which are associations of private groups of employees or self-employed persons.

There are 39 state-recognised unemployment insurance funds with about 2 000 000 members. They are closely related to the trade unions and other occupational organisations, but admission to an unemployment insurance fund is not conditional upon membership of such an organisation.

In order to become state-recognised an unemployment insurance fund must admit members from one or more occupations or fields and have at least 5 000 members.

Unemployment insurance is financed through membership contributions, employers' contributions and by the state. The membership contribution is an annual amount corresponding to eight times the amount of maximum daily cash benefits. The employer's contribution forms part of the labour market contribution which is 2.5% of the VAT basis of the undertaking or similar.

To obtain unemployment benefit in the event of unemployment, it is necessary to belong to an unemployment insurance fund. Persons between 16 and 65 years having their residence in Denmark (except Greenland and the Faroe Islands) may be admitted to an unemployment insurance fund if they are employed as an employee within the occupational field covered by that fund; they must also, during the ten weeks prior to their application for admission, have been so employed for more than 300 hours, (for part-time employed persons at least 150 hours and not more than 300 hours), or be able to prove that they can obtain and actually do obtain such employment immediately following their admission, or have completed vocational training of at least 18 months' duration within the occupational field covered by the fund and file an application for admission within two weeks of completion of the training, or be self-employed (except on a

temporary basis) to a significant extent, or participate in the self-employed activities of their spouse (on more than a temporary basis and to a significant extent) or be performing military service. Apprentices under the age of 18 years may not be admitted. Persons working part-time may normally be admitted to an employment insurance fund as part-time insured members. Members who do not have their primary income from paid employment or who cannot be considered to be seeking permanent employment must withdraw from the fund (exceptions include members undergoing training, members receiving a voluntary early retirement pension or partial pension). Members undergoing training, or for some reason temporarily not seeking work, may retain membership and thus entitlement to unemployment benefit in the event of unemployment on completion or interruption of the training or on expiry of a short period during which they have for other reasons temporarily not been seeking work, if they otherwise satisfy the conditions for entitlement to unemployment benefit. Persons receiving a voluntary early retirement pension or partial pension retain membership irrespective of these rules.

In connection with dismissal, temporary lay-offs, expiry of a fixed-term contract, etc. the employer is required to pay members of an unemployment insurance fund unemployment benefit corresponding to the maximum daily rate calculated in relation to the number of hours for which the member was employed. This applies only to members who have been working for the employer under a full-time employment contract for one week out of the preceding four.

Entitlement to unemployment benefit is conditional upon one year's membership of a state-recognised unemployment insurance fund, although apprentices and others who have not satisfied the admission conditions and persons who have completed vocational training of more than 18 months' duration are entitled to unemployment benefit after one month's membership. Entitlement to benefit lapses when the member attains the age of 67 years. Entitlement is further conditional upon the member having been, prior to each payment of benefit, employed or self-employed for at least 26 weeks out of the previous three years. For part-time employees the requirement is 17 weeks. Only employment in membership periods is taken into account. Special rules apply to members who perform self-employed activities as a secondary occupation. The unemployed person must be registered as a job seeker with the public employment service and be available for work.

Unemployment benefit amounts to 90% of previous earnings (individual rate) but may not exceed maximum daily benefit. For part-time employees maximum benefit amounts to two thirds of the benefit payable to full-time insured persons. A special lower rate applies to apprentices not eligible for membership of the fund, persons who have completed vocational training of at least 18 months' duration and persons performing military service. As a general rule, the amount of benefit is reduced when members perform paid or unpaid work. Any concurrent payment of pension relating to previous employment relationships is offset. As a general rule, unearned income does not affect the amount of unemployment benefit.

The Act also contains rules on holiday pay. Appeals against the decisions of the unemployment fund may, in principle, be lodged with the Directorate of the Unemployment Insurance System. Unemployment benefits are taxable as A income.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

12. In Denmark there is nothing to prevent employers from joining employers' organisations or employees from setting up trade unions. In accordance with case law, employers and employees also have a legal right to be members of organisations relevant to the exercise of their occupation.

    In the public sector, administrative law does not allow membership of an occupational organisation to be imposed as a requirement for taking up or holding a job. In the private sector, it is unlawful to dismiss employees for failure to join a union or other organisation.

13. Guidelines for the conclusion and renewal of collective agreements have been laid down between management and labour organisations and may thus differ from one occupational field to another, as negotiations take place between the individual federations or associations. Negotiations and the conclusion of collective agreements are, as in the case of any other agreement, left to the parties involved. However, the state supports the management and labour organisations' negotiations through the independent Conciliation Service which monitors negotiations and ballots on the outcome.

14. Under the special machinery set up to resolve industrial disputes it is not, as a general rule, lawful to strike during the currency of a collective agreement (the so-called "peace clause").

    Work stoppages are, however, allowed where payments are suspended or where urgently required by virtue of considerations pertaining to life, honour or welfare. In all other cases conciliation must be attempted before any stoppage.

    The conciliators appointed by the Minister of Labour may under certain specified circumstances call in the parties for the purpose of negotiations where the negotiations between the parties themselves have failed to lead to the conclusion of an agreement. The conciliators are empowered on two occasions to defer for a two-week period industrial action for which notice has been given.

15. Under the Public Servants Act public servants have no right to strike. This also applies to the armed services and the police where most posts are filled by public servants.

## VOCATIONAL TRAINING

16. There are two equivalent means of access to vocational training, namely through practice and through school.

    In principle, vocational training is open to all persons who have completed compulsory basic education under the Schools Act (competence in Danish may be required). The Minister of Education may lay down rules restricting access to institutions for certain types of training in view of the employment opportunities.

    New legislation on practical training means that more companies than before can now be approved as training establishments, and companies are offered financial incentives to provide more traineeships. It is the duty of vocational colleges to arrange traineeships for students in companies. Suitable students who cannot find a traineeship and enter into a training contract with a company must be offered an opportunity to attend a vocational college.

Job market training aims (1) to provide vocational training and advanced training in line with technological developments and labour market needs, thus maintaining and improving the vocational skills of semi-skilled workers, skilled workers and other similar groups, and (2) to provide preparatory vocational training and training to make it easier for persons experiencing difficulties in entering or staying in the labour market to find a job or start training. The training at (1) is open to persons having attained the age of 18 years who have sought or are seeking employment within the occupational field concerned. The training at (2) is open to persons having attained the age of 18 years who are experiencing difficulties in entering or staying in the labour market. Access to advanced training for skilled workers is conditional upon the skilled worker having completed the relevant basic vocational training or having obtained similar occupational skills in some other way. Retraining is also available to the persons who form the target group for job market training, as well as to public employees. There are no special measures for foreigners, who have to satisfy the same conditions, with the exception of courses, including Danish courses for immigrants and refugees, offered in conjunction with job market training.

As of 1 January 1994 the legislation on job market training will be amended, in that the target groups of job market training will be extended to take in public servants and graduate engineers.At the same time training programme divisions will be abolished, so that vocational training will consist of training for unskilled workers, skilled workers, supervisory staff and engineers. The amended legislation will also give management and labour organisations a say in how financial resources are distributed.

## EQUAL TREATMENT FOR MEN AND WOMEN

17. The first Danish legislation on equal treatment for men and women was introduced in 1921 with the Act on equal access for men and women to certain posts and occupations. Since 1975 legislation has been introduced on equal treatment for men and women as regards access to employment, maternity/paternity leave, etc. remuneration, appointment of public committees, commissions, etc., and appointment to certain senior posts in public administration.

    This legislation gives entitlement to 24 weeks' maternity leave following the birth of a child. The last ten weeks may be taken by the father as paternity leave. The father is also entitled to two weeks' leave following the birth.

    The Equality Council may, at its own initiative or on request, investigate all matters relating to the Acts on equal treatment and equal pay.

    The Equal Pay Act contains provisions prohibiting dismissal on the grounds that an employee has submitted a claim for equal pay, together with more stringent rules on the burden of proof in cases where employees are dismissed or have their terms of employment altered to their disadvantage following a claim for equal pay. Similarly, the Act on equal treatment for men and women as regards access to employment and maternity/paternity leave, etc. contains provisions on the burden of proof where employees are dismissed or have their terms of employment altered to their disadvantage following a request for maternity/paternity leave or are dismissed during leave. Either the dismissal may be declared invalid or the employee may be awarded compensation.

    Reports are prepared, studies carried out,

and conferences organised to raise awareness about problems in this field. The Equality Council is at present studying the interaction between family life and working life.

A large number of measures have been implemented to alleviate some of the problems which arise in connection with the combination of family and working life. For example, childcare facilities and maternity/paternity leave are partly financed by the state. In the public sector, which accounts for around one third of jobs, parents are entitled to a full wage during maternity/paternity leave.

In December 1986 the Danish Government presented its first action plan for equality, calling on ministries and other authorities to promote equality within their respective fields of competence. The ministries submit annual reports to the Equality Council on initiatives to promote equality and on the results achieved.

In addition, training measures have been initiated with a view to ensuring equality and integration for women in the labour market. Thus, special introductory programmes for women wishing to start work have been organised and special courses for women arranged.

The Government has set up an inter-ministerial committee on children, one of its tasks being to consider initiatives to reconcile working life and family life. In March 1990 the Administration and Personnel Department sent out a guide on flexible working time to all state institutions with a view to promoting such arrangements for employees with children.

The central organisations on the private labour market extended their cooperation agreement from 1 April 1991 so as to ensure that all matters which promote equal treatment of men and women in individual enterprises are dealt with by the enterprises' cooperation committees and may, if necessary, be brought before the Cooperation Board.

In June 1993, as part of the government's efforts to fight unemployment, the Danish parliament adopted the "Leave Act", which will enter into force on 1 January 1994. Even though the Act is not primarily concerned with equal treatment for men and women, it does cover certain aspects of this subject. Its objective is to provide an economic basis to allow persons involved in the job market to obtain training leave, a sabbatical or childcare leave, while receiving an allowance equivalent to 80% of maximum daily subsistence benefit. Parents with children up to the age of eight can obtain leave to look after their children for a minimum of 13 and maximum of 52 consecutive weeks. This applies to both parents, for each of their children. Furthermore, the eligibility requirements have been changed so that entitlement to childcare leave is a direct extension of entitlement to maternity/paternity leave. One of the aims of the Act is to provide better conditions and motivation for both parents to take maternity/paternity and childcare leave.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

18. Employees have a statutory right to co-determination, in that those in public or private limited companies with more than 35 employees are entitled to elect a number of supervisory board members corresponding to half the number of members appointed by the Annual General Meeting. The same rights are enjoyed by the employees of a group as regards

appointment to the supervisory board of the parent company, though this applies only to employees in subsidiaries in Denmark.

In all companies with 10 or more employees, safety and health work must be organised in accordance with the Working Environment Act, involving representatives elected by and from among the employees in each department or work area.

19. Where access to information is concerned, the most important employers' organisations and the public employers have concluded agreements with the employees' organisations concerning cooperation in enterprises with more than 35 employees. This ensures regular information and discussion through a joint cooperation committee on a number of central issues, such as the financial situation and outlook, the employment situation, staff policy, training and retraining.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

20. Legislation concerning safety and health at work was first introduced in 1873 with the Act on work by children and young people in factories and similar establishments. In 1889 the Act on protection against machinery was introduced, followed in 1901 by the Act on work in factories and similar establishments and public inspection. The scope of this Act was extended in 1913 by the Factories Act which remained in force until 1955, supplemented by the 1906 Bakeries Act, the 1919 Act on the inspection of steam boilers on land and the 1925 Act on work by children and young people. In 1954 this legislation was replaced by three acts on worker protection: (1) the General Act, (2) the Office and Shop Act, and (3) the Agriculture Act.

At present, safety and health at work is regulated by the Working Environment Act of 1975, a framework Act which lays down basic principles, with only a few detailed rules. Accordingly it contains a number of provisions which empower the Minister of Labour and the Director of the National Labour Inspection Service to lay down more detailed and revised rules in individual fields in cooperation with management and labour organisations. It was decided to introduce a framework Act for several reasons. Firstly, an act containing many technical details soon becomes obsolete. Secondly, a single act cannot provide solutions to all problems of the working environment in all types of undertakings without becoming too complex. Thirdly, thanks to the form of the framework Act, improvements to the working environment - and thus the drafting of the administrative regulations issued under the Act - can be based on a balanced evaluation of considerations relating, on the one hand, to the constant improvement of safety and health at work and, on the other hand, to the enterprises' need to be able to plan and organise their operations properly.

The framework Act is supplemented by: (1) orders issued by the Ministry of Labour, (2) circulars issued by the Ministry of Labour, (3) orders issued by the National Labour Inspection Service and (4) instructions issued by the National Labour Inspection Service. In addition, guidelines are published, both in connection with Ministry of Labour and National Labour Inspection Service orders and independently. Notices (not in the form of rules) are used to inform management and labour about various matters, e.g. information about exemptions granted, approvals, campaigns, etc.

The Act aims to create a safe and healthy working environment in line at all times with technical and social developments in society and to form a basis to allow companies themselves to deal with safety and health matters, with guidance from the labour market organisations and with guidance and supervision from the National Labour Inspection Service.

It applies - with a few exceptions - to all work performed for an employer.

Where aviation is concerned, the Act applies only to work on the ground, and as regards shipping and fishing only to the loading and unloading of vessels (including fishing vessels), dockyard work on board vessels and comparable work.

The Act covers the following fields: safety and health in enterprises, Trade Safety Councils, general obligations (employers, supervisors, employees, suppliers, fitters, repairers, planners, etc., as well as building owners), the performance of work, the design of the workplace, technical equipment, etc. substances and materials, rest periods and rest days, young persons under 18 years of age, medical examinations, etc. and rules on sanctions and penalties, etc. A number of orders, circulars and instructions, etc. have been issued pursuant to the Act. The Act is administered by the Ministry of Labour and the Labour Inspection Service, which consists of a Directorate, a Working Environment Institute and inspection districts.

The Directive on the minimum safety and health requirements for work with display screen equipment has laid down safety regulations for an area not specifically covered by Danish legislation. It is to be implemented by 1 January 1993 at the latest.

Danish workers are involved in the decision-making process in connection with health and safety at work through their elected safety representative in the safety organisation.
Similarly, through their organisations, workers have the opportunity to influence the decision-making processes of committees and councils, including the Working Environment Council.

## PROTECTION OF CHILDREN AND ADOLESCENTS

21. Under the Danish Working Environment Act a minumum age has been fixed for certain types of gainful employment. Thus, children who have attained the age of 10 years may perform certain types of light work. Additional types of light work may be performed by children who are at least 13 years old. Finally, there are special rules laying down the types of work that young persons under 15 and under 18 years may not perform and on conditions to which they may not be exposed at work.

22. There are no special statutory rules on the wages paid to young persons. In the same way as for adults, the wages of young persons are mainly fixed by collective agreements. Generally, special lower wage rates apply to young workers under the age of 18. The question may also be settled by individual agreement with the employer.

23. Under the Working Environment Act young persons under the age of 15 years are not allowed to perform paid work, except for work of a light nature for two hours per day. For young persons belonging to the employer's household, this prohibition applies only to work with technical equipment, etc. which may constitute a risk to them. In agriculture the Minister of Labour may lay down rules on

an age limit lower than 15 years for such work. Working time for young persons under 18 years may not normally exceed the usual working hours for adults employed in the same occupation. Young persons are not allowed to work more than 10 hours per day in total. Working time must be a continuous period interrupted only by appropriate breaks for meals and rest. As regards evening and night work, the main rule is that young persons under the age of 18 years are not allowed to work after 10 p.m.

The organisation of vocational training is regulated on the basis of the Act on vocational training schools and the Act on vocational training. These rules are largely based on cooperation between the public authorities and management and labour organisations

24. It is also possible for young persons to opt for basic vocational training (cf. paragraph 15 above). Such training is geared to labour market needs, but also aims to satisfy the wishes of society and the individual trainee for basic vocational knowledge.

## THE ELDERLY

25. Danish citizens become entitled to Danish old age pension by virtue of their residence in Denmark. Each year's residence between the age of 15 and 67 years gives a right to 1/40 of the full amount of pension. Entitlement to old age pension is not related to occupational activities.

All persons who are nationals of an EC Member State and by virtue of employment in Denmark are covered by Regulation 1408/71 are entitled to payment of a Danish old age pension calculated on the basis of the number of years' residence in Denmark. The full amount of the Danish old age pension is at present Dkr 5 006 per month; this amount is adjusted once a year by a percentage based on wage developments. Where this pension plus any pensions from previous countries of residence is insufficient, additional assistance may be granted in the form of a personal supplement.

All employees must join the statutory Labour Market Supplementary Pension scheme, which pays them a supplement to their old age pension as from the age of 67. The level is calculated on the basis of contributions paid by the employee and the employer totalling approximately 1% of earnings. At the moment this pension amounts to a maximum of Dkr 1 000 per month.

26. Any person residing in Denmark has a right to free medical and hospital treatment. This right is not conditional upon the exercising of economic activity.

## DISABLED PERSONS

27. Under the Social Assistance Act the public authorities are required to provide assistance to any person who is in need of support for the development or reestablishment of his working capacity where this is considered necessary to enable the person concerned to support himself and his family. A vocational rehabilitation plan is prepared and a rehabilitation allowance is paid in connection with the implementation of the measures envisaged in the plan. In addition, special support may be granted for special expenses arising from the person's disablement and also for special expenses for training or other activities included in the plan.

In 1991 the experimental arrangements for personal assistance to disabled people in employment were made permanent. The purpose of these arrangements is to give the disabled the same scope for exercising an occupation as the able-bodied.

Companies who employ disabled people can obtain financial support for the remuneration of a personal assistant for the disabled person for up to 20 hours weekly. Disabled persons who are independent can similarly receive support under the scheme. The personal assistant provides help with practical tasks which the disabled person cannot perform himself owing to his disablement.

Furthermore, a special scheme has existed since the mid-1970s, whereby disabled people who have difficulties in obtaining employment on the open labour market have priority access to certain types of suitable jobs in the public sector.

## MANAGEMENT AND LABOUR ORGANISATIONS IN DENMARK

28. In Denmark the management and labour organisations are themselves responsible for the most important aspects of working and living conditions. Accordingly, if they fail to reach agreement there is no legislation to fall back on. This does not mean that the state does not have any responsibility in the labour market policy field, but there is a certain division of tasks between the state and the management and labour organisations. The state refrains from using its powers as long as the labour market is functioning properly without legislation. As a result, the organisations and their members feel more responsible in relation to the schemes which they themselves have agreed than in relation to schemes imposed upon them. Another characteristic feature of the Danish system is that the same matter may be regulated at more than one level, namely through legislation, national collective agreements, at company level and at individual level. The advantage of this system is that it is very flexible.

29. This system, which is founded on the principle that the state should not intervene in matters of labour law, was developed towards the end of the last century and during the early years of this century. It was based on the establishment of large national organisations of employers and employees. After a major industrial dispute in 1899 the workers' and employers' organisations recognised each other's right to negotiate and enter into collective agreements on wages and other working conditions for their members. The agreement also comprised a set of rules relating to the right to strike or impose a lockout. The principles of this system remain unchanged today, although the agreement has been revised several times. Consequently there is still a strong tradition that decisions concerning pay and working conditions are taken by the management and labour organisations themselves and not by the state.

The role of the state is to provide the parties with the institutional framework for their negotiations. A neutral, independent conciliation board set up under the law intervenes if the partners fail to reach agreement. The state has also set up a special Labour Court, where specialised judges rule on disputes concerning breaches of collective agreements.

In certain special areas within the labour market and in relation to certain special subjects, the legal relationship between employers and employees is regulated by fully or partly binding legislation drawn up in conjunction with the management

and labour organisations.

30. Most employees in Denmark are members of national unions, each covering a specific trade or occupation. A large number of unions, with around 1.42 million workers (1990) out of the totalworkforce of about 2.9 million (1989), are affiliated to the Federation of Danish Trade Unions (LO). Others have joined the Federation of Public Servants' and Salaried Employees' Organisation (FTF) and the Central Organisation of Academics (AC). More than 80% of Danish employees are union members.

    The employers belong mainly to the Danish Employers' Confederation (DA) and the Federation of Employers in Agriculture (SALA), but there are also other employers' organisations. Although the membership rate on the employers' side is lower than on the employees' side, these two central organisations of employers set standards, and it is usually possible for a union to conclude an agreement with a non-member employer on terms similar to those laid down in the agreement with the Danish Employers' Confederation.

    It should be mentioned in this connection that the public sector - i.e. the state and the counties and municipalities - now accounts for one third of the labour market, making it the country's largest employer. Most areas within the public sector are regulated by collective agreements similar to those applying in the private sector.

31. As regards EC cooperation in the field of labour market and social questions, the management and labour organisations in Denmark are actively involved in the decision-making process all the way from the Commission initiative stage to the determination of the Danish position in connection with adoption by the Council. The implementation of directives, etc. also takes place in cooperation with the management and labour organisations, in some cases through collective agreements, although the state retains overall responsibility.

# FEDERAL REPUBLIC OF GERMANY

## FREEDOM OF MOVEMENT

1. There are no restrictions other than those justified on grounds of public order, public safety or public health.

   Under Article 3 of AufenthG/EWG, limitations are possible in respect of the issue of EC residence permits, but these have their origin in secondary Community law - i.e. Regulation 1612/68 and Directive 68/360/EEC - and cannot therefore be regarded as national restrictions on the freedom of movement.

2. a) As reported last year, the provisions of Article 7a of AufenthG/EWG have been deemed by the Commission to be contrary to Community law. The German government has rejected this criticism on the grounds that Community law makes no provision for the issue of an open-ended EC residence permit, which means that any additional advantages may be subject to the fulfilment of supplementary conditions.

   b) There are no such restrictions for nationals of EC Member States.

   c) The Ministry for Labour and Social Affairs runs bilateral training projects for young people with Greece (since 1988), Spain (since 1991) and Italy (from 1993). In addition to their period of training under Germany's dual training system (in the metalworking, electrical engineering and commercial trades), the young people concerned receive tuition in their national language and, with funding from their own countries, undergo five-week or two three-week practical training sessions in their countries of origin. The idea is that trainees should later be able to carry out their occupation either in Germany or in their country of origin. The additional qualifications they obtain at the end of the course are certified and accepted in their countries of origin too.

3. a) The sum of DM 46 million made available in 1991 for the vocational and social integration of foreigners in the Federal Republic of Germany was increased in 1992 to DM 52.6 million.

   b) Reciprocal recognition is guaranteed by the higher education diploma directive and the directive dealing with the recognition of vocational training qualifications.

   The higher education directive has already been transposed into national law; transposition of the vocational training directive is currently in progress.

   c) There are a wide range of special provisions under European Community law (Directive 1408/71) to cover frontier workers. Further measures are planned.

   A special agreement regarding frontier workers was signed with Luxembourg on 25 January 1990, relating to the implementation of Article 20 of Directive (EEC) 1408/71. The agreement extends the provisions enabling frontier workers to obtain medical treatment either in Germany or in Luxembourg to members of their families too.

   A similar agreement exists with the Netherlands (signed 15 February 1982).

## EMPLOYMENT AND REMUNERATION

4. There are no restrictions in respect of European Community nationals.

5. a) There is no such thing in the Federal Republic of Germany as an officially authorised "fair rate of pay". The two sides of industry, workers and employers, are entirely free to negotiate pay rates. However, it is legally possible to declare wage scale agreements to be generally binding.

   b) This applies without restriction to fixed-duration full-time and part-time employment contracts. Furthermore, employers may not treat part-time employees any differently from full-time employees simply because of their part-time status, unless there are objective reasons for any difference in treatment.

   c) Remuneration for work done, pensions or other payments in money is subject to attachment only to a limited measure. Attachment-free allowances are brought into line with economic developments at suitable intervals; they are staged by reference to net income and take account of the number of persons being supported.

6. There is unrestricted access to public placement services free of charge, regardless of whether the person concerned was previously an employee, self-employed or a family worker, or had no occupation. Nor does the person in question have to have paid contributions to the Federal Labour Agency. In fact, the only condition is that job seekers must be seeking work in an employed capacity.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. Matters concerning the duration and organisation of working time are dealt with by workers and employers under the terms of individual employment contracts. Working time is limited by regulation to a period commensurate with health protection requirements. The daily working time may not exceed eight hours; the weekly working time may not exceed 48 hours, although limited exceptions may be granted either with official approval or by agreement under the employment contract.

   In such cases, the daily working time may not exceed ten hours, apart from workers who are on call. There is a general ban on Sunday and holiday working, although the law does allow exceptions in certain sectors, e.g. for continuous production processes, in hospitals, transport services and the services sector in general.

   The works council has a say in regulating when the daily working time begins and ends (including breaks) and in deciding how working time should be spread over the various days of the week.

   There have been no changes in respect of part-time and limited-duration employment contracts (7b)) and procedures for collective redundancies and for bankruptcies (7c)).

   The Protection against Unfair Dismissal Act (KSchG) also applies in cases of bankruptcy. Under the protection procedure workers can always ask for the reasons given for their dismissal by the employer to be examined. If the employer's assets are not sufficient to satisfy all creditors, payment of wages to any workers kept on takes priority over

payment of legal and adminstrative costs. Workers are paid State redundancy benefits for wage arrears for the last three months of their employment contract. Wage arrears for the period up to six months before the start of bankruptcy proceedings may be claimed by workers against the assets as a priority. Arrears going back to 12 months before the opening of bankruptcy proceedings are treated as normal bankruptcy claims, but given priority over all other claims. Paragraph 613a of the Civil Code (protection of workers' rights in transfers of undertakings; prohibition of dismissals solely on the grounds of a transfer of undertaking) also applies in cases of bankruptcy. Redundancy programme claims are treated as general bankruptcy claims, albeit with top priority. Redundancy programme payments are limited to 2½ months' pay or one third of the assets available for distribution.

The employer must notify the Employment Office in advance of any collective redundancies (notifiable redundancies). The notification must be accompanied by the opinion of the works council.

Notifiable redundancies are:

- redundancies affecting more than five workers in firms usually employing more than 20 and less than 60 workers;
- redundancies affecting 10% of the regular workforce or more than 25 workers in firms usually employing at least 60 and up to 500 workers;
- redundancies affecting at least 30 workers in firms usually employing at least 500 workers.

Notifiable redundancies require the approval of the Land Employment Office if they are to become effective less than one month after the Employment Office receives notification. In some cases the Land Employment Office may decide that the redundancies may not become effective less than a maximum of two months after receipt of notification.

The provisions of the KSchG on notifiable redundancies have been brought into line with Directive 75/129/EEC of 7 February 1975 on the approximation of the laws of the Member States relating to collective redundancies. Legislation is currently in hand for the transposition of amending Directive 92/56/EEC of 24 June 1992.

8. a) The statutory minimum period of paid leave, which in practice is of only minor significance compared with the more generous collectively agreed period of leave, is three weeks in the original *Länder* and four weeks in the new *Länder*.

   The German government supports the Commission's proposal in the Directive on the organisation of working time to prescribe a four-week minimum period of paid leave throughout the Community. There are more generous statutory leave arrangements for young people and the severely disabled.

   b) Over and above the statutory minimum period of leave, there are collectively agreed arrangements which normally give a right to much more generous leave than the statutory minimum.

   c) Under collective agreements for well over half of all workers, age and seniority in the firm have no effect on the period of leave, the standard period being six weeks.

   The average period of leave is now 29 working days.

d) A worker's right to a weekly rest period derives indirectly from the fact that, in principle, no work may be done on Sundays or public holidays. Where, exceptionally, work is done on Sundays or public holidays, it is normal to make provision for time off in lieu under collective or individual agreements.

9. There is at present in the Federal Republic of Germany no general statutory requirement to lay down the agreed working conditions in writing (the exceptions being training arrangements, contract work systems and hired-labour conditions). The requirement for a written document applies, though, to a large number of collectively or individually agreed provisions. The Council Directive on the obligation on employers to inform their workers of the conditions applying to an employment contract or relationship will create similar conditions for all other employment relationships.

## SOCIAL PROTECTION

10. a) The statutory pension insurance scheme is essentially intended for persons in paid employment. Categories of persons covered by a different scheme (e.g. civil servants) do not have to be insured.

The amount paid by workers for whom the statutory pension insurance scheme is mandatory has been modified since last year (1992). They are now required to pay 17.5% of their pay up to a set ceiling (as against 17.7% hitherto).

Otherwise, see last year's report.

b) Anyone not able to meet their material needs from their own income or capital is entitled to social assistance.

c) Persons who cannot claim accident insurance or pension insurance benefits, unemployment benefit or unemployment relief can obtain subsistence benefit under the Social Relief Act.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. a) The basic (constitutional) law guarantees anyone in any occupation the right to form associations to protect and improve his or her working and financial conditions (the basic right to freedom of association).

b) A worker has the right to create and join an association as well as the right not to join. Any agreements which seek to restrict or prevent this right being implemented are null and void, and any measures seeking to do so are unlawful.

12. Constitutional law guarantees the right of collective bargaining, which means that it is up to employers and employees (or their representative organisations) to negotiate and reach agreement on pay and other working conditions. They also decide freely and with no government control or approval mechanism whether to conclude a collective agreement and what its content should be. There are no legal procedural constraints in respect of collective bargaining arrangements.

13. a) In cases where the two sides fail to reach a collective agreement, the Federal Labour Court has ruled that trade unions may, under constitutional right of freedom association, make use of the s

weapon in a bid to get the employers' side to conclude an agreement. In other words, strikes are only lawful if organised by a trade union, and only if their aim is the conclusion of a collective agreement; they may not be directed against current and valid collective agreements. Furthermore, all negotiating channels must have been exhausted before the strike weapon may be used. Finally, the principle of a "fair fight" applies; for instance, unions may not admit unlawful activities, such as the use of force against persons who wish to work.

b) The Federal Republic of Germany has no form of government-enforced conciliation procedures in the event of an industrial dispute. Generally speaking, there are conciliation agreements built into collective agreements, requiring the two sides to go through the conciliation machinery before a dispute proper.

14. For employees in the public service, the Federal Labour Court's judgment on strike law applies in the same way as for private sector employees. Thus, industrial dispute mechanisms, including strikes, are legitimate weapons for all employees in all parts of the civil service. Clearly, as far as the armed forces are concerned, the right extends only to civilian employees. Strikes are not an admissible weapon for civil servants or for members of the police and armed forces.

Following a decision of the Federal Constitutional Court in March 1993 the use of civil servants on strike-bound premises during lawful disputes in the public service is not permitted if there are no legal grounds for doing so.

## VOCATIONAL TRAINING

15. a) Access to vocational training is, as a general principle, open to all, apart from those at higher education level. More particularly, access to recognised vocational training courses under the dual system (e.g. commercial and craft trades) is not dependent on school-related conditions. One condition, though, is that the trainee must sign a vocational training agreement with the trainer covering the essential aspects of the arrangement.

b) Access to vocational training is open to German and foreign nationals alike.

Access to vocational training is open to all Germans and nationals of the other Member States; under §19 of the Employment Promotion Act nationals of non-member countries require a work permit for further or continuing training if such training is their primary occupation.

c) Continuing training measures are, in principle, open to anyone who meets the objective access requirements (e.g. vocational training/experience). Further training for employed persons is primarily a matter for enterprises, and is organised either by firms themselves or by external organisations under contract to firms, depending on the type of training required and the employees' previous experience. Other further training measures are organised by private firms and by training institutes run by the two sides of industry or by the public authorities.

Financial support (e.g. subsistence allowances and the cost of courses) is available from the Federal Labour Agency where a particular course of training is necessary to enable an applicant who is either jobless or under threat of being made redundant or who has no vocational qualifications to obtain a qualification, and provided certain other conditions are met (e.g. occupational experience, membership of contributory scheme, etc.). Where the course of training is not absolutely necessary or is not deemed appropriate to the job market, financial support is available on a reduced scale (e.g. limited grants, subsistence allowance in the form of a loan). Usually, another of the conditions is that the applicant should have paid his or her contributions to the Federal Labour Agency and will in the future continue to be subject to mandatory contributions.

The requirements set out in the Charter regarding access to vocational training and measures in respect of further and continuing training (to give every person the chance to retrain) are fully met.

## EQUAL TREATMENT FOR MEN AND WOMEN

16. a-b) The Federal Childcare Benefit Act described in the second report has been supplemented by regulations at Land level.

To provide financial coverage for the one-year gap between the periods for which childcare leave and childcare benefits are granted, the Federal Government has called on the Länder to introduce supplementary childcare benefits at Land level. Baden-Württemburg, Bavaria, Berlin, Rhineland-Palatinate and Saxony have complied so far. Bavaria and Saxony have introduced laws on the subject, the other Länder administrative provisions.

For civil servants there are regulations at both federal and Land level providing for the possibility of part-time employment for family reasons. Under these regulations civil servants may apply for a reduction of up to 50% of their working time if they have at least one dependent minor or close relative to look after. The maximum period for which part-time employment may be granted for family reasons is currently 15 years. Legislation proposed by the Federal Government will probably remove this time limit from mid-1994. The possibility of opting for part-time employment makes it easier for families to decide how best to reconcile job, family and childcare commitments. It also plays an important part in promoting the employment of women in the public service.

With regard to the situation of women in the labour market, the government decided it was essential to enshrine the idea of positive action for women in the Employment Promotion Act. This has had the effect of giving positive action a higher profile, with women now receiving support pro rata to the proportion of women in the unemployed population. This principle applies to the full range of labour market policy instruments. The effect is that the employment service is required to make more of an effc increase the percentage of wc benefiting from all employ

promotion measures.

The employment service is also required to ensure that job vacancy notices are gender-neutral and that, subject to suitability, men and women are proposed for jobs in equal numbers.

In the new Länder, job creation measures are in particularly widespread use, and in this context, special assistance is given for measures which affect a disproportionately high percentage of women. With a view to improving job prospects for women in eastern Germany, the government is making plans for a special information campaign in the late summer of 1993, designed to encourage the development of part-time working strategies and make employers more willing to consider recruiting women.

On 1 January 1993, a new labour market instrument was created specifically for the new Länder. The Federal Labour Agency can now promote the employment of male and female workers in projects designed to improve the environment, the social services or help for young people by subsidising direct wage costs. With women normally accounting for a high proportion of jobs in the social services and the care of young people, this instrument is of particular benefit to women and improves their employment prospects.

The government has now tabled a bill on equal rights for men and women (the second equal rights law), which is currently making its way through the legislative machinery. It addresses such matters as damages for gender-specific discrimination on the part of employers and the gender-neutral wording of job vacancy notices. It also deals with positive action for women and ways and means of reconciling family and occupational duties in the civil service, the appointment of women's affairs officers in national authorities, the publication of vacancies for managers and supervisors as both full-time and part-time appointments, the provision of an adequate range of part-time jobs, greater powers for works councils and staff councils in respect of positive action for women, and a law on sexual harassment at work.

Plans are also being made to improve the equal treatment of men and women at work, including entitlement to damages where an employer treats a woman unfairly in respect of recruitment or promotion because of her sex. The requirement that job vacancy notices be formulated to cover both men and women will be given mandatory form.

With a view to enhancing and supporting the balanced participation of men and women in official bodies, the equal rights law also embraces a law on the appointment of men and women to such bodies within the national government's sphere of influence. As with the law on sexual harassment, this is uncharted territory as far as the Federal Republic of Germany is concerned, requiring the national authorities and all social institutions, organisations, associations and other authorities and official bodies to nominate two people for each post within the national government's sector.

In other words, each and every proposal must name a suitably qualified woman and man. It is also intended to extend the general legal

entitlement to part-time work and leave for family reasons to managerial and supervisory functions too. It is further intended to equate home-based carer duties with child care as grounds for deferral in terms of occupational rights and benefits.

c) The Employment Promotion Act (AFG) has, over recent years, made it much easier for parents to reconcile their family and occupational responsibilities. Anyone who, in the three years prior to a training course, was in employment (and who paid compulsory insurance contributions) can obtain a subsistence allowance from the employment service to enable him or her to take part in further training or retraining courses. The basic three-year timescale is extended by five years for each child where the person concerned opted to look after and bring up the child rather than go out to work. The aim here is to make it easier for people to return to work after a career break.

In addition, both men and women are entitled to a partial subsistence allowance for the duration of the training course where the care of children or other persons requiring care makes it impossible for them to participate in such courses full-time. Under the AFG, child care costs eligible for a training allowance were increased from DM 60 to DM 120 per child in 1992.

Finally, employers have a legal entitlement to a training subsidy equal to between 30% and 50% of the agreed/normal earnings for a maximum of one year if they employ a person who is returning to work after a period of looking after children or other persons requiring care, and is in need of special training.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. The Codetermination Law of 1972 provides workers or their elected representatives (i.e. the works councils) with a comprehensive system of participatory rights, covering virtually the entire range of business decision-making processes affecting workers. These rights include the right to information, consultation and counselling, along with genuine participatory rights whereby business matters can only be decided with the agreement of the works council.

Clearly, the 1972 law can only apply to the territory of the Federal Republic of Germany. To extend information and consultation rights of workers' representatives to European-scale companies or groups of companies, the German government supports the Commission's draft Directive on the establishment of European-scale works councils.

18. a) Under the terms of the Co-determination Law of 1972, the works council is required to represent the general interests of workers in the company and to ensure that the relevant laws, collective agreements and accident prevention provisions are complied with. The works council also has special participatory rights, more particularly as regards:

-social affairs: e.g. matters relating to in-house order, working time (including overtime and short-time working), pay schemes, etc;

-personnel affairs: e.g. staff pla
vacancy notices, in-house tra
individual measures such as
classification, movement
recruiting. In the event of dism
or redundancies, the works c

also has a right of consultation and contestation;

-business matters: in companies with more than 100 workers, the works council sets up a business committee which the management is required to inform about any business matters (e.g. the financial status of the firm, production and investment programmes, rationalisation measures, etc.). In the event of upheavals (e.g. closures), the works council can insist that a "social plan" be set up to provide compensation for, or to ease, the repercussions of such measures on the workers concerned.

b) As regards technological changes, the employer is required to inform the works council on his own initiative and in good time at the planning stage. The employer is required to discuss the proposed measures with the works council at an early enough stage to enable proposals and reservations expressed by the works council to be taken into account in the planning procedure. The employer is also required to inform individual workers of proposed measures arising from the planning of technical installations, working procedures and processes and workplaces. Once it becomes obvious that changes will be required in an individual worker's duties, the employer is required to discuss with the worker concerned how his knowledge and abilities can be adapted to future requirements. The works council has a right of codetermination in respect of technical installations where these are objectively capable of monitoring the behaviour or performance of workers.

Business restructuring, either as a result of fundamental changes to the way the company is organised or as a result of the introduction of essentially new working methods and manufacturing processes, is deemed to be a change in the business, as are collective redundancies. In such cases, the rights of workers' representatives range from the early provision of comprehensive information and discussion of the planned changes to the establishment (with compulsory codetermination) of "social plans" designed to compensate for, or alleviate, the repercussions on the workers concerned.

Transfrontier workers (including foreign nationals) are likewise covered by the protective provisions of the Co-determination law provided they work in a firm with at least five workers on the territory of the Federal Republic of Germany.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19. a) As regards the improvements brought about in Germany by the relevant Community Directives, it is important to make certain distinctions.

The Directives relating to the internal market are concerned with dismantling barriers to trade created by the differing national protective provisions in respect of products. The point here is to harmonise the provisions at "a high level of protection" (Article 100a (3) of the EEC Treaty). It does not mean, though, that the highest existing standard in any one Member State is taken as the criterion for the entire Community. The situation in the Federal Republic of Germany is that the current Directives, particularly as regards technical equipment, are

tending to displace a comprehensive system of rules and mechanisms at what is acknowledged to be a high level. There are, however, certain points on which the Directives are bringing about improvements.

On the other hand, in the field of health and safety at work, which is affected by the Directives setting out minimum requirements under Article 118a of the EEC Treaty, improvements are evident, especially:

1) The framework Directive (89/391/EEC) features provisions which apply to all fields of activity and all employed persons, whereas the provisions in force hitherto in Germany have not been applicable to all aspects of working life. As a result, transposition of the Directive is having the effect of extending the scope of health and safety at work provisions, more particularly in the public service. Materially too, the framework Directive is creating a number of improvements, e.g. clarification of the fact that health measures include measures to avoid monotonous work and the basic obligation on employers to identify and evaluate existing health hazards at the workplace.

   The workplace Directive (89/654/EEC) corresponds largely to the German workplace regulation and as such will not bring about any major changes to the current level of protection. One difference is, however, again the fact that the scope is extended to cover the public service.

2) There are no statutory provisions on visual display unit work. There are the "safety rules for visual display unit workplaces in offices" issued by the clerical trade accident insurance association, which are not binding, but which are very often accepted in practice by equipment manufacturers. These rules lay down certain requirements in respect of equipment and the workplace (e.g. hardware ergonomics). The VDU Directive (90/270/EEC), on the other hand, includes requirements in terms of software (which programme imposes the least strain on the user?) and in respect of the organisation of work (e.g. low-stress design of daily working procedures). Once the Directive has been transposed into national law, then, the advantages will be two-fold:

   - binding rules;
   - wider scope.

3) Transposition of the Directive on health and safety at work sites will for the first time incorporate the requirement that health and safety considerations should be taken into account as early the planning phase. At the moment, certain protective measures, e.g. the provision of railings to prevent workers working on high buildings from falling, are often not feasible simply because the requisite arrangements were not planned and made early enough.

b) Worker participation with regard to health and safety is provided for in the following cases:

1. At company level

The works council has a right of codetermination in respect of rules and regulations on the prevention of occupational accidents and illnesses and of health protection within the framework of the relevant legislation or the accident prevention regulations. The appointment of works doctors and safety officers requires the approval of the works council, which is also involved in the appointment of safety delegates.

Employers are also required to consult the individual workers or the works or staff council (where such a council exists) on such matters as the identification and evaluation of risks arising from hazardous substances or on which type of personal protective equipment to choose. The works council is also entitled to suggest additional protective measures in individual cases.

2. At supra-company level

In addition to the official health and safety at work regulations, Germany also has a range of accident prevention regulations issued by the various accident insurance associations. Each set of provisions is adopted by a general assembly of delegates to the various trade associations, normally comprising a 50-50 mix of workers' and management representatives.

## PROTECTION OF CHILDREN AND ADOLESCENTS

20. The minimum age at which young people may start work is 15 years.

Young people who are no longer required to attend school full time may, exceptionally, be employed before the end of their 15th year without contravening the relevant legal provisions, for example as part of vocational training.

21. There are no statutory provisions to regulate the remuneration of young people. Article 9(3) of the law on the protection of young people at work merely says that there must be no reduction in earnings as a result of a young person attending vocational school during training.

Where young workers' earnings are regulated by collective agreements, these agreements will normally contain provisions for a varying percentage reduction for particular occupational categories.

22. The law on the health and safety of young workers sets out special rules regarding working time, night work and vocational training.

Young people may be employed for no more than 8 hours per day and 40 hours per week; nor may they be employed for more than 5 days in the week.

Only in very exceptional cases may young people work between 8 p.m. and 6 a.m. hrs. There is an absolute ban on night work for young people in the core time between 11 p.m. and 4 a.m.

To enable young people to comply with the requirements of school work during their training, they must be given time off work to attend vocational school. School attendance is counted as working time.

As a general rule young people may not work on Saturdays, Sundays and public holidays. Should they be employed on such days in the exceptional cases provided for in the relevant legislation, they must be given time off on other days to ensure that they do not work more than five days in the same week.

23. There is a consensus on the part of all groups or organisations involved in vocational training in Germany that all young school leavers should, if they so wish, receive vocational training in accordance with their inclinations and abilities. The great majority of young people seeking vocational training can and do call on vocational counselling services; preparatory measures are also available where necessary.

No company in Germany is required to offer training, and no young person is required to undertake training. Nonetheless, something like 65 to 75% of all young people are currently receiving full-scale, full-time training of an average duration of three years under Germany's dual system. Something like 30% of young people in any given year undertake higher education, including a substantial proportion of people who have already gone through the "dual system". Overall, some 90% of young people finish up with proper qualifications.

## THE ELDERLY

24. The following population groups are eligible for a retirement pension:

-60-year-old female insured persons who have given up work and, on reaching the age of 40, have completed more than 10 years' compulsory contributions. The qualifying period is 180 months.

-60-year-old insured persons, provided they were out of work for at least 52 weeks within the past 1 1/2 years and, over the past 10 years, paid at least 96 compulsory contributions. The qualifying period is 180 months.

-60-year-old insured persons who are severely disabled or incapable of work, and who have given up work. The qualifying period is 35 insured years.

-63-year-old insured persons who have given up work. The qualifying period is 35 insured years.

-65-year-old insured persons. The qualifying period is 60 months.

25. Every person - regardless of whether German or a national of another Community Member State - who has his normal place of residence in the Federal Republic of Germany and cannot fend for himself has a right to social welfare assistance in the form either of subsistence payments or of help in particular situations.

To be eligible for subsistence payments, the person concerned must be incapable in his own right of meeting his basic daily needs.

Help in particular situations will normally take the form of assistance in the event of sickness and care needs, and is available where the recipient's income and resources are inadequate.

Sickness relief covers medical and dental treatment, medicines, dressings and dentures, hospital treatment and other services required in respect convalescence and overcoming alleviating the results of illnesses.

Care relief is available to persons who, a result of illness or disability,

dependent on care arrangements. The assistance includes the provision of aids designed to help alleviate the person's complaints.

The Pension Reform Act of 1992 provides that the retirement ages of 60 and 63 (but not including the 60 age limit for the severely disabled and those unfit for work) are to be progressively increased to the standard retirement age from 2001 onwards. The standard age of 65 will be reached for women in the year 2012, when the age for entitlement to a full pension will be the same for men and women.

## DISABLED PERSONS

26. Persons who are physically, mentally or psychically disabled have a "social right" to whatever help is needed in order to:

- prevent, overcome or improve their disability;
- secure a place in society commensurate with their inclinations and abilities.

There is a varied system of medical, vocational and social integration institutions and services providing a range of resources and measures to meet individual need situations.

In addition to employment-related rehabilitation services, the severely disabled can also obtain special benefits from the "compensatory levy" to assist their occupational integration.

Occupational integration measures

In principle, disabled people enjoy all the same occupational options and opportunities as the able-bodied.

More particularly, the disabled have access to:

- help in finding or keeping a job, including special assistance in taking up work and assistance to the employer to help ease the disabled person into a job;
- help in occupational adjustment, training and retraining.

Individuals have a legal entitlement to the requisite measures to facilitate occupational integration.

Wherever necessary by reason of the nature or severity of the disability, the requisite occupational training measures are dispensed in special occupational rehabilitation centres, equipped with the necessary services (e.g. medical, psychological, pedagogical and social) for the initial training of disabled young people and the retraining of disabled adults.

During such courses, the appropriate insurance fund normally pays a cash allowance and the person's social insurance contributions.

Special measures for the severely disabled

Special measures to improve the chances of the severely disabled include:

- an obligation on private and public-sector employers to reserve 6% of jobs for the severely disabled, with a compensatory levy for any places which are reserved but unoccupied;
- special conditions concerning the serving of notice;
- a special contact person in companies and administrative authorities;
- special financial and other assistance for employers and severely disabled employees.

Sheltered workshops

For disabled people who cannot be employed on the ordinary labour market, but who are capable of doing a minimum of economically useful work, sheltered-workshops offer an opportunity to carry out a suitable activity.

Social rehabilitation and integration

In accordance with the basic provisions set out in the first volume of the Social Code, the underlying aim of all rehabilitation measures is the general integration of disabled people into society. Help in enabling the disabled to participate in social life features measures designed to facilitate contact between the disabled and the able-bodied, and the provision of a wide range of technical aids.

One important condition for the successful integration of disabled people is that their whole environment should be "disability-friendly", including the creation of disability-friendly housing; consequently, there is special provision for promoting housing for the severely disabled. Social integration is also encouraged by the removal of obstacles to mobility. There are a range of legal provisions, DIN standards and promotional measures designed to take account of the interests of the disabled in terms of housing construction, fittings and transport.

## IMPLEMENTATION OF THE CHARTER

27. As stated in the last year's report, the basic principles enshrined in the Community Charter are guaranteed in the German system of labour and social law.

    Implementation is secured by way of legislation, collective agreements and the labour and social courts.

# GREECE

## FREEDOM OF MOVEMENT

From 1 January 1988 workers from EEC Member States have been free to work in Greece without any obstacle apart from those resulting from considerations of public order, public security and public health. Such workers can work freely in Greece once they have found an employer to engage them and they do not need a residence permit or a work permit. All that is required of them is that they report to the competent police authority within eight days of their arrival in Greece.

If their employment lasts for more than three months, they then require a resident's card confirming them to be residents of an EEC Member State and this they can obtain from the competent police authority.

In addition to the above, mention should be made of Presidential Decree 525/83 which concerns entry into and residence in Greece of self-employed EEC nationals (liberal professions) and which was issued in order to bring Greek legislation into line with the provisions of the Council Directives of the European Communities.

From 1 January 1992 free passage is allowed to workers from the EC member countries Spain and Portugal, in accordance with Council Regulation (EEC) No 2194/91 of 25 June 1991.

The existing legislation guarantees the free movement and employment of nationals of EEC Member States and no new initiatives have therefore been taken in this sphere.

Since 1 January 1992 Greece has been playing an active part in the pilot stage of the reorganisation of the SEDOC system decided by the Member States and the Commission of the European Communities in October 1991.

For this purpose, in addition to the part played by the OAED (Organisation for Labour Force Employment) in work on computerisation of the new system, renamed EURES, fourteen Eurocounsellors were trained in 1993.

The OAED, together with representatives of the Commission, is also examining the possibility of establishing in Greece a Eurogichet Social (European citizens' advice bureau), a transnational information system operating in the other Member States and involving the employment agencies and both sides of industry.

## EMPLOYMENT AND REMUNERATION

There are no specific provisions which prohibit certain categories of person from freely choosing and engaging in an occupation other than the provisions regulating each trade or profession.

Collective agreements or arbitration awards, which have equal force, regulate salaries and wages in various branches and occupations and any extra payment for which provision is made.

In addition to the above collective arrangements a National General Collective Agreement (NGCA) is signed each year and determines the wages policy for that year. Furthermore, by the terms of Article 664 of the Civil Code an employer may not make any compensatory deductions from any wages due to a worker if such wages are necessary for the support of the worker and his family. This prohibition does not apply to compensatory deductions made to offset any loss or injury due to damage caused intentionally by the worker in the performance of his contractual

duties. Wages which are not subject to compensatory deductions must be paid in full.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

From 1 January 1984 the weekly wage of workers in Greece corresponds to 40 hours' work (NGCA of 14 February 1984).

For workers with any contractual employment relationship with the public services, local government organizations or public corporate bodies the weekly wage corresponds to 37½ hours' work (Laws 1157/81 and 1476/84).

Decision 25/83 of the Second-Instance Administrative Arbitration Tribunal of Athens established the 5-day 40-hour week for the industrial sector, subject to certain conditions.

Establishment of a five-day working week for all shopworkers in Greece (Laws 1892/90 and 1957/91, Article 23). In order that undertakings which do not operate a programme of uninterrupted production can work a 24-hour day 7 days a week, Law 1892/90 provides that they may engage personnel for Saturday and Sunday or Sunday and Monday to work two alternate shifts of 12 hours a day. The total remuneration for 24 hours' work, including that payable for overtime and for working on Sundays, holidays and at night, is equal to the remuneration for 40 hours, unless a shorter number of hours is worked per week. Employees working in the schedule are insured for 6 working days.

In order to provide protection for employees already working normal hours (Article 38 of Law 1892/90) the cancellation of an employment relationship is declared invalid if it is the result of a refusal by a worker to accept an employer's proposal that he work part-time. The written form of the contract for part-time employment is also set out, whether it is concluded at the beginning of or during such an employment relationship. The same article safeguards the rights of part-time workers in relation to minimum terms of employment, annual paid leave and generally with regard to all the provisions of labour legislation. Finally, the question of insurance entitlement of the part-time worker is dealt with in that each day on which he works, irrespective of the number of hours worked, is recognized as one day for insurance purposes.

In accordance with company collective agreements or arrangements between an employer and the workers concerned, workers in all types of establishment may, for a period of up to three months, increase the number of working hours to 9 per day and 48 per week, with a reduction in the number of hours in the corresponding period thereafter. Throughout the combined period, which may not exceed 6 months, the average number of working hours is to be 40 per week; throughout the entire period there is to be no increase in remuneration, which is to remain the same as for an 8-hour working day and a 40-hour week.

In addition to open-ended and full-time contracts, there are fixed-term contracts which, for those in the purely private sector, are subject to Articles 669-674 of the Civil Code, and, for those with a private-law employment relationship with the State, public corporate bodies or local government organizations, are subject to the provisions of Presidential Decree 410/88 and, additionally, to the Civil Code. There are also part-time contracts of employment which are subject to the provisions of Law 1892/90 and Presidential Decree 410/88.

With regard to information and consultation, in the event of collective redundancy, which falls within the competence of our department, undernoted rules apply. In accordance Law 1387/83 (Articles 3 and 5):

Before an employer enforces a col redundancy, he must consult the w

representatives in order to investigate ways of avoiding or reducing the collective redundancy and its adverse effects.

The employer must: a) inform the workers' representatives in writing of the reasons for the intended collective redundancy, the numbers he wishes to dismiss, with a breakdown by sex, age and speciality, and the number of workers he employs and b) make available all information which would be of assistance in framing constructive proposals.

Copies of such documents are submitted by the employer to the Prefect and the Labour Inspector.

A period of twenty days is allowed for consultations between the workers and the employer, beginning with the employer's invitation to the workers' representatives to begin such consultations. The outcome of the consultations is given in a report signed by both sides and forwarded by the employer to the Prefect and the Minister of Labour.

Since 1 January 1982 workers throughout Greece have been entitled to four weeks' leave. An additional day's leave is granted each year for three years up to the maximum of 22 or 26 working days for a five-day and a six-day working week respectively, no account being taken in the first case of the extra rest day in the five-day week.

The provisions relating to the above matters are contained in the Legislative Act of 19 May 1982 and in Laws 1346/83 and 1288/82.

Furthermore, Article 4 of the NGCA of 21 February 1990 lays down that workers who have completed 25 years' service or previous service are entitled to three days' leave in addition to the normal number, if they work five days a week, or four days if they work six days a week.

In accordance with Article 6 of the National General Collective Labour Agreement (EGSSE) of 9 June 1993, workers who marry are entitled to five working days' leave with pay and such leave is not deducted from the annual leave entitlement provided for in Emergency Law 539/45.

Furthermore, on each occasion when a child is born, the father is entitled to one day's leave with pay.

Young workers who are studying are also entitled to an extra 14 days' leave, in accordance with Law 1837/89.

With regard to workers employed in the wider public sector who are studying at a university or a polytechnic, the upper age limit of 25 does not apply, but they are not entitled to this leave if they are studying for a second degree (Laws 1346/83 and 1586/86).

To assist workers who are studying at polytechnics, provision is also made for short periods of leave on days when they are sitting examinations or have to be present for tutorial classes or laboratory work or for any other activity for which the student must attend the educational establishment in question. Such leave is for a period of three hours and can be used to enable the student to arrive at work later than the regular starting time, to leave work during working hours, or to leave early. Such short periods of leave may be taken up to 10 times per year (Presidential Decree 483/82).

Furthermore, polytechnic students are allowed to come off the night shift for the duration of the examination period and also to change their shift if it would otherwise coincide with the time of an examination.

Workers over the age of 18 but who have not yet reached the age of 25 are entitled to 14 days' study leave if they are studying at a secondary or higher-level educational establishment of whatever type or whatever level in the State education sector or in establishments which are, in whatever manner, under State supervision (Ministry of Education

and Ecclesiastical Affairs).

Generally speaking, contracts need not usually be drawn up in writing (Supreme Court Decision 1054/76). The contract is the expression of agreement between the parties on the same topic. The individual contract of employment may contain provisions and conditions relating to the duties, functions etc. of workers, provided such provisions and conditions are not contrary to the law, collective agreements etc., public order regulations, emergency legislation or good morals. There are exceptions to the normal rule that contracts of employment need not be in writing; employment relationships which require a written form of contract include part-time work, contracts of employment with the State, public- corporate bodies, local government organizations, contracts of actors with theatrical promoters, contracts of safety technicians and specialists in industrial medicine and so on.

## SOCIAL PROTECTION

In the Greek social security system the body appointed to be responsible for implementation of general social policy is IKA (Social Security Institution), which is the main workers' insurance organization. The legislation on the operation of this insurance body (Emergency Law 1846/51), in particular the provisions of Article 5 of that law, allows for the continuing operation of other workers' insurance funds (special funds) on the condition, however, that the insurance protection which they provide is equivalent to that which IKA provides for its insured persons.

This equivalent insurance protection relates to all the insurance risks covered by IKA (old age, disability, death, industrial accidents, illness).

The law also includes the following provisions:

a) Workers who are insured either with IKA or with some other workers' insurance organization are entitled to sickness and maternity benefits in cash or in kind at least of the same type and extent as those provided for in the legislation on IKA.

b) Workers who are acquiring a right to a pension, the amount of which is at the lowest level laid down in the legislation on IKA (Article 29 of Emergency Law 1846/51) as the minimum pension entitlement, receive that amount whether they are insured with IKA or any other workers' insurance organization.

The protection referred to above relates to benefits and pensions for old age or disability (whether due to illness or industrial accident) or death of a spouse.

The same minimum provisions set out in the legislation on IKA (Article 28 of Emergency Law 1846/51) relating to acquisition of a right to a pension to be paid in the situations referred to above, apply to all employees whether they are insured with IKA or with a workers' insurance organization.

The above provisions are evidence of the steps taken by the State to guarantee an adequate level of social security protection for those in receipt of pensions.

The information below concerns the organization of social protection to safeguard rights as a result of legislation:

Recent regulations in Law 1902/90 applicable to the field of insurance confirm the public law character of the right to social insurance of all workers in Greece.

In accordance with the interpretative provision of Article 43 (3) of the above law, pension matters which may not be the subject of a collective agreement on employment include the direct or indirect change in the proportion of the worker's or employer's contribution, the

transfer from the one to the other of liability in whole or in part for regular contributions or contributions in recognition of previous employment and the establishment of special funds or accounts from which periodic pension benefits or non-recurring payments are made at the employer's expense.

In addition, with regard to the insurance cover of all persons employed in Greece, this is a compulsory requirement (Article 24 (1) of Law 1902/90) irrespective of nationality, sex, age or religion (principle of the national scope of the insurance).

This placing on the same footing of foreign nationals working in Greece and Greeks insures that they have the same insurance protection against the insured risks (accident, disability, sickness, maternity, etc).

The above regulations apply to workers employed in the private sector and to those working in the broader public sector who are insured with special private company funds (telecommunications, electricity, banks, etc).

There is no generalized system of protection for social insurance benefits provided by the Organization for Labour Force Employment (OAED) since the basic precondition for such benefits (unemployment, military service, family benefits, suspension, insolvency, maternity) is the status of the worker (a subordinate employment relationship) and the payment of contributions either by employer and worker or only by the employer.

Law 1140/81 (Article 42(1)) makes provision for an allowance for persons suffering from tetraplegia/paraplegia and insured with insurance organisations under the jurisdiction of the Ministry of Health, Welfare and Social Security.

The right to the above allowance was extended to those receiving old-age, disability and survivors' pensions under social security schemes and to the members of their families (AYKY (Decision of the Minister for the Social Services) F.7/1104/81) and to officials and retired officials of public corporate bodies who are covered by the pension scheme of Law 3163/55, which treats them as civil servants, and to the members of their families (Law 1902/90, Article 40(7)) and to serving and retired civil servants (whether civilians or in the armed forces) and to members of their families suffering from the disease (Law 1284/82, Joint Ministerial Decision 61384/1683/83). This special allowance has been classified as a type of pension (AYKY F. 7/1342/13423/81) and is paid as long as the person concerned is judged to be tetraplegic/paraplegic; it is paid 14 times a year (12 months plus extra payments at Christmas, Easter and a holiday payment).

Payment of the above allowances is conditional upon:

a) invalidity (determined by a special medical panel) to the extent of 67% (Law 2042/92);

b) eligibility, as determined by insurance criteria, for sickness benefit in accordance with the internal regulations of each insurance organisation;

c) a minimum number of days or years of insurance contributions and

d) the pensioned person not being in receipt of an allowance under a more comprehensive form of insurance.

The allowance is payable irrespective of the earning capacity of the person concerned.

Finally, tetraplegics/paraplegics are entitled to a pension after 35 years (Law 1902/90, Article 40(8)) without any age limit once they have a contribution record of 4050 days or 15 years.

In the field of social security the new Law 2084/92 introduces fundamental changes in two basic areas:

a) the creation of a new insurance system for newly insured persons with the introduction of general universally applicable principles and

b) the introduction of transitional provisions for the rationalisation and safeguarding of the existing system.

The basic principles governing the new system are outlined below:

- Legislation for the first time provides for a 3-way participation by which the worker, the employer and the State pay respectively 2/9, 4/9 and 3/9 of the contributions required to finance the new system.
- Uniform principles are introduced for all insured persons with regard to the conditions and age limits for pensions, the rates of premium and the rates of benefit corresponding to the insurance period.
- Both sexes are accorded equal treatment with regard to benefits and special provision is made for mothers with under-age children or three or more children.
- Finally, concern for the elderly is evidenced by the reduction of the pensionable age for uninsured older people from 68 to 65.

The adjustments introduced by Law 2084/92 can be divided into two categories:

a) those relating to persons insured to the end of 1992 and
b) those relating to newly insured persons from 1 January 1993.

These adjustments are detailed below.

A. Men and women insured until 31.12.1992

1. Until the end of 1992 the right to a pension after 15 years' insurance is maintained for mothers of under-age children if those children are physically or mentally incapable of earning a living; this right is also maintained for married women, widows and divorcees with unmarried children who were compulsorily insured until 31.12.1992 . The age limit for the above pension entitlement varies from case to case. Where the abovementioned 15-year insurance period is not completed by the end of 1992, it is extended by six-month periods up to a maximum of 17 and a half years.

2. For men and women who commenced coverage under the compulsory insurance scheme between 1.1.1983 and 31.12.1992, the stipulated minimum qualifying period for a pension is 25 years. There are also, depending on the circumstances, age limit conditions which must be satisfied.
For women with under-age or disabled children or women with a disabled husband, the pensionable age is 50.

3. A mother with three children becomes entitled to a pension after 20 years' insurance, without application of any age limit. This entitlement also applies to an insured widower or a divorced father with three children in his care.

4. Leave taken by a parent to look after children is considered as a period of contributory insurance.

5. For insured men and women who have reached the age of 65 the minimum qualifying period for a pension is 15 years.

B. Men and women insured from 1.1.1993.

1. Both men and women who have reached the age of 65 and have been insured for 15 years are entitled to a retirement pension.

2. Mothers with under-age or mentally or physically disabled children who are unable to earn a living are entitled to a

full pension when they reach the age of 55 and have been insured for 20 years. A reduced pension may be paid when they reach the age of 50.

3. Any period of parental leave taken to look after children counts towards the qualifying period for a pension.

4. For mothers who have three or more children and who have been insured for 20 years the pensionable age limit is reduced by three years for each child, with a lower limit of 50 years. In this case no account is taken of the children's age: the sole condition is that the women are mothers of at least three children.

   Costs incurred by reason of the reduction in the pensionable age of mothers in the above category will be charged to the State budget since the purpose of the provisions concerned is to encourage a higher birth rate.

5. Provision is made for equal pension treatment of the surviving spouse. Thus, any surviving spouse is entitled to a surviving spouse pension if he/she is at least 67% disabled or his/her income, from any source, does not exceed a certain amount.
   Finally, from October 1992 the same conditions with regard to pension rights apply to the children and brothers and sisters (family members) of insured persons and pensioners.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

legislation at present in force in Greece not seek to prevent or impose penalties creation of trade union organizations by s: on the contrary, a number of ons underpin and encourage the ered practice of this right.

The provisions listed below refer to organizations whose members are employees and workers having a private-law employment relationship both in private and in public sector.

More specifically, the basis for the principle of the right of collective organization of workers in Greece is found in Articles 12 and 23 of the Constitution (but with restrictions on the abuse of that right expressed in Article 25), Article 78 of the Civil Code and, in particular, in Articles 7 and 14 (1 and 2) of Law 1264/82 and in International Labour Conventions Nos 87/1948 and 98/1949 which have been duly ratified by legislation.

A more detailed account of the situation is as follows:

- By the terms of Article 7 of Law 1264/82 every worker who has worked for two months in the previous year in the undertaking or enterprise or branch of trade in which he is employed has the right to become a member of an organization in that undertaking or enterprise or branch of trade provided he satisfies the conditions for membership in the organization's articles of association.

  The same article gives trade union organizations the right to become members of the above-mentioned organization.

  If a worker is refused admission to a trade union organization or if a trade union is refused admission to one of the organizations referred to above, an appeal can be lodged with the competent lower court which can order the admission of the appellant to the trade union organization.

- Article 14 (1 and 2) of Law 1264/82 lays down that State bodies have a duty to take the necessary steps to ensure the unhindered exercise of the right to

establish and independently operate trade union organizations and generally prohibits any interference whatsoever in the exercise of trade union rights including the right to establish trade union organizations and to call for penal sanctions in accordance with Article 23 of the same law.

According to Law 1876/1990, trade unions and employers' associations and individual employers have a right and a duty to negotiate the terms of collective agreements.

The side exercising the right to negotiate has to inform the other side, in writing, of the place where the negotiations are to take place and of the subjects to be discussed. If the negotiations end in agreement the agreement is recorded in writing and signed by the representatives of the parties. If no agreement is reached the interested parties can ask for a mediator to be appointed or can go to arbitration.

The mediator is selected by the parties from a special list of mediators and, if they cannot agree, he is chosen by lot.

The mediator invites the parties to discussions, interviews the parties in private, examines individuals or makes any other enquiries about the working conditions or financial situation of the undertaking.

If the parties, in spite of the efforts of the mediator, fail to reach agreement within 20 days, the mediator presents his own proposal which, if accepted by the parties, is signed and has the same standing as a collective agreement.

If the mediator's efforts are unsuccessful recourse can be had to arbitration under certain conditions.

The arbitrator is selected, by agreement between the parties, from a special list of arbitrators.

The arbitrator studies all the data collected at the mediation stage and, within ten days of assuming his duties, issues the arbitration award.

The conditions governing the exercise of the right to strike are set out in Articles 19, 20 and 21 of Law 1264/82 as amended by Articles 3 and 4 of Law 1915/90 and are as follows:

a) Strikes are organized by trade unions.

b) The right to strike may be exercised only if the employer or employer's association is given at least 24 hours' notice of the intention to strike and, in the case of workers with a private-law employment relationship in the wider public sector whose work is vitally necessary to maintain basic public services (Article 19 (2) of Law 1264/82 as amended by the changes in Article 3 of Law 1915/90), the strike call may not be put into effect until four full days after notification of the strikers' demands and the reasons underlying them.

c) A strike may be called by a trade union only by a decision of its General Assembly or Council, depending on the form and size of the trade union, in accordance with the specific provisions of Article 20 of the same law.

A strike in demonstration of solidarity may be called only by the more representative third-level trade union organization.

Staff associations as defined in Article 1 (3 a), indent cc' of Law 1264/82 may exercise the right to strike subsequent to a decision by secret ballot taken by majority of the workers in an undertaking, public service, public corporate body local authority. For workers in undertaking, public service, corporate body or local authority, if is no staff association or company g

branch guild of which most of them are members, a decision to strike may be taken by the most representative Trade Union Federation in the area where they work.

d) The trade union organization which calls a strike must ensure that, for the duration of the strike, staff are present in sufficient numbers to guarantee the safety of the installations of the undertaking and to prevent disasters or accidents and, with regard to trade union organizations of workers referred to in Article 19 (2) of Law 1264/82, as amended by the changes in Article 3 of Law 1915/90, they must in addition make available the staff required to maintain basic public services.

Article 21 of the above Law, together with Article 4 of Law 1915/90, defines the procedures relating to emergency staff and their manner of nomination.

If there is no agreement on the nomination of emergency staff, the body responsible for finding a solution is the committee referred to in Article 15 of Law 1264/82, as superseded by Article 25 of Law 1545/85. This committee has three members, is chaired by a court representative and the other members are a workers' representative and an employer.

## VOCATIONAL TRAINING

1) The undernoted provisions regulate the access to vocational training:

- Royal Decree of 6/6/52 on the education of trainee artisans.
- Law 709/77: I Introduction of incentives for vocational training of the workforce and regulation of associated matters.
- Law 1346/83: Amendment of and supplement to the provisions of labour legislation and regulation of various matters.
- Law 1404/83: Programmes for training units of the Organization for Labour Force Employment (OAED) (Article 50).
- Law 1545/85: National system to combat unemployment and other provisions (Chapter E).
- Law 1566/85: Second-level education
- Law 1836/89: Promotion of employment and vocational training and other measures.
- Law 2009/92: National system of vocational education and training and other provisions.

In application of Law 1836/89 a National Council for Vocational Training and Employment (ESEKA) was established and is already operating; it recommends to the Government guidelines on vocational training and employment at national level, encourages cooperation between agencies implementing vocational training and employment programmes and generally directs their activities in accordance with national programmes of development. Associated with ESEKA there are regional (PEEKA) and prefectoral (NEEKA) committees which encourage democratic dialogue and the decentralisation of the decision-making process in the planning of policy on vocational training and employment.

As part of the activities referred to above, and in the light of developments at national and European level, the ESEKA decided to draw up a framework of principles and guidelines for the development of human resources, with the

following objectives:

- The establishment, at national and regional level, of a procedure for consultation relating to the drafting of policy on the development of human resources, involving the participation of the two responsible Ministries of Labour and of Education, the OAED, the two sides of industry, local authorities and the productive classes;

- The definition of priorities for training structures and the establishment of general guidelines and priorities for preparatory work for the new Community support framework for 1994-1998, based on labour market research at national and regional level.

To encourage, mobilise and coordinate the activities of the regional (PEEKA) and prefectoral (NEEKA) committees and in association with the National Council for Vocational Training and Employment (ESEKA), it has been decided to engage 13 experts who will each be employed in one of the 13 administrative regions of Greece.

Finally, in the context of Law 1836/89 an Experimental Institute of Vocational Training and Employment (PIEKA) was established (Decision 31699/93 of the Minister of Labour) with a view to operating and managing an integrated information system for analysing labour market data, conducting research and preparing studies in order to ensure a better adaptation of the workforce to the country's capacity for development.

Also, in conjunction with the above planning structure, a recent piece of legislation, Law 2009/92, established the "National System of Vocational Education and Training (ESEEK) and other measures" and the Organisation for Vocational Education and Training (OEEK) was set up with the objectives of a) organising and operating public institutes of vocational training (IEK), b) supervising private IEKs and c) realising the objectives of the ESEEK as they are set out in Article 1 of the Law in question.

The remit of the Organisation for Vocational Education and Training (OEEK) includes the following activities:

a) Recognition of the qualifications and definition of the prerogatives of occupations corresponding to those for which education and training is provided by the IEKs, taking account of the data and the needs of the Greek market and the situation obtaining in the EEC.

b) Recognition of qualifications awarded by other Greek vocational education and training organisations, establishment of the equivalence of corresponding foreign qualifications and provision of the necessary information relating to recognition of rights and certificates and other conditions governing access to statutorily regulated occupations.

c) Definition of the vocational rights resulting from all levels of vocational education and training referred to in Law 2009/92, in cooperation with the relevant competent Ministry and the social partners.

d) Definition of the specific features and approval of the programmes of typical vocational training provided by other organisations supervised by the Ministry for Education and Ecclesiastical Affairs.

e) Planning and supervision of the drafting and implementation programmes of further training

vocational education and training instructors, under the Ministry of Education and Ecclesiastical Affairs.

f) The carrying out of research, the production of studies, the keeping of statistics and documentation relating to vocational education and training.

g) Observation of international trends and prospects in the field of employment.

The IEKs provide all kinds of vocational training, basic and supplementary, and ensure that the trainees acquire the necessary skills and qualifications to enable them to be easily integrated in society and at the workplace. The task of the IEKs is to fill an important gap in the field of vocational education and training, i.e. vocational guidance and vocational education and training for students who have completed secondary education but have not gained admission to a university or a technical college. IEKs are open to students from lower and higher secondary schools, OAED apprentice schools and adults. They began to operate in February 1993 although 15 were established in a pilot phase as from 1 September 1992.

Pursuant to the provisions of Law 2009/92, in order to cover the need for vocational training in the sphere of post-secondary education, the Ministry of Labour has now established in the OAED four IEKs, which are already operational.

The programming of the vocational education and training courses in the IEKs will depend on the type of training and the educational level of the trainees.

Finally, once the National Labour Institute has been set up (the Bill establishing it is at present before Parliament), it will promote social dialogue, the study and drafting of proposals concerning policy on employment and vocational training, further training of staff in agencies working on the implementation of programmes, and also the administration of technical assistance for the support of the implemented programmes.

- Law 4009/89: Decision of the Minister of Labour. Definition of the conditions for OAED for cooperation with the agencies referred to in Article 8 (1 and 2) of Law 1836/89 in connection with the drafting of vocational training programmes, etc.

It is clear from the above provisions that all young people in Greece, irrespective of their nationality, are entitled at the end of their compulsory schooling to have basic vocational training if they wish, either in lower secondary schools or in technical schools, in order to equip them for their future careers.

2) There are some new initiatives associated with the amendment of Article 6 of Law 709/77 and which the Directorate in the Ministry of Labour with responsibility for vocational training is already working on.

3) The OAED has no specific structures in this area except those in the recent Law 1892/90 which replaced Emergency Law 1262/82 and which provides for the retraining in new technologies of redundant workers from firms in financial difficulty and of staff from private undertakings. In addition, the OAED considers suggestions from associations and federations for retraining of their members in accordance with Law 709/77.

In accordance with Law 2150 of 16 June 1993, which was published in issue 98 of Volume I of the *Government Gazette*, a legal entity of private law named the National Labour Institute (EIE) was established with its registered office in Athens. The EIE is financially, administratively and operationally independent.

It is administered by an 11-member tripartite Board of Administration (State, employers, workers). The Chairman is selected from 3 candidates nominated by the Minister of Labour.

The remit of the EIE comprises:

a) Research into and study of labour as a means of livelihood and as a factor in production and in social progress.

b) Research into and study of the Greek labour market, especially from the point of view of national, Community and international developments and trends (financial, social, etc.) and of their impact on that market, particularly in the light of European Union.
More specifically, research into and study of the supply of and demand for occupations and special areas in accordance with the medium-term prospects for the Greek economy.

c) Observation of the characteristics and analysis of the structures of atypical vocational training in Greece, and the drafting and promotion of proposals for the strengthening and continuing improvement of competitivity and productivity.

d) Organising, financing and realisation of training and further training programmes for the planning, management and supervision of the activities of the European Social Fund, with special reference to the questions of labour, employment, working relations, pay, working conditions and trade unionism, possibly in cooperation with workers' and employers' organisations and other bodies.

e) Evaluation of the activities of the ESF in Greece.

f) Technical support for social actions relating to human resources.

g) The creation of a data and documentation bank to cover Greek, Community and international legislation, jurisprudence and bibliography relating to the aims of the EIE.

h) The organisation of seminars, day-conferences or other information events, also the production of printed material or other related activities to provide publicity and information in accordance with the aims of EIE.

i) The presentation of suggestions for measures to strengthen and develop the social dialogue between workers and employers.

j) Cooperation with relevant national, Community and international organisations, educational establishments and bodies in Greece and abroad which have the same or similar aims, the exchange of acquired knowledge and experience and the development of joint initiatives and activities.

k) The systematic classification, in whole or in sections, of labour legislation, including relevant Community legislation, applicable in Greece.

With the operation of the Institute Greece has the flexible type of organisation required for the coordination of actions relating to training and employment.

## EQUAL TREATMENT FOR MEN AND WOMEN

Equal treatment for men and women in labour relations is guaranteed by the Constitution

(Articles 4 (2) and 22 (1)), by the National General Collective Agreement of 1975, which laid down the principle of equal pay for male and female workers and which was supplemented in 1978 by ratification of International Labour Convention 100 "on the equal remuneration for men and women workers for work of equal value", and by Law 46/75.

Law 1414/84 on "ensuring equality of the sexes in labour relations and other provisions" (*Gazette* A/10/2.2.84) forbids any discrimination on grounds of sex or marital status in relation to access to, content and implementation of programmes and systems of careers guidance, vocational training, apprenticeships, further training, retraining, training for a change of occupation, open retraining courses, refresher courses and information for workers (Article 2).

Access to all branches and levels of employment must be ensured irrespective of sex and marital status (Article 3).

Men and women are entitled to equal remuneration for work of equal value (Article 4).

Any discrimination, on grounds of the sex of the worker, with regard to terms and conditions of employment, vocational development or career advancement is forbidden (Article 5).

Termination of an employment relationship for reasons relating to sex is forbidden (Article 6).

Any employer who infringes the provisions of this Law is liable to a fine of Dr 20 000 to Dr 300 000 (Article 12).

The Organization for Labour Force Employment (OAED), the General Secretariat for the Equality of the two Sexes and other agencies have taken steps to intensify action to encourage the equal treatment of men and women, e.g. by drawing up programmes for the vocational training of unemployed women and for the return of women to the labour market. In this connection, mention should be made of the Community Initiative NOW (international cooperation programmes).

Law 1483/84 "Protection and assistance for workers with family responsibility" (*Gazette* 153/A/8.10.84) makes provision for parental leave for workers of both sexes to allow them to take care of their children. Such leave is for a period of three and a half months, is granted after expiry of maternity leave and may be taken up until the date on which the child is three years old (amendment made by Article 8 of the National General Collective Labour Agreement (EGSSE) 1993); this provision is applicable to workers in undertakings employing more than 50 people.

The EGSSE of 1993 increased the length of maternity leave to 16 weeks (8 before and 8 after the birth) and provided for an increased reduction in the working day whereby mothers, after the birth, are allowed to work either one hour less per day for two years, or, by agreement between the parties, for two hours less per day for one year.

Parents are also allowed leave of absence in the event of sickness of the children or dependent members of the family, a reduction in working time of one hour per day if they have a child with a physical, psychological or mental impairment and, finally, they are entitled to leave in order to help their children's progress at school.

The provisions of Law 1483/84 have also been extended to the public sector by Presidential Decree 193/88. Law 1835/89 provides for subsidies to women's organisations and for the establishment of a Research Centre to investigate the question of equal treatment, but the Centre is not yet operating.

Finally, Law 1892/90 deals with the question of part-time employment and provides for payment of allowances to mothers who have a third child.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Provision is made in Greece for a system of information, consultation and participation of workers in decision-making relating to undertakings operating in Greece.

The conditions for the procedures for and implementation of the measures in question are set out in Law 1767/88 on workers' councils, which ratified International Labour Convention 135.

All undertakings with at least 50 employees come within the scope of this law. In undertakings without trade union representation the figure is reduced to 20.

Law 1767/88 gives workers the right, through their councils, to obtain information and to take decisions jointly with the management of the undertaking in relation to a number of subjects affecting the workers in the undertaking and to its economic activity and its programming.

a) In particular, Article 12 states that workers' councils:

1. Take decisions jointly with the employer on the subjects listed below, provided they are not already regulated by legislation or collective agreement or if there is no trade union organization in the undertaking:

aa) formulation of the undertaking's internal regulations

bb) regulations governing health and safety in the undertaking

cc) drafting of documentation on programmes for new working methods in the undertaking and on the use of new technology

dd) programming of retraining, ongoing training and further training of staff, especially after any introduction of new technology

ee) the manner in which the presence and behaviour of staff are monitored, it being a condition that their dignity be respected, e.g. with regard to the use for the purposes of such monitoring of listening devices or cameras

ff) programming of regular leave

gg) the reintegration, at workplaces suited to their abilities, of workers disabled as a result of an industrial accident in the undertaking

hh) programming and monitoring of cultural, recreational and social events and of social facilities.

2. Examine and propose methods of improving productivity from all factors of production.

3. Propose measures for the improvement of working conditions.

4. Nominate the members of the Health and Safety Committee from the workforce.

The agreement on the above matters is a written agreement and has regulatory force. Any disagreement which arises is resolved by a Prefectoral Committee in a reasoned decision.

b) By the terms of Article 13:

1. The employer is required to inform the workers' council concerning the matters listed below before any decisions related to them are implemented:

aa) any change in the articles of association of the undertaking

bb) total or partial transfer, extension or reduction of the undertaking's installations

cc) introduction of new technology

dd) changes in personnel structure, reduction or increase in the number of workers, and lay-offs or shiftwork

ee) annual programming of investments in health and safety measures in the undertaking

ff) any information which the workers' council requests and which concerns the matters referred to in Article 12 of this law

gg) programming of any overtime work.

2. Workers' councils also have the right to be informed of:

aa) the general economic trend of the undertaking and of the programming of production

bb) the undertaking's balance sheet and annual report

cc) the undertaking's operating results.

c) By the terms of Article 14, if there is no trade union in the undertaking, the workers' council is to be consulted by the employer:

aa) in cases of collective redundancies, insofar as provided for by the legislation in force at the time on the monitoring of collective redundancies

bb) in cases where consultation with the workers is provided for in general or specific legislation.

It should be pointed out that the operation of workers' councils under the above law is not intended to conflict with the aims, means and rights of the trade unions. On the contrary, the same law provides for cooperation with and the supply of information to the undertaking's trade union organization.

Presidential Decree 572/88 on the "Protection of the rights of workers in the event of transfer of ownership of undertakings, installations or parts of such installations" , requires the transferor and the transferee to provide information on the following matters for the respective representatives of their workers who are affected by the transfer:

a) the reasons for the transfer;

b) the legal, financial and social consequences for the workers after the transfer and

c) the proposed measures applicable to the workers.

The transferor is obliged to provide this information to the workers' representatives in good time, before the transfer is effected.

The transferee is obliged to provide such information to the workers' representatives in good time and at all events before the transfer directly affects his workers' terms of employment and working conditions.

Finally, if the transferor or transferee intend to take steps to change the contractual relationship of their workers, they are required to have prior discussions in good time with the workers' representatives in order to reach an agreement.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

*Community Directives concerning safety and health containing provisions more favourable than those at present in force in Greece*

Greek legislation has not yet been brought into line with the following Directives:

1. Directive 89/391
2. Directive 89/655
3. Directive 89/654
4. Directive 89/656
5. Directive 90/270
6. Directive 90/269
7. Directive 90/394

There have been complications in the drafting and progress of the final text which would bring Greek legislation into line with the most important of these Directives, No. 89/391/EEC, since the social partners have conflicting views about the draft presented by the Ministry of Labour to the Council for Hygiene and Safety at Work (SYAE) as early as June 1992.

This has also delayed the harmonisation of Greek legislation with the other Directives. However, every effort is being made to reach agreement, after which Greek legislation will directly be brought into line.

With regard to Directive 88/642, the corresponding Greek law has already been prepared and is in the final stage of publication whereas the others are in the course of preparation.

*Worker participation in decision-making on health and safety*

- At undertaking level

  - In accordance with Article 1 of Law 1767/88 workers have the right to elect and organize workers' councils to represent them in the undertaking if the number of workers is at least 20. Article 12 of the same law states that the role of the workers' council is to provide advice and information and its objective is to improve the working conditions of the workers in keeping with the development of the undertaking.

  - In accordance with Law 1568/85 workers in undertakings which have more than one hundred and fifty (150) employees have the right to establish a committee of workplace health and safety consisting of elected representatives from the undertaking.

- At prefectoral level

  Each Prefecture has a collective advisory body for the health protection and safety of workers at the workplace, known as the Prefectoral Committee of Health and Safety at the Workplace. The members of such committees always include two representatives of the most representative Trade Union Federation in the Prefecture.

- At national level

  Three representatives of the most representative third-level trade union organization participate as members, in the Council for Health and Safety at the Workplace (SYAE). The role of the Council is to provide information and reports for the Minister of Labour on matters concerning health and safety (for Presidential Decrees, Ministerial Decisions etc.).

Finally, the parties to any collective agreement can make decisions jointly on matters concerning health and safety.

## PROTECTION OF CHILDREN AND ADOLESCENTS

Article 2 of Law 1837/89 on the protection of

young people, on employment and other matters states that young people must be at least 15 years of age before they can be employed in any capacity, with the exception that young people under 15 may be employed in theatrical or musical performances or other artistic events provided such work is not harmful to their physical or mental health or their morals. The employment of young people under the age of 15 in such events has to be authorized by the competent Labour Inspectorate and is subject to the restrictions contained in the abovementioned article.

Furthermore Decision 130627/90 of the Minister of Labour, issued pursuant to Article 2(2) of Law 1837/89, gives a detailed description of hazards, strenuous and unhygienic work and types of work which are harmful to the mental health and generally are an obstacle to the free development of the personality of young people; young persons under 18 years of age may not be employed in such work.

Under Article 6 of Law 1837/89 the remuneration of workers who are minors is based on the minimum wage of the unskilled worker, as laid down in the National General Collective Agreement, in accordance with the number of hours worked. Provisions containing more favourable working conditions and higher levels of remuneration are contained in collective agreements.

Article 5 of Law 1837/89 stipulates that:

a) minors who have not reached the age of 16 and minors studying in any kind of higher or lower secondary schools or public or private technical colleges recognized by the State may not work more than 6 hours per day and 30 hours per week and may not work overtime.

   For minors taking part in artistic or similar events the relevant provisions lay down further restrictions on working time depending on age (for minors between 3 and 15 years of age a maximum of two to five hours per day);

b) workers who are minors must have a daily rest period of at least 12 consecutive hours, which must include the time between 10 p.m. and 6 a.m. This provision has the indirect effect of prohibiting night work for minors;

c) minors attending school or university who are also working should be afforded special arrangementas with regard to arrival and departure times.

In accordance with Article 4 of Law 1387/89, young workers, before being employed on any work, have to attend courses in out-of-school vocational guidance. These courses are designed and organized by the OAED which awards the young person a certificate for the course attended.

By the terms of Articles 6-9 of Law 1566/85 all young people, irrespective of nationality, are entitled at the end of their compulsory schooling to have basic vocational training if they wish, either in lower secondary schools or in technical schools, in order to equip them for their future careers.

## OLDER PEOPLE

The provisions which ensure that every worker in the European Community enjoys resources affording him or her a decent standard of living were referred to in section D on Social Protection.

With regard to the protection system for persons who have reached retirement age but who are not entitled to a pension, the Greek government wishes to state that every Greek citizen is entitled to medical attention, pharmaceutical products and hospital treatment.

If the above services are not provided by the

insurance organization, the State assumes responsibility for them by issuing a certificate of financial need. Also, if the elderly person has particular problems with housing or because of a disability, he or she is entitled to an appropriate form of social assistance (housing or disability allowance) either as a lump sum or as an additional payment. Furthermore, if he or she is not entitled to a pension from some organization a non-insurance pension is provided.

The above benefits are in the nature of relief payments but they are not sufficient to cover the minimum cost of living.

## DISABLED PEOPLE

The measures which have been taken by the State for the social and vocational integration of disabled persons are as follows:

1.a) By Joint Decision 30965/91 of the Ministers of National Defence and of Labour, Article 2(1) of Law 1648/86 on the protection of war disabled, war victims and disabled persons was partly amended in that Greek undertakings or foreign undertakings operating in Greece which have more than 50 employees are required to reserve 2% of their jobs for disabled persons or the children of disabled persons and of persons who died during the war period 1940-1950, in the Korean war, in the hostilities in Cyprus or who took part in the national resistance (Article 1(1)), and 5% for the persons referred to in Article 1(4).

This Decision applies to the private and the public sector and shall be applied in every Prefecture after the applications from the persons referred to in Article 1(1) of Law 1648/86, still pending in the relevant Committees at the time of publication, have been dealt with.

b) The public services, public statutory bodies and local authorities are required to recruit, without an entrance competition, persons protected by Law 1648/86 in the ratio of five such persons per 100 vacancies and, for vacant positions of messengers, night watchmen, cleaners, charwomen, doorkeepers, gardeners and waiters, in the ratio of one protected person per 5 vacancies.

In Article 13 of Law 2026/92 on "Rules concerning the organisation and personnel of the public service and other measures" the minimum disability which disabled persons must have in order to benefit from the provisions of the first indent of paragraph 4 of Article 1 of Law 1648/86 is set at 40%.

2. Decision No 33800/93 of the General Secretariat of the Ministry of Labour on the preparation of programmes relating to the contribution of the Labour Force Employment Organisation (OAED) to the subsidy to employers of up to Dr 120 000 and to the ergonomic changes to workplaces at which disabled persons are employed.

3. Joint Decision 34050/93 of the General Secretariats of Finance and Labour on the preparation of programmes for subsidizing private undertakings, organizations and local authority and public utility undertakings, cooperatives of trade groupings and associations thereof which employ disabled persons under the compulsory recruitment procedure (Article 2 of Law 1648/86) and in general for subsidizing employers recruiting disabled persons. They shall also receive a subsidy of Dr 2 900 per day for 12 months for the employment of disabled persons.

4. Decision 34166/93 of the General Secretariat of the Ministry of Labour on the preparation of two programmes for providing young self-employed disabled

persons with a subsidy, in the case of manufacturing industry, of Dr 600 000 and, in the services, of Dr 500 000.

5. By the terms of Ministerial Decree 2065/89, disabled persons are entitled to six extra days' paid holiday.

## IMPLEMENTATION OF THE CHARTER

The fundamental social rights contained in the Social Charter correspond to the individual and social rights included in and safeguarded by the Greek Constitution. These constitutional rights do not confer on the individual citizen a right of action against the State to guarantee a particular social right (apart from certain cases of payment of welfare benefits not based on financial criteria where such an action may be brought before Greek courts). However, they serve as a marker for the Greek State, indicating the general direction to take in order to protect such rights by means of appropriate legislation.

In practice there are laws and presidential decrees which ensure the protection of all social rights.

# SPAIN

## FREEDOM OF MOVEMENT

1. The final date stipulated in Articles 55 to 60 of the Act of Accession of Spain to the European Communities for workers' freedom of movement and unrestricted right of residence in Spain to become effective was advanced to 31 December 1992 in respect of Luxembourg nationals and to 31 December 1991 in respect of nationals of other Member States by Council Regulation (EEC) No 2194/92 of 25 June 1991. There are thus now no restrictions other than those deriving from considerations of public order, safety and health.

2. Consequently, nationals of Community countries do not require prior authorisation to work in Spain and workers from the Community countries receive the same treatment as Spanish workers as regards the pursuit of any profession or occupation.

   In addition, action programmes for the benefit of immigrants were established by the Ministerial Order of 25 March 1993, repealing the Order of 9 January 1991.

   The purpose of these programmes is to promote the social and occupational progress and integration of immigrants by funding activities in the areas referred to in Article 1 of the Order through the Directorate-General of Migration in the Ministry of Labour and Social Security.

   Unemployed persons who have particular difficulty in entering or reentering employment, and in particular migrant workers, are given priority for places on training schemes under the National Employment Training and Integration Plan approved by Royal Decree 631/93 of 3 May.

   The Community rules on family reunification are now implemented, the transitional restrictions on Luxembourg nationals having been abolished as mentioned in paragraph 1 above.

3. The Ministerial Order of 12 April 1993 implements Royal Decree 1665/91 of 29 October laying down the general system for recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration in respect of the following professions: civil engineer, aeronautical engineer, telecommunications engineer, public works engineer, surveying technician, aeronautical technician, telecommunications technician and construction technician.

   This Order covers:

   - recognition of qualifications awarded in other Community Member States to nationals of any Member State as equivalent to those required in Spain for these professions;

   - attestation that qualifications obtained in Spain by nationals of Community Member States entitle the holder to practise these professions in other Member States;

   - attestation that a person has legally and effectively practised a profession in Spain for a given number of years when this is a condition for establishment in another Member State.

## EMPLOYMENT AND REMUNERATION

4. As already stated in the first and second reports, the Spanish Constitution, the Workers' Statute and other instruments of labour law recognise the right to the free choice of profession or trade, subject to

any special conditions laid down for the pursuit of a given occupation or considered necessary by virtue of usage or custom, these special conditions being based on objective grounds and not merely on the defence of unspecified group interests, failing which they are regarded as discriminatory treatment infringing the above right.

In this context, mention should be made of the Constitutional Court's ruling 229/92 of 14 December recognising the right of a female worker to employment as an assistant miner on the same terms as the men who passed through the selection procedures at the same time. She had been refused this job on the grounds of various rules of different status which barred women from working below ground in mines.

5. In the annual instrument setting the general minimum wage for both regular employees and casual and temporary workers, a minimum wage based on that for casual and temporary workers is also set for domestic staff paid on the basis of an hourly rate.

The minimum wages take account of payments in both cash and kind and relate to the statutory working day for the activity in question. Day rates do not include the minimum pro rata payment for Sundays and public holidays to which all workers are entitled.

6. The national free public placement service may be used both by the unemployed and by workers in employment who wish information, guidance, vocational training or placement if they are out of work or wish to change to other work on different terms or of a different nature.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. The provisions concerning forms of employment other than open-ended full-time contracts contained in Royal Decree-Law 1/92 of 3 April on Urgent Measures for Job Creation and Unemployment Protection were incorporated into Law 22/92 of 30 July of the same name.

Subsequently, Royal Decree 3/93 of 26 February on Urgent Measures on Budgetary, Fiscal, Financial and Employment Matters provides for temporary job-creation contracts to be extended by one year if their three-year maximum duration expires between the date on which this instrument enters into force and 31 December 1993.

Provision is also made for a subsidy when the employer converts the contract to an open-ended basis at the end of the four-year period.

Under the Royal Decree-Law, the public programme instituted by Law 22/92 of 30 July to promote the employment under open-ended contracts of young persons, of women in occupations where they are under-represented and of the long-term unemployed over 45 years old is extended to cover part-time open-ended contracts concluded between the entry into force of the Royal Decree-Law and 31 December 1993, provided the working day stipulated is at least half the normal hours of work in the activity in question.

8. Article 38 of the Workers' Statute states that workers are entitled to at least 30 calendar days' paid holiday, which may be negotiated by agreement. The period will be determined by common consent of the

employer and worker, or, if this is not possible, the provisions of the collective agreements will apply. The criteria to be satisfied are as follows.

- By agreement with the workers' representatives, the employer may exclude the time of year when the undertaking is most busy from the holiday period and the holidays of all the workforce may be determined. They may be staggered, or the unit may be closed down completely.

- When holidays are staggered, workers with family responsibilities have priority so that their holidays coincide with the school holidays.

- If there is disagreement between the parties, the competent judicial body determines the dates and its decision is final.

9. There have been no changes as to whether contracts must be in writing. However, while it is not obligatory for all open-ended contracts to be in writing, either of the parties may demand a written contract, even if the employment relationship already exists.

## SOCIAL PROTECTION

10.1. There have been no basic changes in the Spanish social security system as compared with the two previous reports.

Social security coverage has been extended by including the following categories in the general system:

- current employees and pensioners of Ferrocarriles Metropolitanos de Barcelona, S.A.

- current employees and pensioners covered by the special scheme for local authority officials

- professional basketball players.

It is planned to bring the following groups under the general system:

- clergymen of the Churches of the Federation of Evangelical Religious Communities of Spain who provide evidence that they are normally engaged in the conduct of worship or pastoral duties;

- clerics of the Communities belonging to the Federation of Jewish Communities of Spain who possess the title of rabbi and provide evidence that they are normally engaged in the performance of religious duties;

- Muslim religious leaders and imams of the Islamic Communities who provide evidence that they are normally engaged in the conduct of worship and in religious instruction and assistance.

In addition, self-employed certificated agronomists registered with the appropriate professional body have been included in the special scheme for self-employed persons.

Under the Ministerial Order of 4 August 1992, intermittent permanent employees who receive non-contributory unemployment assistance and are entitled to pay social security pensions contributions can be covered by a special agreement with the social security scheme for a 60-day period.

The Order of 18 January 1993 updating the rules for social security, unemployment, wages guarantee fund and vocational training contributions set the maximum and minimum contribution limits for 1993 as follows:

- maximum contribution basis: 338 130 pesetas per month;
- contribution threshold for workers aged 18 or over: 68 310 pesetas per month; when the worker is less than 18 years old, this figure is 45 090 pesetas per month.

The contribution rate for the social security general scheme is 29.3% for the standard risks, 24.4% being borne by the employer and 4.9% by the worker.

The same Order also regulates contributions to the special schemes for the self-employed, agricultural workers, seafarers, domestic staff and coal miners.

Royal Decree 6/93 of 8 January on the review of social security pensions and other public welfare benefits for 1993 increased the social security cash benefits for dependent children in the current year as follows:

- 378 360 pesetas per year if the child is aged 18 or over and suffers 65% or more disability;
- 567 540 pesetas per year, if the dependent child is aged 18 or over, suffers 75% or more disability and requires assistance with self-care and daily living activities.

Law 4/93 of 29 March provides for periodic review of the annual income ceiling for entitlement to social security cash benefits for dependent children and provides that the percentage change in this limit as compared with the previous financial year shall be not less than as the general rate of increase in contributory social security pensions laid down in the General State Budget Law.

Royal Decree 825/93 of 28 May lays down the special employment and social security measures referred to in Article 6 of the Industry Law 21/92 of 16 July. This Royal Decree introduces specific measures for the benefit of workers made redundant from firms carrying out an approved industrial restructuring plan, making it possible for the firm to pay additional social security contributions from the time when the employment contracts are terminated so that the workers concerned can receive allowances equivalent to early retirement pensions.

10.2. The changes made in the unemployment benefit system by Royal Decree-Law 1/92 of 3 April, which were mentioned in the second report, were approved by Parliament by Law 22/92 of 30 July on Urgent Measures for Job Creation and Unemployment Protection.

A new feature introduced by this law is the abolition of the one-month waiting period for entitlement to non-contributory unemployment assistance which used to apply to those who had not contributed long enough to qualify for the contributory benefit.

For intermittent permanent employees who receive non-contributory unemployment assistance, since they

have not contributed for the 12-month qualifying period for contributory benefit but have contributed for 180 days or more, the administering body will pay the social security contributions for retirement cover for a period of 60 days.

Royal Decree 6/93 of 8 January sets the non-contributory social security pensions for old age and invalidity pensions at 31 530 pesetas per month for 1993. This is an increase of 5.1% over the 1992 levels.

The eighth additional provision of the same Royal Decree amends Royal Decree 356/91 of 15 March on non-contributory benefits for dependent children as follows: "There shall be no means limit for entitlement to cash benefits for disabled dependent children. The annual income limit for entitlement to benefit for non-disabled dependent children shall be one million pesetas, increased by 15% for each additional dependent child after the first."

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

During the reference period there were no changes in the pertinent legislation, although the Constitutional Court handed down two rulings relating to the Spanish legislation on freedom of association and collective bargaining.

11-12. The Constitutional Court's ruling 105/92 of 1 July has implications for freedom of association, the right to form employers' associations and trade unions to defend economic and social interests, the right to negotiate and conclude collective agreements and the binding nature of these agreements as discussed in earlier reports. This ruling recognises trade unions' right to engage in collective bargaining as inherent in the trade union freedom enshrined in Article 28.1 of the Spanish Constitution. In the case in question, a firm reached individual agreements with its workers on changes in the distribution of working hours which had previously been laid down by collective agreement, without discussing the question with the legal representatives of the workers, ignoring their representative status and the right to negotiate that this implied and thus infringing not only Article 37.1 of the Constitution and the binding nature of the agreements provided for by that Article, but also freedom of association under Article 28.1 of the Constitution.

13. With regard to the right to strike, which is guaranteed by Article 28.2 of the Spanish Constitution, the Constitutional Court, by its ruling 123/92 of 28 September, found in favour of the plaintiff, the works' committee of a firm which replaced strikers by non-strikers during a strike legally called by the workers. The Court recognised the right to strike and declared the firm's action in replacing strikers by non-strikers unlawful. This clarifies the legislation currently in force and will help to ensure better implementation.

14. With regard to the civil service, the Law on Civil Service Reform of 2 August 1984 recognized civil servants' right to strike and described as very serious misconduct "any action intended to restrict the free exercise of the right to strike". Such action will result in one of the following disciplinary measures:

- dismissal from the service: this may be decided only by the Council of Ministers on a proposal from the

Minister of Public Administration;

- suspension, for not more than six years nor less than three years;

- transfer and change of residence, no return to the original posting being permitted until three years have elapsed.

In all three cases, a disciplinary procedure must first be followed and the civil servant responsible for the misconduct must be heard.

Organic Law 2/86 of 13 March on the Armed and Security Forces forbids strike action by members of these forces.

## VOCATIONAL TRAINING

15.1. In Spain, occupational training is regulated by Royal Decree 631/93 of 3 May, which replaces Royal Decree 1618/90 of 14 December and deals with the National Employment Training and Integration Plan (FIP Plan).

Royal Decree 631/93 seeks to reorganise occupational training provision by public bodies, concentrating exclusively on the unemployed with the aim of providing those who have no specific vocational training or whose skills are inadequate or inappropriate with the qualifications required by the economy and enabling them to find work. Such training is run by the employment services under the Ministry of Labour and Social Security, as opposed to formal vocational education, which is run by the educational services under the Ministry of Education and Science.

15.2. Article 1(2) of the Royal Decree approving the FIP Plan provides that "unemployed migrant workers, together with other groups, shall have priority for access to training".

15.3. In addition to training unemployed workers and making it easier for them to find employment by providing them with better qualifications, the Spanish government has encouraged arrangements agreed by collective bargaining for the training of workers already in employment. To this end, the National Agreement on Continuing Training was signed on 16 December 1992 by the most representative trade union and employers' organisations, and the government undertook to provide financial support.

This agreement entered into force in January 1993 for a period of four years and forms part of the social dialogue, resulting from a tripartite understanding. It is intended to provide a basis for more extensive vocational training, enhanced quality of employment and greater workforce flexibility in responding to the needs of the economy. Its main purpose is to promote in-service training for firms' employees to enable them to improve their qualifications and progress in personal and professional terms, in the interests of all the parties concerned. The agreement treats vocational training as a means of seizing the personal and employment opportunities offered by the European market, rectifying basic educational shortcomings and contributing to a continuous process of adaptation and vocational qualification.

Provided they draw up suitable

training plans, both individual firms and employers' associations may benefit from the National Agreement on Continuing Training, as may their employees. Access to training for employees depends on individual release by employers, the aim being to enable the worker to follow training courses leading to a particular qualification or to contribute to the upgrading or adaptation of his technical and occupational skills.

Continuing training is also provided by the educational services under the National Vocational Training Programme.

The National Agreement has been backed up by a Tripartite Agreement on Continuing Training for Workers in Employment between the government and the employers' and workers' associations.

Participation by the trade union and employers' organisations in activities under the National Agreement on Continuing Training is channelled through the Joint State Committee on Continuing Training, which is composed of eight trade union and eight employers' representatives. The main function of this Committee is to ensure implementation of the Agreement and to manage the funds available for the projects it covers.

The two sides of industry have undertaken to ensure implementation of the Agreement in the various areas of activity by means of Sectoral Joint Committees.

Finally, operation of the National Agreement on Continuing Training and the Tripartite Agreement is supervised by the government and the most representative trade union and employers' organisations in the National Tripartite Monitoring Committee.

## EQUAL TREATMENT FOR MEN AND WOMEN

16.1. The provisions of Royal Decree-Law 1/92 of 3 April on Urgent Measures for Job Creation and Unemployment Protection were incorporated into the similarly named Law 22/92 of 30 July. Like the Royal Decree-Law, this provides incentives under the public programme to promote open-ended contracts for the employment of women who have been registered as unemployed for at least a year, women who are entering professions or trades in which they are under-represented or unemployed women over 25 years old who have previously been in employment and wish to return to work after an interruption of at least five years provided the employer is not obliged to reinstate them by virtue of statutory requirements or collective agreements.

A precedent in the equal treatment of men and women is set by the Constitutional Court's ruling 229/92, which recognised the right of a female worker to employment as an assistant miner on the same basis as the men who had passed the same tests. This was consistent with Spain's denunciation of Article 8.4.b) of the European Social Charter, which prohibits employment of women in underground mine workings and in all other work which is unsuitable for women because of its dangerous, arduous or unhealthy nature and of ILO Convention No 89 concerning

night work of women employed in industry. The Court regards the prohibitions as invalid since the restrictions they impose on women, while apparently advantageous, constitute a barrier to access to the labour market and their retention is contrary to Article 14 of the Spanish Constitution and Section 16 of the Community Charter, which forbid sexual discrimination.

16.2. On 15 January 1993, the Spanish Cabinet approved the second Plan for Equality of Opportunity for Women, for the period 1993-95. This plan sets out the following ten basic objectives and various means of attaining them.

- To promote the involvement of women on an equal basis in the processes of acquiring and transmitting knowledge.

- To ensure a better balance between men and women in employment, in both qualitative and quantitative terms, by pursuing training programmes for adult women which are appropriate to their needs and interests; to provide women with information to help them seek employment and extend the range of occupational choice open to them; to promote long-term employment contracts for women; to assist women in acquiring job experience.

- To disseminate a social image of women which is appropriate to present-day realities.

- To encourage an equitable division of domestic responsibilities.

- To increase the social and political involvement of women.

- To make it easier for women to attain positions of authority.

- To address public health issues of special concern to women.

- To ensure the social integration of disadvantaged categories of women.

- To place equality policy in its international context.

With regard to equal treatment in terms of working conditions, the second Plan for equal opportunities refers to the explicit inclusion of verbal and physical aggression of a sexual nature in Article 8 of Law 8/88 of 7 April on Labour Offences and Sanctions, although the point is at present implicitly covered by section 11 of this Article, which refers to "actions by the employer which are contrary to respect for workers' privacy and due consideration for their dignity".

Reference is also made to a change in the wording of Article 28 of the Law on the Workers' Statute, which lays down that "... the employer shall pay the same remuneration for equal work". The words "... equal work" are to be replaced by "work of equal value" to express more clearly the anti-discriminatory force of this requirement, as interpreted by the Constitutional Court and in accordance with Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and with the ILO Equal Remuneration Convention No 100, 1951, which was ratified by Spain on

26 October 1967.

16.3. As already mentioned, one of the aims of the second Plan for Equality of Opportunity for Women is to "encourage an equitable division of domestic responsibilities", to ensure a more balanced distribution of household duties between men and women.

The following practical steps are being taken to this end:

* Increasing the availability of nursery schools and school meals for children up to the age of three, with flexible arrangements covering a large part of the day.

* Seeking greater compatibility of working hours and school and creche timetables.

* Promoting alternative ways of looking after family members who require assistance and live in single-parent families or families in which both spouses work.

* Promoting and subsidising child-care facilities in general and nursery schools in particular.

* Using publicity and educational material to campaign for a change of attitudes to the everyday distribution of roles and responsibilities.

* Publicising the availability of parental leave, and encouraging take-up by both mothers and fathers.

Within this general context, a further aim is to compare different types of family and background in relation to economic factors in order to investigate how children learn gender roles from their parents.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. For companies established in Spain, the right of workers or their representatives to information and consultation is enshrined in Spanish labour legislation and in particular in Article 64 of the Workers' Statute, together with Article 62.2 of the same instrument and Organic Law 11/85 of 2 August on Trade Union Freedom.

18. Under the terms of the Workers' Statute, the Works Council has the following prerogatives:

(1) to receive information at least every three months on the general trends in the economic sector to which the undertaking belongs and on the unit's production and sales, production programme and employment prospects;

(2) to be acquainted with the balance sheet, the profit and loss account, the annual report and with the same documentation, under the same conditions, as the shareholders or partners if the firm is in the legal form of a joint stock company or a partnership;

(3) to issue reports prior to action by the employer on the latter's decisions with regard to restructuring of the workforce and total or partial layoffs or redundancies, short-time working and total or partial transfer of plant, the undertaking's vocational training plans, the introduction or alteration of work organization and control

sytems, time studies, systems establishment and job evaluation;

(4) to issue reports when mergers, takeovers or changes in the legal status of the undertaking are liable to affect employment.

In addition, the Works Council is responsible for:

- monitoring compliance with the labour, social security and employment regulations;
- monitoring safety and industrial hygiene in the undertaking;
- assisting in the management of the undertaking as provided for in collective agreements;
- participating in the management of welfare facilities provided by the undertaking for its workers or their families.

Article 10.3 of the Organic Law on Trade Union Freedom provides that trade union representatives who are not members of the Works Council shall enjoy the same guarantees as are established by law for the members of the Works Council, together with the following rights:

- to have access to the same information and documentation as the employer makes available to the Works Council;
- to be present at the meetings of the Works Council and the internal health and safety bodies established by the employer;
- to be consulted by the employer in advance on any collective measures affecting the workers in general and in particular on dismissals and disciplinary measures.

The branches of the major trade unions and the unions represented on the Works Council are entitled to engage in collective bargaining in accordance with the pertinent legislation.

The right of the representatives of the workforce in an undertaking to receive information was recognized in the Workers' Statute and has been strengthened by Law 2/91 of 7 January with regard to employment contracts, the employer being required, inter alia, to provide the workers' representatives within the undertaking with an outline copy of all contracts which must be concluded in writing.

Title V "Participation and representation" of this bill provides that: "Workers shall have the right to participate in matters relevant to the protection of their health and physical well-being at work through their representatives and the specialist internal bodies provided for in this Title".

It further states that: "The bodies representing the workforce and trade union representatives shall, in accordance with the Workers' Statute and the Organic Law on Trade Union Freedom, monitor compliance with the rules on safety, hygiene and working conditions, and take any necessary legal action in relation to the employer and the competent authorities and courts on behalf of the workforce. To this end, they shall be assisted by the safety representatives, who shall make available to them all information to which they obtain access in the performance of their duties."

Finally, Law 21/91 of 17 June set up an Economic and Social Council to strengthen participation by those concerned in economic and social affairs. The Council will include representative trade unions and employer organizations and other organizations or social forces representing various interests (agriculture, shipping and fisheries, consumers and users). It will serve as a forum for

consultation on the government's prescriptive action in the socio-economic and employment fields - in which case its role will consist basically in issuing reports and opinions of a mandatory or optional nature as appropriate - or will express views on its own initiative, since it has wide powers of autonomous action and organization which ensure its independence.

Workers' representatives have the same rights to information and participation with regard to frontier workers as for other workers with respect to employment measures or policies which may affect working conditions.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19. In addition to the safety and health directives in course of transposition, mention should be made of Directive 90/269/EEC on manual handling of loads where there is a risk of back injury.

    Transposal of this Directive will not involve major changes in Spanish regulations, since Spain has ratified ILO Convention No 127 of 1967 concerning the maximum permissible weight to be carried by one worker. This Convention applies directly since it forms part of Spanish national law under the terms of Article 96.1 of the Spanish Constitution, which provides that: "international treaties which have been validly concluded shall form part of national law once they have been officially published in Spain".

## PROTECTION OF CHILDREN AND ADOLESCENTS

20. Articles 6 and 7 of the Workers' Statute provide that the minimum employment age shall be 16 years, except that persons less than 16 years old may work in the entertainment industry. Such work must be specified and authorised in writing by the labour authority and must not put at risk the minor's physical health, vocational training or personal development.

21. Royal Decree 44/93 of 15 January sets the general minimum wage for workers less than 18 years old at 1989 pesetas per day or 38 670 pesetas per month, depending on whether the wage is set as a daily or monthly rate.

    Apart from the amount, this wage is subject to the same rules as the general minimum wage for workers aged 18 or over. The minimum wage for casual and temporary workers employed by a firm for not more than 120 days, and for domestic staff, is also set in the same way as for adult workers.

    The pay differential between workers over and under 18 years old is based on the principle of equal pay for equal work. It thus reflects the fact that young persons perform work requiring less experience and less intensive effort than older workers.

22. Law 22/92 of 30 June on Urgent Measures for Job Creation and Unemployment Protection incorporates the provisions of the Royal Decree-law 1/92 of 3 April of the same name, providing similar incentives for the conclusion of open-ended contracts with persons less than 25 years old who have been registered as unemployed for at least a year or unemployed persons between 25 and 29 years old who have not previously worked for more than three months.

    The Law also provides for a subsidy for the conversion of work-experience and job-training contracts to an open-ended

basis, this being the best way of pursuing the ultimate aim of the training provided under these contracts.

Unemployed persons under 25 years old who either have been out of work for at least six months after losing a previous job or are seeking their first job are given priority for training under the National Employment Training and Integration Plan approved by Royal Decree 631/93 of 3 May. They will receive occupational training through the Crafts School Workshop and Work and Training Centre Programme.

23. With regard to formal vocational education, which is the responsibility of the Ministry of Education and Science, Royal Decree 676/93 of 7 May setting out guidelines for vocational qualifications and the corresponding minimum study requirements describes the objective of vocational training as the acquisition not merely of knowledge but rather of abilities so that trainees are prepared for employment within a field of activity and develop the capacity to practise various skilled occupations, receiving a broad-based education which will allow them to adapt to changes in the labour market which may occur in the course of their lives.

In pursuing this aim, assistance is sought from employers and unions in identifying the occupational profiles required by the economy, which are the starting point for setting different levels of academic and vocational qualification within a European context, and in specifying the content of vocational training.

## THE ELDERLY

24. The General State Budget Law for 1993 provides for both contributory and non-contributory social security pensions to be increased in 1993.

This Law was implemented by Royal Decree 6/93 of 8 January, which introduced the following increases:

1. Contributory retirement pension

   The provisions cover retirement pensions under both the general social security scheme and the special schemes.

   These pensions were increased by 5.1%, this being the percentage rise in the consumer price index between November 1991 and November 1992.

   The updated pensions are capped at 245 546 pesetas per month, excluding special payments. The annual ceiling is set at 3 437 644 pesetas. Pensions which exceed the monthly limit will not be increased.

   Updated non-concurrent pensions which fall short of the following annual minimum levels will be topped up as necessary:

   - pensioner 65 years old or more
     with dependent spouse: 780 150 pesetas
     without dependent spouse: 663 040 pesetas

   - pensioner less than 65 years old
     with dependent spouse: 682 710 pesetas
     without dependent spouse: 578 690 pesetas

2. Pensions under the former compulsory old age and invalidity insurance system (SOVI), which are not concurrent with another pension, will be increased up to a limit of 474 040 pesetas per year.

3. Non-contributory retirement pensions were increased by 5.1% for 1993 to 31 530 pesetas per month.

Although they do not form part of the social security system, there are pension arrangements which enable persons meeting the necessary requirements to receive an income when they reach retirement age (65 years). These include:

- Pensions for the elderly and disabled, which were set at 24 935 pesetas per month for 1993, with entitlement to two special payments of the same amount.

- Non-contributory old-age pensions for Spanish emigrants. These were introduced by Royal Decree 728/93 of 14 May and are intended to provide persons of Spanish origin living abroad with an entitlement to a minimum level of subsistence when they reach retirement age without having adequate resources.

  The ceiling for this pension will be that set in the General State Budget Law for the non-contributory retirement pension.

25. The social security system provides pensioners with the following social assistance and social services. These were mentioned in the previous reports by the Spanish government and this report merely contains the updated figures for the number of centres or places and the number of persons making use of the services.

- *Old people's homes.* On 31 December 1992, there were 141 homes in Spain which belonged to the social security or were run jointly with other institutions. The number of places was 20 742.

- *Day centres and clubs.* The total membership of such centres was 1 253 396 on 31 December 1992.

- *Holidays.* In 1992, over 92 342 persons benefited from this programme.

- *Subsidised thermal cures.* In 1992, over 45 000 persons benefited from this programme.

Fiscal provisions

With respect to the 1992 tax return, Law 18/91 of 6 June on Personal Income Tax provides for the total tax due to be reduced by 15 000 to 30 000 pesetas for each relative in the ascending line who is 75 years old or more, lives with the taxpayer and does not have an income exceeding the general minimum wage.

The same Law provides for a deduction of 15 000 pesetas for all taxpayers aged 65 or over.

Plan for the Elderly

The Plan for the Elderly was drawn up by INSERSO, acting for the Ministry of Social Affairs, to coordinate the activities of the various public authorities and the voluntary sector in pursuing the objectives set.

The starting point was a quantitative and qualitative assessment of the elderly population in present-day Spain and a study of demographic projections to the year 2000. Consideration was given to the changing characteristics of the elderly over the next 10 years and the economic and social consequences of the ageing of the population. Finally, the resources available for services to the older citizen were reviewed.

The Plan covers five areas:

1. Pensions (adequate resources)
2. Health and medical assistance
3. Social services
4. Culture and leisure
5. Involvement

In each area, specific objectives are set and the necessary means determined. Arrangements are worked out for coordination, joint participation and joint funding by various administrative authorities and institutions, including the "social fabric" (NGOs, senior citizens' associations, etc.) and great stress is placed on rectifying the imbalances between regions.

The Plan for the Elderly was launched in 1992 and substantial progress was made with regard to pensions, cooperation between the Ministry of Social Affairs and the Ministry of Health and Consumer Affairs in coordinating social and health services for old people and the introduction of a number of novel services such as day-care facilities, personal alarms, short-term residence and sheltered housing.

A steering committee was set up and operates within the Social Affairs Sectoral Conference to implement the Plan and monitor the measures taken.

## DISABLED PERSONS

26.1. Occupational integration

Unemployed persons who encounter particular difficulties in finding work, and in particular disabled persons, are given priority in the activities covered by the National Employment Training and Integration Plan approved by Royal Decree 631/93 of 3 May.

In 1992, INSERSO ran 226 occupational training courses for disabled persons with financial support from the European Social Fund.

22 such courses were entirely funded by INSERSO in 1992 and were attended by a total of 227 persons. The cost was 35 818 295 pesetas.

In 1992 six occupational centres were entered on the register of occupational centres run by non-profit private bodies. On 31 December 1992, the register listed 160 such centres.

26.2. Social integration

*Fiscal provisions*

Law 37/92 of 28 December on Value Added Tax includes the following provisions with regard to disability-related goods:

Imported goods to be used for social, educational and occupational purposes for the benefit of disabled persons are exempt from VAT, provided they are supplied free of charge and with no commercial purpose to institutions or bodies.

Motor cars and wheelchairs for the disabled, vehicles for the transport of wheelchair passengers, the modification of such vehicles and prostheses and orthoses for the handicapped are subject to a reduced rate of VAT (3%).

Law 38/92 of 28 December on Special Taxes provides that there will be no liability to tax when a motor vehicle is definitively registered for the first time in the name of a disabled person and for his exclusive use.

Law 18/91 of 6 June on Personal Income Tax provides that for the purposes of the 1991 tax return:

Disabled persons who have to travel to work and are not able to do so by their own efforts and who submit evidence of disability may deduct 15% from their total income;

Total tax payable is reduced by 50 000 pesetas for each person whose income is less than the general minimum wage and who provides evidence of disability.

## IMPLEMENTATION OF THE CHARTER

27. The 1991/92 national figures for the activities carried out by the Labour and Social Security Inspectorate, as the body responsible for enforcing and monitoring compliance with social legislation, are summarised in the attached table.

With regard to implementation by means of international treaties of the rights set out in the Charter, Parliament has assented to Spain's ratifying ILO Convention No 172 concerning working conditions in hotels, restaurants and similar establishments, 1991, and the Ministry of Foreign Affairs has begun the procedure for the Instrument of Ratification.

# ACTIVITIES OF THE LABOUR AND SOCIAL SECURITY INSPECTORATE
## NATIONAL STATISTICS

REPORTING PERIOD: 1991/92

| AREA OF ACTIVITY | NUMBER 1991 | NUMBER 1992 |
|---|---|---|
| 1. EMPLOYMENT | | |
| 1.1. PLACEMENT | 432.662 | 313.527 |
| 1.2. CONTRACTS | 89.050 | 137.473 |
| 1.3. UNEMPLOYMENT BENEFIT | 37.801 | 198.276 |
| 1.4. EMIGRATION AND FOREIGN WORKERS | 10.381 | 10.098 |
| TOTAL | 569.894 | 659.374 |
| 2. SOCIAL SECURITY | | |
| 2.1. REGISTRATION, MEMBERSHIP, ACTIVE STATUS, CONTRIBUTIONS | 664.059 | 673.046 |
| 2.2. BENEFITS | 15.241 | 15.489 |
| 2.3. COMPETENT INSTITUTIONS AND BODIES | 292 | 279 |
| 2.4. OTHER ACTIVITIES | 73.950 | 85.792 |
| TOTAL | 753.542 | 774.606 |
| 3. LABOUR RELATIONS | | |
| 3.1. INDUSTRIAL DISPUTES, STRIKES, LOCKOUTS | 3.253 | 3.750 |
| 3.2. MINORS * | 880 | 1.525 |
| 3.3. BASIC RIGHTS | 7.223 | 8.784 |
| 3.4. CONTRACTS | 11.926 | 16.752 |
| 3.5. WAGES | 14.536 | 17.159 |
| 3.6. WORKING DAY, HOURS OF WORK, REST PERIODS, HOLIDAYS, OVERTIME | 16.697 | 17.186 |
| 3.7. ADJUSTMENT OF EMPLOYMENT LEVELS | | |
| - TERMINATION OF CONTRACTS | 4.889 | 5.611 |
| - SUSPENSION OF CONTRACTS | 3.058 | 3.099 |
| 3.8 OCCUPATIONAL CLASSIFICATION | 5.738 | 6.184 |
| 3.9. INCENTIVES AND WORKING METHODS | 1.329 | 1.513 |
| 3.10. GEOGRAPHICAL MOBILITY, MAJOR CHANGES IN CONDITIONS OF WORK, PROVISION OF LABOUR | 7.694 | 8.796 |
| 3.11. RIGHTS OF WORKERS' REPRESENTATIVES AND TRADE UNIONS | 6.612 | 7.106 |
| 3.12. OTHER ACTIVITIES | 12.271 | 13.654 |
| TOTAL | 96.106 | 111.119 |

| AREA OF ACTIVITIES | NUMBER 1991 | NUMBER 1992 |
|---|---|---|
| 4. SAFETY AND HEALTH | | |
| 4.1. REPORTS ON OPENING OF ESTABLISHMENTS | 26.411 | 22.599 |
| 4.2 ACCIDENTS AT WORK (FATAL, VERY SERIOUS, INVOLVING MINORS, COMMUTING) | 22.420 | 18.702 |
| 4.3. OTHER ACCIDENT REPORTS AND INFORMATION ON OCCUPATIONAL ACCIDENTS AND ILLNESSES | 6.488 | 5.661 |
| 4.4. OCCUPATIONAL ILLNESSES | 710 | 641 |
| 4.5. UNHEALTHY, ARDUOUS AND DANGEROUS WORK | 1.205 | 1.291 |
| 4.6. PREVENTION AND SURVEILLANCE ACTIVITIES | 131.710 | 149.682 |
| TOTAL | 188.944 | 198.576 |
| 5. OTHER | | |
| 5.1. CONSULTATION AND ADVISORY ACTIVITIES | 11.569 | 8.904 |
| 5.2. COOPERATIVES AND WORKERS' LIMITED COMPANIES | 559 | 483 |
| 5.3. COUNTER-NOTICES | 61.826 | 51.032 |
| 5.4. REQUESTS FOR INFORMATION | 1.435 | 1.437 |
| 5.5. CHECKING EMPLOYMENT INSPECTORS' REPORTS | 372.236 | 368.194 |
| 5.6. INVENTORIES OF ASSETS | 1.084 | 1.269 |
| 5.7. IMPROVEMENT NOTICES | 19.238 | 21.162 |
| 5.8. CAUTIONS | 3.761 | 3.439 |
| 5.9. OTHER ACTIVITIES | 18.406 | 20.806 |
| TOTAL | 490.114 | 476.726 |
| GRAND TOTAL | 2.098.600 | 2.220.401 |



* Includes activities relating to the employment of minors

SOURCE : Directorate General for the labour and social securi ectorate. "Information".

# FRANCE

## FREEDOM OF MOVEMENT

Question 1

Articles 6 and 13 of Decree No 81-405 of 28 April 1981 transposing into French national law Directives 64/221 of 25 February 1964 and 68/360 of 15 October 1968 state that a residence permit may not be refused to a worker entitled to freedom of movement except on grounds of public order, public safety or public health.

Question 2

The French authorities ensure that the provisions guaranteeing the right of residence to workers from the European Community are applied.

Access to all professions and occupations for EC workers is accorded under the same conditions as those applied to French nationals.

However, subject to further progress on the equivalence of diplomas, the main obstacle to the free movement of workers still seems to be the non-recognition of vocational qualifications.

*New initiatives*

The most important new initiative to reinforce freedom of movement is the bill to introduce miscellaneous provisions relating to the public service, which is currently going though the adoption process. This bill provides for an Article 5bis to be added to the general statutes covering civil servants (Law of 13 July 1983), to allow access for Community citizens to certain bodies, job groups or jobs in the French public service.

This will be implemented by amending the specific statutes governing public service bodies, so that they specifically allow foreigners to apply for such jobs through the competition process and set out any restrictions concerning certain jobs within the bodies concerned.

The protection of the rights of workers from a Member State accompanying a service supplier is the subject of a detailed study being carried out by the departments concerned (Population and Migration Directorate, Employment Relations Directorate/Interministerial Liaison Mission against clandestine employment, undeclared employment and labour trafficking) in order to identify the legislation or regulations to be used to create a set of minimum rules applicable to all the employees of a service supplier.

Referring more specifically to the public service sector and in accordance with Community case law, certain bodies, job groups or jobs in the French public service are suited to being opened up to nationals from other Member States of the European Community. The necessary provision is contained in Law No 91-715 of 26 July 1991 on miscellaneous provisions relating to the public service, Article 2 of which incorporates into the general statutes covering civil servants (Law of 13 July 1983) a new Article 5bis to allow Community nationals to take part in competitions for employment in certain jobs in the public service.

The only restriction to this principle relates to jobs associated with the exercising of sovereignty or involving participation in the exercising of the prerogatives of public power. As a result, the opening-up process does not apply to certain specific activities within the French public service. The jobs concerned are those which come under the central and primary functions of the administration, including the armed forces, police and other law and order forces, the judiciary, the tax authorities, the diplomatic service and, more generally, jobs within the Ministries and central bank and senior positions in local and regional government.

On the other side of the coin, the government feels that priority should be given to certain

public service sectors including, in first place, the bodies responsible for managing commercial services (public transport, electricity and gas distribution, postal service and telecommunications). Other areas covered are public health services, teaching in state education and, finally, non-military research in state institutes.

Article 2 of Law No 91-915 of 26 July 1991 permitting access for European Community nationals to certain public service jobs called for the adoption of regulatory implementing measures.

The ministerial departments for the priority sectors have therefore prepared texts listing the bodies covered by the opening-up process. A number of decrees have already been published, and another four are at the drafting stage.

Among the seven decrees already published, two relate to teachers employed by the Ministry of Education (Nos 92-1246 of 30 November 1992 and 93-60 of 13 January 1993) and two concern public service jobs in hospitals (Nos 93-101 of 19 January 1993 and 93-659 of 26 March 1993). The others relate to the postal service and France Telecom (No 92-1309 of 16 December 1992), the Ministry of Research (No 93-769 of 26 March 1993) and the Ministry for Youth and Sport (No 93-853 of 11 June 1993).

Certain job groups in the local and regional public service are due to be opened up in the near future (cultural, sports and medical-social services), together with teaching posts under the Ministries of Agriculture and Culture and nursing and social assistance posts in the public service.

France will then have opened up 70% of its public service (more than 80% of the public service at national level) to EC nationals and will have brought its legislation into line with Community case law on the free movement of civil servants in Europe.

Question 3

Article 10 of Regulation 1612/68, the provisions of which are incorporated into Article 1 (k) of Decree No 81-405 of 28 April 1981, gives the members of a worker's family the right to settle with that worker.

The family members installed with a worker from an EC Member State thus enjoy equal treatment with French nationals, with specific reference to the arrangements for social assistance, housing assistance and loans, vocational training, grants, social protection, etc.

*Recognition of diplomas*

A clear distinction must be made between the recognition of diplomas for academic and occupational purposes.

In France, the State is not concerned with the academic recognition of diplomas, which is entirely the responsibility of higher education establishments.

However, the Ministry of National Education, through its National Academic Recognition Information Centre, encourages the mobility of students, teachers and research workers within the Community by providing them with information on studies and university courses abroad.

The recognition of diplomas for occupational purposes is covered by the Directive of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, which is currently being transposed by the departments responsible for supervising the regulated professions in question.

Furthermore, common training courses are set up by training bodies acting in partnership with up to three or four institutions in other Member States, either under Community

programmes or on their own initiative.

The qualifications awarded on completion of these courses are awarded on a joint basis or on the principle of mutual recognition. They may then be recognised by employers' organizations (cf. Chamber of Commerce and Industry).

*Frontier workers*

The living and working conditions of frontier workers are improved by regulations providing for unemployment benefit, pursuant to Community Regulation 1408/71 (Articles 68 and 71 I a ii). A frontier worker without employment receives compensation from the country of residence according to that country's legislation, as if he or she had been subject to this legislation when employed in his or her last job.

Where benefits are calculated on the basis of previous earnings, it is the wage received by the beneficiary for his or her last job which is taken into account (Fellinger judgment of 28 February 1980).

Consequently, a frontier worker living in France receives benefit from the ASSEDIC in accordance with French legislation and on the basis of the wage received for his or her last job.

Other measures now being introduced include the creation of European Citizens' Advice Bureaus to provide frontier workers on both sides of borders with information on working and living conditions in the country in which they work. An ECAB is already operating on an experimental basis to serve the border between Nord-Pas de Calais and Hainaut, making use of the Wallonian employment service and the French national employment agency (ANPE).

ECABs are currently at the planning in the first instance for the Rhône Alpes-ern Italy region.

Finally, there are also computerized systems for the exchange of information on job vacancies between the employment services of :

- Wallonia and Nord-Pas de Calais
- Baden-Württemberg and Lorraine
- Saar/Rhineland-Palatinate and Alsace.

Such systems also exist between Italy (Piedmont) and Rhône Alpes, but still on a manual basis.

## EMPLOYMENT AND REMUNERATION

Question 4

Apart from conditions relating to competence which apply to certain professions, there are no general provisions preventing access to employment for certain persons.

Question 5

*Fair remuneration*

The free determination of wages is a fundamental principle of French labour law. The employer is free to fix the form and amount of an employee's remuneration, and the latter may then accept or reject the terms. However, this freedom is applied within a legal framework comprising limits established by legal and agreement-based guarantees.

The "minimum growth wage" (SMIC) guarantees the purchasing power of lower-paid employees. Instituted by the Law of 2 January 1970, it is an hourly wage linked to changes in the national consumer price index, thus guaranteeing its purchasing power. Furthermore, in order to ensure that the employees concerned benefit from the economic progress of the nation, the minimum growth wage is also increased in line with general economic development. The annual rise in its purchasing power cannot therefore be

less than half the rise in purchasing power of the average hourly wage rate. At 1 July 1993 the minimum growth wage stood at FF 34.83 per hour, giving a monthly remuneration (for 169 hours) of FF 5 886.27 gross and a minimum of FF 4 720.42 net, calculated over 52 weeks (applicable to metropolitan France).

All collective agreements applicable to specific sectors guarantee a minimum remuneration. To ensure that this is realistic, in other words higher than the statutory guarantee provided by the minimum growth wage, the government has encouraged employers and employees to negotiate. In 1990 the Commission nationale de la négociation collective laid down the objectives to be achieved through sectoral negotiation within two years:

- no agreement-based minimum wage to be lower than the minimum growth wage;
- classification scales taking account of technological change and new forms of work;
- career development prospects for all employees.

The most recent review (1 June 1993) shows that these objectives have largely been achieved. Out of a constant sample of 149 branches (41 in the metal-working industry, 108 elsewhere), the wage situation is consistent with the objectives in 78% of cases, compared with 31% in February 1990. 34 sector agreements on category adjustments and career development have been concluded since 1990. Negotiators have carried out a genuine revamping of their pay scales, as opposed to purely cosmetic changes, and pay scales based on classification or mixed criteria are gradually taking over from Parodi-type systems.

*Wages of atypical workers*

Workers on fixed-term contracts and temporary workers must enjoy the same rights as the company's other employees. Their remuneration must be at least equal to that which other employees of the company with equivalent qualifications and employed in the same job would receive after a trial period. They are also entitled to benefits to compensate for the non-permanency of their employment. The end-of-contract gratuity payable to employees with fixed-term contracts was increased to 6% of gross remuneration by the Law of 12 July 1990 on encouraging the stability of employment by amending the system of non-open-ended contracts. Similarly, temporary employees are entitled to an end-of-job gratuity of 10%.

Part-time workers, i.e. employees working reduced hours amounting to at least one fifth of the statutory or agreement-based working time, must receive a remuneration equivalent to that of their full-time counterparts calculated on a pro rata basis in accordance with their working time.

*Withholding, seizure or transfer of wages*

To ensure that workers retain the necessary means of subsistence for themselves and their families, French law places a limit on the withholding, seizure or transfer of wages. The amount remaining is sufficient to provide a minimum subsistence income for the employee and his or her family.

The Law of 9 July 1991 reaffirms this principle and establishes certain procedures for its application.

Question 6

Any person seeking paid employment can benefit from public placement services free of charge by registering with the national employment agency.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Question 7

*Duration and organisation of working time*

The statutory weekly working time is 39 hours, and 130 overtime hours per year may be worked by each employee at his or her discretion.

Since 1982, the duration and organisation of working time have been covered by a series of reforms forming part of a general movement towards flexibility and diversity of contract conditions in preference to a standardised statutory norm.

The Order of 16 January 1982 offers the following possibilities:

- exemption by an agreement covering the sector as a whole or the company concerned from the working time organisation procedures laid down by the Decrees of 1937;

- organisation of weekend shifts as an exemption, by agreement applicable to the sector or company, from the principle of Sunday rest.

The Law of 13 November 1982 made it compulsory for companies to hold negotiations at least once a year on the effective duration and organisation of working time.

The Law of 28 February 1986 introduced provisions on the organisation of working time (flexibility of working time, rest days), making them dependent upon sectoral negotiations. The Order of 1 August 1986 lays down similar provisions for intermittent work.

The Law of 19 June 1987 redefines and harmonises certain procedures for organising working time, including compensatory leave, ility and cycles. It permits continuous work on economic grounds and exemptions from the ban on night work for women in industry. Regarding implementation of these provisions, it gives priority to collective bargaining, whilst on the flexibility of working time and intermittent work it offers a choice between sectoral and company negotiations.

This Law has been supplemented on a number of points by the Law of 3 January 1991, which includes two parallel objectives:

- reorganisation of working time by extending the duration of equipment use and encouraging job sharing;

- more control by employees over their working time, making it easier for them to reconcile the demands of their work with those of their family and social life.

Following the judgment of the Court of Justice of the European Communities of 25 July 1991 to the effect that the ban on night work by women in the Labour Code contravened Directive 76/207, France renounced ILO Convention No 89. As night work has many very different forms depending on the sector, employers' associations and trade unions were called upon to negotiate. These negotiations now having been completed, the government is proposing to table a draft law guaranteeing all night workers certain compensations, i.e. a reduction in working time, additional remuneration, and measures to protect their health and ensure access to vocational training.

The Decree of 18 December 1992 on the monitoring of working time requires employers to keep daily and weekly records of the time worked by any employee not working the standard hours applicable to the workforce in general. These records must be available to labour inspectors, and the employees concerned and workforce representatives may also have access to them. The procedures applicable to employees working the standard hours (which must be displayed and communicated to the labour inspector) remain unchanged.

*Fixed-term contracts*

Without detracting from the benefits of short-term contracts, which reflect the real need of companies to adapt employment to short-term economic fluctuations, the Law of 12 July 1990 amended the rules applicable to fixed-term employment contracts and temporary work in order to improve the monitoring and control of these forms of employment. As a result, they are permitted only for precise tasks and in specific cases set out in the Law. Such contracts may not have the objective or effect of employing the workforce needed for a company's normal, ongoing activities.

Furthermore, non-permanent workers may not be employed by establishments which have recently made workers redundant on economic grounds, and the previous ban on the temporary employment of workers in particularly dangerous jobs is extended to cover fixed-term contracts as well.

Stricter controls on the use of non-permanent labour also derive from the provisions on the duration and renewal of contracts. The maximum duration, including renewal, is reduced to 18 months (from 24), with a number of specified exceptions. Furthermore, neither form of non-permanent contract may now be extended more than once.

To help prevent occupational accidents to atypical workers, the Law includes important provisions on safety, particularly increased safety training for employees assigned to workplaces presenting specific hazards, according to a list drawn up by the company.

The Law introduces new penalties for infringements of the regulations on fixed-term contracts and increases existing ones relating to temporary work and the illegal subcontracting and hiring out of labour.

In 1991 several agreements were concluded improving the rights of non-permanent employees in respect of vocational training (supplement of 8 November to the agreement of 3 July on the right of workers with fixed-term contracts to individual training leave; agreement of 15 October on the training of employees of temporary employment agencies).

*Part-time work*

The Orders of 26 March 1982 and 11 August 1986 guarantee part-time employees a status comparable to that of full-time workers.

The Law of 3 January 1991 introduced an important innovation, namely that workers now have a right to work part-time, whereas previously it was up to the employer to offer this possibility. The procedures for the application of this right are negotiated by the employers and employees.

The Law of 31 December 1992 makes the maintaining at the previous level of the scope for overtime by part-time employees subject to the signing of an extended sectoral agreement. The objective of this encouragement to negotiate is to promote agreements offering genuine guarantees to the employees concerned. Such guarantees must cover the possibility of access to part-time and return to full-time working, equal treatment for part-time and full-time employees, and organisation of part-time working.

*Procedures for collective redundancies*

Before effecting collective redundancies on economic grounds, the employer must consult the workforce representatives and respect certain time-limits. The workforce representatives may call in experts. These formalities differ depending on whether the number of employees involved over a 30-day period is less than ten, or ten or more.

Under the Law of 30 December 1986, the authorities no longer have to give permission to the employer for redundancies on ecc grounds, but must merely be informed plans.

Employers must take measures to limit the number of redundancies or to assist the redeployment of employees whose redundancy cannot be avoided. Such measures include redeployment agreements allowing the employees concerned to receive a guaranteed level of income, together with training, over a period of six months. Furthermore, collective redundancies affecting ten or more employees are null and void if a redeployment plan providing for measures other than the aforementioned agreements has not been presented to the workforce representatives.

Employees made redundant are entitled to a redundancy payment.

In accordance with the provisions of Law No 92-722 of 29 July 1992 on the occupational integration minimum income (RMI), the rules on collective redundancies will be applicable in the event of substantial changes to a contract of employment on economic grounds and to voluntary redundancies. This extension of the scope of the regulation complies with the European Community Directive adopted by the Council on 30 April 1992.

*Bankruptcies*

Under the terms of the Law of 25 January 1985, a company is subject to compulsory financial restructuring or liquidation proceedings when it can no longer meet its payments, i.e. when its liabilities cannot be covered by its available assets.

The current arrangements for the compulsory financial restructuring of companies are designed to safeguard the industrial potential and the jobs which go with it.

The works committee must be informed and consulted before the suspension of payments is announced or, if compulsory financial restructuring proceedings are started against the company, before any decision on the continuation of activities is made, and when a cial restructuring plan is being drafted.

Representatives of the works committee must be heard by the court.

The works committee may inform the court or public prosecutor of any facts indicating the suspension of payments by the company. The court adopts a financial restructuring plan or pronounces the liquidation of the company.

All employers must insure themselves against the risk of non-payment of sums due to their employees, including those seconded or employed abroad. The relevant scheme is operated by the Association pour la Gestion du Régime d'Assurance des Créances des Salariés (Association for the management of the insurance scheme covering debts to employees) and is financed by contributions from employers.

Question 8

Since the Order of 16 January 1982, employees have been entitled to 2 1/2 working days of annual paid leave per month effectively worked for the same employer between 1 June of the previous year and 31 May of the current year, giving five weeks of annual leave.

Employees have a legal right to a weekly rest period of at least 24 consecutive hours. Except where a derogation is granted, this must be on Sunday. Decrees adopted in 1937 extended this right by making provision in many sectors for two consecutive rest days per week.

The Decree of 6 August 1992 updates the list of derogations from the Sunday rest obligation, increases the penalties for contraventions and gives labour inspectors the right to take summary action to stop unlawful Sunday working by employees in retail and consumer service businesses, with imposition of penalty payments in the event of non-compliance.

Question 9

The Law required only contracts valid for a limited time (e.g. fixed-term contracts,

apprenticeships contracts, temporary contracts, etc.) and part-time contracts to be drawn up in writing. However, the conclusion of agreements made the use of written contracts more general.

The Directive on proof of an employment relationship adopted on 14 October 1991 is currently being transposed into national law.

## SOCIAL PROTECTION

Question 10

a) Generally speaking, social protection on a personal and compulsory basis is granted to employed and self-employed persons exercising a paid occupational activity. The members of the insured person's family may also be entitled to certain benefits (health insurance, survivors' pensions, etc.)

There are four main groups of statutory systems (general system for employees, special systems for employees, systems for non-agricultural self-employed workers, agricultural holders' scheme), each of which applies to a given socio-professional category or set of categories and provides protection against the various risks covered by French social security (illness, maternity, death, invalidity, accidents at work, old age, widowhood, dependants). Unemployment insurance is not included in the French social security system.

The general system is by far the largest, covering some 82% of insured working persons against illness and maternity (benefits in kind, i.e. reimbursement of the costs of medical treatment, hospitalisation, medicines, etc.).

French social security is therefore organised on the basis of a group of statutory systems which are managed under the supervision of the competent authorities.

b) French social security, the objective of which is to guarantee a sufficient level of benefits to the individuals concerned (mainly workers), is financed primarily by contributions (90% in the case of the general system, with 27% and 73% funded by employees and employers respectively). These contributions are levied on occupational income (from paid employment or self-employment) and substitute incomes (retirement pensions, unemployment benefit, early retirement pensions).

However, certain special schemes covering only a small number of persons are financed mainly by state contributions and transferred revenue. The agricultural system is also financed mainly by state subsidies, appropriated taxes and transfers.

c) French social security was originally linked to the exercising of an occupational activity, but the entire population now has access to social protection, at least as far as family benefits, sickness and maternity benefits in kind, and old age are concerned.

It should be noted in this connection that:

- the right to family benefits is not dependent on occupational activity;

- employed workers who do not meet the conditions of entitlement to sickness and maternity benefits under the general scheme (over a month, 60 times the hourly minimum growth income applicable on the first day of the reference month or 60 hours in the month; or, over three months, 120 times the hourly minimum growth income applicable on the first day of the three-month reference period or 120 hours of paid activity or the equivalent over three calendar months or three months from day to day; or, over one year, 2 030 times the hourly minimum growth income applicable on 1 January of the reference year or 1 200 hours of paid activity or the equi ...

during the same calendar year) are covered - subject to explicit refusal on their part - by the "personal insurance" scheme, which provides them with benefits in kind equivalent to those under the general scheme.

It should also be noted that Article 14 of Law No 92-722 of 29 July 1992 states that medical aid recipients and their dependants who are not entitled to benefits in kind under a statutory health/maternity insurance scheme are required to be covered by the personal insurance scheme provided that they fulfil the conditions set out in this chapter.

- non-active persons not covered against illness and maternity as members of a worker's family may receive cover under the "personal insurance" scheme if they so wish;

- finally, persons who have previously been covered by compulsory social insurance may continue to be covered against the risks of invalidity, old age and widowhood by subscribing to voluntary insurance. The same applies to parents with dependent children in respect of pension insurance.

d) French legislation includes provisions to allow persons excluded from the labour market and with no means of subsistence to receive sufficient benefits and resources:

- regarding access to health care, the personal insurance contributions of the persons mentioned under c) may, where such persons do not have sufficient resources, be covered by social assistance or the family benefits scheme as appropriate;

- there are also a number of provisions to guarantee a minimum level of resources for the most deprived, namely the "occupational integration minimum income" (RMI) introduced by Law No 88-1088 of 1 December 1988 for all persons unable to work, the "old-age minimum" pursuant to Volume VIII of the Social Security Code, the disabled adult's allowance pursuant to Articles L.821-1 et seq. of the Social Security Code and the single parent's allowance granted according to the conditions laid down in Articles L.524-1 et seq. of the same Code (FF 3 021 per month plus FF 1 007 per dependent child as from 1 July 1992).

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Question 11

The freedom to join or not join a union is established in the preamble to the Constitution.

Organisations wishing to operate under the Law of 21 March 1884 on trade unions must comply with a number of formalities. The founders of a trade union must provide the local authorities of the place where the union is established with its articles of association and the names of the persons responsible for administration or management. These few simple formalities are part of the "prior declaration" arrangements, which apply to the freedom of association. Their objective is to provide information and openness and they exclude any institutionalised control by the authorities. French legislation does not therefore contain any obstacles to the formation of professional or trade union organisations by European Community employers and workers.

Failure to respect this freedom is subject to penalties.

Question 12

Agreements may be negotiated at interprofessional, sectoral or company level.

Whatever the level of negotiation, only the representative trade union organisations may negotiate with the employers' organisations or groups or with one or more individual employers. Representative trade union organisations are:

- the organisations affiliated to one of the five confederations recognised as being representative at national and interprofessional level: Confédération française démocratique du travail (CFDT), Confédération française des travailleurs chrétiens (CFTC), Confédération générale des cadres (CGC-FE), Confédération générale des travailleurs (CGT), Confédération Force-Ouvrière (CGT-FO),

- organisations which have demonstrated that they are representative at the level at which negotiations are taking place (this is assessed on the basis of their membership and independence).

For an agreement to apply, it is sufficient for it to have been signed by an employer or employers' organisation and by a union which is representative of the employees. Unanimous agreement of all negotiating parties is not essential.

However, agreements do not apply to all companies. To counter this drawback, the Ministry of Labour may adopt an Extension Order to make a sectoral agreement applicable to all companies whose main economic activity is in the same sector and which are in the geographic area specified in the agreement. Extension of a sectoral agreement thus means that it applies to all companies in the sector, even where the employer is not a member of one of the employers' organisations which have signed it.

Negotiations may be entered into at any time at the initiative of the negotiators on the subject of their choice. However, negotiations on certain subjects are compulsory, at intervals laid down by the Law of 13 November 1982, as follows:

- at company level: wages and the duration and organisation of working time must be negotiated every year in all companies with at least one union delegate; the procedures for applying workers' right of direct expression must be negotiated in certain companies.

- at sectoral level: all employers' and employees' organisations which are party to a sectoral agreement must negotiate wages at least once a year and categories at least once every five years. Furthermore, the Law of 31 December 1991 requires employers and employees to hold fresh negotiations on vocational training at least once every five years.

Questions 13 and 14

*The right to strike*

The right to strike is guaranteed by the Constitution, the preamble to which states that it shall be exercised within the scope of the laws governing it. However, this framework of laws has been invoked only to a very limited extent.

In the public sector, the overriding need to maintain public services has justified limitations and even bans on exercising the right to strike, and the institution of a special procedure.

Legislation has withdrawn the right to strike from judges (Order of 22 December 1958), military personnel (Law of 13 July 1972), police officers (Law of 9 July 1966), personnel of the external departments of the prison services (Order of 6 August 1958), officers of the state security services (Law of 27 December 1947), and communications staff of the Ministry of the Interior (Law of 31 July 1968).

Similar restrictions ensure a minimum s

in the event of a strike by radio and television employees (Laws of 7 August 1974 and 26 July 1979) and in the air traffic control service (Law of 31 December 1984 and Decree of 8 July 1987). A special procedure must be followed, consisting of 5 days' notice to be given by one or more representative trade-union organisations, with an obligation to negotiate during this period (Law of 31 July 1963).

In the private sector there is only a single legal provision, which is that a strike does not terminate a contract of employment except in the event of serious misconduct by an employee; any dismissal in contravention of this principle is null and void. In view of this almost complete absence of legislation, the courts have developed a system of praetorian law applying to strikes.

*Procedures for settling disputes*

The Law of 13 November 1982 sets out the procedures for settling collective labour disputes.

In the event of a dispute, the parties may either take the matter to a conciliation committee which attempts to bring together the different points of view, call in a mediator whose job is to propose a solution which the parties are free to accept or reject, or ask an arbitrator to work out a solution which is then binding on both parties.

## VOCATIONAL TRAINING

Question 15

French legislation, i.e. the Laws of 16 July 1971 and 31 December 1991, states that all members of the workforce have a right to training. However, access to training varies according to the status of individuals (whether they are employed or seeking employment, whether they are in the private sector or public sector, etc.).

Persons seeking employment

Training is accessible to all persons seeking employment (regardless of nationality) and consists of traineeships approved, for the purposes of remuneration of trainees, by the State or Regional Councils and, where appropriate, financed by them. The persons concerned have the status of "trainees undergoing vocational training" and are covered by the social security system.

Special measures exist for certain groups:

- young people aged between 16 and 25 without vocational qualifications are offered individual sandwich traineeships or employment contracts. They receive a remuneration commensurate with their age from the State or employer;

- the long-term unemployed (more than one year) can also benefit from traineeships or employment contracts including sandwich training (return-to-employment contracts).

Former employees who are receiving the basic unemployment insurance allowance have a special status. They can undergo training aimed at facilitating their reintegration. These measures are financed by the Regional Councils. The persons concerned receive an allowance calculated on the basis of their previous wage.

Persons exercising an economic activity

*Private-sector employees*

These persons may receive training as part of their company's training plan or by taking training leave.

A training plan is drawn up and financed by the company concerned. It enables employees to receive training which is usually linked to their vocation or function. Trainees' wages are

paid by the employer.

The Law of 31 December 1991 extended the legal obligation on employers to finance such a plan to all companies (previously it had applied only to those with more than 12 employees).

The various forms of training leave allow employees to absent themselves from work to undergo training of their choice or take an exam. Their remuneration is generally suspended by their employer, but they remain covered by the social security system and retain their entitlement to paid holiday, rights connected with length of service, etc.

Individual training leave allows all employees with a personal training project to undergo training during working time (full-time or part-time). Training may be financed by a joint organisation approved under the individual training leave system, which also covers part of the trainee's remuneration.

The other main types of training leave are:

- young-worker's training leave, for persons under 26 years of age who wish to acquire a first vocational qualification;
- youth leader training leave, for persons under 25 years of age for the purpose of training in sporting, cultural or social activity leadership;
- economic, social and trade-union training leave for the purposes of training in a trade union or workers' training centre.

*State and local government employees*

Civil servants, whether established or employed on a contract, can attend training organised or approved by their authority. They continue to receive their salary during training. They may also apply for training leave, although the conditions which apply are less favourable than for private-sector employees.

*Independent persons*

The Law of 31 December 1991 also gave the self-employed and members of the liberal and non-wage-earning professions the right to continuing vocational training. Such training is financed by a contribution payable by these categories of persons (0.15% of the social security ceiling) to mutual funds administered by approved bodies.

Provisions facilitating access to training

*Individualised training entitlement*

Individualised training entitlement, originally introduced on an experimental basis for unemployed persons under the age of 26, was extended by the Law of 4 July 1990 to cover all persons seeking or in employment without a level V vocational qualification of use on the labour market. The system provides for the personalised supervision of training by correspondence and applies mainly to trainees paid by the State, persons made redundant for economic reasons and receiving reintegration training, young people on sandwich training contracts, and employees on individual training leave. Training is planned on the basis of a personal and vocational skills assessment and must be aimed at acquiring a recognised vocational qualification corresponding to the needs of the economy.

*Skills assessment*

The Law of 31 December 1991 allows all employees to acquire a skills assessment by giving them the right to skills assessment leave. In other words, every employee now has the possiblity of obtaining an analysis of his skills, aptitudes and motivations in order to plan his vocational future.

An assessment may be produced only with the worker's consent, and the result may not be sent to any other party without such consent. The persons producing assessments are bound by professional confidentiality. A skills

assessment is the right of every worker with five years' service as an employee, including 12 or 24 months in the company, depending on whether he is employed under a fixed-term contract or not. The Law lays down the rules for access to skills assessment for employees in the context of a company's training plan.

*Guidance contract*

A guidance contract allows young people without qualifications to prepare a career plan before starting a job or training course. A local guidance contract allows young people aged 16-17 to discover which trades and professions are found in local authorities, associations and state establishments.

Are these systems the responsibility of the public authorities, of undertakings or of employers' associations and trade unions?

Continuing vocational training involves the State, as well as companies, local and regional authorities, state establishements, public and private educational institutions, and professional, trade-union and family organisations.

Continuing vocational training places considerable emphasis on collective negotiation.

The arrangements for continuing vocational training are the result of initiatives by the employers' associations and trade unions (collective agreements) and the State authorities (laws and decrees).

*Apprenticeship training*

Apprenticeship training is another way to acquire a qualification, nowadays up to the level of engineer.

In accordance with the Law of 17 July 1992, apprenticeship training may take place in a private company or in the public sector. Apprentices' pay has been improved, and the company certification procedures simplified.

Another bill being prepared in 1993 will supplement these provisions with a view to doubling the number of apprentices in 1995.

Continuing training and apprenticeships are provided to achieve the objective of developing the career profiles of graduate engineers trained each year. The bill on apprenticeship reform is now being discussed and should be adopted before the autumn, followed by negotiations on a five-year plan.

Financing

Continuing vocational training is financed mainly by companies, the State and the regions.

Since 1971 companies have had a legal obligation to contribute towards the financing of training. This contribution is additional to apprenticeship tax, which is intended mainly to finance apprenticeship contracts. Since decentralisation, financing by the authorities is broken down into State and regional funding. Although companies, the State and the regions finance continuing vocational training each in their own domain, joint financing is encouraged. The State and regions may decide to provide joint financing of State-regional plan contracts under the five- year objectives.

Aid is given to companies and sectors with three essential objectives in mind, namely to create optimum conditions for the negotiated modernisation of the economy, integration of technological change and adaptation to increased competition on the markets, to involve employees in the implementation of negotiated modernisation, and to help unqualified employees obtain a first qualification.

Forecasting contracts and training development commitments are priority tools. The principles of State activity reflect four lines of concern: to ensure that a contract takes the form of an

agreement on the company's training policy over several years, to ensure that the funding provided for in the agreement represents a substantial increase over the previous level of expenditure and normal practice within the sector, to improve the quality of the company's training plan, and to make use of several levels of intervention, i.e. sectoral or interprofessional group agreements and individual agreements with specific companies, with all such contracts capable of being managed at national or regional level.

Companies can finance training for their employees, join a training insurance fund, or contribute to the financing of training for job-seekers.

Continuing vocational training is provide by the authorities, companies and professional or joint bodies (state and private training bodies are also among the main players).

The Regional Councils are free to draw up their own training policies as long as they comply with the relevant laws and regulations. Other local and regional authorities (departments and municipalities) may be actively involved in continuing vocational training.

Companies and professional organisations play a major part in providing continuing vocational training.

Professional and trade-union organisations are involved not only in preparing continuing vocational training measures, but also in implementing them by consulting and creating specialised joint institutions.

Training plan

A company's training policy is translated into an annual training plan which is submitted to the workforce representatives (works committee) for an opinion.

This annual consultation on the training plan takes place at two special meetings.

The works committee is asked for its opinion on the recruitment, integration and training of young people in the company, and is informed about practical traineeships offered to young people receiving basic technological or vocational training and the assistance offered to teachers who provide such training and to guidance counsellors. It is also consulted about training given in the company to pupils and students during compulsory practical training periods which form part of technological or vocational training courses.

The trade-union delegates also receive information on these questions.

The multiannual training programme takes account of the objectives and priorities of vocational training as set out, where applicable, in the sectoral or occupational agreement.

Special institutions for the development of training

Special institutions responsible for improving vocational training help companies to set up their programme. Training insurance funds, joint bodies approved under the individual training leave system and approved mutual funds are set up by the employers' associations and trade unions and approved by the State. The principal task of these joint institutions is to help finance training operations and provide assistance for companies and employees. Training bodies set up by employers' associations also exist. Membership of all the above is sometimes optional, but may be compulsory under legal provisions or agreements.

## EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

1. *Employment*

Law No 83-635 of 13 July 1983 transposed

Directive 76/207/EEC of 9 February 1976 into national law.

It enables action promoting equal treatment for men and women to be stepped up in various ways.

The Law set up a High Council for equal opportunities at work which is made up of representatives of the administrations most concerned with equal opportunities, including the Directorate for Employment Relations, representatives of trade union organisations, representatives of employers' associations and individual experts.

This Council was set up on 17 July 1984. It was chaired by the Minister for Women's Rights, then by the Minister for Social Affairs and Employment and is now chaired by the Secretary of State for Women's Rights and Consumer Affairs. It has an advisory role on documents relating to equal opportunities or conditions of employment for women and every two years receives a report on equal opportunities at work, which lists action taken in this field by ANPE (National Employment Agency), AFPA (Association for Adult Vocational Training), ANACT (National Agency for the Improvement of Working Conditions), the Labour Inspectorate and the National Commission for Collective Bargaining.

The Law created several instruments for achieving its aims (respect for equal rights and equal opportunities for men and women):

- an instrument for diagnosing the situation in companies: a report on the comparative position of men and women (obligatory in companies with more than 50 employees);
- an instrument for negotiation: an agreement on equal opportunities at work (at company or branch level);
- financial aid: contracts covering equal opportunities at work later complemented by contracts to make jobs open to both sexes, aimed particularly at small and medium-sized companies and industries.

The latter encourage diversification of the jobs occupied by women and facilitate their access to qualifications in areas where they are under-represented.

State aid for companies has two aims, namely to promote diversification of women's employment and to encourage them to obtain qualifications or jobs where they are in a minority (80% men).

Since February 1992 the scope of the measure has been extended in that it is now applicable to companies with up to 600 employees, the previous ceiling having been 200.

New provisions were issued in 1989 to eliminate discrimination.

Law No 89-549 of 2 August 1989 made negotiation on measures to remedy any irregularities statutory. Negotiation mainly covers:

- conditions of access to employment, training and promotion
- working and employment conditions.

The negotiations take place between the trade unions and employers' organisations which have concluded a sectoral or professional collective agreement (Article L 123-3-1 of the Labour Code).

In addition to these provisions laid down by law, aid to works councils from the Ministry of Labour, Employment and Vocational Training will henceforth take in the aspect of equal opportunities at work. One of the areas in which the works council will be active is the design of measures to encourage the opening up of jobs to both sexes and equal opportunities at work for men and women.

*Sexual harassement*

1. With regard to sexual harassment, provisions for two Orders have been under discussion since mid-1991.

First of all, in criminal law, the text adopted imposes penalties for "harassing others", taking account of:

1. the means used ("orders, threats or constraints")
2. the intended objective ("for the purpose of obtaining favours of a sexual nature")
3. the position of the perpetrator ("abusing the authority invested in the person's functions").

This provision will enter into force, together with the complete reform of the Penal Code, on 1 March 1994.

Secondly, with regard to employment law, at the initiative of the Office of the Secretary of State for Women's Rights, the government tabled a bill on the abuse of authority at work for sexual purposes, resulting in adoption of Law No 92-1179 of 2 November 1992.

Law No 92-1179 of 2 November 1992 on the abuse of authority at work for sexual purposes amends the Labour Code and the Code of Criminal Procedure.

Its intention is to prevent any penalty, dismissal or discrimination by a hierarchical superior or employer who, in abuse of the authority invested in his (or her) functions, has given orders, made threats, imposed constraints or exerted any kind of pressure on an employee with a view to obtaining favours of sexual nature. Similarly, any employee who has witnessed or reported sexual harassment may not be penalised or dismissed.

The head of a firm must therefore take preventive measures, and the firm's regulations must contain provisions banning the abuse of authority for sexual purposes. The committee on hygiene, safety and working conditions has powers in respect of information and prevention.

Any person committing sexual harassment is liable to legal and disciplinary action.

Finally, trade-union organisations and associations properly constituted for at least five years may take legal action, subject to the agreement in writing of the victim. At the request of one of the parties, the proceedings may take place in camera.

The law is applicable to all occupations including company, government and domestic employees, childminders and caretakers.

An implementing circular from the Ministry of Labour, Employment and Vocational Training dated 11 February 1993 explains the Law.

France is also taking action to increase the awareness of labour inspectors, employers' associations and trade unions. Various resources are available, including a brochure on the abuse of authority at work for sexual purposes.

2. Creation of a Fund to encourage training for women (FIFF).

Since June 1992, at the initiative of the Office of the Secretary of State for Women's Rights and of the Ministry of Labour, Employment and Vocational Training, a fund to encourage training for women may be established in each region or department, based on an agreement between the State and local partners.

The purpose of the fund is to provide individual financial assistance for women in difficulties who wish to follow a vocational training course financed by the State or by a regional or local authority which is a fund partner.

Such aid is primarily intended to cover childcare and home-help costs for dependent

persons (the elderly or disabled), and in some cases travel or accommodation costs as well.

It may be granted throughout the recipient's period of training and for one month afterwards to facilitate job-seeking.

Priority recipients are:

- single women with limited resources, no job (but seeking one), with at least one dependent child or elderly or disabled adult, including those who have already brought up their child,
- women receiving the single-parent allowance,
- long-term unemployed women,
- women receiving the occupational integration minimum income,
- women with long-term unemployed husbands.

The Fund receives FF 6 million each year from the State (FF 4 million from the Ministry of Labour, Employment and Vocational Training, and FF 2 million from the Ministry of Social Affairs, Health and Urban Affairs - Women's Rights Department).

Law No 92-1179 of 2 November 1992 on the abuse of authority at work for sexual purposes is one measure designed to secure equal opportunities at work for women and men by protecting employees against sexual harassment in the form of sex discrimination. Employees who witness such discrimination receive the same protection. The Law prohibits all discrimination in recruitment, performance or termination of employment contracts. Employees acting in a manner which constitutes sexual harassment are subject to disciplinary action. It is the responsibility of the head of the firm to take all the necessary steps to prevent such discrimination. The firm's regulations must remind its employees of these principles.

Law No 93-121 of 27 January 1993 on miscellaneous social measures includes various provisions to make it easier to reconcile family life and work. In the event of a refusal to recruit, enforced change of job or termination of the employment contract during the trial period of a pregnant women, the employer must, in the event of a dispute, provide the judge with full information to justify his decision. Any doubt must be to the benefit of the employee. Where the employee requests a temporary change of job, maintenance of pay is no longer subject to any seniority condition. Authorisation for absence (paid and counted as work) must be granted to female employees to allow them to attend compulsory prenatal and postnatal medical examinations. The latter two measures transpose into French Law Articles 9 and 11 of European Directive 92/85 adopted on 19 October 1992. Furthermore, a couple adopting a child may opt to share adoption leave between them, provided that such leave is not divided into more than two parts, the shortest of which is less than four weeks. Maternity and adoption leave are now equated to periods of presence at work for the purposes of profit-share allocation. Employees are also entitled to vocational training on completion of a period of parental leave or part-time activity to bring up a child. This entitlement may be taken up before such periods are completed. However, in that case, the training brings to an end the leave or part-time activity. The persons concerned are also entitled to receive an assessment of their skills.

2. *Social security*

A. In general, equal treatment for men and women has been largely achieved, and discrimination against women eliminated in social security

For wage earners, a general provision in Law No 89-474 of 10 July 1989 placed a ban on all discrimination in social security and continuing training for hospital

personnel: Article 6 of this law created Article L 731-2-1 (subsequently L 731-4) of the Social Security Code, which is intended to outlaw any discrimination between men and women in pension and welfare agreements, collective agreements and in the statutes, regulations and rates annexes of supplementary pension and welfare institutions.

This Article states - with some exceptions - that clauses which do not comply with the principle of equal treatment for men and women and which are not removed or duly amended before 1 January 1993 will be null and void as from this date.

Instructions for implementing this provision were issued to supplementary retirement and welfare institutions in a ministerial letter of 16 August 1989.

These provisions are applicable to agricultural workers pursuant to Article 9 of the above-mentioned law, and the supplementary welfare and retirement institutions were informed thereof by a letter, dated 21 December 1989, from the Minister responsible for them.

B. Any discrimination which still exists is mainly in favour of women

This is true of the reduction in some social security schemes (either statutory or supplementary) of the age of entitlement to pension rights for widows, the option of early payment of a pension after bringing up children, and the increase in insurance credits for bringing up a child or children.

In this context it should be noted that full application of the principle of equal treatment would result either in the elimination of discrimination in favour of women - which might be regarded as a step backwards in social terms - or the extension to men of the same provisions - the cost of which would be very high.

3. *Specific cases*

**The rights of spouses of self-employed workers who have no occupational status**

It should be stressed that French legislation largely provides for equal treatment of husbands and wives of self-employed workers, both as regards the option of joining a social security scheme, acknowledgement of work performed and protection in the event of pregnancy and motherhood.

1. Crafts and industrial and commercial occupations are covered by Law No 82-596 of 10 July 1982 which greatly improved the status of the spouses of craftsmen and traders participating in the activities of the company by giving them the freedom to choose between three options:

- paid spouses enjoying the same social security rights as other paid workers (general insurance scheme),

- associates regarded as entirely separate craftsmen or traders (self-employed workers' scheme),

- helpers who, as they do not benefit from a statutory pension scheme, may join the self-employed workers' scheme on a voluntary basis to acquire their own pension rights.

In addition, Decree No 86-100 of 4 March 1986 enabled the latter, under certain conditions, to contribute retrospectively for certain periods of activity previous to their joining the scheme on a voluntary basis.

Law No 89-1008 of 31 December 1989 on the development of commercial and craft enterprises and the improvement of their economic, legal and fiscal environment

granted spouses of owners of one-man companies with limited liability the right to join a self-employed workers' pensions scheme on a voluntary basis if they were not covered by the statutory scheme.

Point 5 of Article L 742.6 of the Social Security Code has amended Decree No 91-987 of 5 September 1991 accordingly (procedures).

2. As regards the liberal professions, Article L 643-9 of the Social Security Code as amended by Law No 87-588 of 30 July 1987 now enables surviving spouses to add their own rights, irrespective of which social security scheme they were acquired under, to their derived entitlements, up to the limits established by Article D 643-5 of the Code.

   In addition, Decree No 89-526 of 24 July 1989 gave spouses helping members of the liberal professions the possibility of acquiring their own old-age pension rights (with the scheme for the profession concerned).

3. As regards lawyers, Article 5.III of Law No 89-474 of 10 July 1989 enacting provisions relating to social security and continuing training of hospital personnel was complemented by Article L 742-6 of the Social Security Code to enable spouses of lawyers helping in the practice to join the pension scheme for non-agricultural self-employed workers on a voluntary basis. A draft decree for implementing this provision is currently being prepared.

4. As regards sickness and maternity insurance for all self-employed workers in non-agricultural occupations, it should be noted that the above Law of 10 July 1982 introduced maternity allowance (intended to compensate partially for loss of earnings) and a replacement benefit (intended to make good the expenses incurred in replacing the self-employed workers at home or at work) both for women who were themselves engaged in industry, commerce, the crafts or a liberal profession and were personally affiliated to the self-employed workers' scheme, and for spouses helping their partners in the above activities.

   Finally, Law No 89-1008 of 31 December 1989 provides for maternity benefits to be extended to the unpaid spouses of the head of a company, if this is a one-man, limited-liability company. The Law amends Article L 615-19 of the Social Security Code accordingly.

**Measures to improve childcare facilities for young children**

The Law of 27 January 1993 on miscellaneous social measures contains provisions on reconciling family life and work. Some of these relate to protection of pregnant women, allowing them to be absent from work for compulsory medical examinations without loss of pay (see also parental leave).

The policies pursued in the past few years have been aimed at reconciling family and occupational commitments. Efforts have been made to increase and improve childcare facilities so that each family can choose how many children it wishes to have and how they are to be educated, particularly at preschool age. Diversity in the childcare facilities on offer to parents is one of the factors enabling them to make these choices.

The work undertaken in this field covers all forms of childcare for children under 6, both permanent and temporary childcare, and care for older children.

The government is keen to develop various types of childcare by improving grants for childminders and introducing childcare contracts.

Specific approaches are being examined in cooperation with the parties involved (local government, family credit institutions and family associations).

In addition, it should be noted that financial assistance is granted to working parents who wish to have their child cared for at home.

A childcare at home allowance, introduced by Law No 86-1307 of 29 December 1986 (in force since 1 April 1987), can be allocated, irrespective of the parents' means, to households (or to a single person of either sex) employing one or more persons at home to look after at least one child under three years old, if both parents (or the single parent) work.

This allowance (maximum FF 6000 per quarter) is intended to cover the costs of the social security contributions (employers' and employees') involved in employing somebody to care for children at home. The family credit institution transfers contributions directly to the union for the recovery of social security contributions and family allowances (URSSAF), thus avoiding the need for employers to advance them.

Households also benefit from a tax reduction amounting to 25% of expenditure (maximum FF 15 000 per year per child).

Family employment

As from 1 January 1992 parents (or a single parent) employing a person to look after children at home qualify for the new "family employment" tax concession. This is more advantageous than the existing "childcare" concession (with which it cannot be combined). Households may deduct from their tax a sum equal to 50% of expenditure (wages and social security contributions) up to a maximum of FF 25 000. The maximum tax benefit is therefore FF 12 500 per year.

Childcare facilities for children under school age

Children under three years old whose parents both work are taken care of:

- by nurseries (collective, family and parental) - 18%
- by approved childminders - 26%
- by means which are not recognised officially: non-approved nurses, grandparents, family, neighbours - 56%

For occasional childcare, day nurseries currently offer approximately 37 000 places.

Parental nurseries are set up on the initiative of parents or professional childcarers. Parents are more directly involved in running them, but they are relatively unstable institutions.

Creation of childcare facilities is mainly the task of local authorities. The responsibility for this policy is shared between the State (via regulations), the network of family credit institutions and local authorities (municipalities and departments), and sometimes companies and works committees.

Two instruments set up by the National Family Credit Institution (CNAF) have enabled a contract policy to be developed: nursery contracts between 1983 and 1989 and childcare contracts from 1989 onwards cover all childcare facilities admitting children up to 6. These contracts make CNAF assistance for childcare facilities for children under school age (including "extra-curricular" activities) more flexible and more extensive. Since 1 January 1991 they have been extended to the overseas departments.

At present there are almost 220 000 places in childcare facilities as against 100 000 in 1980.

Given the present lack of childcare facilities,

the use of a childminder remains the most common solution for children under three. New provisions should make it possible to improve the quality of this alternative. These cover:

Family aid

Family aid has been significantly improved by two measures. The first of these is the creation by Law No 90-590 of 6 July 1990 of aid to families for the employment of an approved childminder, with effect from 1 January 1991. Under this Law, the childminder's social security contributions are covered by the family credit institutions. The burden on the families concerned is eased by direct payment and the simplification of formalities. Its scope is wider than that of the special childminder allowance, which it replaces.

The second measure supplements the above by providing an additional monthly allowance of FF 519 per child under 3 and FF 312 per child between 3 and 6. This new increase in childminding aid came into effect on 1 January 1992 for periods of employment after that date, and is reviewed twice a year.

Like childminding aid, the increase is additional to the single-parent allowance and occupational integration minimum income.

Families employing an approved child minder are entitled to a tax reduction for child care expenses amounting to 25% of such expenses, with a limit of FF 15 000 per child concerned.

Reform of the status of childminders

The Order of 26 December 1990 on social security contributions for the employment of a childminder gives childminders social rights on the same lines as all other employees. It took effect on 1 January 1991 for childminders employed by families and on 1 January 1992 for those employed by local authorities.

Law No 92-642 of 12 July 1992 on childminders supplements and amends that of 17 May 1977. It maintains their obligation to obtain prior approval and makes training compulsory. Finally, their remuneration is reassessed (2.25 times hourly minimum growth income per day per child as from 1 January 1993, compared with twice the minimum growth income at present).

Creation of a "young children's municipality" label

In order to encourage the contract system for childminding, an information campaign aimed at local authorities was undertaken in 1991, in close collaboration with the French Mayors' Association. Around 50 municipalities with dynamic policies in this area were designated "young children's municipalities". This continued in 1992.

Reform of regulations on childcare facilities for young children

The Law of 18 December 1989 made provision for the harmonisation of childcare facilities for young children, which are currently regulated by very old and diverse legislation (Decree and Order of 12 August 1952) concerned mainly with health supervision in nurseries and kindergartens. The regulations have been revised and updated, above all to allow more flexibility. A corresponding Decree is currently being prepared.

Nursery schools

These take children between 3 and 6 years of age.

- 80% of 3-year-olds are at nursery school
- almost 100% of 4-year-olds are at nursery school.

**Special leave for working parents**

*Parental leave*

Any man or woman who can provide evidence

of at least one year's service is entitled to parental leave for up to three years after the birth of a child or arrival of an adopted child. Applications are made for one year at a time. Both the mother and father (natural or adoptive) are entitled to parental leave, which can be granted to both of them simultaneously or at different times. It can either take the form of complete absence from work, during which the employment contract is suspended, or part-time work with a free choice between a minimum of 16 hours a week and a maximum of 80% of full-time working hours. This arrangement, which makes parental leave more flexible and replaces the previous concept of half-time work by part-time work, was introduced by provisions governing working hours in Law No 91-1 of 3 January 1991 on employment.

Parental leave is a right except in companies with fewer than 100 employees, where the employer can refuse it if, after consulting the works committee or staff delegates, he thinks that the absence of the employee would have consequences detrimental to the sound operation of the company.

After the period of parental leave the employee is entitled to return to the same job or a similar job with at least equivalent pay. Half of the period of parental leave is credited for the purposes of any benefits accruing from length of service.

Parental benefit (a family benefit created in 1985 and extended to three years in 1986) can be paid to one of the parents who is not working after the birth of a third child, as long as he or she has worked at least two years during the previous ten. Should the parent return to work after the child's second birthday he or she may work up to 50% of the normal working hours and receive 50% of the benefit, provided that the parent received the full benefit previously. This measure is intended to make it easier for the parent receiving benefit to return to work.

A quantatitive study of this type of leave is currently being carried out in the public and private sectors in order to obtain more information about the employee groups which make use of it and the companies and authorities concerned. The study is being co-financed by the Ministry of Labour, the Office of the Secretary of State for Women's Rights and Consumer Affairs, the Office of the Secretariat of State for Family Affairs, and the National Family Credit Institution. At a later stage a qualitative study will be carried out in order to analyse practices. Both studies will make a distinction between full-time and part-time parental leave.

A quantitative study of this type of leave was carried out by SOFRES, which published its report in January 1993 under the title "Parental leave in the private and public sectors".

The Law of 27 January 1993 on miscellaneous social measures contains provisions on parental leave entitling parents to vocational training organised by the State at the end of their leave or earlier (which automatically brings leave to an end) as well as to a skills assessment.

*Postnatal leave*

Any parent who does not fulfil the conditions for parental leave (at least one year's service) can apply for leave to bring up a child (Articles L 122.28 and L 122.30 of the Labour Code). There are no conditions of length of service or number of employees in the company. Unlike other forms of leave, postnatal leave involves terminating the contract of employment, but the employee retains priority if he or she wishes to return to the company.

*Leave for family events*

Leave for the birth of a child

This comprises three days for each birth or arrival of a child for adoption. These three

days (either consecutive or not, as agreed between the employer and the employee) must be taken when the event occurs unless a collective agreement offers more flexibility.

According to the Labour Code, any employee may take leave for the birth or adoption of a child. In principle, both the father and the mother may do so. However, this possibility is somewhat theoretical, at least in the case of a birth, as the mother will already be on maternity leave and cannot combine both types of leave. She could take leave for adoption provided that she does not take adoption leave (duration equal to postnatal maternity leave).

See the table below for other leave for family reasons.

Provisions covering employees when a child is ill (minor children's ailments)

Where such provisions exist they are set out in collective agreements. Any agreements concluded after the adoption of the Law on equal opportunities at work of 13 July 1983 provide for leave to be open to both fathers and mothers.

A study on this subject financed by the Office of the Secretary of State for Women's Rights and Consumer Affairs is now available. Entitled "Leave when a child is ill - initial sociological analysis", it was carried out by a research team from the National Scientific Research Centre under François de Singly. The study was commissioned as a result of the recommendations of the working party set up by the Council for Equal Opportunities at Work on the subject of company management and consideration of family responsibilities.

The results of this study are described in a Documentation Française publication entitled "Working parents and children's ailments" ("Women's Rights" series).

## LEAVE FOR FAMILY REASONS

(Art. L-266-1 of the Labour Code)

| Leave | Beneficiaries | Duration | Formalities | Effects on the contract of employment |
|---|---|---|---|---|
| Birth | All workers | 3 days | Evidence to be provided on request of company | None - employee remains on full pay |
| Marriage | " | 4 days | " | " |
| Death of spouse<br>Death of child | " | 2 days | " | " |
| Marriage of child | " | 1 day | " | " |
| Death of father<br>Death of mother | " | 1 day | " | " |
| Law of 19 January 1978 grants workers with at least 3 months' service: | | | | |
| Death of brother<br>Death of sister | The following are excluded: homeworkers, casual, seasonal and temporary workers | 1 day | " | " |
| Military call-up | " | 3 days | " | " |

Collective agreements may offer longer periods of leave or leave under other circumstances

*Measures to help single-parent families*

In the more special cases of lone persons (or single-parent families) the situation is largely covered by family benefit legislation.

Special benefits are payable.

Family income support, introduced by the law of 23 December 1970 and amended by the law of 22 December 1984, helps a surviving spouse, a single parent or a foster family to bring up any children whose charge they assume. The full rate (orphans, or spouse not receiving maintenance payments) is FF 604 per child, and the partial rate (all other cases) FF 453 per child.

The single parent's allowance, introduced by the law of 9 July 1976, is designed to provide temporary aid (subject to means-testing) to widows, people who are separated de jure or de facto, who have been deserted, or who are single and have to look after at least one child on their own. Reviewed on 1 July 1992, the allowance is now FF 3 021 for the parent and FF 1 007 per dependent child.

Current regulations also allow single women who are heads of families and have a dependent child to receive housing benefit, subject to means-testing.

Such persons may also continue to benefit from an increase in their tax allowance.

It should be stressed that the childcare at home allowance is a measure which is chiefly of benefit to single-parent families.

Finally, important provisions have been enacted to combat isolated women's unemployment by means of specific social and occupational integration measures (training or retraining).

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

Given the principle of territoriality, national legislation cannot require multinational companies to set up a system for the information and consultation of employees in establishments situated outside France.

Nevertheless, 11 French groups have set up an information and/or consultation system for their employees within Europe, at their own expense. These are Airbus Industrie, BSN, Bull, Elf Aquitaine, Carnaud, Péchiney, Rhône-Poulenc, Saint-Gobain, Thomson, Assurances Générales de France and Compagnie Générale des Eaux. There is a certain degree of diversity in the systems introduced. Other groups have announced their intention to follow these examples.

Question 18

The main characteristics of the workforce representation system in France are shown in the attached table.

| | WORKS COMMITTEES | WORKFORCE DELEGATIONS | UNIONS | |
|---|---|---|---|---|
| | | | UNION REPRESENTATIVES<br>–on the works committee<br>–to assist the workforce delegates | UNION DELEGATES |
| SCOPE | Election compulsory in all industrial, commercial and agricultural concerns, public and ministerial departments, liberal professions and partnerships, trade unions, mutual societies, social security institutions, associations, public industrial and commercial establishments, etc. with at least 50 employees. | Election:<br>–compulsory in all industrial, commercial and agricultural concerns, public and ministerial offices, liberal professions and partnerships, trade unions, mutual societies, social security insittutions, and associations or other obdies established under private law with at least 11 employees;<br>–at the initiative of the Departmental Director of Labour or at the request of the unions at sites where at least 50 persons are employed. | Optional appointment by each representative union:<br>–of a representative at works committee meetings;<br>–where appropriate, of a non-permanent representative to assist the workforce delegates at meetings with the employer.meetings; | Each representative union has the right to:<br>–set up a union branch in any concern;<br>–appoint union delegates in concerns with at least five employees, or alternatively a workforce delegate assuming the functions of union delegate in concerns with fewer than 50 employees.<br>(Conventional union delegates may also be appointed in concerns with fewer than 50 employees). |
| APPOINTMENT | –Electors: employees aged 18 years or over who have been working in the concern for at least three months.<br>–Eligibility: employees of the concern who have worked there at least one year, are at least 18 years of age, and are not related to the head of the concern.<br>–Term of office:<br>2 years renewable | –Term of office<br>1 year renewable | Appointment by trade union organisations:<br>–the representative on the works committee must be selected from among the concern's workforce and must meet the works committee eligibility criteria;<br>–the assistance workforce delegate may be an employee of the concern of an external person, as long as trade union organisation;<br>–term of office: at the discretion of the trade union organisation. | Appointment by the representative unions in the concern:<br>–the union delegate must be at least 18 years of age and have worked in the concern for 1 year;<br>–term of office: at the discretion of the trade union organisation |
| DUTIES | –Economic and employment matters: information and consultation before any decision concerning the organisation, management and general operation of the concern; regular information on the activities, status and results of the concern.<br>–Social and cultural matters: management of social and cultural activities in the concern; monitoring of certain social institutions.<br>–Negotiation and conclusion of profit-sharing and participation contracts. | –Presentation to the employer of individual and collective demands concerning application of the Labour Code and relevant agreements; referral to Labour Inspectorate of complaints and observations from the workforce.<br>–Communication to the works committee and CHSCT of suggestions from the worforce.<br>–Economic responsibilities of the works committee and joint management of social arrangements in the event of absence or default of the works committee; the responsibilities of the CHSCT in the event of its absence or default; where applicable, responsibilities of union delegate in concerns with fewer than 50 employees. | –To represent the union on the works committee.<br>–To assist workforce delegates at meetings with the employer. | –To represent the union in dealings with the head of the concern and to defend the rights and interests of the workers.<br>–To participate in the trade union delegation negotiating and concluding collective agreements.<br>–To direct trade union action in the concern. |

Source: "Liaisons sociales" Special edition of 23 May 1991

French legislation also requires companies with more than one establishment to set up a central works committee as well as individual establishment committees. Groups of companies must also have a group committee. Finally, every five years the workforce of a public company with more than 20 employees elects delegates to serve on the company management bodies.

Information and consultation of workers come under the main functions of works committees, which are concerned with all economic and vocational questions. Furthermore, in some fields their responsibility is laid down in specific terms. This applies to all the subjects mentioned in the question. Transfrontier workers are not given special treatment, but their situation is covered by the general framework of information and consultation concerning the situation and developments in respect of employment and qualifications.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

*Community Directives and labour law*

The development of health and safety at work in Europe brought to light the fact that certain hazards were not specifically covered by French regulations and that regulations in some areas had become obsolete.

European law therefore helps to plug a number of gaps. The Directive on display screen equipment, for example, ensures that more attention is paid to the working conditions of the employees concerned, whose number is rising steadily as a result of the development of computer systems. The same applies to the Directive on biological agents, which establishes principles of prevention aimed at providing workers likely to be exposed to pathogenic biological agents with effective protection against possible infection.

European law also plays a part in the modernisation of French regulations. This applies, for example, to risks connected with handling heavy loads, protection against the risks related to carcinogens, and the design and use of machinery, plant and personal protection equipment.

Transposition of recently adopted Directives is having a similar effect. As regards protection of pregnant women, French legislation, though generally more favourable to female employees, has been improved in several respects (absence for prenatal check-ups, change of job for women working nights or in risk conditions, etc.).

Similarly, the Directive on mobile work sites will lead to new laws extending the application of safety rules to self-employed workers.

The Law of 31 December 1991 amended the Labour Code and Public Health Code to incorporate seven European Directives on health and safety at work, including the framework Directive.

*Worker participation*

Committees on hygiene, safety and working conditions (CHSCTs), instituted by the Law of 23 December 1982, closely associate employees' representatives with the action to be taken in these areas. Their consultation on all these questions is compulsory.
The Law of 31 December 1991 extends the right to training of workforce representatives on CHSCTs to all companies, allows committees to make wider use of experts and permits them to take preventive action. Finally, the creation of CHSCTs in the construction and civil engineering industries is now subject to the same statutory conditions as elsewhere.

## PROTECTION OF CHILDREN AND ADOLESCENTS

Question 20

The statutory minimum employment age is 16 years, with the following exemptions:

- young people who can provide evidence of having completed the first stage of secondary education may enter apprenticeships at the age of 15;

- young people of school age undergoing alternance training may, during the last two years of their compulsory school education, follow training courses on adaptation to working life in approved companies which have agreements with their school;

- children may be employed in agriculture from the age of 15 if they are entering an apprenticeship or if they have completed the first stage of secondary education. During the last two years of their school education (i.e. from the age of 14 in the case of pupils engaged in alternance training), young people may attend basic or practical training courses in approved agricultural enterprises;

- young people over 13 may do light work during school holidays (Law of 3 January 1991).

Question 21

The preamble to Article 18 of the Constitution prohibits discrimination based on age by stating that all persons performing equal work or functions or having an equal grade or responsibility have the right to equal rewards and treatment. In other words, the work performed is the sole reference criterion.

However, the Law states that young people under 17 and between 17 and 18 years of age may be paid on the basis of the minimum growth wage reduced by 20% and 10% respectively, if they have less than six months' job experience in the sector concerned. Similarly, some sectoral collective agreements provide for reductions in minimum wage levels as a function of age. The justification for these reductions is not the inferior value of young persons' work, but their lack of job experience and the working time spent on training.

Question 22

*Duration of work*

Young people under 18 years of age may not work more than 8 hours a day or 39 hours a week.

In exceptional cases, exemptions may be granted by the labour inspector responsible up to a limit of five hours per week, subject to approval by the establishment's occupational physician.

*Night work*

Young workers under 18 years of age may not work between 10 p.m. and 6 a.m.

Exemptions may be granted by the labour inspector for commercial and entertainment establishments. Exemptions in the hotel and catering industry have to be established by a Conseil d'Etat Decree; the bakery industry is covered by the Decree of 4 February 1988. In this case the young people concerned are entitled to 12 hours' consecutive rest.

*Public holidays*

Young people under 18 years of age may not work in industry on statutory public holidays.

*Paid leave*

Workers under 21 years of age on 30 April of the previous year are entitled to 30 working days' leave, whatever their length of service.

*Vocational training*

Young people aged between 16 and 25 with no vocational qualifications are offered individual sandwich traineeships or employment contracts, as described in detail in the reply to Question 15.

Question 23

Basic vocational training is the responsibility of two ministerial departments, the Ministry of Labour, Employment and Vocational Training (activities described in the reply to Question 15) and the Ministry of National Education.

The basic vocational training system instituted by the Ministry of National Education is as follows:

- Vocational secondary schools admit pupils as from the end of the fourth year and prepare them for a vocational studies diploma (BEP) or certificate of vocational skills (CAP). Young persons who have obtained a BEP or CAP may then study for a technological or vocational Baccalauréat, with the objective of entering working life.

- Higher technological education (short courses):

  - university institutes of technology offer two-year courses. Students awarded the university diploma of technology (DUT) at the end of the second year may exercise a profession with supervisory responsibilities in the secondary or tertiary sectors;

  - advanced technician departments offer more highly specialised courses than the university institutes of technology. After two years of study, a higher-level diploma in technology (BTS) is awarded, available in 87 specialised subjects;

  - short-duration paramedical training offered by universities takes the form of a two or three-year course as appropriate, allowing successful students to practice speech therapy, hearing aid dispensing or psychomotor development.

- University institutes of professional skills (IUP) represent a similar approach, attempting to tailor the training offered to suit the needs of the employment market. Holders of a DUT or BTS may enter the second year of an IUP. At the moment these institutes offer training, at Baccalaureat + 4 level, in five areas, namely engineering, communications, administration, commerce and financial management.

- Provisions for the integration of young people. It is part of a school's job to assist the vocational integration of all its pupils. Such help is provided above all through the system for the integration of young people into the national education system (DIJEN). The objective of this system is to provide unqualified young people with a further possibility of gaining access to the national education system and to foster the occupational integration of young people holding a level IV diploma (level III under the European classification).

  Agreements between school establishments and integrated training establishments (CEEFI) are currently being worked out to enable the education system to monitor young people with problems until recognition of a qualification acquired in a company (over a period of approximately two years).

## THE ELDERLY

Question 24

a) The general social security system (the largest of the French systems, as already

mentioned, covering employees in the private sector and certain public companies) guarantees a retirement pension from the age of 60 to any worker applying for it. There is no qualification period for entitlement.

The pension is calculated as a percentage of the average wage of the 10 best years, with a maximum of 50%, and as a function of the length of the person's working life, maximum 37.5 years (150 quarters).

To this pension must be added any pension from supplementary schemes (also compulsory), representing an average of 20% of average career wage. Taken as a whole, former blue-collar workers with a complete career (150 quarters) will have a retirement pension of around 80% of their last net wage. Percentages differ slightly for white-collar staff.

b) If the insured person has fewer than 150 quarters of contributions, pension rights are reduced proportionally. However, certain categories of insured persons laid down in Article L.351–8 of the Social Security Code (invalids, persons unfit for work and, in any event, all those aged at least 65) receive a pension at the full rate (50%) even if they do not meet the 150 quarter requirement.

Any person receiving this rate of 50% is entitled to the minimum pension, without being subject to means-testing (Article L.351–10 of the SSC). This amounts to FF 2 998.01 per month (as of 1 January 1993) for a complete career of 150 quarters. For shorter careers it is calculated on a pro rata basis.

In any event, an increased pension may be paid to insured persons who had low wages and/or very short careers covered by the system, subject to age and means-testing, first of all up to the level of the benefit paid to former employed workers (FF 1 334.16 per month as of 1 January 1993) (Article L.814–2 of the SSC) and then, where applicable, to the "old age minimum" through a supplementary allowance from the National Solidarity Fund (FNS) amounting to FF 1 796.66 per month for a single person (Article L.815–2 of the SSC).

It is important to note that most of those whose pensions are increased to the level of the former employed workers' benefit are women.

Women are also the main beneficiaries of the supplementary allowance from the FNS. This allowance, which constitutes the second stage of the old-age minimum, actually supplements, as from the age of 65 (60 where the person concerned is unfit for work), basic contribution-linked entitlements in such a way as to provide all persons with a minimum annual income of FF 37 570 for a single person and FF 67 400 for a couple (as of 1 January 1993).

Question 25

a) Any person who has reached retirement age (65, or 60 for those unfit for work) but is not entitled to a pension (e.g. because he or she has not exercised an occupational activity in France) has the right, on submission of an application and subject to a means test, to a special allowance (Article L.814–1 of the SSC) equal to the above-mentioned former employed workers' benefit, which may also be boosted by the supplementary allowance from the FNS to reach the "old-age minimum".

The wife, widow or separated, abandoned or divorced wife of an employed or self-employed worker and any woman whose husband has disappeared is entitled at the same age to a mother's allowance (Article L.813–1 of the SSC) equal to the special benefit (and also subject to increase by the FNS supplementary allowance) if she has raised at least three children, subject to specific conditions.

French legislation also contains further provisions guaranteeing sufficient resources for the most deprived, i.e. the minimum integration income paid to a small number of elderly

persons (Law No 88–1088 of 1 December 1988 as amended by Law No 92-722 of 29 July 1992) and since 1 July 1992 amounting to FF 2 253.02 per month, and the disabled adult's allowance (Articles L.821–1 et seq. of the SSC), the amount of which is the same as the old-age minimum, i.e. FF 3 130.03 per month (as of 1 January 1993).

b) Recipients of the special benefit are also entitled to sickness and maternity benefits in kind under the personal insurance scheme, their contributions being covered by the Special Fund managed by the Caisse des Dépôts et Consignations, which is responsible for the special benefit.

Elderly persons receiving the minimum integration income are subject to compulsory membership of the personal insurance scheme if they are not covered by any other compulsory social security system. Their contributions are covered by the local authorities (departments).

Elderly persons receiving the disabled adult's allowance are covered by the general social security system (Article L.381-27 of the SSC) without payment of contributions.

In any event, all elderly persons not entitled to a pension, whether or not they apply for the special benefit (increased where appropriate by the FNS supplementary allowance), the minimum integration income or the disabled adult's allowance, are entitled to social assistance according to the conditions set out in the Family and Social Assistance Code; more specifically, coverage of the costs of hospital treatment, accomodation (for the elderly and/or disabled), personal insurance contributions and medical care at home - the latter subject to three years' residence in metropolitan France.

Furthermore, a mother's allowance is available to women who have raised at least five children and who are not entitled to old-age benefits or whose personal retirement pension is not more than the amount of this allowance.

The mother's allowance may be boosted by the FNS supplementary allowance. Both are subject to means-testing.

## DISABLED PERSONS

Question 26

Law No 75–534 of 30 June 1975 constitutes the keystone of the social protection system introduced in France step by step to benefit the disabled and remains the general reference framework for the policy implemented in recent years to assist this group.

The Law makes school, occupational and social integration of the disabled a national obligation, with the aim of helping the people concerned eventually to achieve as much independence as they are capable of. They must therefore be permitted access, wherever they possess the necessary skills, to institutions open to the population as a whole or, failing this, gradual transfer from a protected environment to a less protected one.

1. *Disabled children*

1.1 Education

Disabled children and adolescents are subject to compulsory schooling, provided by either normal or special education.

Where they are educated at a normal school, the State covers the costs of accommodation and initial vocational training.

The costs of accommodation and treatment at special and vocational training institutions and of associated treatment outside such establishments are covered in full by the sickness insurance schemes or, failing this, by social assistance. The child's family is not subjected to means testing in this connection.

1.2 Special education allowance

Where justified by the nature and degree of the child's disability, the family (or the person responsible for the child) receives a special educational allowance to cover part of the additional expenditure involved in the education of a disabled child. Three supplements may be added to the basic allowance, depending on the degree of the child's dependence. The third of these is for parents of severely disabled children requiring highly complicated treatment, where one parent gives up his or her occupational activity or engages a paid employee.

1.3 Care of disabled children

Over the past fifteen years, the combined effect of demographic changes, improvements in medical and retraining techniques, the increasingly early assumption of responsibility by the State, the desire of disabled persons to remain within their own environment and the desire of the families of disabled children to remain more closely associated with measures to help the child, has led to substantial improvements in the initial framework established by the Law of 30 June 1975, affecting both the fundamental approach and practical aspects.

Thus, as far as disabled children are concerned, the regulations governing the technical conditions for the approval and operation of special education establishments and services (almost 2 000 establishments, with more than 118 000 children) have been reformed with the specific aim of encouraging the educational integration of disabled children in a normal environment, by providing appropriate support and opening establishments to the external environment, with the children being monitored after leaving the establishment. This policy is accompanied upstream by a special effort on the part of the Ministry of National Education, in the context of the Law on school guidance of July 1989 to prevent the educational exclusion of children with problems.

2. *Disabled adults*

Resources

In accordance with the Law of 30 June 1975, a minimum level of resources is guaranteed to any person who is 80% disabled or who cannot work because of his or her disability. This is provided by the State in the form of the disabled adult's allowance.

Disabled persons who require assistance for essential activities also receive financial compensation from the regional authorities.

Finally, persons whose working capacity is reduced as a result of a disability are guaranteed sufficient resources through an income supplement from the State which is at least equal to the minimum growth wage.

To permit access for disabled people to employment, the Law of 10 July 1987 requires the State, local authorities, public establishments and companies with at least 20 employees to reserve a minimum of 6% of jobs for disabled people.

Companies may also meet this obligation by subcontracting work to the protected employment sector or signing company or sectoral agreements on the recruitment, integration, training and secure employment of disabled people. Finally, they may make a financial contribution to the fund for the integration of disabled people set up under the same Law. Recruitment measures financed by this fund are implemented by 94 teams responsible for the preparation and follow-up of redeployment. Today, 235 000 disabled workers are employed in companies with at least 20 employees.

As part of an employment plan for the disabled drawn up in 1991, the government has relaunched its policy to give priority to the improvement of training by facilitating access to conventional facilities, developing links between companies and the protected

environment by making it easier for persons from the latter to be seconded to the normal environment, coordinating action by the various parties involved in the occupational integration of disabled workers through Department integration programmes, and facilitating access to jobs in the public service.

The protected environment is the subject of a multiannual plan to create 10 800 places in "help through work" centres and 3 600 places in protected workshops. Between 1989 and 1993 the objectives were fulfilled in their entirety, and a similar programme of comparable scope will follow during the period 1994-98. More than 90 000 persons now work in protected establishments.

## IMPLEMENTATION OF THE CHARTER

Question 27

In France, since the adoption of the Charter, its objectives - though already achieved to a wide extent - have served as a reference for the reform of legislation and regulations and for collective bargaining.

# IRELAND

## FREEDOM OF MOVEMENT

The existing legislative framework guarantees the free movement and employment of nationals of EC Member States and no new initiatives are contemplated in this regard.

Measures to encourage family re-unification, recognition of qualifications and to improve living and working conditions.

Information on comparability of qualifications including CEDEFOP manuals are circulated to all placement service staff.

Ireland actively supports the efforts at Community level to encourage the recognition of diplomas, etc.

FAS, the national training and employment authority in Ireland, is an active participant in EURES – the European Placement System. A Transfrontier Committee, sponsored by the EC, was established between Ireland and the UK in 1991. The Committee comprises representatives from the voluntary sector in both countries. The remit of the Committee includes;

- the provision of appropriate support for workers seeking to move between Ireland and the UK, and
- the minimisation of difficulties of entry to employment and training markets by arriving or returning emigrants.

The operation of the Transfrontier Committee was improved and strengthened during 1992 and new cooperation committees established between FAS and the Netherlands and Germany. FAS staff are now located within the State employment services of these two countries.

## EMPLOYMENT AND REMUNERATION

Joint Labour Committees, which draw up minimum rates of pay and other conditions of employment, operate for a limited number of industries and trades. These rates become legally binding when ratified by the Labour Court in the form of Employment Regulation Orders. Employees in the sectors covered by Joint Labour Committees are generally non-unionised and regarded as low paid.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

The Framework Agreement on Hours of Work which was negotiated under the Programme for National Recovery (1987 - 1990) provides for a reduction of working hours by one hour in cases where the normal working week is at or above 40 hours. This reduction in working hours has generally been implemented throughout all sectors of the economy.

The Conditions of Employment Act, 1936 stipulates certain minimum statutory provisions to which shift-work and overtime in industry must conform and also governs entitlements to breaks.

The Shops (Conditions of Employment) Acts 1938 and 1942 regulate and control conditions and hours of work in wholesale and retail shops, warehouses, hotels (Dublin City only) licensed premises and refreshment houses (restaurants, cafes or tea shops).

The Worker Protection (Regular Part-Time Employees) Act, 1991 extends a number of Acts to regular part-time employees. These Acts include:

- Holidays (Employees) Act, 1973
- Maternity Protection of Employees Act, 1981
- Minimum Notice and Terms of Employment Act, 1973 and 1984
- Redundancy Payments Act, 1967 to 1990
- Unfair Dismissals Act, 1977
- Worker Participation (State Enterprises)

Act, 1977 and 1988

Regular part-time employees are defined as those who normally work 8 hours per week and have 13 weeks' continuous service.

The Holidays (Employees) Act, 1973 provides that an employee who works 1,400 hours (1,300 if under 18) in the leave year, i.e. 1st April to 31st March, is entitled to 3 weeks' paid leave unless he has changed his employment during that year. An employee who has not worked the required total hours in the leave year or who has changed his employment in that year is entitled to paid leave at the rate of 3/4 of a week for each calendar month during which he worked at least 120 hours (110 if under 18).

This legislation stipulates minimum statutory entitlements, but in general annual leave entitlements are negotiated by collective bargaining and the average annual entitlement would be approximately 4 weeks.

The Minimum Notice and Terms of Employment Act, 1973 provides that an employee covered by the Act may require his or her employer to furnish a written statement containing all or some of the following particulars:

(a) date of commencement of employment;
(b) rate or method of calculation of remuneration;
(c) length of intervals between the times of which remuneration is paid, whether weekly, monthly or any other period;
(d) terms or conditions relating to hours of work or overtime;
(e) terms or conditions relating to holidays, holiday pay, sickness, sickness pay, pensions and pension schemes;
(f) the period of notice which the employee is obliged to give and entitled to receive, this being determined by the contract of employment, or (if the contract of employment is for a fixed term) the date on which the contract expires.

An employer is obliged to provide the above details within one month of a request to do so.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Laws governing formation of professional organisations or trade unions

The relevant position in the Irish Constitution in relation to freedom of association is Article 40.6.1.

In this Article the State guarantees liberty for the exercise, subject to public order and morality, of, inter alia, "the right of citizens to form associations and unions". The Article provides that laws may be enacted for the regulation and control in the public interest of the exercise of this right. Article 40.6.2 provides that laws regulating the manner in which the right of forming associations and unions may be exercised shall contain no political, religious or class discrimination.

The right to join associations, as distinct from the right to form associations, is not guaranteed by the Constitution. The power of the Oireachtas (Parliament) to regulate freedom of association is limited, but trade unions may themselves impose restrictions on the right to join. A trade union is not obliged, constitutionally or otherwise, to accept every applicant. A number of legal cases have established that there is no constitutional right to join the union of one's choice.

The courts have also established the principle that the freedom or right to associate necessarily implies a correlative right not to join any trade union.

Some categories of workers, i.e. members of the Defence Forces and of the Police Force, are forbidden by law to join ordinary trade unions and to resort to industrial action to

effect changes in their terms and conditions of work. Civil Service employees enjoy the same rights regarding strike action as other trade union members.

Measures for negotiating and concluding collective agreements

The principle of free collective bargaining forms the basis of the industrial relations system in Ireland. The terms and conditions of employment of the majority of workers are governed by collective agreements arrived at through the process of collective bargaining at local level between employers and one or more trade unions.

Certain basic rights covering such matters as hours of work, minimum notice, holidays, etc. are covered by legislation.

The terms of collective agreements are not legally binding; however, under the Industrial Relations Act, 1946, it is open to the parties to an agreement to register the agreement with the Labour Court and thereby give it legal effect. The coverage of the agreement may be extended to employers and workers in the same industry even if they were not parties to the negotiations, provided that the Labour Court is satisfied that the parties to the negotiations substantially represent the class, type or group of workers to whom it applies.

An employer is not legally obliged to bargain with a trade union and may refuse to recognise it for this reason. Irish Courts have, however, held that a dispute concerning union recognition is a dispute for the purpose of allowing strike action to be taken. Under the Industrial Relations Act, 1969 a trade union may unilaterally refer a recognition dispute to the Labour Court, agreeing to be bound by its decision. In general, the Court recommends that the employer and trade union agree to negotiate a collective agreement, even where the trade union in dispute has not secured a majority of the employees in membership.

Regulations governing the exercising of the right to strike and provision of conciliation, mediation and arbitration procedures

Irish statute law does not enshrine a positive right to strike; instead it provides a certain immunity to ensure that in certain circumstances trade unions which hold negotiation licences, and their members, are legally protected if they institute industrial action.

The Industrial Relations Act, 1990 protects against liability in relation to conspiracy, peaceful picketing, inducement of breach of the contract of employment or interference with the trade, business or employment of another, provided that in all cases the act is done by a person "in contemplation or furtherance of a trade dispute".

Any body of persons who wishes to carry on negotiations for the fixing of wages or other conditions of employment must apply for a negotiation licence which is granted by the Minister for Enterprise and Employment. Under the Trade Union Act, 1971 and the Industrial Relations Act, 1990 certain principal conditions must be met by the group:

- it must be registered as a trade union under the Trade Union Act with the Registrar of Friendly Societies or,in the case of a foreign-based union, it must be a trade union under the law of the country in which its headquarters are situated
- it must have a minimum of 1,000 members
- it must give notice of its intention to apply for a licence 18 months before doing so
- it must deposit with the High Court a sum

of money ranging from IRL£60,000, depending on its membership

Foreign-based unions are not required to register with the Registrar of Friendly Societies in order to obtain a negotiating licence. However, a foreign-based union must have a controlling authority, every member of which is resident in the State of Northern Ireland, which has power to make decisions in relation to issues of direct concern to members of the trade union resident in the State of Northern Ireland. Apart from this, a foreign-based union must satisfy the same conditions to obtain a negotiation licence as Irish-based unions.

The principle of free collective bargaining forms the basis of the industrial relations system in Ireland. This system assumes freedom for workers to organise and to bargain with the employer while the function of the State is to provide legislative and institutional support. The principal dispute-settling bodies are the Labour Relations Commission and the Labour Court.

The Labour Relations Commission was set up in 1991 and has overall responsibility for the promotion of good industrial relations. It is guided by a tri-partite board with employer, trade union and independent representatives appointed by the Minister for Enterprise and Employment.

Its main functions are:

(a) to provide a conciliation service which assists parties to a dispute to resolve it, when direct negotiations between the trade union and management have failed;

(b) to provide an advisory service whose function is to assist in identifying the underlying problems which may give rise to on-going industrial relations unrest and to help work out solutions to such problems;

(c) to provide a rights commissioner service which assists in the resolution of disputes involving individual workers;

(d) to conduct or commission research on industrial relations;

(e) to review and monitor industrial relations developments;

(f) to prepare and offer guidance on codes of practice on industrial relations issues which are drawn up in consultation with trade unions, employers' organisations and other interested parties. The terms of a code of practice are not legally binding. However, courts of law and industrial relations bodies may take account of any provisions of a code of practice which they deem to be relevant in determining any proceedings before them.

The Labour Court was set up in 1946 and is a court of last resort in dispute resolution. It is an independent tri-partite body with an equal number of members nominated by employer and worker organisations. The Chairman and Deputy Chairman are appointed by the Minister for Enterprise and Employment. Disputes must first be referred to the Labour Relations Commission. Once the Commission is satisfied that no further efforts on its part will help resolve the dispute the parties may refer the dispute to the Court which will issue a recommendation.

## VOCATIONAL TRAINING

FAS, the Training and Employment Authority, has statutory responsibility for the provision of vocational training programmes for Irish industry, with the exception of Hotel and Catering – provided by CERT – and Agriculture – provided by TEAGASC.

FAS has commissioned a series of Sectoral Studies to establish the training and manpower requirements of the main sectors of Irish

industry. The results of these studies will provide the foundation for the FAS response to meet the training needs of workers and ensure that they possess the necessary levels of skill and competence.

FAS has continued to encourage and support the provision of training within companies and organisations through the Industrial Restructuring Training Programme and the Job Training Scheme.

FAS provides an extensive range of training and employment schemes to meet the needs of unemployed persons.

These include:

Specific Skills Training Programmes
Enterprise Training
Employment Subsidy and Support Schemes

Special training and development programmes are also provided for unemployed young persons, particularly those with inadequate education or vocational qualifications.

Provision of special programmes is made through the implementation of special initiatives aimed at promoting local community involvement in the problems of unemployment. Such programmes include:

Community Enterprise Programmes
Community Youth Training Programmes
Community Training Workshops

With regard to certification, FAS has initiated bilateral agreements for the mutual recognition of certification for five courses with AFPA (France). In addition, FAS has a joint certification agreement with the City and Guilds of London Institute.

FAS has participated in the EUROQUALIFICATION Programme which is designed to facilitate the mutual recognition of vocational certification throughout the Member States.

All these activities should facilitate and improve the mobility of workers throughout the Community.

Apprenticeship Training

FAS, in conjunction with the social partners, has designed a new standards-based system of apprenticeship. Successful apprentices will be awarded a new National Craft Certificate which will be based on standards achieved as opposed to the old system which was based on time served.

The content of the new apprenticeship has been drawn up as a result of surveys of employers to establish the range of skills and level of competence required by apprentices in the following trades:

| | |
|---|---|
| Carpenter | Fitter |
| Bricklayer | Toolmaker |
| Plumber | Metal Fabricator |
| Painter/Decorator | Sheet Metal Worker |
| Plasterer | Refrigeration Mechanic |
| Electrician | Instrumentation Mechanic |
| Motor Mechanic | Contractors Plant Fitter |
| Wood Machinist | Heavy Goods Vehicle Mechanic |
| Cabinet Maker | Agricultural Mechanic |
| Aircraft Mechanic | Book-Binder |
| Vehicle Body Repair | Printer |
| Compositor/Graphic | Carton Maker |
| Reproductionist | Originator |

## EQUAL TREATMENT FOR MEN AND WOMEN

FAS has continued its "Positive Action Programme for Women" which is aimed at encouraging women to enter non-traditional occupations. In 1992, over 40% of participants on FAS programmes were female.

Legislation governing the principle of equal treatment for men and women

The Anti-Discrimination (Pay) Act, 1974 established the right to equal remuneration where women employed by the same employer in the same place of employment are doing "like work" with men.

The Employment Equality Act, 1977 makes it unlawful to discriminate on grounds of sex or marital status in relation to access to employment, conditions of employment (other than pay or occupational pension schemes), training or work experience or in the matter of opportunities for promotion or regrading.

Grievances under equality legislation can be pursued by any person in proceedings before Equality Officers, the Labour Court and in certain circumstances, the Civil Courts.

The Employment Equality Agency was established under the Employment Equality Act, 1977. It has both an investigative and over-seeing role and was conferred with three main functions:

- to work towards, the elimination of employment discrimination;
- to promote equality in employment opportunity and;
- to keep under review the 1974 and 1977 Acts.

Promoting Equal Opportunities in the Public Service

On the premise that the public sector can be a proving ground for new concepts of positive action, and that it has an obligation to give leadership to the private sector, the process of monitoring equality of opportunity initiatives was started in the civil service by unions and management in 1987. In 1991 this process was extended to local Authorities and Health Boards in line with a commitment in the PESP and a survey of three sectors was undertaken by the Department of Labour. A report on Equal Opportunities in State-Sponsored Bodies, Local Authorities and Health Boards is being finalised. Extensive consultation between the relevant Departments, Health Boards and the Local Government Staff Negotiation Board took place in the context of the preparation of this report.

A revision of the questionnaire used in the monitoring process to ensure its user friendliness and to accomodate the needs of the three sectors involved.

Parent Departments were also consulted in the case of Health Boards and Local Authorities.

Two major initiatives took place in Ireland during the period under review in relation to the promotion of Equal Opportunities viz, the establishment of the Department of Equality and Law Reform and the publication of the Report of the Second Commission on the Status of Women.

The Second Commission on the Status of Women provides to the Government a comprehensive report with a series of wide-ranging recommendations - 210 in all - with the aims of establishing a gender balance in all areas of decision-making; of facilitating women to develop economic independence and to achieve a balanced society by the evolution of a "norm" in society from a male-only stereotype to a composite one involving both men and women.

Employment Equality Agency

During 1992 the Employment Equality Agency staged a second Equality Focus Award Scheme. A video on sex-stereotyping targeted at primary school children was commissioned and produced during 1992. It seeks to bring about attitudinal change and to change traditional attitudes regarding the role of women at work and in society.

Sexual Harassment

At present the emphasis is being placed on the development of an Irish Code of Practice relating to sexual harassment.

During Ireland's Presidency of the Social Affairs Council of the European Community in 1990, and at Ireland's initiative, the Council adopted a Resolution on the Protection of the Dignity of Men and Women at Work. As a direct result the European Commission prepared a Recommendation and a Code of Practice to combat Sexual Harassment, which the Social Affairs Council endorsed in November, 1991. The social partners and relevant interests were consulted during 1992 regarding the implementation of the Code to ensure as broad as possible, a consensus for it's effective operation. The means of adapting the EC Code of Practice on Sexual Harassment to develop preventive measures at entreprise level in Ireland is now being considered.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

FAS is committed to the development and maintenance of a safe and healthy environment in both training centres and employment services offices.

In its relations with industry and other bodies, FAS promotes and supports effective safety training and ensures, as far as is practicable, that effective training is included in all schemes and programmes.

Safety Committees, consisting of the location manager and staff, are established in each FAS location. They meet at least once every eight weeks to discuss and review health and safety within the location.

The Safety, Health and Welfare at Work (General Application) Regulations, 1993 (S.I. No. 44 of 1993) implements the following EC Directives into Irish Law:

* "Framework Directive" (89/391/EEC);
* Workplace Directive (89/654/EEC);
* Use of Work Equipment Directive (89/655/EEC);
* Personal Protective Equipment Directive (89/656/EEC);
* Manual Handling of Loads Directive (90/269/EEC);
* Display Screen Equipment Directive (90/270/EEC);
* Fixed Duration and Temporary Employees Directive (91/383/EEC).

In addition the Regulations introduce new statutory provisions in relation to electricity, first aid and the notification of accidents and dangerous occurrences.

The Regulations apply to all workplaces and are made under the Safety, Health and Welfare at Work Act, 1989. They extend the duties of employers, the self-employed and employees under the 1989 Act. Prior to theh introduction of the 1989 Act only certain sectors or activities were subject to statutory provisions. These included manufacturing industry, construction, mining and quarrying and the use, storage, transport etc of dangerous substances.

The principal provisions of the current legislation requires that all safety and health measures taken by the employer must be based on preventive principles and cover all employees, including temporary employees. Risks must be evaluated periodically and a written record of risk assessment kept as part of the Safety Statement. When they share a workplace employers (and self-employed) must co-operate in safety and health matters. The costs of safety and health measures cannot be passed onto employees (a proportionate charge for personal protective equipment can be made if used also outside the workplace). Health surveillance must be available to employees where the risks justify it.

Every employer, unless competent to deal with health and safety matters, must either employ competent health and safety staff or obtain any necessary advice from an outside expert. Every employer must also arrange any necessary emergency evacuation plans as well as contacts with local emergency services and name employees to help cope with emergencies.

Every employer must provide information and training in safety and health to employees and must consult employees or their Safety Representatives on safety and health matters. Where worker participation operates this should include health and safety matters.

Employees must make proper use of all machinery, tools, substances etc. in the workplace and must make proper use of personal protective equipment and return it to storage after use. The regulations also require employers to protect temporary workers from risks to their health and safety and to inform and train them in health and safety matters.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

A joint Declaration on Employee Involvement in the private sector was adopted by the Federation of Irish Employers and the Irish Congress of Trade Unions, having been drawn up under the auspices of the Employer Labour Conference.

The document emphasises the principle of voluntarism and the recognition of the differing needs of organisations. No strict form of participation is prescribed and organisations are free to develop arrangements which best suit their circumstances.

The main responsibility for ensuring the greater development of employee participation in the private sector rests with the parties directly involved. The Irish Productivity Centre has been designated as the National Participation Agency and will offer help and advice to organisations. The Employer Labour Conference will monitor developments.

## PROTECTION OF CHILDREN AND ADOLESCENTS

The Protection of Young Persons (Employment) Act, 1977 is the legislation which controls the employment of young people. Under this Act, the employment of children under 15 is generally prohibited. Provision is made, however, for the employment of children over 14 during school holidays. The Act governs hours of work, hours which may be worked at night and hours which may be worked on overtime.

# ITALY

## FREEDOM OF MOVEMENT

In 1992 the second part of Regulation 1612/1968 was amended by Council Regulation 2434/92 of 27 July 1992, the aims being to:

- encourage employment services in the Member States to disseminate through the Community system job applications and vacancies having a "Community vocation" or those which it may be possible to cater for at the Community level;

- guarantee workers opting for mobility and wishing to work in another Member State a flow of information on openings and the possibility of having answers appropriate to their requests;

- streamline procedures for both users and employment services;

- introduce a new capillary informatics network under the name of EURES.

Endeavours were made in 1992 to overhaul the SEDOC system and Euro-advisers have already been selected (one for each region with the exception of Liguria and Piedmont which have two each).

## EMPLOYMENT AND REMUNERATION

While the underlying themes remain essentially the same as those described in the previous report, the government was again prompted to take action in these two contexts in 1992.

The employment crisis caused by recession-hit companies releasing structural manpower surpluses for redeployment, highlights the importance of measures taken over the past few years by Parliament and the government ' ....y legislation may be introduced to deal with a situation of emergency.

Specific trade union agreements on flexibility, and action to avoid or reduce the laying off of structural manpower surpluses, may follow from the arrangements for redeployment of workers already registered under the CIG *(Cassa integrazione guadagni)* temporary redundancy and unemployment fund, and collective redundancies under negotiations on manpower and production cuts, in accordance with the provisions of Law No 223/1991 on manpower surpluses.

These measures include:

- job-security agreements (***contratto di solidarietà interna***) for companies covered by the CIG fund (companies having over 15 employees) in accordance with Article 1 of Law No 863/1984 on the basis of a trade union agreement designed to avoid or minimise redundancies;

- job-security agreements with the in-house trade unions for companies in any production sector and having over 15 employees, in the context of one of the legal procedures for reducing manpower levels by making cuts of up to 30% in contractual working hours in order to avoid or minimise redundancies.

The first type of agreement attracts assistance from the CIG special fund equal to 50% of the loss of pay resulting from the shorter working hours negotiated and the second a payment from the State equal to 50% of the loss of pay, shared equally among the workers and the firm.

There exists the possibility for companies to take on by means of temporary contracts workers registered on a redeployment list, with subsidies being paid (in accordance with Law No 223/1991).

A more significant measure, even if not yet converted into law, is the Decree-Law of 6 March 1993 entitled "Urgent employment measures", by means of which for the period

1993-95 the Minister for Employment and Social Security, in conjunction with the Minister for the Treasury, will implement special policy measures to maintain employment levels, bearing in mind the proposal made by the Committee for the Coordination of Employment Measures under the aegis of the Presidency of the Council of Ministers, set up pursuant to Article 29 of Law No 40 of 23.8.1988 and by Decree of the President of the Council of Ministers of 15.9.1992, specifically for the areas identified by the European Community under Objectives 1 and 2 of Council Regulation 2052/88 and in respect of instances of significant local imbalance between labour supply and demand as set out in Article 36(2) of the Decree of the President of the Republic No 616 of 24.7.1988, agreed to by the Minister of Employment upon the proposal of the Regional Employment Committees on the basis of agreements reached with the Commission of the EC.

The same Decree also makes specific provision for an employment fund of Lit 1 350 000 million, for the extension of protracted redeployment schemes and, by way of exception, for intervention under the CIG fund.

As regards earnings, it can be pointed out - following up what was said in the second report - that discussions were pursued between the government, trade unions, and employers in order to define labour costs and adjust accordingly the system of the sliding scale and automatic salary adjustments. Agreement was reached on 2 July 1993 and was signed the protocol of agreement on 22 July, the content of which should be highly significant and will be set out in the next report.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Although there have been no significant changes on the legislative and contractual front since the second report, the following trends towards a more functional organisation of working hours established by agreement did emerge in 1992.

Arrangements concerning working hours and flexibility were the focus of much attention in collective bargaining at various levels and in legal measures in 1992.

Private sector

An examination of the national collective labour agreements in industry following the 1983 multi-industry framework agreement shows that the organisation of working time has, as already stated in the previous report, provided an extensive exchange of views between the two sides, substantial acknowledgement being made therein of the firm's production requirements.

Nevertheless, the actual reductions in working hours agreed (15-20 hours per year) under the renewed contractual arrangements for 1990 and 1991 are disappointing in relation to the more substantial requests made.

These contracts have generally confirmed the clauses of the previous contracts on contractualisation of overtime and the fixing of limits or ceilings on the number of hours worked per year. The ever-present considerations concerning the requirements of firms to be competitive have provided also for "packages of working hours" not subject to prior notification to the trade union representatives in the event of certain contingencies, as in the case of the metalworkers' contract in 1990 concerning Saturday work.

These developments in national negotiations have been implemented, on the basis of the relevant clauses, by means of company level negotiation as illustrated by the many instances of combining shorter working hours and so-called flexibilisation of the duration of service, e.g. under part-time or shiftworking arrangements.

On top of this there are experiments to determine average working hours over several weeks or the already-mentioned practice of negotiating so-called annual calendars which are more or less modulated as a function of production and/or market requirements.

Public sector

Working hours and flexibility, a theme handled along with organisation of work by decentralised negotiations, are also included in the public sector contracts (central government, local authorities, the semi-public sector, public enterprises, health authorities, etc.), renewed in 1990-91 on the basis of the above-quoted sectoral agreement and the relevant enabling decree dating back to 1988.

These themes are recognised as being fundamentally important in overcoming the organisational inflexibility and bureaucracy of the public sector and to make public services more efficient and less costly.

The contracts of this sector deal with arrangements concerning working hours in a very homogeneous fashion. The salient features are still the 36-hour week for all employees and the possibility for everyone to opt for a shorter working week. They also contain a specific commitment to introduce timetable arrangements allowing offices, particularly those open to the public, to remain open at least up to 6 p.m.

Provision has also been made in the public sector for programming multi-week timetables of work along the lines of the contracts used in industry. A longer-than-normal working week will naturally be followed by a correspondingly shorter working week.

Average timetables for several weeks were again often used in 1992, *inter alia* to bring greater flexibility into the annual calendar, as it is defined early in the year ly by end-February), could be adapted firms' fluctuating requirements.

Following the blockage, already mentioned under the protocol agreement between the government and the two sides of industry of 31.07.92 and covering the full 1993-94 two-year period, of all company-level negotiations on salary increases, the renewal of expired company-level contracts generally concerned the definition of configurations or flexible working arrangements, partly the result of companies being crisis-hit or undergoing restructuring. The aim is always to seek out alternative measures to lay-offs and at times even limit the removal from the production cycle of surplus manpower by reducing working hours and using "solidarity contracts".

There were no significant developments as regards the rules governing self-employed workers.

## SOCIAL PROTECTION

As a follow-up to what was said in the second report, developments in 1992 are set out below.

Unemployment

Law No 223 of 23 July 1991 provides for a "redeployment" allowance which replaces the special unemployment benefits. It is payable to workers having a length of service of at least 12 months and who are registered in the appropriate redeployment lists and who have already been laid off with no chance of being re-employed by the company or who have been affected by collective redundancies. The allowance remains payable from 12 to 48 months depending on the age of the worker and the region of residence. Its amount decreases as time goes by: it stands at 80% of salary for the first 12 months and 64% thereafter. The periods of subsidised "redeployment" are valid for the purposes of pension rights. Workers undergoing "redeployment" have recruitment priority and can ask for the benefit to be paid in advance in

order to undertake self-employed activity or form a cooperative.

Pensions

Legislative Decree No 503 of 30 December 1992 sets out the provisions for reorganisation of pension schemes for public and private sector employees. The main objectives of the reform are the phased elimination of differences between the various pension schemes and the financial readjustment of pension scheme management.

Below are set out the most significant innovations:

- phased raising of age limits for entitlement to pension rights: from 1 January 2002 these will be 65 for men and 60 for women;

- phased raising of the requisite minimum level of contributions for old age pension: as from 1 January 2001 this will be 20 years;

- phased raising of the reference period for calculating pensionable salary. For newly recruited persons, it is anticipated that it will be possible to take account of all earnings received during working life;

- subordination of the right to old age pension to the cessation of the employment relationship;

- annual reassessment of pensions on the basis of cost of living alone;

- raising to 35 years the requisite period of contribution for old age pension in all schemes. More favourable transitional arrangements are provided for anyone having already completed certain lengths of contribution periods;

- the income of the pensioner's spouse will also be taken into consideration for the purposes of deciding entitlement to minimum income supplement;

- non-cumulation of old age and disability pensions exceeding the minimum with income from work which exceeds 50% of the pension;

- possibility for employees having paid at least five years employment-related contributions to redeem the periods outside the employment relationship and corresponding to optional absention from work for reasons of maternity and periods devoted to attending to disabled persons.

Periods corresponding to compulsory abstention for reasons of pregnancy and maternity, even outside the employment relationship, will be covered by a notional contribution.

In both cases these will have to be periods subsequent to 1994.

For the purposes of entitlement to old age pension, newly recruited workers may claim a maximum of five years of notional contributions.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

No major changes here as regards legislation and contractual arrangements. However, as in the case of the second report, mention can again be made for 1992 of the following trend which over the past decade has become steadily consolidated in Italy: the call for greater institutionalisation of the collective bargaining system by constant emphasis (particularly in top level negotiations) on an increasing degree of mutual recognition, stability and regulation between the two sides of industry.

This trend, undoubtedly given impetus by the

commitments Italy must fulfil as regards Community integration, stems from the need to check (particularly within the company) situations of mutual distrust and to promote comparative stability in negotiations which is essential against the background of world economic crisis in which the European economy is currently set.

As already mentioned under item 6 "Remuneration", the protocol agreement on the cost of labour reached on 2 July 1993 is a radical innovation to the system of industrial relations and, in line with the trends described above, puts greater emphasis on a more objective and rational analysis of the structure of costs and salaries. Information on the content of this protocol will be given in the report for 1993.

## VOCATIONAL TRAINING

Nothing new to report on the legal front. As mentioned in the previous report, a National Conference on Vocational Training was held in Rome on 5-7 February 1992, preceded by three preparatory seminars held respectively in Florence (4-6 November 1992, "Training supply and demand"), Capri (27-29 November 1992, "Certification and assessment systems") and Milan (16-18 December 1992, "Financing vocational training").

In addition, a symposium was held on guidance services at the workplace following a survey of guidance services in Italy, in November 1992 in Rome. On this occasion, the relevant departments drew operational conclusions for the sector on the basis of a survey conducted in 1992 by the CERIS social research organisation.

Through the January 1993 protocol agreement on vocational training, the bilateral joint organisations comprising the employers' associations (**Confindustria**) and the workers' trade unions reiterated the strategic importance of vocational training for maintaining and developing the possibilities for integration and employment of young people and other workers, and for defending and enhancing firms' competitiveness, in an economic context of increasing internationalisation of the economy.

## EQUAL TREATMENT FOR MEN AND WOMEN

No major new developments in this delicate sector in 1992, but it is again worth mentioning the importance of Law No 215 of 25.2.1992 ("Positive action for business initiatives by women") designed to encourage the creation and development of companies in the sectors of agriculture, craft industries and in trade and industry, composed of and managed predominantly by women, and of cooperatives of persons in which women represent the majority partners, or make up at least two-thirds on the board.

These companies or cooperatives are entitled to capital grants and subsidised loans for the introduction of technical, technological or management innovations or for starting up or purchasing concerns. The budgeted expenditure of the Ministry for Industry includes a national fund for the development of business activities by women, the purpose of the fund being to finance the above-mentioned subsidised loans.

In addition, within the contractual platforms and even more so in almost all national collective labour contracts for the various categories of workers, also renewed during the year under consideration, there are provisions for safeguarding and upgrading female work and to guarantee the respect of the dignity of women at work.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

No major changes on the legal and/or contractual front in this context. In addition to what was said in the second report, the following trends can be mentioned. Management of the labour factor in the new configuration of employer/employee relations means that the employee's work contribution is no longer limited to merely fulfilling his/her obligations under the terms of his/her contract as was the case previously, but is now seen as an active and conscious contribution to the interests and welfare of all concerned.

This new trend towards a more participative involvement of workers in the activities of the company is now virtually part and parcel of the scene, beginning some years before with the IRI-CGIL-CISL-UIL protocol agreements signed in 1985 and 1986 on the "right to information" and the new configuration of industrial relations, and subsequently becoming common practice in employer/employee relations. Another important stage in this process was the Inter-federation Agreement of 20 January 1990 on the cost of labour and the attached protocol on industrial relations, and, although indirectly, the two protocol agreements between the government and the two sides of industry on the cost of labour, one dating from 21 July 1992 and the other signed very recently on 2 July 1993.

This latter protocol, the content of which will be outlined in the report for 1993, represents an overall framework of new trends in the sector and will have a substantial impact on the practical and sectoral procedures of consultation between the two sides of industry, depending on the extent to which the government, employers and trade unions can and wish to follow it up in practice.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

No major changes to report as regards legal arrangements in this context.

The following provisions relating in particular to the implementation of certain directives on safety at work were introduced in 1992:

- Decree Law No 77 of 25.1.1992 concerns the implementation of Directive 88/364 on the protection of workers against the risks from exposure to chemical, physical and biological substances at work.

- Law No 142 of 19.2.1992 (Community law for 1991), described in the previous report, which through Article 43 delegates to the government the responsibility for implementing eight EC directives on the safety and health of workers at work.

- Law No 257 of 27.3.1992 on the prohibition of the use of asbestos.

In addition, the Standing Consultative Committee for the Prevention of Accidents and the Safeguarding of Health at Work, set up in accordance with Article 393 of Presidential Decree No 547/55, pursued its activities during the 1991-92 period, working both within the framework of its institutional duties and particularly on the examination of the preparations for the European Year of Safety, Hygiene and Health Protection at Work. The Consultative Committee, by virtue of its collegial composition (the workers' trade unions and the employers' federations are equally represented) was chosen by the European Community as the national liaison committee for the European Year.

As regards its institutional tasks, during the

Year it published:

- Decree N° 155 of 3.7.1992 giving the employees of the ENEA CRE Casaccia earthing facility responsibility for checking and monitoring procedures;

- Decree No 151 of 3.8.92 on the regulation amending legislation on the recognition of the effectiveness of systems and safety arrangements for the manufacture and use of radio controls for cranes, etc.

## PROTECTION OF CHILDREN AND ADOLESCENTS

No significant changes in legal or contractual provisions.

Emphasis is again laid on measures by the Ministry for Employment's labour inspection departments to get information on the employment of young people under legal age and on the scale of the "black economy", and particularly to take stock of action taken by the many bodies competent in this sector. This is coordinated centrally, as stated, by a simultaneous check on trends in the problems in the sector, carried out by the "Committee for the problems of persons under legal age" comprising members representing all the ministries and competent departments, within the Ministry of the Interior.

## THE ELDERLY

The following new legal and administrative development has emerged since the second report:

- Pursuant to the Decree of the President of the Council of Ministers, Giuliano Amato, published in the Official Journal of the Italian Republic No 177 of 17.07. 1992, the Minister for Social Affairs must, upon the instruction of the President of the Council of Ministers, prepare an annual report on the state of the elderly, to be submitted to the government, to Parliament, to individual ministries and to local authorities by 30 September of each year.

This report highlights the Ministry of Health's project "Safeguarding the health of the elderly", mentioned in the previous report and approved by a law of 30.01.1992.

This project provides the basis for a decisive step towards a comprehensive system of assistance for the elderly, in line with WHO, OECD and UN guidelines. Its contents serve as guidelines for regional organisation and provides a reference point for a care and welfare model designed to ensure equal conditions of access to services throughout the country.

The social merits of the project for the elderly stand out even more if account is taken of the welfare models to which priority has been given:

- comprehensive home help providing a package of medical, nursing, and therapeutical care along with welfare and assistance at the sick person's home;

- hospital care at home, providing a new concept within the health service, implemented by the geriatrics department and different from the comprehensive home help described above by virtue of its typically hospital care contents;

- in-patient care schemes, with admission into an establishment of the elderly person when he/she cannot be cared for at home. These arrangements are organised in accordance with specific standards suggested to the regional authorities and are part of health care.

The project shows that the Ministry of Health,

in conjunction with the Ministry of Social Affairs, can henceforth go ahead with schemes for both medical and social assistance targeted at the elderly.

The Parliament for its part continues to bring the attention of the government to elderly persons and devotes to this subject a chapter in its interim report to the 12th Committee for Social Affairs and Health of the Chamber of Deputies on problems emerging in the context of care and welfare, submitted on 5.8.1992.

The report mentions that the EC has designated 1993 as the European Year of Older People and Solidarity between Generations. The Ministry of Social Affairs has set up the national liaison committee to coordinate the programme for the European Year. The activities pursued will be designed essentially to promote a new culture of the elderly as an "active resource" in society.

The EC has been promoting campaigns which the individual Member States are encouraged to incorporate into their care and welfare programmes.

In particular, a special over-60s pass has been introduced making it easier for citizens to travel throughout the Community and a European committee has been set up to foster new programmes for the elderly.

Pension arrangements for the elderly have also been helped along by recent laws.

The framework law on voluntary work (Law No 26 of 11.8.1991, already mentioned in the previous report), in tandem with the entry into force of Law No 381 of 8.11.1991 on social cooperatives, has provided a valid instrument enabling the elderly to themselves become players in the organisation of social services.There is also the framework law on handicapped persons (Law No 104 of 5.2.1992) which is designed to safeguard the rights of this group, which includes many elderly people.

Lastly, the reform of the pension system in progress is endeavouring to pave the way for better arrangements for the elderly in the future, the aim being to establish a greater degree of equal treatment.

## DISABLED PERSONS

Following up what was said in the previous report, the framework Law No 104 of 5 February 1992 "Welfare, social integration and rights of disabled persons" sets out the following guidelines in this sector:

- prevention, treatment and rehabilitation, the primary aims being information, health education and early detection;
- insertion and social integration, the primary aims being education, school and university teaching and, more significantly, placement in work and occupational integration;
- removal of obstacles to active participation in the life of the overall community;
- setting up of a personal aid service for cases of severly limited autonomy, with the possibility of specifically setting aside accommodation, etc.

Lastly, pursuant to Decree of the President the Council of Ministers No 177 of 17.7.1992 establishing the responsibilities of the Ministry of Social Affairs, the Minister coo... general government activity on the prob... the handicapped and assists in all ... measures adopted by the government and individual ministries.

The National Committee for the Hand... is chaired by the Minister for Social ... and comprises the Ministers of the Interior, Treasury, Education, Health, Employm... Social Security, the Ministers for Insti...

Reforms, Regional Affairs and Coordination of Community Policies. It also calls in representatives of the regional, provincial and municipal authorities as well as representatives of bodies and associations active in the context of the handicapped, and also of trade unions.

As regards compulsory placement of disabled persons, the consolidated text of bills to reform the law concerned is currently before the Committee of the Senate. This reform, in line with the EEC Recommendation of 24.7.86 on the employment of handicapped persons, seeks to improve the current system by measures of counselling and vocational training, promotion of integrated cooperatives, agreements on occupational therapy and rationalisation of placement procedures.

The government is in favour of the measure as it is designed to replace the current welfare-geared system by a system which, by means of "targeted placement" finds every disabled person a job adapted to his/her handicap and his/her occupational capacity.

## IMPLEMENTATION OF THE CHARTER

The observations made in the first report remain valid.

Although many draft directives submitted by the Commission still have to be discussed and activity in this context did slow down in 1992, the following directives were nevertheless adopted:

- amendment of the directive on collective redundancies;

- protection of pregnant women at work.

These directives and others still at an advanced preparatory stage of discussion, e.g. the "Works Councils in European-scale undertakings", the "Protection of young people at work" and the "Detachment of workers in the context of special services", are considered essential for a solid start to the implementation of the Community Social Charter. Lastly, it is thought that the directive on the protection of atypical workers can be put before the Council's Group on Social Affairs as soon as possible.

# LUXEMBOURG

## FREEDOM OF MOVEMENT

Question 1

The right of nationals of a Member State to move to a different Member State to seek work is subject to no condition other than that applying to entry into Luxembourg itself.

Question 2

a) There are at present no plans for new initiatives to regulate the right of residence of workers exercising their right to freedom of movement within the Community.

b)

- Private sector: Workers who have exercised their right to freedom of movement are treated in the same way as nationals in respect of the exercise of an occupation of profession.

- Public sector: See reply to question 4.

c) Negative answer.

Question 3

a)

There are no measures preventing the reunification of families of workers from the Community working in Luxembourg.

The State Immigration Service (reporting to the Ministry for Family Affairs) assists in family reunification in respect of legal, administrative and material problems.

The Ministry plans to modify the Immigration Service's terms of reference by widening its scope and providing it with more resources to deal with the implications for families of the completion of the Single Market.

b) In all cases where the recognition of diplomas or occupational qualifications acquired in another Member State is based on international treaties, bilateral agreements between Member States or laws or regulations resulting from the transposition of a Community instrument into national law, decisions are taken on an ad hoc basis, in application of the relevant rules or regulations, by the competent authorities.

Recognition of foreign diplomas awarded at university or higher education levels is a practical necessity in Luxembourg owing to the fact that Luxembourg has no full-scale university education system. The legal bases are the Law of 17 June 1963 on higher education qualifications and the amended Law of 18 June 1969 on higher education and the recognition of foreign qualifications and degrees.

In all other cases, the Ministry of Education examines individual applications and issues certificates of equivalence where appropriate.

This process is quick and unbureaucratic. Where appropriate, foreign embassies and/or professional bodies are asked for their opinion.

c) In terms of living and working conditions, frontier workers enjoy exactly the same rights as workers resident in Luxembourg.

## EMPLOYMENT AND REMUNERATION

Question 4

Freedom of choice of, and freedom to engage in, an occupation do not extend to a certain number of posts requiring direct or indirect involvement in the exercise of public power and participation in functions aimed at safeguarding the general interests of central and local government, more particularly:

- the armed forces, the police and other law

and order enforcement bodies;

- the judiciary, the tax service and the diplomatic service;

- posts in ministerial departments, local authorities and other similar bodies, the central bank (for staff exercising activities prescribed in respect of a central government legal power or a legal person under public law, such as the drawing up of legal acts, the implementation of such acts, monitoring of such application and the supervision of dependent organizations).

The Commission has informed the Luxembourg Government that proceedings are being brought under Article 169 of the EEC Treaty (failure to fulfil an obligation) in respect of the free movement of workers in the following six fields:

- rail transport, urban and extra-urban transport;
- water, gas and electricity distribution services;
- post and telecommunications services;
- operational services in the public health sector;
- teaching in nursery, primary and secondary schools and in higher education;
- public civilian research establishments.

Question 5

a) Generally speaking, the level of remuneration, the essential element in a contract of employment, is freely determined by the parties to the contract.

However, there are certain binding rules on pay which apply to employers and workers alike.

1. *Definition of "remuneration"*

The statutes governing the status of (non-government) employees contain a generaldefinition of the various terms covering pay, wages, salaries and remuneration as used in law.

The general concept covers all income elements including:

-cash remuneration
-other ancillary benefits and the like such as bonuses, royalties, discounts, premiums, free housing, etc.

2. *Minimum wage*

The statutory minimum ("social") wage scheme is based on the Law of 12 March 1973, as amended by the laws of 27 March 1981, 28 March 1986 and 28 December 1988.

The law provides for payment of a minimum wage to all persons of normal physical and intellectual aptitude, without distinction by sex, employed by an employer under a provision of services contract.

The minimum wage finds general application, no derogation being provided for in law by reason of the employer's sector or branch of economic activity.

The law provides for the legislature to adapt the minimum wage to economic developments.

In practice, in order to ensure that workers and employees benefit from economic development in the country, the minimum wage is increased every two years at least, whenever general economic conditions and income trends so justify.

To this end, the Government is required to submit a report every two years to Parliament accompanied, where appropriate, by a draft instrument for increasing the minimum wage.

3. *"Escalator" scheme for wages and salaries*

The Law of 27 May 1975 gave general effect to the "escalator" scheme for wages and salaries which already applied to the minimum wage and to remuneration covered by a collective agreement.

The system for the automatic adaptation of wages and salaries operates according to mechanisms introduced by the Law of 28 April 1972, and is triggered by attainment of a threshold based on the weighted consumer price index, based in turn on a basket of 269 items (Grand-Ducal Regulation of 24 December 1984).

This happens whenever the mean of the index calculated over the past six months exceeds 2.5%.

The Law of 1975 makes it an offence for an employer to pay workers at a rate below that determined by the above scheme.

b) The legal provisions mentioned under a) above apply likewise to terms of employment other than open-ended full-time contracts.

c) Cases in which wages are witheld, seized or transferred are covered by a special regulation governed by the concept of providing protection for workers for whom the wage or salary is very often their only means of subsistence. Thus, the Law of 11 November 1970 makes wages and salaries immune in part to seizure or transfer.

This basic legal text was amended and supplemented on a number of points by the Law of 23 December 1978.

Finally, a Grand-Ducal Regulation of 9 January 1979 redefined the procedure for the withholding or seizure of wages or salaries, laying down the forms and dispute arrangements in respect of assignment or transfer of remuneration or pensions.

1. *Protected elements*

The special regulation on attachment and assignment of remuneration applies to all types of remuneration without distinction, provided they arise from a paid activity. The employment status (government, non-government, manual worker) is irrelevant, nor is any distinction made according to the quantum and nature of remuneration, or to the form and nature of relations between the worker and his employer.

The regulation also applies to pensions and unemployment benefit.

2. *Quantum of the attachable and assignable proportion*

A Grand-Ducal Regulation of 18 January 1988 lays down what proportion of each wage or salary may be only partially attached or assigned.

The Law of 11 November 1970 lays down the available percentage from each of these wage or salary instalments. It operates the principle of the separation of the attachable and assignable portions, apart from the fifth instalment, which is declared to be attachable and assignable in total.

3. *Basis of assessment for disposable portions*

For the purposes of determining what amounts are disposable, the law provides for tax and social security payments to be deducted.

4. *Special rules in respect of maintenance payments*

In the event of an assignment or attachment arrangement to service maintenance payments, the monthly

amount due for such maintenance payments is taken in whole from unattachable and unassignable portions of the remuneration.

Any outstanding maintenance payments from previous months and the attendant costs have to compete with other creditors for the attachable and assignable portion.

Question 6

Nationals of a Member State seeking a job in Luxembourg receive the same assistance as that accorded by placement offices to job seekers of Luxembourg nationality.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Question 7

a) *Working time*

1. Normal working time

Normal hours of work for employed persons are 8 hours a day and 40 hours a week.

Compensating derogations

In certain cases, the normal working time may be exceeded provided it is compensated for at another time by a rest period corresponding to the excess hours worked.

Hours so worked are not subject to extra pay arrangements.

Without authorization from the Minister of Labour: for both staff and manual workers, employers have the right to increase the maximum working day to 9 hours on condition that the weekly time worked does not exceed the normal 40 hours.

With authorization from the Minister of Labour:

- for sectoral or technical reasons, exceptions may be granted for a reference period (to be determined by the Minister for manual workers, 2 weeks for non-manual workers), provided that the average working week does not exceed 40 hours or 10 hours per day;
- for continuous and shift work: maximum reference period of 4 weeks;
- for seasonal and hotel establishments.

For non-manual workers, maximum reference period of a year; the 40–hour limit may be exceeded for a number of weeks provided there is a compensatory reduction during certain other weeks.

Overtime arrangements

- The law allows overtime to be worked, subject to prior ministerial authorization, in the following cases:
  - to prevent the loss of perishable items or to avoid compromising the technical results of work;
  - to allow special work to be done (e.g. stocktaking);
  - to enable firms to cope with temporary pileups of work;
  - in exceptional cases in the public interest and in connection with events constituting a national risk.
- The law also allows for recourse to be had automatically to overtime (i.e. without prior authorization) for all types of work designed to cope with an accident or imminent risk of accident and for urgent work to be carried out on machines and work equipment and for work caused by force majeure insofar as this is needed to avoid causing a serious hindrance to the firm's normal operations.

Firms are required only to inform the Labour Inspectorate.

Overtime is limited to 2 hours per day unless special arrangements are made to the contrary.

2. Night work

There are no general rules and regulations.
Special rules apply to:

- The bakery trade:
  - bread and pastries may not be made between 10 pm and 5 am;
  - the working day in bakeries may be from 4 am to 9 pm provided the operator has made a written declaration to the Labour Inspectorate.
- Pregnant women and nursing mothers:

  May not work between 10 pm and 6 am.
- Adolescents:

  Must have a break from work of at least 12 consecutive hours, this period to include the time between 8 pm and 6 am.

b) *Employment contracts other than full-time open-ended contracts*

1. Fixed-term contracts

1.1.

The law stresses the exceptional nature of fixed-term contracts, stipulating that ment contracts must be open-ended.

in cases and under conditions provided the law may contracts of employment be ced period, such period to be laid down ature of the contract or to be terminated completion of the work to which the contract relates.

Thus, the Law of 24 May 1989 on employment contracts lays down the legal scope of fixed-term contracts, enabling parties to conclude such contracts "for the execution of a precise and non-permanent task".

The law adds that a fixed-term contract may not be for a job linked to the firm's normal and permanent activity.

It gives examples of jobs which are to be regarded as precise and non-permanent tasks within the meaning of the law:

- replacements
- work of a seasonal nature
- work for which it is normal to have recourse to fixed-term contracts (e.g. in the audiovisual and building industries)
- for the execution of a clearly-defined occasional and specific task
- for urgent work
- contracts linked to employment policy schemes

1.2.

The law requires employment contracts concluded for a fixed duration to define the object of the contract and to indicate a number of elements related to the time-limitation aspect.

- Where a contract is concluded for a precise period, the date of expiry must be stated;
- Where the contract does not include a date of expiry, it must indicate the minimum period for which it has been concluded;
- Where a contract has been concluded to provide a replacement for an absent worker, it must name the person whose absence has given rise to the contract.

The contract must, where appropriate, name

the precise trial period.

It may, where appropriate, include a renewal clause.

In the absence of a clause to the effect that the contract has been concluded for a fixed duration, a contract of employment is assumed to be open-ended.

No provision is made in the law for proof to the contrary.

**1.3.**

**Duration of fixed-term contracts**

1.3.1 Contract period

The law provides for two types of fixed-term contract, viz. where the contract period is clearly stated, and where the contract is concluded for a precise project or task where the date of completion is not known in advance.

In principle, the law requires contracts to be concluded from a fixed date to a fixed date.

However, the parties to the contract may opt for different arrangements in three cases:

- for the replacement of an absent employee or for an employee whose contract has been suspended,
- for work of a seasonal nature,
- for jobs for which in certain sectors of activity it is normal not to use open-ended contracts because of the nature of the activity and the temporary nature of the job.

1.3.2 Maximum contract duration

The maximum duration of a fixed-term contract may not, for one and the same employee, exceed 24 months, including any renewals.

In view of the possibility open to the contract parties to provide for a seasonal contract to be renewed from season to season, the law states that the 24–month limit does not apply to successive contracts of a seasonal nature.

The law also makes an exception to the 24–month upper ceiling for employees exercising activities requiring highly specialist knowledge and properly substantiated specialist professional experience.

Exceptions to the ceiling rule are also allowed for jobs assigned to a job seeker under an occupational integration or reintegration measure under the law, along with jobs designed to encourage the recruitment of certain categories of job seeker and jobs occupied with a view to enabling the job holder to benefit from vocational training. These types of job must be authorised in advance by the Minister of Labour.

**1.4.**

**Renewal of fixed-term contracts**

The law provides for fixed-term contracts to be renewed twice for a fixed period.

The principle, and where appropriate, the conditions of renewal must be set out in the initial contract or in a rider to the contract.

In the absence of any such written provision,

the renewed contract is assumed to be open-ended. The law makes no provision for proof to the contrary.

Employment contracts of a seasonal nature may be renewed for the following season, in which case a contract concluded for a fixed period of one season is held to constitute a fixed-term contract even if it is renewed for subsequent seasons.

If there is a renewal clause, the repetition of contractual relations for more than two seasons between an employer and one and the same employee has the effect of transforming the sum total of the seasonal contracts into an overall open-ended relationship. The consequence is that, when the firm no longer has need of the worker for the next season, the cessation of seasonal relations is deemed to be equivalent to a redundancy.

1.5.

**Succession of contracts**

- In the event of the tacit renewal of a fixed-term employment contract which has expired, the law provides for the employment relationship to be continued in the form of an open-ended contract.

  In respect of the continuation of contractual relations by open-ended contract, the law says that one and the same post cannot in principle be filled by a succession of fixed-term contracts.

  Where a post has been occupied by a person employed under a fixed-term contract, the employer may not, once the contract has expired, employ the same person or another person at the post in question under a fixed-term contract or an interim contract before expiry of a period equivalent to a third of the duration of the previous contract, including renewals (known as the one-third rule).

  By way of exception to this general principle, the law provides for the possibility of concluding successive fixed-term contracts with one and the same employee or with another employee without application of the continuity solution.

  Exceptions to the principle of the waiting period concern first and foremost - and regardless of the motive behind recourse to a fixed-term contract-cases where cessation of contract is the employee's fault. The same goes for the anticipated termination of contract by the employee or linked to a serious misdemeanour on his or her part or refusal by the employee to renew a contract comprising a renewal clause.

  An uninterrupted succession of fixed-term contracts with different employees or with one and the same employee is allowed for jobs of a seasonal nature, for jobs where it is not normal to have recourse to open-ended contracts and for contracts linked to employment policy measures.

  The same possibility is available for the execution of urgent work.

  Finally, the law allows for the case of a fresh absence on the part of a replaced employee, particularly for a health relapse. Whatever the time which has elapsed since the end of the first contract, the employer may instate a new employee under a fixed-term contract if the employee who was originally replaced has once again gone absent.

- The law provides for restricted contracts to be reclassified as open-ended contracts for violations of certain legal provisions governing the fixed-term type of contract.

  The types mainly concerned here are contracts which are renewed under

conditions which are not authorised by law and successive contracts concluded for one and the same post without complying with the waiting period.

- Where a contract is reclassified into an open-ended type, the employee retains the seniority he had acquired at the end or the fixed-term contract.

- In all cases, the law makes it illegal for a trial clause to be inserted into the new contract.

**1.6.**

**Trial period.**

A contract concluded for a fixed period may make provision for a trial period in conformity with the provisions applying to open-ended contracts (see under 2.1. below).

The trial period is taken into account in calculating the maximum duration of a fixed-term contract.

The two parties to the contract may terminate a contract which includes a trial period according to the same rules which apply to open-ended contracts.

Where a trial contract is not terminated in accordance with the law before expiry of the trial period agreed by the parties, the contract is deemed to be concluded for the period agreed in the contract from the date of entry into service of the employee.

**1.7.**

**Termination of fixed-term contracts**

Fixed-term contracts are terminated automatically on expiry.

Suspension of such contracts has no effect on the expiry arrangements, although the law allows for the anticipated termination of such contracts for a serious reason attributable to other party.

Anticipated termination of a fixed-term contract by the employer gives the employee a right to compensation in a sum equivalent to the wages and salaries which would have been paid up to the expiry of the contract, up to a maximum amount equivalent to the remuneration for the period of notice which the employer should have observed had the contract been of the open-ended type.

Where a contract is terminated prematurely by the employee, the employer has a right to compensation corresponding to the damage or disadvantage actually incurred, on condition though that the level of such compensation may not exceed the sum of wages and salaries payable for the period of notice which the employee should have observed if the contract had been of the open-ended type.

**2. Trial contract**

A trial clause may be incorporated into both open-ended and fixed-term contracts.

Any contract which does not incorporate a trial clause is deemed to be concluded for an indefinite period. Evidence to the contrary is not admissible.

**2.1.**

**The trial period**

- may not be less than two weeks;

- must be
  .two weeks to a maximum of
  months for employees
  qualifications are below CATP level;
  .two weeks to a maximum of six
  for employees with the CATP or
  equivalent or higher qualifications;
  .two weeks to a maximum of 12
  for employees earning a monthly salary
  LFR 21 622 or more (base 100

linked);

- if of one month or less must be expressed in full weeks, with trial periods in excess of one month being expressed in full months.

2.2.

**Termination of trial contract**

2.2.1 Termination

- May not be terminated unilaterally during the first two weeks except for a serious reason.

- Once two weeks have elapsed, any termination of the contract by one or other of the parties must be by registered letter or by way of signature on the duplicate on the letter of termination.

- The reason for termination does not have to be indicated.

2.2.2 Notice

The period of notice is expressed in days and calculated by reference to the trial period. It must comprise the same number of days as the trial period comprises weeks. If the trial period is expressed in months, the period of notice will be four days per trial month without, however, exceeding a period of one month.

If the trial contract is not terminated before expiry of the agreed trial period, the contract will be deemed to have been concluded for an indefinite period from the date of entry into service.

3. <u>Part-time contract</u>

The law of 26 February 1993 concerning voluntary part-time working seeks to eliminate *de jure* and *de facto* discriminatory treatment of part-time workers.

The broad lines of the new law can be summarised as follows:

- the company head is required to consult the joint committee or the staff delegation before creating part-time posts;

- employees who have expressed a wish to take up or resume a part-time job must be informed when such jobs become available;

- an employee occupying a full-time post may not be dismissed for refusing to occupy a part-time post;

- there must be rules governing the content of part-time employment contracts;

- there must be rules on overtime arrangements;

- there must be rules concerning the rights of part-time employees in respect of pay, seniority rights, severance pay and trial periods;

- there must be rules on the representation of part-time employees on staff committees and the like.

c) *Collective redundancy and bankruptcy procedures*

The law regards collective redundancy as comprising redundancy for at least 10 persons for a period of 30 days or of at least 20 persons for a period of 60 days.

The employer must conduct prior consulations

with the staff representatives and inform them in writing of the reasons for the redundancy arrangements, the number of workers affected, the number of workers normally employed and the period over which he intends to effect the redundancies.

A copy of this letter must be sent to the Employment Administration, which in turn forwards to the Labour Inspectorate.

Collective redundancy arrangements notified in advance to the Employment Administration do not take effect for individual workers until a period of 60 days has elapsed.

Question 8

1. *Ordinary leave*

Employees have a right to leave after 3 months' uninterrupted work with the same employer.

Duration:

- 25 working days per year regardless of age.

- Supplementary leave:
  .disabled workers: 6 days;
  .where the weekly rest period is less than 44 hours: 1 working day for each full period of 8 weeks, whether successive or not, for which the weekly rest period is not granted.

Employees may be refused leave where unjustified absences, calculated as a proportion of the year which has passed to date, exceed 10% of the time which should normally have been worked.

Leave must be taken in a single instalment unless the needs of the service or justified reasons on the part of the employee apply. In such cases, one leave instalment must comprise at least 12 continuous days.

For the first year at work, the period of leave is 1/12th per full month worked, with fractions of a month in excess of 15 days being counted as a full month. Fractions of leave-days in excess of 50% are regarded as full days.

Where the firm closes for its annual holiday, the collective leave period must be fixed by common accord between the employer and his employees (or their delegated representatives).

Where a contract is terminated in the course of the year, the employee has a right to 1/12th of his annual leave for each full month worked.

For each day's leave, employees have a right to an allowance equivalent to the average daily rate of pay over the three months immediately preceding the period of leave. The holiday allowance must correspond to the pay the employee would have received had he been working normal hours, and must be paid over together with the normal wage or salary.

Employers must keep records of the statutory leave periods of employees in their service.

2. *Weekly rest period*

Employers may not employ any workers, whether manual or non-manual, whether contracted or under an apprenticeship contract, on work between midnight on Saturday night and midnight on Sunday night.

**2.1.**

**Exceptions in respect of certain categories of persons**

- Relatives in the ascending or des… line, brothers and sisters or in-laws … employer, where their sole occupation … with the firm.

  This derogation concerns one-man … but also companies where the prop… … affiliated to the liberal professions …

self-employed workers sickness insurance fund.

- Travellers and sales representatives, in so far as they exercise their activity away from fixed establishments.

- Employees occupying an executive post and executives whose presence in the firm is essential for the smooth running and supervision of the firm.

2.2.

**Exceptions in respect of certain types of work**

- Supervisory work in premises attached to the firm.

- Cleaning, repair and maintenance work ensuring the smooth running of the firm; work other than production which is essential so that work can resume on subsequent days.

- Work needed to prevent any deterioration of raw materials or products.

- Urgent work which has to be done in respect of salvaging, preventing imminent accidents or carrying out repairs following accidents affecting materials, installations or buildings.

2.3.

**Exceptions in respect of firms**

- Retail sales establishments where Sunday closing would be such as to compromise the normal functioning of the establishment because of the scale of the Sunday turnover and the impossibility of making up for the custom over the other weekdays. The Minister of Labour may grant temporary or permanent derogations to the ban on Sunday working in cases which are duly justified, on condition that the legal provisions governing normal working time are upheld.

  Such working time may not exceed four hours, although there is a Grand-Ducal Regulation enabling this period to be extended up to 8 hours at most for at most six Sundays per year.

- Firms where the only or main driving force is water; the exercise of activities to satisfy public needs which arise 7 days a week or mainly on Sundays; activities which are carried on for only part of the year or are carried on more intensively in certain seasons; activities exercised for reasons of public utility. A Grand-Ducal Regulation lays down the conditions and arrangements in respect of such derogations.

- Undertakings which are automatically excluded from the general ban on Sunday working:

  .hotels, restaurants, canteens, establishments serving drinks or other consumable items;
  .pharmacies, drug stores and shops selling medical and surgical appliances;
  .fairs and sideshows;
  .farming and wine-growing undertakings;
  .public entertainment undertakings;
  .suppliers of lighting, water and motive power;
  .transport undertakings;
  .hospitals, clinics, dispensaries, sanatoria, rest homes, old people's homes, children's homes, holiday camps, orphans' homes and boarding schools;
  .undertakings in which work, by its nature, must be continuous and punctual. A Grand-Ducal Regulation will be issued to lay down which undertakings are involved and specify the nature of work which is authorized on Sundays;
  .domestic staff.

- Firms operating continuously on a shift

system and which do not fall within the category of firms in which work, by its nature, must be continuous and punctual, i.e. in most cases firms wishing to introduce Sunday working, not so much for considerations inherent in the production method, but more for economic reasons (e.g. improved production capacity utilization, job growth or consolidation). Any such exceptions are subject to an agreement which must be distinct from the collective agreement and must be concluded for a specified firm with all the representative trade union organizations at national level.

Compensatory rest arrangements

Employers must grant compensatory rest time to employees who work on Sundays. Such rest may not necessarily be on a Sunday, nor on the same day of the week for all the employees in one and the same firm. It must amount to a full day if the Sunday work accounted for more than 4 hours, and a half-day at least if the Sunday working time was 4 hours or less. In the latter case, the compensatory rest time must be granted before or after 1.00 p.m., and on such days working time may not exceed 5 hours.

Question 9

The law provides for a compulsory contract of employment in writing and in duplicate, one copy to be held by the employer and the other to be handed to the employee at the time of entry into service at the latest.

The employment contract must contain the following details:

- the nature of the job
- the normal working time
- the basic salary or wage and, where appropriate, any supplements, bonuses, profit-sharing arrangements and the like
- the duration of the trial period
- any other terms agreed between the parties.

## SOCIAL PROTECTION

Question 10

The social security system in Luxembourg is designed to guarantee workers an alternative source of income where they are prevented from pursuing their normal occupational activity by reason of illness, child birth, old age, invalidity, death or unemployment. The basis on which social security benefits are calculated is the wage or salary previously received. The entire working population (employed or self-employed) is covered by the system; there are also optional insurance arrangements covering cessation of work.

In addition to these traditional social security mechanisms, there is also a guaranteed resources mechanism which ensures that people receive a guaranteed minimum level of income to guard against poverty.

The guaranteed minimum income is a State social benefit by which the monthly income of all inhabitants who are not in a position to live off their own resources is raised by a supplementary payment to a given level laid down in law.

Under the law of 19 June 1985, family allowances are deemed to be a child's personal right and are not subject to professional or means-testing.

Taken in conjunction with tax allo family allowances constitute a global policy system.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Question 11

Apart from a worker's constitutional rights, the right to form professional organizations derives from ILO Convention 87 on the freedom of association and protection of the right to organize, ratified in 1958.

This convention states that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization".

As regards the rules, "workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes".

The convention goes on to state that "organizations shall not be liable to be dissolved or suspended by administrative authority" and insists that "workers and employers and their respective organizations shall respect the law of the land".

Question 12

1. *Definition*

The law defines a collective agreement as a contract relating to employment relations and general conditions of employment concluded between, on the one hand, one or more trade union organizations and, on the other, one or more employers' organizations, or a particular firm, or a group of companies with a similar production pattern or activity, or a group of companies exercising the same activity.

2. *Drafting arrangements*

The law requires an employer who has been asked to enter into negotiations with a view to the conclusion of a collective agreement to comply with the request.

However, it releases the employer from the obligation to negotiate where he shows a willingness to negotiate within a group of employers or in concert with other employers exercising the same activity. Where, in such cases, negotiations have not commenced within 60 days of the initial request, the employer may be obliged to negotiate separately.

Where an employer refuses to enter into negotiations, the fact of disagreement is notified to the national conciliation board.

The same happens where, in the course of negotiations, the parties fail to agree on all or part of the agreement.

Finally, the law allows the parties to have their case adjudged by one or more arbitrators, either before or after failure has been ascertained at the conciliation stage.

3. *Form and notification*

The agreement must be in writing and duly signed, otherwise it is deemed to be null and void.

It must be lodged with the Labour Inspectorate and be posted at the main entrances to the places of work.

4. *Date of entry into effect and duration*

The agreement is applicable from the day after it is lodged with the Labour Inspectorate.

Minimum duration: 6 months
Maximum duration: 3 years

The agreement may be terminated by notice agreed between the parties. The period of notice is three months at most and 15 days at least.

5. *Sanctions*

Failure on the part of the employer or worker to comply with his obligations under the agreement is subject to a fine ranging from LFR 2 501 to F 250 000.

Question 13

1. *The right to strike*

Workers' right to strike is not stated explicitly either in the constitution or in law. It derives from a broad interpretation of judicial origin of the concept of freedom of association incorporated in Article 11(5) of the constitution which, in its amended 1948 version, states that "the law ... guarantees freedom of trade union activity".

Any strike which is launched before exhausting all means of conciliation as evidenced by a protocol of non-conciliation is deemed to be illegal.

2. *Conciliation*

All collective disputes must be the subject of a session of the national conciliation board, which is called by the Chairman either:

- as a matter of course
- at the request of the parties to the dispute
- at the request of two members of the Joint Committee.

*Conciliation agreement

Settlement of a dispute results from agreement on the part of the groups. The secretary draws up a report, which is signed by the Chairman and the parties.

The resulting rules govern the employment relations and conditions of work in signatory companies.

They may also be declared to have general application for all employers and employees in the branch of activity concerned.

*Failure of conciliation

When the Chairman rules that all means of conciliation have been exhausted, the Commission draws up a report of non-conciliation bringing out the contentious issues. The law states that the conciliation procedure at the national conciliation board is mandatory.

a) It is an offence to :

.bring about a stoppage or general cessation of work without taking the matter first of all to the national conciliation board;
.refuse, without legitimate grounds, to enter into the conciliation efforts undertaken by the national conciliation board;
.hinder the parties' representatives in the accomplishment of their mission as part of the conciliation procedure.

b) It is a criminal offence for employers and employees to fail to carry out their duties devolving from agreements reached with the board.

Question 14

Certain categories of civil servants may make use of the strike weapon within the limits and subject to the conditions of the Law of 16 April 1979 concerning strike action in the civil service and public establishments under the direct control of central government.

*a) Beneficiaries*

Strike action may be taken by all established officials, trainee officials, employees and auxiliary staff with the exception of:

1. Officials whose functions are based on Article 76 of the Constitution (Conseillers

de Gouvernement).

2. Envoys extraordinary and ministers plenipotentiary, diplomatic service delegation advisors and other agents in the diplomatic service exercising the functions abroad of a permanent or temporary chef de mission.

3. Judges.

4. Administrative heads and their assistants.

5. Directors of teaching establishments and their assistants.

6. Staff of the judicial and prison services.

7. Members of the armed forces.

8. Medical and paramedical staff on duty.

9. Security agents and staff responsible for security in the public services.

*b) Conciliation*

* Collective disputes between the staff and the employing authorities referred to in Article 1 are subject to a compulsory conciliation procedure under the auspices of a conciliation commission.

* Apart from the chairman, who must be a member of the judiciary, the conciliation commission is made up of five representatives of the public authority and five representatives of the trade union organization or organizations representing the staff involved in the dispute.

* The chairman is appointed by the Grand Duke for a period of three years; the representatives of the public authority are appointed by the Prime Minister; the representatives of the trade union organizations are appointed by the organizations themselves, bearing in mind the following criteria:

-where the dispute is a general one, the trade union organization or organizations which are most representative in national terms of the sectors covered by this law have the right to name the five representatives from among their members;

-where the dispute is not of a general nature, but is limited to one department or another, or one category of staff or another, the trade union organization or organizations which are most representative in national terms name three representatives, with the other two being appointed by the trade union organization or organizations representing the staff involved in the dispute.

* A trade union organization within the meaning of this law is taken to mean any professional grouping with an internal organization whose aim is to defend the professional interests and which represent exclusively the staff of central government and of public establishments under the direct control of the State.

* The most representative trade union organization in national terms or for the sector concerned is the one which can show evidence of being the most representative in terms of having the highest number of members, and in terms of its activities and independence.

*c) Mediation*

* In the event of non-conciliation, the dispute is put, at the request of one of the parties and within a period of forty-eight hours, to the Chairman of the Council of State or to the member of the Council of State delegated by the Chairman as mediator.

The mediator then endeavours to mediate between the two parties. If he fails in his task, he puts to them, within a period of

eight days and in the form of a recommendation, proposals for regulating the dispute.

*d) Notice of strike action*

* Where, as a result of failure of the conciliation procedure and, where appropriate, of the mediation process, the staff decide to take strike action, the concerted cessation of work must be preceded by notice in writing. Such notice must be issued by the trade union organization or organizations designated in Article 2, and must be transmitted to the Prime Minister ten days before the planned start of the strike. It must indicate the reasons, place, date and time of start and the planned duration of the strike. It may not have cumulative effect with any other notice of strike action.

*e) Limitations*

* In the event of the concerted cessation of work on the part of staff covered by Article 1, the time of cessation and the time of return to work may not be different for different categories of staff or for the various members of staff.

* Stoppages may not, by staggered strike action or by rotation, affect the various sectors or staff categories in one and the same service or establishment or the various services or establishments in one and the same organization.

* Concerted stoppages whose aim is not exclusively the defence of professional, economic or social interests are prohibited.

* Stoppages accompanied by acts of violence against persons or property or by constraints on the freedom to work are deemed to be illegal in respect of the persons committing such acts.

*f) Requisition arrangements*

* By reason of a government decision, the ministers may be authorized to requisition or have requisitioned all or some of the persons designated in Article 1 as being indispensable to the provision of essential services to meet national needs.

* Such requisition orders may be individual or collective and must be brought to the attention of those concerned by appropriate means such as individual notification, posting, publication in the national Gazette or in the press or radio.

*g) Sanctions*

**1. Custodial**

* Any member of staff as designated in Article 1 and any union representative who does not conform to the rules set out in Articles 2, 3, 4 and 5 may be subject to a fine of between LFR 2 500 and 50 000.

* The provisions set out in Volume 1 of the Penal Code and in the law of 18 June 1879 making the courts responsible for assessing attenuating circumstances, as amended by the law of 16 May 1904, apply.

* If a second offence is committed within a period of two years, the fine set out above may be doubled.

* The above provisions apply without prejudice to the application of any other provisions of the Penal Code.

**2. Financial**

* Absence from work as a consequence of the concerted stoppage of work brings with it, for the persons designated in Article 1, a loss of

remuneration, other than family allowances, of a thirtieth of the monthly remuneration per day.

For the purposes of this provision, parts of a day are deemed to count as a full day.

* Despatch to the person concerned of the supporting evidence of withheld remuneration counts as notification of the decision, the date indicated on the bank statement acting as the first day of the period within which appeal may be made to the Council of State's disputes committee.

3. **Disciplinary**

* Without prejudice to the application of penal sanctions and the sanctions provided for in Article 8 below, the non-observance of the above provisions attracts, in conformity with the normal disciplinary procedure, sanctions as provided for in the statutes or rules governing the categories of staff concerned.

## VOCATIONAL TRAINING

Question 15

a) The conditions of access to vocational training are laid down in the Grand-Ducal Regulation of 8 February 1991, determining the criteria for advancement in the lower, middle and technical education sectors and in the upper cycle of secondary technical education.

They are as follows:

1. Pupils who have successfully completed a class in the 9th level of technical education (9/I) under advancement system A are eligible to attend all classes in the 10th grade of the middle school.

2. Pupils who have successfully completed

   - a class in the 9th technical grade (9/I) under advancement system B,
   - a class in the 9th general grade (9/II) under advancement systems A and B,
   - a class in the 9th vocational grade (9/III) under advancement system A

   are eligible to enrol in a 10th grade class in the middle school in conformity with the class advisor's opinion.

   In forming his opinion on children who fall into the above category, the advisor takes into account:

   - the pupil's results,
   - the knowledge and aptitude required to follow training courses in the various divisions and sections of the middle school,
   - the advice of the school pyschological and guidance service.

3. The provisions set out in Article 25 of the Law of 4 September 1990 introducing reforms to the secondary technical education system and to the continuing vocational training system find their application in the publication of the Grand-Ducal Regulation determining the way in which the guidance profile is drawn up and applied.

   The following points should be noted:

   - advancement system A governs the school career of pupils continuing the same training scheme,
   - advancement system B governs the school career of pupils changing training stream,
   - the guidance profile is based essentially on grades obtained, weighted in accordance with a system which takes into account the pupil's

intended school and vocational career and indicates, where appropriate, what means of support might be available to enable the pupil to pursue his or her training scheme.

b) The question does not apply, given that the education system in Luxembourg features no element of discrimination on grounds of nationality with regard to access to vocational training.

c) The Law of 4 September 1990 introducing reforms to the continuing vocational training system offers, with no restriction whatever, opportunities for refresher courses, retraining and further training. Admission to such courses is free of charge or costs a token sum.

The same goes for adult training courses offering opportunities for a "second chance" to obtain certificates and diplomas. This type of training is governed by a law passed by Parliament on 4 June 1991 and offers a wide range of courses in languages and general subjects.

Other intiatives on continuing training have been taken by professional organizations and firms themselves and are, generally speaking, designed for particular groups.

## EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

a) Equal treatment is a principle which has been written into the various laws which have been passed over recent years (e.g. equal pay, equal access to jobs, equal treatment in respect of training and promotion, equal working conditions and equal treatment in respect of social security). There is no direct discrimination in terms of access to education, training or jobs.

b) A variety of measures have been taken in respect of education and vocational training with a view to encouraging girls to take an interest in the new technologies and non-traditional trades, and to provide training and support for women returning to work after a career break.

c) The Law of 1 August 1988 creating an education allowance provides for the following persons to be eligible for such payment:

- a parent whose main concern is bringing up children at home and who does not exercise a professional activity;

- a parent who, while exercising a professional activity, has - together with his or her spouse - a level of income which does not exceed a certain threshold which varies with the size of the family.

  Discussions are currently in progress with a view to extending the education allowance to persons exercising a part-time professional activity.

  The Law of 24 April 1991 concerning contributory pension schemes provides for two rather than one baby year to count as an effective insurance period for calculating contributory scheme pensions.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

The Laws of 6 May 1974 and 18 May 1979 providing for the information, consultation and participation of workers or, via joint works councils, for the representation of workers at company level and staff delegations apply exclusively to firms situated on the territory of the Grand Duchy of Luxembourg.

Question 18

1. *Staff delegations*

The Law of 18 May 1979 makes the staff delegations generally responsible for safeguarding and defending the interests of employees in the firm in respect of the following:

- working conditions
- job security
- social status

The law allows for an exception to be made to this principle where this mission is assumed by the joint works committee, where such a committee exists.

**1.1.**

**Functions of a social and professional nature**

The staff delegation is required to give its opinion and formulate proposals on any matter to do with the improvement of working conditions and employment conditions and to the social situtation of employees.

In this context, the law requires the staff delegation to give its opinion on any new or revised internal rules and regulations for the company or a particular operating unit and to ensure that the rules are strictly applied.

The staff delegation is also empowered to propose changes to the internal rules of procedure; the management or, where appropriate, the joint works committee must take a decision on any such proposal within a period of two months, such decision being communicated to the staff delegation.

**1.2.**

**Functions of an economic nature**

1.2.1 Annual information

In a joint stock company, the law requires the management to inform the staff delegates once a year at least of the economic and financial situation of the company.

To this end, the management presents workers' delegates with a general report on the firm's activities, turnover, overall production and operating results, orders, staff remuneration changes and investment activity.

Where there is a joint works committee, presentation of the report must be first of all to the committee and then to the staff delegates.

1.2.2 Periodic information

The law requires heads of companies to give staff delegates information in respect of company status and prospects.

Such details must be made available:

- in companies with a joint committee: every month;
- in companies without a mixed committee: to coincide with meetings of the staff delegation and management.

2. *Joint committees*

The Law of 6 May 1974 introduced joint works committees made up jointly of management and staff representatives.

The law lays down the functions of the joint committee, making a distinction between consultation, decision-making and supervisory functions.

**2.1.**

**Information and advisory functions**

2.1.1 Six-monthly information

The law requires the head of the company to inform and consult the joint committee in writing at least twice a year on economic and financial developments in the company.

To this end, it calls on the person in charge to present a general report on the company's activities, turnover, overall production and operating results, orders, staff remuneration changes and investment activity.

It also requires the management of joint stock companies to pass on to the joint committee the company's profit and loss account, annual balance sheet, auditors' report, board of administration's report and any other document destined for the shareholders' general assembley.

All these documents must be communicated before being presented to the general assembley to enable the joint committee to base its opinion on the information contained in them.

2.1.2 Annual information

The company head must inform and consult the joint committee once a year at least on the company's current and future needs in terms of manpower and on the ensuing measures, particularly training and retraining, which might affect the company staff.

2.1.3 Specific information and consultation

Generally speaking, the law gives the joint committee powers to state its views on decisions of an economic and financial nature which could have major implications for the structure of the firm or its manning level.

The examples given concern decisions on the volume of production and sales, production programming and planning, investment policy, plans for restricting or extending the firm's activities, merger plans, and plans for altering the firm's organizational structure.

The law also states that the joint committee has advisory powers in respect of measures relating to production or administrative installations, equipment and manufacturing processes and methods.

It states that the information and consultation function is not restricted to a straight description of what decisions are pending, but must extend to the implications of such measures for the staffing level and structure and for employment and working conditions. Where appropriate, it will also relate to measures of a social nature either taken or planned by the head of the firm to lessen the impact of these measures on employment conditions, particularly as regards vocational training and retraining.

Information and consultation must, in principle, precede the decision itself.

However, the law allows for derogations from this rule where prior consultation might have a detrimental effect on the management of the firm or compromise a projected operation. In such cases, the company head must give the joint committee all necessary information and explanations within 3 days.

2.2.

**Joint decision-making function**

The law gives the joint committee a power of joint decision-making in respect of the introduction or application of technical installations designed to keep a check on the behaviour and performance of workers at work.

The same applies to the introduction or modification of measures in respect of the health and safety of workers and the prevention of occupational diseases.

The law also bestows joint decision-making powers on the joint committee in respect of the establishment or modification of general criteria regarding recruitment, promotion, transfer and redundancy and for the establishment or modification of general criteria for assessing workers' performance. The actual decisions on recruitment, promotion, transfer and redundancy, however, remain the exclusive preserve of the employer.

Finally, the law gives the joint committee joint decision-making powers in respect of the granting of bonuses to workers for suggestions or proposals which prove particularly useful to the firm, although the firm reserves all patent and invention rights.

2.3.

**Monitoring function**

The joint committee is responsible for overseeing the firm's social services; to this end, it receives a management report from the head of the firm at least once a year.

Deliberations of the joint committee:

Each decision and each opinion expressed by the joint committee is deemed to be adopted if it receives an absolute majority of votes from employer's representatives' group and the representatives' group.

- Where there is disagreement between the two groups on the adoption of a measure falling within the scope of joint decision-making powers, the law gives the first petitioner the right to initiate the conciliation procedure and, where appropriate, the arbitration procedure under the auspices of the national conciliation board.

- In the event of disagreement between the two groups on the adoption of an opinion voiced by the joint committee, the law makes it mandatory to communicate each of the two opinions to the company's administration board.

The head of the company or the administration board must give full details of what becomes of the opinions expressed by the joint committee.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

a) In the areas or sectors covered by Community Directives, there are, generally speaking, no provisions which are more favourable in national terms, with the result that Luxembourg endeavours to transpose such directives into national law before the projected implementation dates.

b) The Law of 18 May 1979 on the reform of staff delegation arrangements says in Article 10, in the chapter entitled "Staff delegates' functions", that the staff delegation is required in particular to participate in labour protection and its environment and in the prevention of occupational accidents and occupational diseases.

Article 11 says that each divisional delegation must nominate from its members or from the other workers in the establishment a staff

safety delegate.

The Law of 6 May 1974 instituting joint committees in private-sector companies says in Article 7 that the joint works committee has the power of decision-making in respect of the introduction or modification of measures concerning the health and safety of workers and the prevention of occupational diseases.

## PROTECTION OF CHILDREN AND ADOLESCENTS

Question 20

The law prohibits the employment of:

- children under 15 years of age on any kind of work;
- adolescents up to the age of 18 on work which is not appropriate to an adolescent's stage of development, which requires a disproportionate effort from him or her or which may be a risk to his or her physical or mental health.

Question 21

For work of equal value, the law gives adolescents aged 18 years or more the same remuneration as adult workers aged 20 years occupying a similar post. It does not, however, allow bonuses based on length of service to which adults may be entitled.

The following abatements apply:

- adolescents aged between 17 and 18 years of age: 80%
- adolescents aged between 16 and 17 years of age: 70%
- adolescents aged between 15 and 16 years of age: 60%

Question 22

1. *Duration of work*

The normal working week for adolescents is 40 hours with effect from 1 November 1969.

2. *Night work*

2.1. Principle

The Law of 28 October 1969 prohibits in principle the employment of adolescents during night time, i.e. for a period of 12 consecutive hours at least, whereby this period must include the period between 8 pm and 5 am.

2.2. Derogations

1. The employment of adolescents is authorized automatically up to 10 pm in continuous-operationproductionprocesses.

2. The employment of adolescents may be authorized by the labour inspectorate director up to 10 pm where such adolescents are covered by an apprenticeship contract and are employed in hotels, restaurants, cafés and the like.

3. Similarly, the employment of an adolescent during night time may be authorized by the labour inspectorate director for certain paramedical professions.

3. *Vocational training*

The Grand-Ducal Decree of 8 October 1945 defines the terms of apprenticeship contracts.

It determines the functions and forms of action open to the employers' professional representation and of the professional representation responsible for the apprenticeship arrangements.

It also determines the conditions under which the right to engage or train an apprentice may be refused.

3.1. Contract validity

The apprenticeship contract or declaration is compulsory and must take the form of a private deed, otherwise it is deemed to be null and void.

3.2. Employer's duties

The employer's duties with regard to his apprentice are:

-to pay over apprenticeship allowances as laid down in the ministerial decree;
-to provide the apprentice's vocational education and training;
-to act with all reasonable and usual care, skill and forethought, to supervise the apprentice's behaviour and habits, to inform the apprentice's legal guardian where a serious misdemeanour is committed;
-to give the apprentice whatever time is needed to pursue formal or post-school vocational training courses prescribed by the employer's professional representation;
-not to employ the apprentice on work or services which do not fall within the scope of the occupation covered by the contract;
-not to give the apprentice productive work to do at home.

Apprentice's duties

The apprentice owes his employer loyalty, obedience and respect. He must help him in his work and give him proof of the fact that he is enrolled for and attending courses at the vocational training establishment.

4. Cessation and termination of contract

The apprenticeship contract is terminated:

a) by the apprentice passing the final examination,
b) if the employer dies or gives up his occupation,
c) if the employer or the apprentice are given certain types of custodial sentences,
d) by force majeure.

The apprenticeship contract may be terminated prematurely:

1. By the employer's professional representation where one or the other party is manifestly not complying with the apprenticeship conditions or with the provisions of the relevant decree;

2. By one or other of the parties:

a) where there has been a serious violation of the contract conditions,
b) in the event of a penalty involving the loss of civil rights,
c) where one of the parties changes residence in conditions such that continuation of the apprenticeship arrangements becomes impracticable. However, in such an event the contract may not be terminated until the month following the change of address.

3. By the employer:

a) where the apprentice is guilty of a breach of good conduct;
b) where, even after a trial period, it becomes obvious that the apprentice will never learn the trade properly;
c) on the advice of the doctor where, as a result of an accident or illness lasting more than three months, the apprentice is no longer capable of exercising his chosen occupation;
d) on the advice of the doctor, where the apprentice is suffering from a contagious or repellent disease;
e) on the death of the employer's

spouse, where the apprentice received board and lodging from the late spouse.

4. By the apprentice or his legal guardian:

a) on the advice of the doctor, where the apprenticeship cannot be continued without damaging the apprentice's health;
b) on the event of a female apprentice's marriage;
c) where a female apprentice receives board and lodging from the employer: in the event of the death of the spouse or of the person running the household.

An employer who takes on an apprentice whom he knows to have been a party to an apprenticeship contract and where the contract has not been properly terminated may be liable to pay compensation to the former employer.

3.5. Disputes and legal redress

Disputes between employers and apprentices under this Decree are dealt with by a joint committee comprising:

a) the Director of the Labour Inspectorate, chairing the committee;
b) two representatives of the employer's professional representation
c) two representatives of the professional representation for the apprentice;
d) a similar number of deputy members.

Legal redress

Appeals brought against decisions taken by the joint committee may be made to the national conciliation board within 10 days of notification of the decision.

Supervision and examination

Supervision of the apprenticeship arrangement is a matter for the relevant professional institutes.

Apprentices must take an apprenticeship examination based on the rules and programmes drawn up by the relevant professional institutes and approved by the government.

Question 23

See reply to question 15.

## THE ELDERLY

Questions 24 & 25

The retirement system has been improved over recent years to afford retired persons a decent standard of living. Thus, the Law of 24 April 1991 brought about a substantial increase in old-age pensions under the contributory scheme.

Elderly persons who are not entitled to a pension may obtain sufficient resources under the guaranteed minimum income scheme or under legislation on emergency accommodation.

The local authorities' social welfare offices and the central social services are responsible for dealing with the problems of impoverished old people.

The Ministry for Family Affairs has put forward a national programme for the elderly, which was adopted by the government on 11 March 1988.

This programme provides for the fair and equitable distribution of services to the elderly. More than 80% of the country is covered by the meals-on-wheels scheme, and Ministries of Family Affairs and He

currently organising a scheme for providing home help and health care throughout the country.

Depending on income, a care allowance is paid to persons of over 65 years of age (Law of 22 May 1989) in the sum of LFR 2 288 (at index 100 – the index currently stands at 497.09) to enable elderly people to obtain constant care and attention.

Finally, there are central and local government arrangements in the form of day centres, old people's homes, sanatoria and special geriatric units to provide help for all elderly people regardless of financial resources.

The central or local government social services pay the difference between expenditure and the person's resources. A minimum level of resources is guaranteed to elderly people, along with the cost of placing them in a day centre or an old people's home.

The Advisory Committee for the Elderly has been asked to analyse and put forward concrete proposals for the implementation of Articles 24 and 25 of the Charter.

## DISABLED PERSONS

Question 26

Law of 12 November 1991 regarding disabled workers.

1. Definition of disabled worker

For the purposes of the legislation on the training, placement, rehabilitation and [illegible]nal integration of disabled workers, the [illegible] defines "disabled workers" as follows:

persons who have suffered an accident at work
war cripples
- persons with a physical, mental or sensory impairment.

2. Recognition of status as disabled worker

A person's status as a "disabled worker" is assessed and recognised by the Commission for guidance and vocational classification.

When the Employment Administration Service or one of its agencies receives an application for recognition as a disabled worker, it passes it on to the Disabled Workers Department, which then submits it for perusal and decision to the above Commission.

3. Measures in respect of disabled workers

Once a person's status as a disabled worker has been recognised, the above Commission may propose to the Director of the Employment Administration Service various measures in respect of placement, training or occupational rehabilitation, along with work initiation or readjustment measures, depending on the age of the person concerned, the severity or nature of his disability and his previous skills and aptitudes.

The Director of the Employment Administration Service then decides what measures should be taken with a view to occupational integration or reintegration.

4. Compulsory employment of disabled workers

4.1. Establishments concerned

The following establishments or organizations are required to give priority consideration to disabled job seekers:

a) Public sector

-Central government
-Local government
-The national railways company

-Public establishments

b) Private sector

Firms normally employing 25 or more workers.

4.2 Number of disabled workers who should be employed

The law lays down a specific percentage bracket within which priority should be given to disabled workers, as follows:

Public-sector undertakings must reserve at least 5% of their total jobs for disabled workers.

Private-sector firms employing at least 25 workers must employ at least one registered disabled worker on a full-time basis.

Private-sector firms normally employing at least 50 workers must reserve at least 2% of their total jobs for disabled workers.

Private-sector firms employing at least 300 workers must reserve 4% of jobs for disabled workers.

5. Conditions of employment

A disabled worker's pay may not be lower than the level of pay resulting from the application of the relevant legal, regulatory or collectively agreed provisions.

However, the law makes provision for disabled workers who cannot perform to the level of an able-bodied worker to receive proportionately less pay.

In the event of disagreement on the amount of the reduction, it is up to the Director of the Labour Inspectorate to decide, having heard the opinion of the above-mentioned Commission.

Accident-related allowances for which disabled workers might be eligible may not be reduced by such remuneration. Similarly, the remuneration received by a disabled worker may not be reduced by the amount of any accident-related allowance for which he or she is eligible.

## IMPLEMENTATION OF THE CHARTER

Question 27

Virtually all the laws implementing the mental social rights of workers at level are accompanied by administrativ penal sanctions.

# THE NETHERLANDS

## FREEDOM OF MOVEMENT

Question 1

- No.

- As far as job placement is concerned, the employment authorities place no restrictions in the way of such workers. Since 1 January 1992 the provisions of Article 1 of Order 1612/68 have applied equally to Spanish and Portuguese workers.

  Under the law, employment in the judiciary, the police or the armed forces, or in sensitive posts or posts representing the Netherlands abroad, is confined to persons of Netherlands nationality. This is because such posts either involve essential state duties, frequently involving the direct exercise of authority over citizens, or are connected with national interests, in particular the internal and external security of the state. It is admissible to reserve such jobs for state nationals under Article 48(4) of the EEC Treaty.

Question 2

- No, not as far as we are aware.

- There are no restrictions other than those deriving from Article 48(4) of the EEC Treaty, many of which have now been dropped.

- No.

Question 3

- The Netherlands already has a flexible family reunification policy in conformity with Community law. No special measures exist to encourage family reunification. There are no restrictions on family members as regards employment.

- Facilities exist for the employment offices to check what practical (labour-market) relevance attaches to diplomas, etc. issued in other countries (including EC Member States).

  Pursuant to the EC Directive 89/48 (general system for recognition of higher-education diplomas), comprehensive legislation on the recognition of EC higher-education diplomas is currently in preparation.

- Under the Employment Act ("Arbeidsvoorzieningswet"), frontier workers who are nationals of a Member State have the same rights as Dutch workers.

  Under Article 24 of the revised Royal Decree regulating Admittance to National Insurance Schemes (Royal Decree 164), a resident who is in receipt of a benefit under a foreign social security system may, on request and subject to certain conditions, be exempted from the obligation to join the Netherlands national insurance scheme.

  This measure was taken in order to avoid persons entitled to benefits having to pay double, and therefore disproportionate, contributions. The measure applies in particular to former frontier workers.

## EMPLOYMENT AND REMUNERATION

Question 4

- No.

Question 5

- Employees in the private sector who are aged between 23 and 65 and who work

the normal weekly or monthly working hours are entitled under the Minimum Wage and Mininum Holiday Allowance Act to at least the statutory minimum wage. Since the removal on 1 January 1993 of the "one-third" criterion from the Minimum Wage Act, workers who work less than the normal working hours are entitled to the statutory minimum wage adjusted pro rata to the actual number of hours worked. The statutory minimum wage is regarded as fair remuneration for the work performed and, in the case of full-time employment, as adequate to support a family.

"Normal working hours" means the number of working hours regarded in comparable employment circumstances as constituting full-time employment. The number of working hours constituting full-time employment is not defined by law but is usually laid down in the collective labour agreement under which the worker is employed. In cases where no collective labour agreement exists, the normal employment practice within the company must be applied.

The duration of the labour agreement has no effect on this statutory minimum wage guarantee.

Collective labour agreements normally set out the remuneration conditions in detail, including those for part-time workers and workers on limited-duration contracts. The provisions of a collective labour agreement are without prejudice to the provisions of the above-mentioned law; the law prevails.

- Under Article 1638g of the Civil Code, total seizure of wages is prohibited: the worker must at all times be left with a sufficient part of his wage (the "seizure-exempt allowance") to enable him to afford the basic necessities of life. The employer must continue to pay this portion to the worker, irrespective of the seizure.

  The same applies to transfers, pledges or any other procedure whereby the worker grants a third party some right to his wage. The employer first withholds and deducts the income tax and the social security, pension and health insurance contributions. Of the sum remaining, the "seizure-exempt allowance" corresponds to 90% of the benefit to which the worker would be entitled in his specific situation under the National Assistance (Standardisation) Decree.

  In the case of civil servants, Article 115 et seq. of the Central and Local Government Personnel Act stipulates up to what percentages specified parts of the remunerations and pensions of civil servants may be withheld, seized, cut, transferred, pledged or similarly treated. These restrictions do not apply to certain special withholding, seizure or reduction procedures, such as those to recover maintenance or fines imposed by the courts (Article 120 of the Central and Local Government Personnel Act).

Question 6

- Job-seekers and employers have access to public placement services free of charge (Article 79 of the Employment Act).

  Reimbursement may be claimed only for "additional" costs incurred at the express request of the employer or job-seeker.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Question 7

- The maximum working time is 8.5 per day. Employers have various

for extending this but a permit must be obtained from the Labour Inspectorate. A one-year permit is automatically granted for schemes negotiated in collective labour agreements or between employers and works councils, provided that the following standards are not exceeded:

- maximum hours of work per day: 9.5
- maximum hours of work per four weeks: 190
- maximum hours of work per quarter: 552.2
- minimum daily rest: 11 hours
- minimum rest between two working weeks: 38 hours
- working days, for the purposes of this permit, are Mondays to Saturdays
- the limits of daily working hours are between 06.00 and 19.00, or between 08.00 and 21.00.

In addition to this permit, there also exists a contingency permit for overtime in unexpected, short-term emergencies. The maximum day is 11 hours, the maximum week 48 hours and the maximum four-week period 180 hours.

Finally, there is also an adhoc permit for situations in which the above-mentioned permits are not sufficient. The adhoc permit is issued for a maximum of one quarter. The maximum working day is 11 hours, the maximum week 62 weeks, the maximum four-week period 200 hours and the maximum quarter 585 hours.

- It has been government policy for some considerable time to improve the legal position of part-time workers where necessary.

For example, in the field of supplementary pensions the Netherlands is endeavouring to eliminate the thresholds which exist for part-time workers. The pension funds themselves are also deeply involved in reviewing these thresholds.

On a more general level, it can also be confirmed that in collective labour agreements and in working practice the legal position of part-time workers is being brought closer into line with that of full-time workers. The government adopted a more precise position on the so–called "flexible work relationships" in June 1992, after consulting the Socio-Economic Committee. The Netherlands will scrap its previously announced plans to introduce a compensation system for flexible workers.
Instead, the legal position of flexible workers will be considerably improved by, among other things, the extensive implementation of the EC Directive on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (91/533/EEC) so that this directive also becomes highly relevant to this category of workers. The government position also contains proposals which should improve the Working Conditions Act from the point of view of the safety, health and welfare of home workers, and a commitment to investigating ways in which the position of flexible workers can be improved with regard to social security.
The bill to bring homework within the scope of the Working Conditions Act was put before Parliament in May 1993 and is expected to come into force in 1994.
Parliament currently has before it a bill amending the law governing dismissal. For workers on fixed-term contracts this will mean that an employment contract which is not terminated or not terminated on time can no longer - as currently established in the Civil Code - be repeatedly extended for fixed terms but must henceforth be regarded as an open-ended contract which is thus subject to the conditions concerning notice.

- In 1976, in implementation of EC Directive 75/129/EEC, the Netherlands promulgated the Collective Redundancies

(Notification) Act. A few minor modifications to the Act are now required in order to take account of Directive 92/56/EEC, and the proposals in this connection were put before the Lower House on 17 June 1993. Under this Act, an employer intending to terminate the employment of 20 or more employees in a particular employment region within a period of three months must first notify and consult the competent workers' associations. The Act specifies the information which the employer must supply. The Regional Director for Employment then deals with the employer's redundancy proposal one month after notification, provided the unions have been consulted. The one-month waiting period does not apply in bankruptcy cases. The Act is supplemented by the 1971 Works Councils Act, under which the employer is obliged to inform and consult the works council about, for example, the termination of the activities of the undertaking or of a part of the undertaking.

The traditional rules governing dismissal, as laid down in the Civil Code and the 1945 Labour Relations (Special Powers) Decree, are somewhat modified if the employer is declared bankrupt. The receiver or an employee wishing to terminate the employment contract does not then require the approval of the Regional Director. Nor does the special interdiction on dismissal under Article 1639h of the Civil Code apply. Declaration of the employer's bankruptcy also affects the period of notice required (Article 40 of the Bankruptcy Act).

Question 8

- The minimum paid-leave entitlements of every worker in the Netherlands are set out in Articles 1638bb to 1638mm of the Civil Code. The main rule is that workers on a five-day working week are entitled to a minimum of 20 days' paid leave per year (Art. 1638bb). Those working only part of a year are entitled to at least this minimum, adjusted pro rata.

  The minimum is established in the law of 9 June 1988 (published in the Staatsblad 1988, 281), which entered into force on 1 August 1988. It is based on developments in practice and on the EC Council Recommendation of mid-1975 providing for four weeks' basic paid leave. Under collective labour agreements, regulations or individual work contracts, the minimum entitlement can be adjusted upwards.

  Civil servants' entitlements to annual leave and weekly rest periods are laid down by law. The minimum annual-leave entitlement is 23 days, and the weekly rest entitlement over each 7-day period is at least two days - these two days should, in principle, be consecutive.

Question 9

- Articles 1637 to 1639 of the Civil Code lay down requirements concerning, among other things, remuneration, paid leave and dismissal. These are generally minimum requirements, which can be adjusted upwards in collective labour agreements or individual work contracts. A collective labour agreement must always be in writing, whereas in an individual contract of employment even a verbal agreement is binding.

  Working conditions of civil servants are governed by regulations based on the 1929 Central and Local Government Personnel Act (CLGP Act). The drafting of such regulations is preceded by consultations with the organizations and government personnel. Civil servants are appointed in writing, in accordance with the law.

## SOCIAL PROTECTION

Question 10

- Salaried employees in the Netherlands are insured both under the social insurance laws for employees (Sickness Benefits Act; Occupational Disability Insurance Act; Unemployment Act and the Health Insurance Act up to a specific wage ceiling), and under the national insurance laws (General Old-Age Pensions Act; General Widows' and Orphans' Benefits Act; General Child Benefit Act; the General Exceptional Medical Expenses Act and the General Occupational Disability Act). The amount of benefit payable under the social insurance laws for employees is generally related to the most recent wage earned, while the benefit payable under the national insurance laws is a statutory fixed amount, a "flat-rate" benefit related to the statutory minimum wage.

  If for any reason the benefit payable under the Sickness Benefits Act, the Unemployment Act, the General Occupational Disability Act and the Occupational Disability Insurance Act is not at least equivalent to the minimum income, the beneficiary may, subject to certain conditions, be eligible for a supplementary allowance under the Supplementary Allowances Act.

  The amount of the supplementary allowance varies depending on the beneficiary's family situation, ranging from the difference between 70% of the minimum wage and the income to the difference between the full minimum wage and the income.

  Civil servants are covered by the Public Servants' Superannuation Fund Act, which provides protection against the financial consequences of old age, invalidity and death (survivor's pension). These benefits are over and above the statutory minimum levels under the general national insurance schemes. As regards unemployment insurance, civil servants have a separate statutory scheme which compares favourably with the scheme for the private sector.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Question 11

- There are no obstacles to prevent employers and workers in the Netherlands from forming professional organizations or trade unions. Freedom of (professional) association is guaranteed under Article 8 of the Constitution. In addition, the Netherlands has ratified ILO Conventions 87 concerning Freedom of Association and 151 concerning Protection of the Right to Organize and Procedures for Examining Conditions of Employment in the Public Service. The guarantees under ILO Convention 151 are enshrined in the 1929 CLGP Act and the 1937 Military Personnel Act and the decrees based on these two laws.

  Every employer or worker has the right to join or not to join a professional organization or trade union without suffering any disadvantage.

  Freedom of association for civil servants is enshrined in Article 125a of the 1929 CLGP Act.

Question 12

- There is no statutory obligation for collective bargaining or any similar procedure in the Netherlands. Collective bargaining is governed by the principle of freedom of contract. In principle, any union organization or employer/employers'

organization with full legal rights and an explicit right to conclude collective labour agreements is free to decide whether and with whom it wishes to conclude such an agreement. The contracting parties are also free to determine the content of the collective agreement at their own discretion.

The 1927 Collective Agreements Act and the 1937 Collective Agreements (Binding or Non-binding Provisions) Act define what is meant by a collective labour agreement and the legal consequences of such an agreement. Making the provisions of collective agreements universally binding has the effect of obliging all employers to apply them to all employees within a particular sector, thus offering protection against undercutting by outsiders. Universally binding provisions are an important cornerstone of and stimulant to collective bargaining.

In 1986 the National Insurance Funded and Subsidised Sector (Terms of Employment) Act came into force. This Act empowers the government to fix the amounts available each year, provided money has been made available by the government, for the development of terms of employment in specific funded and subsidised sectors. In addition, the contracting parties to collective agreements can make concrete collective agreements.

In the civil service, terms of employment are negotiated with the Civil Service Unions. Technically, the government implements such terms unilaterally, taking account of decisions by Parliament and the Council of Ministers.

Question 13

- The Netherlands has no statutory provisions in this field.

From the jurisprudence (on the basis of Article 1401 of the Civil Code, concerning unlawful acts) it is clear that, among other things:

* Article 6(4) of the European Social Charter has direct effect;
* strikes organized by trade unions in protest against working conditions are illegal only if:

- important procedural rules are ignored, or
- (having regard to the restrictions imposed by Article 31 of the European Social Charter) it is concluded, when all the circumstances of the case have been weighed up, that the unions had no reasonable justification for calling the strike.

- The Netherlands has no legislation in this field, at least as far as the private sector is concerned, although collective labour agreements contain provisions on the subject.

At the end of 1986 the Joint Industrial Labour Council introduced a system whereby the parties to a conflict may jointly request mediation or arbitration by one or more persons to be chosen by them from a list of mediators (the list currently contains 12 names).

For labour disputes in the civil service there is an Advisory and Arbitration Committee, whose task it is to advise or produce a binding judgement in disputes brought before it (Chapter XI of the General Civil Service Regulations).

Question 14

- There is currently no Dutch legislation concerning the right of civil servants to strike. As regards international legis-

lation, the Netherlands excludes civil servants from the scope of Article 6(4) of the European Social Charter, thus theoretically denying civil servants the right to collective action - including strike action. In national practice, however, the right is recognised, both in case law and de facto. In case law, the prerequisites established for strike action are the same as those applying to the private sector.

Advisory and arbitration committees have been set up to deal with questions concerning working conditions in the various sectors of national and local government.

## VOCATIONAL TRAINING

Question 15

- Distinctions need to made here between:

a) Standard, initial training

For persons up to age 27 this is paid for entirely by the Ministry of Education and Science. In principle, vocational training at lower and intermediate levels is eligible for open-ended financing. Such training is open to any applicant who fulfils the admission criteria. These criteria are based primarily on the applicant's prior education.
Nationality is not a criterion. Institutes for higher vocational education and university education have their own education budgets. Within these budgets, the institutes have a degree of autonomy in their admission procedures, although here too the main criterion is prior education. In principle, students are entitled to receive six years' higher or university education at the government's expense. After that they must contribute some of the costs themselves. Grant entitlement is age-related.

b) Adult education

The Ministry of Education and Science operates an adult-education system, giving people a second chance to obtain qualifications. Increasingly, authority for planning of and admission to adult education courses is being delegated to the municipalities concerned, on the grounds that they know best what the adult-education priorities are for their region, in terms both of target groups and programme content.

Ethnic groups have priority for certain forms of adult education.

c) Training for job-seekers

The employment offices are run regionally by a tripartite committee comprising employers, employees and government representatives. Training is seen not as an end in itself but as a means of ensuring rapid and permanent job placement. The employment office determines whether registered job-seekers are suitable candidates for such training.

d) Training for workers

In principle, training for workers is the employer's responsibility. However, workers too have a say in the matter, since many sectors have training funds which are administered on a bipartite basis. Training arrangements are also dealt with in collective labour agreements.

The employers decide, either independently or in collaboration with the workers' organizations, which

workers should receive free training.

The government has recently released an extra budget to give the most poorly educated workers sufficient further education to obtain an initial vocational qualification.

## EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

- Article 1637ij of the Civil Code and the Equal Opportunities Act prohibit differential treatment for men and women at work. A Bill on equal pension treatment is currently before the Upper House of Parliament. An Equal Opportunities Commission has been set up to ensure compliance with the regulations. There is also scope for joint legal action by a number of workers. In addition, surveys to check compliance with the legislation are conducted at regular intervals.

- In addition to the abovementioned measures to ensure compliance with the legislation, the government has an active policy of improving the position of women in work organizations. A scheme exists to encourage the creation of positive action programmes for women, through the provision of subsidies for the development and/or implementation of such programmes.
  Other instruments in the government's policy include information and identification of suitable models to be imitated.

- The Parental Leave Act came into force on 1 January 1991. It contains statutory minimum requirements entitling workers with at least one year's service to take unpaid part-time leave -to be taken over an unbroken 6-month period - for children aged under 4. Collective labour agreements can incorporate different arrangements from the statutory scheme, provided the leave entitlement negotiated is at least that laid down in the statutory scheme. Child-care plays an important part in enabling parents to reconcile occupational and family commitments. The government has been encouraging the creation of more child-care facilities since 1990. The four-year Child-Care Subsidy Scheme should lead to the creation of an extra 50 000 child-care places between 1990 and 1993, bringing the total up to around 70 000. An estimated 100 000 children aged between 0 and 12 will be able to make use of these places. It was recently announced that child-care will continue to be promoted after 1993.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

- The answer to the following question (Question 18) applies in principle to all Dutch undertakings, including those belonging to a concern or group with subsidiaries outside the Netherlands (Arts 31 and 31a of the Works Councils Act).

  As regards the right to consultation, however, attention is drawn to the final sentence of Article 25(1) of this Act, imposing restrictions for cross-frontier situations (the foreign country clause).

Question 18

- This question is covered by the Works Councils Act, and quite a number of collective labour agreements also contain provisions in this field.
  The Works Councils Act contains the following provisions:

Every undertaking in the Netherlands employing 35 or more workers must have a works council. The works council consists of workers' representatives, who consult with management on company policy in general and matters of relevance to the personnel in particular.

The works council has a number of rights which enable it to influence the employer's policies: the right to information, the right to consultation and the right to grant or withhold approval.

The employer must, without being asked, give the works council certain **information** specified in the Act, such as the annual accounts, the annual social report, plans for future policy, etc. He must also provide any other information requested by the works council which the latter can reasonably be said to need in order to perform its functions. Articles 31, 31a and 31b of the Act are particularly relevant.

The employer must **consult** the works council in good time whenever he wishes to take important financial or organizational decisions, for example on the question of merging with another undertaking, on shutting down (part of) his own undertaking or on major investment proposals (Article 25 of the Act). If the works council is not happy with the employer's plans, the employer must defer the decision for one month, during which time the works council can submit the case to the Commercial Chamber of the Court of Appeal in Amsterdam. The Commercial Chamber judges whether the employer's proposal is reasonable, and can oblige the employer to withdraw it or reverse the consequences.

When an employer wishes to establish or amend certain rules concerning the company's social policy, and the matter is not materially dealt with under the terms of a collective labour agreement, he must first seek the **approval** of the works council. The rules in question include those concerning working hours, leave, conditions of work (except where the Labour Inspectorate is authorised to intervene), staff training, and the appointment, promotion or dismissal of workers (Article 27 of the Works Councils Act). If the works council withholds approval, the employer can ask the industrial tribunal to arbitrate. If arbitration fails to produce the desired result the employer can ask the cantonal judge for permission to proceed with his proposal. The latter will only give permission if the company's interests outweigh those of the workers. The employer may not introduce the new rules without the approval of the works council or the permission of the cantonal judge.

There are no specific provisions concerning frontier workers in the Works Councils Act, although the Act offers points of departure for discussion of such a specific policy (e.g. Article 25(1) f and g).

Chapter XI A of the General Civil Service Regulations provides, in the case of state civil servants, for employee participation via consultative committees. These committees, chosen by civil servants, can advise on the way in which working conditions and service conditions are applied within the particular branch of service, on personnel policy, on the organization of the branch of service, and on other such matters. Consultation must take place between the committees and management prior to the issuing of opinions (Article 127d of the General Civil Service Regulations). Comparable arrangements apply for municipal, provincial and water board civil servants.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

- The Working Conditions Act is the most important instrument of legislation which the Netherlands has in this field. The differences with the Community directives are merely differences of emphasis.

  The directives based on the framework directive concerning safety and health at work (Article 118A) go further than the Working Conditions Act in certain respects. The framework directive itself brings an obligation to adapt the legislation concerning the organization of safety and health protection for all workers.

  The imposition of uniform requirements for the design and manufacture of machinery and personal protective equipment (Article 100A directives) could see the Netherlands faced with requirements which it has never in the past been required to meet. However, the consequences should be offset to a large extent by the EC's policy on normalization and certification. The burden of implementation will thus fall primarily on industry. The necessary legal basis is provided by the Dangerous Machinery Act.

  1. Under the Working Conditions Act, responsibility for safety, health and welfare at work lies jointly with the employers and the workers. This requires collaboration and consultation.
     Article 4(4) of the Working Conditions Act stipulates that where company policy may demonstrably affect the safety, health and welfare of workers the employer must first consult the works council or, where no works council exists, the workers in question.

     Consultation takes place at various levels.

     At shop-floor level there is job consultation with workers (Article 16 of the Act). This gives the individual worker the chance to play an active role in improving working conditions.

     At the level of the undertaking there is a general obligation on workers and employers to collaborate (Article 13). Consultation is therefore essential and takes place primarily via the works council, a body accorded a central role in the Act (Article 14). Complementing the Works Councils Act (of which more at point 2), the Working Conditions Act extends and elaborates on the rights of the works council. The Bill to amend the Working Conditions Act (in connection with the implementation of the EC Health and Safety Framework Directive), which was put before the Lower House on 1 June 1993, covers certain specific areas in which participation is called for:

     - the organisation of sick-leave policy, and sick-leave checks and support;
     - the organisation of specialist support;
     - the composition of the basic package which an occupational health and safety service should offer (risk assessment and cataloguing, sick-leave support, occupational health examinations, consultation surgery), and possible extension of the basic package;
     - the organisation of in-house assistance;
     - the frequency and composition of occupational health examinations.

In the interests of effective participation, the employer must provide the works council with all the information it requires. These rights are in addition to the right to be consulted on the annual health and safety plan and the annual health and safety report.
Under the terms of the Working Conditions Act the works council also has the right to accompany labour inspectors on inspections of the firm's premises and talk to the inspectors in private.
The Act also accords rights to the works council (or, in the absence of a works council, to the workers concerned) in connection with the preparation, drafting and notification of Labour Inspectorate decisions. One important area in which provision for worker participation exists is in the preparation of decisions.
The works council has the right to be heard before the district head of the Labour Inspectorate or the Director-General of Labour issues a decision concerning, for example:

a. the work safety report, Article 5(2);
b. an instruction to an undertaking or establishment to set up a works committee, Article 15(3);
c. an instruction to an undertaking or establishment concerning the obligation to provide an occupational medical service, Article 18(2);
d. an instruction to an undertaking or establishment concerning the obligation to provide an occupational safety service, Art. 19(2);
e. an instruction from the Labour Inspectorate to comply with the Working Conditions Act, Art. 35(1);
f. a dispensation, Art. 41(8).

The works council also has the right to request the Labour Inspectorate to apply the Act (Article 40), and in particular Articles 35 (imposition of a requirement), 36 (issuing of an instruction), 37 (ordering work to be stopped), 5, second paragraph (obligation on an undertaking or establishment to produce a work safety report), 18, second paragraph (obligation on an undertaking or establishment to provide an occupational medical service), and 19, second paragraph (obligation on an undertaking or establishment to provide an occupational safety service).

Finally, at national level consultations between the government and employers' and workers' organizations take place within the Socio-Economic Council, which has taken over the duties of the government's advisory body on working conditions, the "Arboraad" (Council for Monitoring Compliance with the Working Conditions Act).

2. Works council (and thus worker) participation in decisions concerning working conditions is also guaranteed under Article 27(1)(e) of the Works Councils Act, which gives the works council the right to withhold approval for any scheme proposed by the employer concerning safety, health and welfare at work. This right does not apply to those provisions of the Working Conditions Act on the basis of which the Labour Inspectorate may issue an instruction or requirement, but only to matters where the employer has a degree of freedom of interpretation.

The works council's right to grant or

withhold approval (see Question 18) also applies to arrangements concerning job consultation. The promotion of job consultation is one of the works council's tasks, under Article 28(2) of the Works Councils Act.

Although not strictly "participation", the works council is also entitled, under Article 31(1) of the Works Councils Act, to receive information from the employer insofar as it can reasonably be said to need the information in order to perform its functions. Information here means supplementary information concerning working conditions.

On the basis of Article 14(1)(a)(1) of the Working Conditions Act, the works council has the right to information from the specialist and welfare services. This provides the formal basis for specialist support for the works council from the specialist services.

As regards civil servants, within the framework of the Working Conditions Act the consultative committees are regarded as the negotiators with management on questions of safety, health and welfare (Articles 2–5 of the Decision on Working Conditions for the Civil Service).

## PROTECTION OF CHILDREN AND ADOLESCENTS

Question 20

- The minimum employment age for young people, and the exceptions thereto, is covered in the 1919 Factories Act (Staatsblad 624), the Stevedores Act (Staatsblad 1914, 486) and the 1933 Outwork Act (Staatsblad 597).

The first paragraph of Article 9 of the 1919 Factories Act states that no child may work, Article 8 defining a child as:

1. a person whose compulsory education pursuant to paragraph 2 of the 1969 Compulsory Education Act (Staatsblad 1968, 303) has not yet started or not yet ended;
   the Compulsory Education Act states that compulsory education begins on the first school day of the month following the child's fifth birthday and ends at the end of the school year in which the child completes at least 12 school years or at the end of the school year in which the child reaches the age of 16;

2. a person exempted from the requirement of paragraph 2 of the 1969 Act on the basis of Article 5 or 15 of the same Act;

3. a person aged under 16 years residing outside the Netherlands.

The second paragraph of Article 9 lists certain exceptions relating to the performance of specific types of light work for a very limited number of hours per day. In addition, a written dispensation may be granted in a very small number of cases by the district head of the Labour Inspectorate.

The first paragraph of Article 4 of the Stevedores Act states, among other things, that no stevedoring work may be performed by persons aged under 18, except where individual permission is granted. Thus, stevedoring work is permitted in apprenticeship schemes, provided that adequate supervision is guaranteed.

The provisions of the 1919 Factories Act concerning the employment of children apply mutatis mutandis to outwork.

For the civil service, there are no special provisions governing the minimum employment age.

As soon as a child enters the labour market in order to perform authorised work as described above, he/she is termed a "young person", and the relevant provisions covering this situation apply until age 18.

Question 21

- Under the Minimum Wage and Minimum Holiday Allowance Act, workers aged under 23 are entitled to the minimum young persons' wage, this being a specific percentage of the minimum adult wage. The percentage is fixed by decree and is graduated by age.

  Salary scales in the civil service are based on the nature and level of the post (job rating), but in general young persons on scales 1-5 are paid the lowest "adult" wage (i.e. wage at age 22), with a reduction of 10% for each year younger than this age up to a maximum of 50%.

Question 22

- The 1919 Factories Act sets the maximum working hours of young people at 8 hours per day for 5 days per week, with an unbroken daily rest period of at least 12 hours. The statutory weekly rest is one period of at least 60 consecutive hours (including a full Saturday or Sunday) or 2 periods of 36 hours (one of which must include the full Saturday or Sunday). The Act also states that a young person may not work between the hours of 19.00 and 07.00, with exemptions for newspaper delivery work (between 06.00 and 07.00) and for work in nursing or care establishments (between 19.00 and 23.00) where nursing or caring is required.

  Work on Saturdays or Sundays is not permitted, with certain exceptions.

  The Decree on hours of work and rest periods for young people allows the district head of the Labour Inspectorate to grant dispensations from the ban on night work by young people. It has been agreed, in consultation between employers', workers' and young people's organizations, that such dispensations shall be granted only for training-related night work in the hotel and catering sector (provided that the employer can show that this is necessary) and for young artistes. In both cases, of course, the obligations entered into with the ILO apply.

## THE ELDERLY

Question 24

- In principle, every person who has been insured under the General Old-Age Pensions Act is entitled to a pension on reaching the age of 65. The amount of pension depends on the number of years' coverage amassed, i.e. the number of years that the person concerned has lived or worked in the Netherlands. In principle, each partner has separate claim to 50% of the total pension amount. However, if one partner has not yet reached 65, the younger partner is then entitled to an allowance, the amount of which depends on the number of years' coverage amassed and the amount of any income which the younger partner may receive from or in connection with work.

  A person having been in paid employment in the Netherlands and having been affiliated to a company pension scheme may be entitled, in addition to the

statutory state pension, to a supplementary pension, the amount of which is generally based on the most recent earnings and the duration of employment.

Question 25

- Every resident with insufficient resources to afford the basic necessities of life is entitled to a cash allowance under the National Assistance Act.

  The amount is based on the claimant's individual circumstances and family size and is related to the statutory minimum wage.

## DISABLED PERSONS

Question 26

- In the Netherlands, all disabled persons, regardless of the origin and nature of their disability, are entitled to concrete supplementary measures to facilitate their social and occupational integration, insofar as these can be considered beyond their means. Under the Disabled Workers Employment Act, responsibility for facilitating the reintegration of disabled persons into the world of work lies with the Joint Medical Service (for the private sector) and the Public Servants Superannuation Fund (for the public sector). The means at their disposal include:

  - authority to set up job placement activities on the basis of the Disabled Workers Employment Act.
  - subsidies for training and wage costs. Unlike in the past, it is no longer necessary for another body to be involved.
  - the possibility of providing facilities on the basis of the General Occupational Disabilities Act (for the private sector) and the Public Servants Superannuation Act (for the public sector).

    This includes the costs of specially adapted transport to and from work, workplace modifications, and of special aids necessary for the performance of the work. Within the framework of the Disabled Workers Employment Act, facilities for use by more than one disabled person can be (part) financed on the basis of the General Occupational Disabilities Act or the Public Servants Superannuation Act.
    Decision-making with regard to such funding lies with the industrial insurance boards in the private sector (under the General Occupational Disabilities Act) and with the Public Servants Superannuation Fund in the public sector (under the Public Servants Superannuation Act).

  Workers in sheltered workshops who have the necessary capabilities are also helped to move on into regular work.

  Integration into social life is facilitated by the following concrete measures:

  - The provision of facilities to individual disabled persons in order to improve their living conditions. These facilities are provided via the same procedure as the facilities outlined above in connection with work, but can be ] independently of the above. most important one is the a for adaptation of a vehicle. from this, wheelchairs communication aids can be ] as well as special home help above the standard home Applicants must be aged under 65.
  - As regards suitably accommodation, claims for under the Financial Aid Scheme Accommodation for the Disabled

be made via the municipality. The scheme covers, for example, the costs of removing and replacing ergonomically unsuitable design features or of re-locating a disabled person in suitable accommodation. The building legislation stipulates that buildings, and in particular public buildings, such as town halls, should be as accessible as possible to the disabled.

- Persons aged over 65 can claim under the National Assistance Act for essential facilities. A means test is applied.
- Parliament is currently discussing a proposed new scheme for the provision of facilities for the disabled (covering both housing and day-to-day living,including transport), which abolishes the current distinction between under-65s and over-65s. The scheme would be run by the municipalities, which could tailor it to suit local circumstances and possibly introduce a contributory system whereby beneficiaries paid a proportion of the costs. The scheme is expected to be brought into force in 1994.

## IMPLEMENTATION OF THE CHARTER

Question 27

- Through the legislation, policies and court judgments referred to in these replies.

# PORTUGAL

## INTRODUCTION

In Portugal, the 90s have seen an intensification of the social dialogue launched in October 1990 by the conclusion of an Economic and Social Agreement between the Government and the social partners on the Permanent Council for Social Concertation. In this agreement, they undertook to make a decisive contribution to modernising the national economy, reducing its vulnerability to the short-term and medium-term challenges that may confront it, ensuring the competitiveness of industry and bringing about a progressive and *sustained improvement in the living conditions of the Portuguese people.*

This agreement covers various areas of social policy and lays down objectives to be met and measures to be taken from January 1991 which, while taking the reality of the Portuguese economy into account, should help to achieve convergence with the other Member States of the European Community by progressive application of the Charter of Fundamental Social Rights for Workers.

With a view to the implementation of the Economic and Social Agreement, the Government and all other organisations representing workers and employers signed an agreement on vocational training policy and an agreement on safety, hygiene and health at work on 30 July 1991.

Law No 108/91 of 17 August 1991 established the Economic and Social Council (CES) as a consultative and coordinating body in economic and social policy matters.

The remit of the above-mentioned Permanent Council for Social Concertation then passed to the Permanent Commission for Social Concertation set up under the CES with the particular task of promoting dialogue and coordination between the social partners and contributing to the formulation of policies on prices and incomes, employment and vocational training.

The social concertation process led in 15 February 1992 to the signing of the agreement on incomes policy for 1992 between the Government, the General Confederation of Portuguese Workers (CGTP), the General Union of Workers (UGT), the Confederation of Portuguese Farmers (CAP), the Confederation of Portuguese Commerce (CCP), and the Confederation of Portuguese Industry (CIP).

Under this agreement, recommendations were drawn up for collective agreements in 1992, regarding the average increase in collectively agreed wage rates and the minimum wage, along with recommendations concerning prices. Also agreed were rates of increase in family benefits, taxation measures, in particular the reduction of the tax burden on earned income, and measures concerning housing, employment and health.

## FREEDOM OF MOVEMENT

On 24 February 1992, a Decision was published by the Ministry of Employment and Social Security stating that the national regulations governing access to employment and the exercise of a professional activity apply without restriction to workers who are nationals of Member States of the European Community and to members of their families within the terms of Council Regulation 1612/68.

3 March 1993 saw the publication of Decree-Law No 60/93, which governs the entry and residence of nationals of Member States of the European Community. This legislation covers employees, the self-employed, students, workers who have retired from work in a Member State other than Portugal and nationals of other Member States who do not have right of residence under other provisions of the Treaty, together with the members of

their families as defined in the Community Directives and Regulations.

## EMPLOYMENT AND REMUNERATION

Under the Portuguese Constitution, everyone has the right to choose freely his or her profession or type of work subject to the restrictions imposed by law in the public interest or by their ability, and all workers, irrespective of age, sex, race, citizenship, place of origin, religion or political or ideological persuasion, are entitled to remuneration for work which reflects its quantity, nature and quality, in accordance with the principle of equal pay for equal work, so as to ensure a decent standard of living.

Under Portuguese legislation, all employees, whatever their terms of employment, are guaranteed a monthly minimum wage. This minimum wage does not preclude the payment of higher wages under collective agreements or agreements concluded between individual parties.

For part-time work, remuneration may not be less than the fraction of the full-time remuneration corresponding to the period of work in question.

One objective of the Economic and Social Agreement is for the guaranteed minimum wage to rise faster than the average wage.

In 1993, the minimum wage was fixed at Esc 47 400 per month for workers in agriculture, industry and services and at Esc 41 000 per month for workers in domestic service, representing annual increases of around 6.5% and 7.9%, respectively.

Where wages are withheld, seized or transferred, there is no provision for national benefits in the social security system. In cases of transfer, however, unemployment benefits or social assistance benefits may be paid in the event of economic need; wages may be withheld only in the event of debts contracted by the worker and then only up to a maximum of 1/6 of pay; as for seizure, only 1/3 of pay may be legally seized, although the court may fix a lower fraction.

February 1993 saw the publication of a Decision establishing a "monitoring unit for employment and vocational training". Its main aim is to contribute towards the diagnosis, prevention and resolution of problems connected with employment and vocational training, particularly the imbalances between supply and demand, the quality and stability of employment, skills, entry and re-entry into the labour market, introduction of innovations and restructuring.

Also in order to combat unemployment, a Decision published in March 1993 makes provision for the establishment and running of "employment clubs", intended mainly for the long-term unemployed.

The services provided by the public employment centres are unconditionally free of charge.

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

The *working conditions* of employees are governed by legislation, collective agreements, internal rules and an individual contract of employment if this is in writing (only temporary contracts, term contracts, contracts for foreign workers not entitled to free access to employment and contracts for workers employed in public performances and/or on board ship are required to be in writing).

Until January 1991, *normal working time* not permitted by law to exceed 48 hours week and 8 hours a day. Under the Ec and Social Agreement, however, a reduction

44 hours was agreed for January 1991 (legislation already having been enacted to this end), falling to 40 hours in 1995 at a rate of one hour a year or as otherwise specified in a collective agreement. For office workers and civil servants, the normal working week is 42 and 35 hours, respectively. Working time may be less than that defined by law, as is the case in the services sector, where the working week is around 35 hours. In collective agreements, normal working time may be defined as an average whereby the normal working day may be increased by up to 2 hours, provided that the working week does not exceed 50 hours except in the case of overtime worked as a result of force majeure. The reference period for calculating such an average is fixed by collective agreement or, in the absence of any explicit provision in such an agreement, is 3 months.

In October 1991, a collective labour agreement was concluded between the Confederation of Portuguese Farmers (CAP) and the agriculture, food and forestry union, fixing the maximum normal working week at 42 hours from 1 January 1992 and at 40 hours from 1 January 1994.

This agreement has been administratively extended to other geographical areas not directly covered.

Without prejudice to the exemptions authorised in collective agreements, the working day must be interrupted by at least one and at most two hours in such a way that not more than five hours are worked consecutively.

By law, the weekly rest period is one day, normally Sunday. A further day or half-day may be granted under a collective agreement.

*Shift work* is regulated by legislation and collective agreement. The duration of each shift may not exceed the maximum limits for normal working and the shift workforce may not be replaced until after the weekly rest period.

*Night work* is work performed between 20.00 hours on one day and 7.00 hours the next. Consecutive periods of 11 hours are permitted by collective agreement, provided that 7 of them are worked between 22.00 hours and 7.00 hours.

*Overtime work* may not as a rule exceed 2 hours a day and 200 hours a year. Workers on overtime are entitled to a higher hourly pay and, in certain situations, to paid compensatory leave. In 1991, the additional social security contributions payable on overtime were eliminated.

*Term contracts* are permitted only in situations specified by law, namely, i) temporary replacement of a worker who is prevented from working, ii) temporary increase in the activity of the company, iii) seasonal activities, iv) casual labour, v) start-up of a company or establishment, vi) starting of a new activity of uncertain duration, vii) hiring of long-term unemployed or first-time job seekers. Term contracts must be in writing. The employer is obliged to notify the workers' commission of the employment of workers under such contracts. *Fixed-term contracts*, which have a minimum legal duration of 6 months (except in cases i) to iv) above, where the duration may be shorter), may not be renewed more than twice and are limited to 3 consecutive years (except in cases v) and vi) above, where the contracts may not exceed two years whether or not renewed).

Within specified deadlines, the employer must inform the worker of the non-renewal of a fixed-term contract or the term of a contract with an unspecified term, otherwise these types of contract are converted into open-ended contracts. On expiry of the contract, the worker is entitled to compensation corresponding to 2 days' pay for every completed month of the duration of the contract. The same conditions are laid down

by law for cases where the contract is terminated by the worker.

*Part-time work* is essentially regulated by collective agreement, except for the principle of proportional remuneration, which is laid down by law.

*Temporary work* is subject to the rules for term contracts and some special provisions laid down in the legislation governing temporary employment agencies. A temporary worker is subject to the terms of employment of the employer to whom he is hired as regards type, place and duration of work, leave of absence, hygiene, safety, occupational medicine and access to social facilities.

There are 12 obligatory and 2 optional paid *holidays*.

*Annual leave* is 22 working days. Entitlement to leave is acquired upon signing of the contract of employment and falls due on the first of January, unless employment commences in the second half of the calendar year, in which case leave may be taken after 6 months of effective employment; if employment commences in the first half, the employee is entitled to leave of 8 working days after a period of 60 days of effective employment.

Where an enterprise or establishment closes for holidays, workers who are entitled to a period of leave longer than the period of closure and take leave during this period may opt to receive the remuneration and allowances corresponding to the difference, without prejudice to their effective entitlement to 15 working days, or take the extra period as leave.

The remuneration for the period of leave may not be less than that which the workers would receive if at work and must be paid at the start of the period of leave. Workers are also entitled to a holiday allowance equal to the amount of this remuneration.

Workers employed under a term contract with an initial or renewed duration of less than one year are entitled to a period of leave corresponding to 2 working days for each completed month of employment.

Justified or unjustified absences have no effect on the entitlement to leave. However, where absences entail loss of pay, the worker may instead, if he so wishes, substitute days of leave for these absences, provided that the leave entitlement to 15 working days, or 5 working days in the case of leave in the first year of employment, is maintained.

If the worker falls sick during leave, leave is suspended, provided the employer is informed, and continued after the period of sickness.

Under national legislation, *collective redundancy* is defined as the termination of individual contracts of employment by the employer, simultaneously or successively over a period of 3 months, affecting at least 2 workers (in enterprises with 2 to 50 workers) or 5 workers (in enterprises with more than 50 workers) in connection with the definitive closure of the enterprise or one or more of its sections or a cutback in the workforce for structural, technological or economic reasons. Notice of such redundancies must be communicated in writing to the body representing the workers, with a copy to the Ministry of Employment and Social Security. This is followed by negotiations, with the participation of the above Ministry, with the aim of obtaining agreement on the scale and impact of the measures to be taken. Whether or not an agreement is reached, 30 days after the communication referred to above, the employer must give each worker to be made redundant notice of redundancy not later than 60 days before the planned date of redundancy.

Workers who are made redundant are entitled to compensation corresponding to one month's basic pay for each year of seniority or fraction thereof, the minimum being three months.

During the period of notice, the employee may terminate his contract without loss of entitlement to such compensation.

If the employer is legally declared *bankrupt* or *insolvent*, this does not terminate the contract of employment as long as the establishment is not definitively closed. The administrator of the bankrupt employer's assets must meet in full the obligations arising from the contracts of employment until the establishment is definitively closed.

If, before the definitive closure of the establishment, some of the workforce are no longer required on account of the gradual reduction in activity, the administrator of the bankrupt employer's assets may terminate the contracts of those workers, provided such action is in accordance with the legal regulations for collective dismissal, the only difference now being that the advance payment of compensation for dismissal is not obligatory.

Any claims on the part of workers, including unpaid redundancy payments, must be lodged during the bankruptcy proceedings, when, on being acknowledged, they will be ranked in accordance with Articles 737, 747 and 748 of the Civil Code, i.e. they will be considered after the claims of the State.

At all events, if the contract of employment is terminated, a wage guarantee fund (fully financed by the government) ensures that workers are paid for the last four months immediately prior to the legal declaration of bankruptcy or insolvency. However, the maximum monthly amount may not exceed three times the minimum wage guaranteed by law for the sector of activity concerned.

## SOCIAL PROTECTION

protection for workers is available under general social security system, which provides compulsory cover for all employed workers and the self-employed, and by the systems catering for the civil service, the legal profession and bank workers.

Persons not compulsorily covered by these systems may join a voluntary *social insurance* scheme.

Protection to cover the risk of occupational accidents is the responsibility of employers. However, they may transfer their responsibility to insurance companies.

For *employed workers*, the following contingencies are covered: sickness, maternity, unemployment, occupational illness, invalidity, old-age, death and family responsibilities.

The self-employed and civil servants are covered against the same risks except for unemployment. Protection against occupational illness is also optional for the self-employed.

Voluntary social insurance is intended to protect insurees in the event of invalidity, old-age and death as well as, for certain specific groups, occupational illness and family responsibilities.

As a rule, but without prejudice to the minimum amounts laid down by law, wage replacement benefits are calculated as percentages of the amount of pay on which contributions are based, varying between 65% and 100% of this amount in the case of immediate benefits and between 30% and 80% in the case of deferred benefits. Family benefits are flat-rate.

Social protection for workers is also provided by supplementary schemes run by insurance companies, pension funds, mutual benefit associations, foundations and other bodies.

Social protection for persons excluded from the labour market and having no means of

subsistence is provided by the non-contributory system in the form of cash benefits to compensate for invalidity, old age, death and also to cover family responsibilities, subject to a means test. Also subject to a means test is a benefit for entry into working life granted to young people aged between 18 and 25 seeking their first job.

In addition *social assistance benefits* are granted on a case-by-case basis.

Currently under preparation is a national programme to combat poverty, comprising a set of locally based activities - projects aimed at ensuring the social, economic and cultural integration of disadvantaged persons, groups and communities by mobilising local and national resources, exploiting and enhancing the capacities of the population, and activating local solidarity.

The programme is coordinated and managed by two commissioners, one for the north of the country and the other for the south. Both answer directly to the Minister of Employment and Social Security.

Health protection is assured by a system comprising the national health service and all the public bodies undertaking promotion, prevention and treatment activities in the field of health, together with all private bodies and professionals who sign agreements with the national health service to perform all or some of these activities. The national health service, which comes under the Ministry of Health, embraces all the official health-care services and institutions under the Ministry of Health and has a statute of its own. Beneficiaries of the national health service are citizens of Portugal and the other Member States of the European Community as well as stateless persons and residents of Portugal who are citizens of third countries with reciprocal arrangements with Portugal.

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Under national legislation, employers have the right to constitute associations to defend and promote their entrepreneurial interests and to join the association representing the category to which they belong in their area of activity, provided that the statutory requirements are met. The right to leave such associations is free and unconditional.

Where workers are concerned, the Constitution lays down that *freedom of association* in trade unions is guaranteed without discrimination, in particular the freedom to form trade unions at all levels and the freedom to join trade unions. However, no worker is obliged to pay dues for a trade union to which he does not belong.

Ordinary law also guarantees workers the right of association in trade unions to defend and promote their social and professional interests and the right to join the trade union that represents the categories to which they belong in the field of their activity as well as the right to leave at any time the trade union to which they belong.

Any agreement or act making a worker's employment conditional upon joining or not joining a trade union or upon leaving the trade union to which he belongs or any agreement or act intended to dismiss, transfer or in any way prejudice a worker on account of his belonging or not belonging to a trade union or on account of his trade union activities is prohibited and deemed null and void.

Labour relations are collectively regulated by collective agreement, arbitration or affiliation agreements.

Only the trade unions and employers' associations registered in accordance with the appropriate statutory regulations as well as

individual employers may sign collective agreements.

Collective agreements concluded by trade unions and employers' associations are known as *collective contracts*, while *collective agreements* proper are entered into by trade unions and a group of employers on behalf of a group of enterprises. *Company agreements* are those signed by trade unions with just one employer for one enterprise.

The process of securing or revising an agreement starts with the presentation of a proposal and a counter-proposal within certain statutorily defined deadlines, followed by a phase known as "direct negotiation" between the parties involved with a view to reaching an agreement. If no agreement is reached, the resulting dispute may be resolved by conciliation, mediation or arbitration.

The regulations established by any one of the above methods may not be overturned by individual contracts of employment except to establish more favourable conditions for workers.

The only obstacle preventing parties to agreements from revising or replacing them is the minimum duration of agreements (1 year). Notice of termination of these agreements may be given only after 10 months following their deposition with the Ministry of Employment and Social Security.

Workers are guaranteed the *right to strike* under the Constitution. It is left to them to decide the scope of the interests to defend. This scope cannot be restricted by law.

ıl legislation lays down some rules in a, specifying who may call a strike, the sory nature of the notice to strike, the : of a strike, obligations during a strike the consequences for workers of not ing with the law.

Civil servants, but not the military and paramilitary forces, are guaranteed the right to strike under the conditions outlined above.

## VOCATIONAL TRAINING

The agreement on vocational training policy mentioned in the introduction calls for "the improvement of coordination between training and working life", "the integration within the labour market of disadvantaged groups", "the intensification of further training", "social consultation in the definition, development and implementation of employment and training policies", "the encouragement of the investigation and systematisation of training and employment statistics" and "cooperation within the European Community".

The agreement provides for a range of measures requiring close cooperation between public authorities and the social partners.

Social dialogue and the participation of the social partners in the definition, development and implementation of employment and vocational training policy feature throughout this agreement, in particular as regards the tripartite organisation of the bodies concerned.

To implement the measures provided for in this agreement, legislation has been adopted concerning a framework for vocational training, preliminary vocational training, vocational information, vocational qualifications, training grants, and work experience.

For example, Decree-Law No 401/91 of 16 October 1991 regulates vocational training, whether provided in the education system or on the labour market, and defines its essential features: concepts, aims, consideration of occupational levels and profiles, assessment, etc. It integrates all such training in a uniform and effective legal system.

Decree-Law No 405/91 of 16 October 1991 specifically establishes a legal framework for training provided on the labour market and clarifies the role of the State, companies and other employers or training bodies.

This legislation also sets out the criteria for defining the priorities to be observed in granting training aids and for their sources of funding.

One particular form of such training is apprenticeship, which provides training combined with work for a duration of not more than 4 years and covers young people from the age of 14 to 24 who have completed compulsory schooling. The legal provisions governing apprenticeship date from 1984, although some modifications have been made.

Decree-Law No 383/91 of 9 October 1991 establishes the legal basis for preliminary vocational training, with the aim of ensuring a successful completion of the period of compulsory schooling and creating conditions for access to apprenticeships with qualified training. This fills a gap for young people dropping out from education without successfully completing compulsory schooling.

Decree-Law No 59/92 of 13 April 1992 provides for vocational information to be disseminated not just via the relevant departments of the Institute of Employment and Vocational Training (EREFP) but also through other public, private and cooperative bodies, thus providing the maximum amount of information for choosing an occupation.

The scheme for vocational qualifications based on training acquired on the labour market or in the course of occupational experience is a new feature of national legislation enshrined in Decree-Law No 95/92 of 23 May 1992.

This Decree-Law set up a Joint Standing Committee under the Administrative Board of the Institute of Employment and Vocational Training, a tripartite body with the task of assisting the Government with the coordination of vocational training.

To accompany this institutional framework for an effective training policy, Regulatory Decisions 86/92 and 87/92, both of 5 June 1992, established the legal basis for awarding grants for training at the worker's initiative and the creation of work experience units (UNIVA).

The first of these decisions establishes an individual's right to training, while safeguarding the proper functioning of the company, and sets out the priorities to be observed in granting this right and the methods of funding it.

As just mentioned, Regulatory Decision No 87/92 is concerned with the creation of work experience units with the aim of intensifying the link between training and working life.

As regards continuing training, a statutory system was set up in 1985 for technical and financial assistance from the IEFP for vocational training in cooperation with other public, private or cooperative bodies, with the aim of implementing specific activities or meeting ongoing needs in one or more economic sectors.

Vocational training is currently expanding, particularly among the working population (continuing training). With the aim of improving workers' qualifications, the right to unpaid leave for a period of not less than 60 days to attend vocational training courses has been introduced. It can be refused only where permissible by law.

Reaffirming the importance of vocational training designed to provide qualifications for the integration and re-entry of workers into the labour market, Regulatory Decision No 52/93 of 8 April 1993 requires the Institute of Employment and Vocational Training to introduce measures for the training and

integration of young professionals and adults to better adapt them to work and place them in jobs appropriate to their training.

With an eye to the principle of involving interested parties in the actual management of public-sector services and in accordance with the Agreement on Vocational Training Policy, legislation was published in March 1993 for the setting up of tripartite consultative boards at the vocational training centres managed by the IEFP.

In January 1993, a Decision was passed to provide financial aid for the development of agricultural training infrastructures open to farmers' organisations.

Vocational training integrated within the education system is covered by provisions in the Education System (Bases) Act, one being that initial training is provided through technical vocational education and vocational schools.

three years and open to young people have completed nine years of schooling, ...l vocational education leads to a ry school-leaving diploma and a l vocational training certificate.

the vocational schools, which are open to people with nine or six years of ıg, courses are split into modules of ʒ duration corresponding to ıively higher levels of education and ıal qualification and leading to a te of qualification at levels 1, 2 or 3 a diploma equivalent to the 10th, 11th or ...rs of the mainstream education system.

it may be noted that any foreign resident in Portugal with the intention entering the national labour market has to vocational training.

## EQUAL TREATMENT FOR MEN AND WOMEN

The principle of equality between men and women is enshrined in the Constitution. It is implemented by ordinary legislation guaranteeing, in particular, equal opportunities and treatment at work in both the private and public sectors. There is a tripartite Commission for Equality at Work and in Employment with the aim of promoting the application of this legislation. This Commission, which answers to the Minister of Employment and Social Security, performs various activities, including the analysis and processing of complaints submitted by trade unions and workers and providing information on, and raising awareness of, the issue in question.

The Labour Inspectorate is responsible for monitoring compliance with the law.

Workers or trade unions may bring proceedings before the competent courts in cases of discrimination.

Also worth noting is the existence of a Commission for the Equality and Rights of Women, also under the Minister of Employment and Social Security, which has as its aim the defence of the equal rights and dignity of women and men at all levels of family, occupational, social, cultural, economic and political life. Among other things, this Commission has launched information and awareness-raising activities.

Various positive measures in favour of women have been adopted to counter and offset discrimination through preferential treatment. In particular, they include increases in public assistance to enterprises employing or training women in traditionally male professions and to women starting up businesses or becoming

self-employed. Worth noting as well is the launching of the 'Bemmequer' (daisy) project, which aims to set up, in an initial phase, 'information areas' in six local authorities with a view to i) helping women to identify their own personal and professional skills, to look for work or to set up their own businesses or cooperatives, and ii) promoting cooperation between partners at local and regional level in order to facilitate the reintegration of women into working life.

In this connection, the agreement on vocational training policy also aims to step up measures concerned with the employment and the training of women with a view to facilitating their integration within the labour market.

Also with a view to ensuring equal opportunities, national legislation provides for the sharing of family responsibilities by specifying that leave for looking after children may be taken by the father or the mother. Women thus have the right to maternity leave of 90 days, 60 of which must follow birth. Should the mother die during the period of leave after birth, the father is entitled to leave from work to care for the child for a period equal to that to which the mother would have been entitled but not less than ten days. If adopting a child less than three years of age, workers are entitled to 60 days' leave to look after the child.

In such situations, workers are entitled to an allowance equal to the average pay taken as the basis for calculating sickness allowance, if they are insured under the social security system, or to their pay if covered by the social protection scheme for the civil service.

Workers are entitled to be absent from work up to 30 days a year to provide, in the event of sickness or accident, urgent and necessary care for their children, including adopted children or step-children, less than ten years of age. If hospitalisation is necessary, the right to absence is extended to the period of hospitalisation required in the case of children less than ten years of age, but may not be claimed simultaneously by the father and the mother. In such cases, and where such absences are unpaid, the social security institutions will grant an allowance not exceeding the allowance payable if the worker falls sick him- or herself. This benefit is means-tested.

A working father or mother is entitled to take six months off work, extendable to a maximum of two years, starting at the end of maternity leave, to take care of his or her child. This period of leave suspends the rights, duties and guarantees of both parties to the contract of employment, which are however reestablished when the leave ends. Such periods of leave are taken into account for calculating benefits due under the social protection schemes in the event of invalidity or old age.

Workers with one or more children less than 12 years of age are entitled to work reduced or flexible hours.

With the objective of ensuring equal opportunities, efforts have been made to create facilities and provide services for childcare and care of the aged.

The constitutional principle mentioned above notwithstanding, the general social security system still contains an element of inequality where the minimum age of entitlement to old-age pensions is concerned. Currently under study, however, are measures to make the age of entitlement to old-age pensions more flexible in order to ensure equality between men and women.

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

The representative bodies exercising the [illegible] of workers to information, consultation [illegible] participation are the *workers' commissions*. Workers are constitutionally guaranteed

right to establish workers' commissions to defend their interests and intervene democratically in the life of the enterprise.

The workers' commissions have the right to: receive all the information necessary for the exercise of their activity; monitor the management of enterprises; intervene in the reorganisation of productive units; participate in the preparation of labour legislation and economic and social plans relating to the sector concerned; administer or participate in the administration of the social works of the enterprise; promote the election of worker representatives to the social bodies of enterprises belonging to the State or other public authorities in accordance with the law.

The right of the workers' commissions to information covers: general operating and budgetary plans; internal regulations; organisation of production and its implications for the degree of utilisation of labour and equipment; the situation regarding supplies; forecasts of the volume and management of sales; personnel management; enterprise accounts; financing methods; burden of taxes and similar charges; projected alterations to the registered capital and object of the enterprise and plans for changing the productive activity of the enterprise.

The right to consultation takes the form of the obligation to be asked for an opinion before decisions are taken on the following: conclusion of restructuring contracts; liquidation of the enterprise or application for bankruptcy; closing of the establishment or production lines; any measures resulting in a significant cutback in the workforce or a substantial worsening of working conditions; hment of the annual holiday ime; alteration of hours of work; ation of the criteria on which ional classifications and promotions are change in the location of the enterprise business.

The workers' commissions must also be consulted on individual and collective dismissals, suspension of the contract of employment or reduction in the normal working time and also on social accounts.

Apart from some exceptions relating to activities in the public interest, the right of the workers' commissions to monitor management covers: the issuing of opinions on the enterprise's economic plans and budgets; the submission of recommendations or critical reports on the apprenticeship, retraining and advanced training of workers and on the improvement of living and working conditions and of health and safety; defending the interests of the workers before the management and supervisory bodies of the enterprise and the competent authorities.

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Under the constitution, all workers are entitled to work in healthy and safe conditions. In accordance with this principle, the employer must provide the worker with good working conditions and ensure health, safety and the prevention of the risks of occupational illness and accidents.

Current legislation in this area includes, in particular, the basic legislation specifying the conditions for the installation and operation of industrial establishments, commercial establishments, offices and services, including the civil service, and the general regulations governing health and safety in industrial establishments.

Taken as a whole, the Community Directives contain more favourable provisions for the training and information of workers.

The improvement of health and safety

conditions at the workplace is an issue that has preoccupied the government and the social partners and is one of the aspects covered by the 1990 Economic and Social Agreement. As provided for in the latter, an Agreement on Safety, Hygiene and Health at Work was signed on 30 July 1991 with the following main guiding principles: i) integration in the vocational preparation of minors of training on occupational risks and their prevention; ii) provision of workers throughout their working lives with information and training on occupational risks and their prevention; iii) promotion of qualified training for specialists in the field of hygiene, health and safety at work; iv) development of a knowledge of occupational risks and prevention techniques; v) creation of a body for the prevention of occupational risks with participation of the social partners; vi) encouragement of negotiation at sectoral and enterprise level on the creation of joint hygiene, health and safety committees in enterprises, establishments and agencies.

As an integral part of this agreement, the Council of Ministers approved Decree-Law 441/91 of 14 November 1991, setting out a framework for safety, hygiene and health at work, which implements in national legislation the requirements set out in various Community directives, in particular Directive 89/391/EEC, and ILO Convention 155. This legislation guarantees workers the right to work in safe, hygienic and healthy conditions. This calls for a policy for the prevention of occupational hazards based on: a definition of the technical conditions to be met by the physical components of work, the identification of the substances, agents or processes to be prohibited, restricted or subject to authorisation or control by the authorities, the promotion and monitoring of the health of workers and the stepping up of research in the field of safety, hygiene, and health at work.

This legislation also entitles workers to up-to-date information on the risks to health and safety and on the measures and instructions to be followed in the event of grave danger. It lists the situations where workers have the right to such information. In addition, workers are also entitled to adequate and sufficient training in safety, hygiene and health.

To ensure the implementation of all the obligations it contains, the legislation requires the employer to organise, with the participation of the workforce, activities in the field of safety, hygiene and health at work.

Consultation of the workers or their representatives is compulsory on: i) hygiene and safety measures before they are put into effect; ii) measures that will have an impact on safety and health at work due to their effects or the technology employed; iii) the programme and organisation of training in field of safety, hygiene and health at work.

The workers or their representatives may submit proposals to minimise any occupational hazard.

28 April 1992 saw the publication of Decree-Law 72/92 and Regulatory Decree concerning the protection of workers the risks of exposure to noise at work.

In the light of the Economic and Agreement and the Agreement on Hygiene and Health at Work referred to and with a view to adapting admi structures to new requirements, the Ins the Development and Inspection of Conditions (IDICT) was established on 1993 with the tasks of promoting and improvements in working conditions, f the prevention of occupational risks ensuring compliance with the legal p governing the working conditions, em and unemployment of workers.

## PROTECTION OF CHILDREN AND ADOLESCENTS

The minimum legal working age is fixed at:

16 years from the 1st of January of the year following that when the first pupils have completed the nine-year period of compulsory schooling; ii) 15 years until this date.

However, minors between the ages of 14 and 16 may, upon completion of compulsory schooling, perform light work not prejudicial to their health or physical and mental development.

Minors of minimum working age who have not completed compulsory schooling may be employed only if they attend an educational establishment or take an apprenticeship or vocational training course that provides them with an equivalent educational qualification. In such cases, working hours may not be prejudicial to educational activities and permission for the young person to work must have been given by his or her legal guardians.

Young workers have additional guarantees to protect their health and education: a medical examination upon recruitment and subsequently every year; the prohibition of work impairing their physical, mental or moral development; the granting of unpaid leave to attend vocational training; and the right to part-time working when attending an educational establishment or apprenticeship or vocational training course providing them with qualifications equivalent to that of compulsory schooling, with entitlement to compensation for loss of pay.

For workers less than 18 years of age, national legislation fixes a minimum guaranteed monthly wage 25% less than that for persons over 18 years of age. The minimum monthly wage for trainees, apprentices or similar who are receiving practical training for a skilled or highly skilled occupation and are aged between 18 and 25 is 20% lower than the normal minimum guaranteed monthly wage for workers aged above 18 for the first two years or for the first year if they have completed a vocational technical course or appropriate vocational training.

It must be stressed, however, that such reductions are without prejudice to the principle of equal pay for equal work.

The law expressly calls for collective agreements to reduce, where possible, the maximum normal working time for workers under 18 years of age. In addition, student workers (regardless of age) are entitled to up to 6 hours off a week without loss of pay or any other benefit, if their school timetable so requires.

As regards night work, workers under 16 years of age are not permitted to work at night in industrial establishments and may only do so in activities of a non-industrial nature where this is considered essential for their vocational training.

Young people aged between 16 and 18 may work nights in industrial establishments only in cases of force majeure that prevent the normal operation of the enterprise.

Minors are not permitted to do overtime.

## ELDERLY PERSONS

The elderly are entitled to a range of benefits including: reduced fares and telephone subscription charges; free entry to museums; and exemption from tax on savings up to Esc 1 500 000. It is also not possible for a landlord to terminate the lease of anyone aged 65 or over or anyone who has been a tenant for at least 30 years.

Persons who have reached retirement age but are not entitled to a pension under the general social security system may receive an old-age pension under the non-contributory system, subject to a means test.

As part of the progressive improvements to pensions, June 1990 saw the introduction of a further benefit for retired persons and pensioners, in addition to the 13th month's pension, payable each July and corresponding to the monthly amount of pension due. This measure directly increased purchasing power.

The elderly now also have easier access to: social centres - social assistance with the participation of the elderly in social, recreational and occupational activities; day centres - social assistance provided through a variety of services such as social, recreational and occupational activities, nutrition, hygiene and personal care and laundry; homes - collective residential assistance for old people unable to remain in their family or social environment, including accommodation, food, health, hygiene and personal care, and social, recreational and occupational activities; holiday camps - temporary social assistance, residential and non-residential (taking the form of a range of social and recreational activities), with the aim of improving physical and mental health and ensuring social integration through bringing the elderly into contact with one another or with other age groups.

Recent years have seen an increase in the provision of home care for the elderly, i.e. carrying out tasks they are no longer able to perform themselves.

A new social policy measure was established in Decree-Law No 391/91 of 10 October 1991, providing for the temporary or permanent integration of elderly persons or adult disabled persons within suitable families. The services provided are paid for by the guests themselves or their families where they have the financial resources or, if they do not, by the coordinating institution (regional social security centres, the Santa Casa Da Misericórdia in Lisbon and private institutions in conjunction with the first-mentioned bodies).

Medical assistance is provided, as mentioned above, by the national health system.

In 1988, a National Commission for Old Age Policy was set up with the aim of developing an integrated policy for elderly persons. It has carried out and overseen innumerable activities, in particular research into ageing, the identification of high-risk situations, and awareness-raising and information campaigns on the problems of old age.

## DISABLED PERSONS

The development of a policy for promoting the social and occupational integration of the disabled has prompted various programmes concerned with occupational rehabilitation.

For example, vocational orientation and assessment programmes and occupational retraining and training programmes have been developed to create the conditions to enable the disabled to take proper vocational decisions and acquire occupational skills.

With a view to facilitating access to employment on the normal labour market, technical and financial aids are granted companies (compensation subsidies, subsidies for eliminating architectural obstacles, workplaces and providing individual attention, integration and merit awards, tax concessions and a reduction of 50% in their social security contributions) and to disabled persons wishing to take up self-employed work (subsidy for setting up their own businesses).

Technical and financial aids are available for setting up and running centres and "enclaves" for sheltered employment and occu activities and for the setting up of occu rehabilitation centres.

These occupational rehabilitation pro are accompanied by other measures int ease the full social integration of the

- provision of technical assistance in health, educational, vocational

employment and social fields;

tax concessions for the integration of the disabled, in particular the importation of cars, tricycles and wheelchairs; income tax reductions; special loan facilities for home purchase or construction;

technical recommendations for urban buildings and structures to improve the accessibility of establishments open to the public, the creation of reserved places on public transport and reserved parking spaces on public highways;

- personal assistance in public services for users with mobility problems or other disabilities and establishment of specific conditions for access, assistance and information/guidance in some museums and other places housing exhibitions or providing cultural and recreational activities.

# UNITED KINGDOM

## THE LABOUR MARKET

Introduction

The workforce of 1993 is very different from that of 10 years ago. The 1980's saw greater changes in the structures and patterns of employment than had been seen in the previous two decades. New jobs have created the need for new skills. Varied and flexible working arrangements have expanded. A new emphasis on the role and importance of the individual employee has emerged. Looking ahead, the 1990s promise to be a decade of unprecedented international competition, but also one of new opportunities. Continuing technological change, inward investment and increased competition will put a premium on the skills, adaptability and flexibility of the workforce.

Changes in the UK labour market

1) *Employment growth*

The UK saw rapid employment growth in the 1980s. Between June 1979 and June 1990 the UK workforce in employment rose by 1.6 million to 26.9 million, an all-time high. Since that date employment has fallen by over two million but latest quarterly figures (first quarter 1993) show a small increase in the number of employees in employment. This is the first rise in nearly three years but at present it would be premature to say that a turning point has been reached.

2) *Changing patterns of employment*

New patterns of employment have evolved. There has been substantial growth in part-time and other flexible forms of work. Almost one quarter of all jobs are part-time. Evidence suggests that people entering these jobs do so from choice rather than lack of opportunity; One in eight of the workforce in employment is now self-employed, compared with one in 13 in 1979.

3) *Changing industrial structure*

The last decade saw a decline in manufacturing jobs in most industrialised countries. In the UK this was accompanied by an increase in the proportion of employees in the service sector, from 59% in June 1979 to 73% (of employment in manufacturing and services) of all employees in employment in the latest figures. This sector now accounts for 62% of all employment, including self-employment, compared with 53% in 1979. There has also been strong growth in the creation of new businesses.

4) *Changing occupational structure*

Equally significant have been changes in the occupational structure of employment. Managerial and professional occupations now account for a third of all workers compared with a quarter in 1979. Only 42% of workers are in manual occupations now, compared with 52% in 1979.

5) *More women in employment*

The number of women in employment has grown significantly in recent years, rising from 9.9 million in spring 1979 to 11.3 million in spring 1993, an increase of 13 % compared with an 11 % male decrease. Women now form 45 % of the workforce in employment, compared with under 40 % in 1979. The UK has a higher proportion of women in employment than any other EC country except Denmark. The UK is the only EC Member State where the unemployment rate is lower for women than for men.

These changes reflect increased demand from women for jobs and the growth in the types of job opportunities with flexible working arrangements, particularly part-time and temporary jobs, that women need.

The UK approach to employment affairs

The UK Governement's labour market policies

reflect the important changes in the labour market during the 1980s and look forward to the key challenges of greater international competition and technological and demographic changes in the 1990s and beyond. They are designed to create an efficient and decentralised and flexible labour market which encourages employment growth and promotes choice and opportunity.

In the UK Governement's view, labour markets work most efficiently with the minimum of Government intervention. Policies have been directed at removing hindrances to the free operation of markets and to balancing the needs of employer and employee. Unnecessary regulations have been removed, thereby lessening the burden of Government on business, and it has been made easier to start up a new business.

The UK believes that, in general, terms and conditions of employment are matters best negotiated and agreed between employers and employees (or their representatives) according to their own priorities, needs and circumstances and according to what can be afforded.

The UK is not, however, opposed in principle to all regulation of the labour market; legislation is sometimes necessary to ensure effective operation of the market, to protect particularly vulnerable groups or to achieve a fundamental principle of public policy, for example to combat discrimination. In the UK there is therefore comprehensive legislation on such matters as health and safety, equal opportunities, maternity rights, unfair dismissal and redundancy payments. However, legislation should be confined to the minimum necessary consistent with establishing a balance between the needs of employers and employees.

* * *

The following sections outline UK employment and social policies. Many of the legislative provisions described satisfy or implement existing Community Directives.

## THE FRAMEWORK OF EMPLOYMENT PROTECTION

There is a comprehensive package of employment protection legislation for workers in the UK.

All employees are covered by legislation dealing with a number of important employment rights. These include equal pay, protection against discrimination on grounds of sex, race or trade union membership or non-membership, protection against the employer's insolvency and the right not to suffer unlawful deductions from pay.

In addition, most employees qualify for other legal rights, such as a redundancy payment, redress against unfair dismissal and the right to return to work after having a baby.

In brief, the main individual rights are as follows:

- written statement of main terms and conditions,
- right to receive an itemized pay statement,
- right to minimum period of notice,
- right not to be unfairly dismissed,
- right to written statement of reasons for dismissal,
- right not to be discriminated against on grounds of race, sex, marital status, or grounds of membership or non-membership of a trade union,
- time off for public duties,
- right to compensation if made redundant,
- time off (for employees who are being made redundant) to look for work or make arrangements for training,
- maternity rights, including the right not to be unreasonably refused paid time off for ante-natal care; right not to be dismissed because of pregnancy or for a reason connected with pregnancy; right to return

to work after having a baby,
- protection against unlawful deductions from wages,
- right to remuneration on suspension on medical grounds.

The Trade Union and Employment Rights Bill, which received Royal Assent on 1 July 1993, further extends these rights to include:

- a right to 14 weeks' statutory maternity leave and specific protection against dismissal on maternity-related grounds;
- extended and enhanced rights to written employment particulars;
- protection against victimisation for taking certain specified types of action on health and safety grounds;
- protection against dismissal for having sought in good faith to enforce a statutory employment right.

Means of redress

Workers who believe their rights have been infringed can get free advice from the independent Advisory, Conciliation and Arbitration Service (ACAS), from Citizens Advice Bureaux, and from law centres. Complaints may generally be pursued through the industrial tribunal system.

Industrial tribunals are independent judicial bodies which were set up to provide a speedy, informal and inexpensive method of resolving disputes between employers and employees. Their procedures have been framed with the objective of making it unnecessary for the parties to be legally represented.

In most cases an industrial tribunal will make an award of financial compensation to a successful complainant; depending on the jurisdiction under which the complaint has been made, the tribunal may alternatively make an order for re-employment or a declaration of the rights of the parties.

There is a right of appeal against tribunal decisions on a point of law, first to the Employment Appeal Tribunal and then to the Court of Appeal and the House of Lords.

Protection in cases of redundancy and insolvency

The UK believes that all employees are entitled to effective social protection in the event of redundancy or the employer's insolvency. The UK arrangements go well beyond the scope of the EC directives on insolvency and collective redundancies:

- Most employees have a statutory right to compensation, based on earnings and length of service, if they become redundant.

- Recognised trade union representatives must be consulted about prospective redundancies and business transfers; and employers must inform the Government in advance about large redundancies.

- A comprehensive package of measures is available to redundant workers to help them back into employment.

- UK law gives preference to debts owed to employees in the event of their employer's insolvency. Furthermore, the UK Government guarantees payment of certain wages and other debts owed by insolvent employers.

- In 1991/92 the Government made payments, totalling some UKL283 million, under the redundancy and insolvency provisions and instituted a free helpline for individuals seeking information about entitlements.

## WORKING CONDITIONS

There is no general legislative framework setting out terms and conditions of employment. In general employers and employees, or their representative organizations are free to agree what suits them best.

### Working time

Working time in the UK is in most cases determined by agreement between employers and employees. Average weekly hours worked in the UK, at 37.8 hours, are only marginally higher than the EC average of 37.4, although greater flexibility results in a wider spread of working patterns and hours worked. The UK's non-statutory approach allows employers and employees greater freedom to explore new types of working patterns and to respond quickly to economic circumstances and customers' requirements. The average annual paid holiday entitlement set by collective agreement is approximately 23 days. These levels are comparable to those in other EC member states.

In surveys UK employees have reported high levels of satisfaction with their working time arrangements: over 80% are satisfied or very satisfied and only 9% dissatisfied. Levels of satisfaction are high amongst all main categories of workers, including part-timers and those working longer than average hours.

### Wages

Real earnings have increased across the whole earnings distribution since 1979 (on average by 34% for men and 49% for women). For the lower paid there are "in work" social security benefits specially designed for those with heavy family commitments.

The Government believes the imposition of minimum wages hinders the free operation of the labour market and destroys jobs.

The best way of helping the lower paid is to create the conditions for a prosperous and growing economy and to remove barriers to employment. The main cause of poverty is not having a job and the best answer is realistic wages which create the right conditions for job growth.

## INDUSTRIAL RELATIONS AND TRADE UNIONS

### Freedom of association

In general, employers and employees are free to establish and run such organizations as they see fit.

Steps taken by the Government to reform the relevant legislation have established a legal framework within which individuals have remedies if they are discriminated against in employment on the grounds of their trade union membership or non-membership. With certain exceptions, all employees now have the following rights:

(i) not to be dismissed for being a member of a trade union or for not belonging to one, or for proposing to become a member of a trade union or refusing to join one;

(ii) not to have action short of dismissal taken by their employer to prevent or deter them from seeking to become a member, or to penalize them for doing so, or to compel them to be or become a member;

(iii) not to be chosen for redundancy because they belong or do not belong to a trade union, or are proposing to join one.

In addition, individuals seeking employment are protected against an employer's refusal to employ them if that refusal was because the individual concerned was, or was not, a trade union member or because he refused to become, or cease to be, a member.

The Government has also recently enacted legislation that includes a right for individuals to join, or remain members of, the trade union of their choice. The right has certain sensible limitations, such as where the union's membership is restricted to a particular geographical location, or by occupational description.

Where individuals believe that any of the rights afforded to them under the law have been infringed, they may complain to an industrial tribunal.

Collective agreements

There has been an increasing trend in the UK towards individual agreements between employer and employee. The notion of people at work as an undifferentiated mass with identical interests and aims is diminishing. Individual employees want to have much more control over the whole direction of their careers. They have their own views about the training and skills they need. They look for and will stay with the employer who will train them and help them to develop their careers.

The Government believes that making collective agreements should be a voluntary matter between the parties concerned. There is nothing in UK legislation which prevents employers, employers' organizations or workers' organizations from negotiating and concluding such agreements. It is for the parties to collective agreements to decide themselves whether their agreements should be legally enforceable between them.

There has been a marked decline in the number of people whose pay is determined by national pay agreements. Data from the New Earnings Survey shows that the coverage of major national collective agreements dropped substantially from 48% of full-time employees in 1984 to 34% in 1992.

There is an increasing trend away from collective bargaining altogether. According to research, the proportion of employees in the UK who are covered by any collective bargaining arrangements fell to below 50 % by 1990.

New forms of performance pay, merit pay and other incentives such as employee share ownership and profit sharing are becoming more widespread at all levels. A recent study found that over 50 % of workplaces with more than 25 employees used some form of payment by results or merit pay for some or all of their workforce. The same study found that around 55 % of workplaces in the trading sector used some form of financial participation such as profit-sharing or share ownership schemes.

Disputes

The industrial relations reforms pursued by the Government have led to the lowest number of stoppages and working days lost (calendar year 1992) ever recorded, since records began in 1891.

Should a collective or individual dispute arise, the UK already has in place well-established provisions for conciliation and arbitration for the settlement of disputes in the form of the Advisory, Conciliation and Arbitration Service (ACAS). ACAS was established as an independent statutory body under the Employment Protection Act 1975 with the general aim of improving industrial relations. Its specific functions include conciliating in industrial disputes (at the request, or with the agreement, of the parties concerned), and arranging arbitrations. The Service enjoys a high reputation on both sides of industry.

In 1992, ACAS dealt with 1,140 requests for collective conciliation cases, and 72,166 for individual conciliation. Furthermore they arranged 157 arbitration and mediation hearings and completed 787 in-depth projects.

If disputes cannot be resolved, nothing in UK

law prevents any employee from choosing to take part in collective strike action.

UK law specifically prevents any court - in any circumstances - from making an order which would compel an employee to do any work or attend any place to do any work, even if such work or attendance is required by the employee's contract of employment.

Provisions in employment law also prevent an employer selecting for dismissal only some of those employees taking "official" (i.e. union-organized) industrial action, in so far as any employee so dismissed may be able to claim unfair dismissal.

Other provisions in employment law provide special protection for any employee who takes strike action by preserving any "qualifying period of employment" which the employee may have accumulated prior to taking such action - thereby protecting certain statutory employment protection rights (e.g. to redundancy pay), even though the employee has chosen to go on strike in breach of the terms of his employment contract.

In addition, anyone (including a trade union) who calls for, or otherwise organises, industrial action which interferes with contracts, may be protected from civil liability (and proceedings which could otherwise be brought for an injunction and/or for damages) by special statutory "immunities".

## EMPLOYEE INVOLVEMENT

The UK Government is firmly committed to the principle of employers informing and, where appropriate, consulting their employees about matters which affect them. It is, however, opposed to prescriptive legislation on employee involvement being imposed on British organizations. This would be at odds with the UK's voluntarist tradition of industrial relations.

The UK Government believes that there is no single blue print for successful employee involvement, and that, in the UK, the extension of effective means of employee involvement should be secured on a voluntary basis. The strength of the voluntary approach is the flexibility it allows for companies to develop and implement arrangements best suited to their needs, and the needs of their employees.

The Government does, however, recognize that it has a role to play in promoting the voluntary development of employee involvement, through for instance:

(i) Good practice: the Government draws attention to, and encourages the adoption of, good company practice. The Government has lent its support, for example, to the joint Code of Practice on employee involvement issued by the Institute of Personnel Management and Involvement and Participation Association.

(ii) Business initiatives: the Government supports the initiatives of business (and other organizations and bodies) which are designed to highlight effective employee involvement practices. For example, the Governement is co-sponsoring a joint campaign with the Confederation of British Industry (the UK's main employer organization) to promote greater awareness of the development of good practice in employee involvement.

(iii) Research: the Government sponsors and supports a variety of research work on employee involvement. The results of such projects are widely disseminated. The results of the 1990 Workplace Industrial Relations Survey (published in 1992), for example, show that companies of all sizes have increasingly introduced new ways of involving their employees. They also show that managements are now using a wider range of channels to communicate with their employees,

including (for example) regular meetings of various types, and periodic newsletters.

(iv) Financial participation: the Government believes that one of the most effective ways of increasing employee involvement and commitment is through financial participation. Such participation gives employees a direct stake in the ownership and prosperity of the businesses for which they work, and is an important element in the employee involvement arrangements of many British companies. As shareholders, employees also receive regular information about their company's objectives and performance.

The Government has introduced a range of tax incentives to encourage the establishment of financial participation schemes (all but two of the last 14 Budgets presented by the Chancellor of the Exchequer have included tax incentives in this area). The UK is in the forefront in Europe in encouraging the take-up of such schemes.

At the end of March 1993, nearly 1.2 million people benefited from registered Profit-Related Pay schemes (an increase of almost 20 % since the end of December 1992). In the same time, the number of live schemes rose by 11 % to over 4,600. By September 1992 over 2,000 all-employee schemes and over 5,000 discretionary share option schemes had been approved. Some 2.9 million employees had benefited from all-employee profit sharing and SAYE ("Save as you Earn") share option schemes by the end of 1992.

In April 1993, the UK Government published the booklet "Sharing in Success", which is designed to promote a greater awareness of financial participation schemes by presenting such schemes as a partnership between employers and employees. It highlights the ·nce of allowing businesses to establish ..... arrangements which meet their specific needs. The booklet was jointly produced by UK's Employment Department, Inland Revenue and Treasury, and has the support of the Confederation of British Industry and the Trades Union Congress.

## FREEDOM OF MOVEMENT

The UK Government recognizes that freedom to take work and provide services anywhere in the Community is vital, both for individual EC nationals, and for business in the free market.

All EC nationals are entitled to enter and reside in the United Kingdom in order to seek or take paid employment, to engage in self-employment or to provide or receive services for remuneration. The UK is taking a full and active role in the development of EURES, the new system for public Employment Services to exchange details of job vacancies, applications for work and information about living and working conditions.

Individuals are not subject to any restrictions on the nature and type of activity of these kinds that they may engage in (except in so far as British citizens may be subject to restrictions), and they thus have full and equal opportunity in employment or business and the professions. They are also covered by the same employment protection rights as UK workers, therefore ensuring equal and fair treatment.

The UK also fully supports Community action to eliminate obstacles arising from the non-recognition of diplomas or equivalent occupational qualifications. The UK regulations transposing in full Directive 89/48/EEC (on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration) came into force on 17 April 1991. The UK was the second Member State to implement the Directive in full. The second Directive (92/51/EEC) will be implemented in UK law by June 1994.

In 1992 the UK professions covered by the Directive accepted over 1200 applications from other EC countries; those applicants are now able to practice in the UK. This is in addition to professionals whose qualifications were recognised here before the Directive came into force.

The UK is a leading participant in ERASMUS, the European action scheme for the mobility of university students which aims to promote increased freedom of movement for students already in higher education within the EC and increased cooperation within higher education. Since the academic year 1992/93, ERASMUS has been extended to the EFTA countries. Within ERASMUS, the European Credit Transfer Scheme (ECTS) promotes credit transfer amongst participating states by requiring higher education institutions to accord full credit for academic work undertaken by participating students.

## VOCATIONAL TRAINING

The overall UK aim is to develop systems which enable and motivate individuals to build on their skills and experience throughout working life; meet the needs of employers and individuals; are capable of delivery by a wide variety of cost-effective means; and can respond flexibly to changing demand.

To achieve this aim, there are six major priorities for training and enterprise in Great Britain for the 1990s. These are:

- employers must invest more effectively in the skills their businesses need;

- young people must have the motivation to achieve their full potential and to develop their skills;

- individuals must be persuaded that training pays and that they should take more responsibility for their own development;

- people who are unemployed and those at a disadvantage in the job market must be helped to get back to work and develop their abilities to the full;

- the providers of education and training must offer high quality and flexible provision which meets the needs of individuals and employers;

- enterprise must be encouraged throughout the economy, particularly through the continued growth of small business and self-employment.

The priority for the UK is to develop systems which are capable of responding flexibly to changing demand, rather than relying on a "fire-fighting" approach which reacts to each issue on an individual basis. Systems already in place or shortly to be completed include:

- a national network of operational TECs (Training and Enterprise Councils) and LECs (Local Enterprise Companies), locally based employer-led organizations which will tailor training and enterprise activities to meet ever changing consumer demand;

- a comprehensive network of voluntary, employer-led, independent Industry Training Organizations. One of their key tasks will be to establish a mechanism for keeping TECs informed of sectoral labour market needs;

- an educational system, which has undergone a major programme of reform to provide the proper foundation for the skills which will be needed for the late 1990s;

- a national framework of National Vocational Qualifications, based on standards of competence defined by lead bodies representing sectors of industry and

commerce, will ensure that training is relevant to the needs of the job and help progression by individuals.

At the heart of the UK's strategy for skills is engaging, motivating and enabling individuals to increase or update their skills. To help individuals draw up realistic and achievable personal action plans for future career development, the availability of and quantity of information and guidance continues to be improved. An initiative which is available through TECs and LECs will:

- develop effective and comprehensive local information, assessment and guidance services for people at work;

- give individuals control of their own development by offering them credits, which they can use to "buy" the guidance and assessment services of their choice.

The UK Government plans to spend over UKL2.8 billion on training, enterprise and vocational education in 1993/94, broadly the same as last year. Employers, who have the prime responsibility for training, are estimated to spend around UKL20 billion a year on training and development. In the spring of 1992 just over three million employees of working age received job related training in the four weeks prior to interview, 66 % more than a similar period eight years ago.

## EQUAL OPPORTUNITIES FOR WOMEN AND MEN

The UK Government recognizes the essential contribution that women make to the economic and social life of the country and wholeheartedly supports equality of opportunity between the sexes in all aspects of life. Significant advances have been made in the field of equal opportunities between women and men in recent years, and are clear evidence that the equal opportunities policies are working.

Britain now has a higher proportion of women at work than any other EC country except Denmark. The increase in the number of women in highly qualified occupations is particularly significant. For example, the number of women in the legal professions has greatly increased, totalling 26,000 in 1992 (28 % of the total), compared with 14 % in 1984. There are now 41,000 women in the medical professions, one in three, compared to 26,000 (26 % of the total) in 1984.

### The Legal Framework

The UK has a full legal framework to combat unjustifiable sex discrimination.

In Great Britain, the Sex Discrimination Act 1975 makes sex discrimination generally unlawful in employment, in education, in the provision of goods, facilities and services, and in the disposal and management of premises. In employment, this means equality in recruitment, training, promotion and retirement. The Act also provides redress against victimisation and may also do so against sexual harassment. It also allows for "positive action" measures, such as single sex training to help people to enter jobs in which their sex is under-represented and to help people to return to work after time at home looking after their families. However, positive discrimination is unlawful.

The Sex Discrimination Act is complemented by the Equal Pay Act 1970. This Act came into force on 29 December 1975 and combats unfair sex discrimination in pay and other terms and conditions of employment. The Act allows equal pay when a man and woman working for the same or an associated employer are doing like or broadly similar work or work judged to be equal by a job evaluation study or (since 1984) work of equal value. Since the legislation, women's average earnings (excluding overtime) in relation to

men's have increased appreciably - from 63.1% in 1970 to 78.8% in 1992.

People who feel that they have been discriminated against in employment because of their sex can complain to an industrial tribunal.

There are equivalent laws covering Northern Ireland.

Other initiatives

Legislation by itself cannot deliver an equal opportunities society. Indeed, regulation which increases disproportionately the costs to employers of employing women workers will become a brake on jobs without acting as a spur to greater equality of opportunity. Non-legislative approaches are equally important; much can be done to change attitudes by raising awareness.

The Equal Opportunities Commission (EOC) is charged with the duty of working towards the elimination of discrimination and the promotion of equality of opportunity between men and women generally. The EOC can offer free help and advice to people who feel they have suffered discrimination. It can also investigate complaints and has the power to serve "non-discrimination" notices on employers.

The Government is playing its part too by encouraging women to think about the full range of job and training opportunities and by putting a good deal of effort into job-related training. For example, many TECs provide tailored training packages for women returning to the labour market.

New patterns of work, such as job-sharing, part-time work, career breaks and voluntary parental leave, are helping women to mix successfully work and family life and are encouraged by the Government. Of course the work of women who want to stay at home to bring up their children must not be undervalued - what is important is the freedom to choose.

The Government has published the Equal Opportunities Ten Point Plan for Employers. The Plan covers the main points of an action plan that would enable employers to eliminate discrimination and effectively promote equality of opportunity within their organisations by making it a natural and integral part of management pratice.

The Plan contains guidance on: developing an equal opportunities policy; setting an action plan, including targets; providing equal opportunity training for all; monitoring the present position of the workforce and monitoring progress in achieving objectives; reviewing recruitment, selection and training procedures; drawing up clear and justifiable job criteria; offering pre-employment and positive action training; considering flexible working; and developing links with the local community.

The Employment Department publication "Rising to the Challenge" is a new guide to encourage employers to assist in the career development of women.

Recent initiatives

A new Cabinet sub-committee on Women's Issues chaired by the Secretary of State for Employment, includes Ministers from the other relevant Departments. It is responsible for reviewing, developing and overseeing implementation of the Government's policy on issues of special concern to women.

In May 1992 the Women's Issues Working Group, a new advisory group, was established. Its members are drawn from business and key organisations concerned with sex equality and women's issues. Members are appointed on an individual basis and advise the Secretary of State for Employment personally.

The Employment Department has been organising the New Horizons initiative - a series of regional events which aim to promote opportunities for women in employment, training, public appointments, community service and voluntary work. It also aims to make all women, whatever their circumstances, aware of the possibilities open to them, and to make employers, appointers and other decision makers aware of women as a valuable resource.

Childcare and reconciling work/family responsibilities

The Government recognizes the importance for parents of being able to combine their work and domestic responsibilities. How this is achieved is best decided by individual families and employers themselves.

The Government takes every opportunity to encourage employers to adopt measures which enable women and men to reconcile work with caring for their family. Such measures include various forms of flexible working arrangements and where appropriate assistance with childcare.

Interest in these matters is growing all the time and the Government's "Best of both Worlds" booklet, promoting the benefits of flexible working to employers, highlights the wide range of measures already in place.

New initiatives

The Employment Department is providing UKL 45 million over the next 3 years to help create 50,000 additional out-of-school childcare places. The programme will help parents, especially women, to take up the jobs and training they want, by improving the quality and quantity of childcare available after school hours and in the school holidays. It will be delivered by Training and Enterprise Councils to a range of local organisations, helping them with the set up costs for childcare.

## HEALTH AND SAFETY

The UK has been in the forefront of protecting workers' health and safety through legislation for over 150 years. The present legislation provides a comprehensive and effective framework for maintaining, improving and enforcing standards of workplace health and safety. Everyone involved with work has legal duties aimed at protecting not only employees, but also the self-employed and members of the public, from risks to their health and safety arising from work activities.

UK health and safety legislation is based on the premise that everyone concerned with work (employers, employees, the self-employed, etc.) must cooperate to comply with their duties to ensure health and safety. The legislation therefore contains general requirements on information, training and consultation, plus more specific requirements where needed. A report published by the European Commission in 1991 suggests that the UK system of workers' participation in health and safety is one of the most effective in the Community.

The UK legislative approach is based on proper assessment in relation to risk and sound medical and technical criteria which results in relevant and effective controls being introduced. There is considerable emphasis on wide consultation on proposals for new legislation.

UK health and safety standards are amongst the highest in the Community. This was borne out by the Health and Safety Executive's own study published in 1991 which showed that British accident statistics compare favourably in most respects with those of the largest EC partners.

The UK is continuing in its commitment to implement health and safety Directives on

time. The introduction of regulations to implement the Framework and associated directives on health and safety by the due date, and our intention to enforce them in a sensible way, are indicative of our positive approach to health and safety at work.

## SPECIAL GROUPS

### I - Young people

*Young people in employment*

All workers in the UK, including young people and children who work, are covered by the same comprehensive health and safety legislation.

There is, in addition, further protection for young workers through regulations which govern the extent to which they can work in particularly hazardous industries or with particularly hazardous substances.

Accident statistics show that young employees (16 to 19 year-olds) have fewer accidents than employees generally.

The minimum age for full-time employment is 16, the same as the statutory school-leaving age. Children aged 13 and over can engage in light non-industrial work where this does not put them at risk and does not interfere with their education.

Young people and school-age children are also covered by the comprehensive package of employment-protection legislation and equal opportunities legislation, the only exception being provisions for redundancy.

*Training young people*

The Government attaches the highest priority to the training of young people. Over the last decade there has been a revolution in Britain's education and training. Far-reaching reforms have been introduced, backed up with increased resources. Parents, their children and young people now have choices that did not exist a generation ago.

The Government's policies are aimed at breaking down barriers to opportunity and creating higher standards. The objective is to give all young people the chance to make the most of their talents and to have the best possible start in life.

The key policies are:

- National Vocational Qualifications (NVQs) in further education and developing a range of general NVQs;

- introduction of GNVQ (General NVQ) . They are designed as a broad-based vocational qualification on five levels, incorporating the generic skills of application which employers seek. Level three is comparable to an A-level standard and is intended to take two years' study to complete;

- providing equal esteem for academic and vocational qualifications and clearer and more accessible paths between them;

- extending the range of services offered by school sixth forms and colleges so that young people face fewer restrictions about what education or training they choose and where they take it up;

- giving Training and Enterprise Councils (TECs) more scope to promote employer influence in education, and mutual support between employers and education;

- stimulating more young people to train through the offer of a training credit and to higher levels of skills, by encouraging more employers to offer structured training;

- promoting links between schools and

employers, to ensure that pupils gain a good understanding of the world of work before they leave school;

- ensuring that all young people get better information and guidance about the choices available to them at 16 and as they progress through further education and training;

- providing opportunities and incentives for young people to reach higher levels of attainment;

- giving colleges more freedom to expand their provision and respond more flexibly to the demands of their customers.

TECs have widened their scope for promoting employer influence in education. Compacts were originally set up in inner-city areas to help young people between the ages of 14-19 meet the standards expected of them in the working environment, for example, punctuality and good levels of English and Maths; work experience is also provided. 62 Compacts have now been set up in inner-city areas in order to promote links between schools and employers. Plans for the extension of Compacts across the country, in non inner-city areas are underway with TECs involved in adapting the Compact approach to local needs.

There are now 56 Careers Service Partnerships (partnerships between TECs and Local Education Authorities (LEAs) to assist in running the Career Service) involving 57 TECs and 80 LEAs. UKL6.13 million has been allocated to TECs to increase resourcing of careers libraries and the updating of computerised systems in schools and colleges.

There are now 111 Education/Business Partnerships, which encourage business involvement in schools at all age ranges and often act as the co-ordinating body between other similar organisations in the same geographical area such as Compacts. There is now at least one in every TEC area. TECs also promote the placement of teachers through the Teacher Placement Service.

The Further and Higher Education Act 1992 has ensured that all further education (FE) colleges and sixth form colleges have the freedom to manage their own affairs as independent institutions. From 1 April 1993 those colleges transferred from Local Authority control to form a new further education sector overseen by the newly created FE Funding Councils for England and Wales. Colleges in this new FE sector now have the freedom to respond quickly and flexibly to the demands of employers and individuals. As well as the new FE Funding Councils, the 1992 Act has also resulted in the setting up of Higher Education Funding Councils which have been created in England, Scotland and Wales.

Youth Credits, a voucher or "credit card" system which gives young people a certain amount of money which they can spend only on training, is currently on offer to 20 % of 16 and 17 year olds leaving school or college. The scheme will be progressively extended throughout the country. By 1996 the Government's aim is that every young person aged 16 or 17 leaving full-time education will have the offer of a credit.

The most significant Government training provision for young people is provided through Youth Training (YT), a training programme which aims to provide broad-based education and vocational training mainly for 16 and 17 year-olds and to produce better qualified young entrants to the labour market.

YT provides vocational education and training mainly for 16 and 17 year olds (although young people up to the age of 25 may be considered), to supply better qualified young entrants to the labour market. The Government guarantees the offer of a suitable training place to all young people, not in full-time education or employment, under the age of 18.

In YT, young people have the opportunity to achieve National Vocational Qualification level 2 as a minimum, or other appropriate goals for those with special training needs. There is a strong emphasis on higher level skills, particularly at craft and technician levels.

Since the inception of the Youth Training Scheme in 1983, over 3.5 million young people have been trained. 76 % of those who complete their planned training go into jobs or further training or education (66 % of all leavers).

II - People with disabilities

A wide range of services is provided for people with disabilities in the UK by health authorities, local authorities, voluntary organizations, Training and Enterprise Councils and Local Enterprise Companies and the Employment Service. They cover a very broad spectrum - medical and nursing care, rehabilitation, training therapy, supply of equipment, support services in the home, holidays, relief for carers, access to information about local services and special employment services for employed and unemployed people with disabilities. There is in addition a comprehensive system of benefits for sick and disabled people.

*Employment and Training*

Training and employment services and programmes are designed to encourage equality of access and opportunity, to help progression into open employment and to promote the retention and development of people with disabilities in work. Many people with disabilities use the mainstream services, but there is also a wide range of specialist provision, for those clients who need it, to help with job placement, advice, assessment, rehabilitation, training and promoting good practices in employment. There is a range of assistance designed to help overcome particular barriers to employment and training and help is provided for severely disabled people in the sheltered employment programme.

The programmes and services are developed to meet both local and individual needs. From April 1993 unemployed disabled people have priority for a place on each of the Department's main employment and training programmes for which they are suitable and eligible. Following extensive consultations on the Employment Department's employment and training services for people with disabilities, decisions have been taken which improve the effectiveness of the Employment Service's existing specialist services. During 1992 Placements Assessment and Counselling teams (PACTS) took on all present functions of Disablement Resettlement Officers who provide specialist help to disabled people, the Disablement Advisory Service which advises employers and the assessment functions of the Employment Resettlement Service. The new teams provide a more integrated service to both employers and individuals with disabilities. Similar services and programmes are provided in Northern Ireland for people with disabilities and employers.

*Benefits*

The UK provides a comprehensive range of state benefits for sick and disabled people at a total cost of UKL16.6 billion in 1992/3. Expenditure on benefits for long-term sick and disabled people is estimated to reach UKL17.0 billion in 1993-94, representing an increase by approximately UKL12.0 billion in real terms since 1978-79. Help with income maintenance is provided through both contributory and non-contributory benefits. Additional help with the extra costs of disability is provided through non-contributory benefits to some 2 million disabled people. Recent surveys have shown that extra costs benefits are a very effective way of helping to meet the needs of several disabled people.

In recent years 850,000 people have gained from improvements to the framework of benefits for disabled people, so it is now more

attuned to their needs and circumstances. Part of these improvements was the introduction in April 1992 of two new benefits: Disability Living Allowance which provides help with the extra costs of disability, and Disability Working Allowance which promotes the independence and social integration of disabled people by helping those who are able and wish to work to do so.

III - Elderly people

The UK pension scheme provides a basic retirement pension to all women over 60 and men over 65 who have satisfied the appropriate contributory requirement over their working life. Uniquely, it provides women with a pension based wholly or partly on their husband's contributions at approximately 60 % of his pension level, if this gives them a greater pension than one based on their own contributions. A second earnings related pension may also be paid depending on the level of earnings received since 1978. This second pension can be provided instead by an occupational or personal pension where the person is contracted out of the state scheme. Extra pensions may also be paid to those who support another adult or who have dependant children. People over 80 who receive little or no state pension can receive a 60 % non-contributory pension.

The Government is pledged, and is statutorily required to increase retirement pension every year in line with the movement in prices so that it maintains its value.

The Government is committed to the equalization of pension ages for men and women, and published a discussion paper in December 1991 to achieve this aim. It received over 4000 responses and met with a large number of organisations. Proposals will be brought forward in due course.

Anyone over pension age who still has inadequate resources may claim Income Support, Housing Benefit and Council Tax Benefit (from April 1993). Additional funds have been made available to pensioners on lower incomes. Since 1988 improvements of nearly UKL1 billion a year have been made in the payment of income related benefits for pensioners, over and above increases to take account of inflation. Higher levels of Income Support are available for elderly people in residential care and nursing homes.

Almost all people who were in residential care and nursing homes at March 1993, the vast majority of whom are elderly, have preserved rights to higher levels of Income Support. The Income Support entitlement of new residents includes Residential Allowance.

Between 1979 and 1989, the average net income, before housing costs, rose by 30 % for all pensioner units. With housing costs, net income increased by 37 %. 6 % of all pensioner units received income from an occupational pension, whilst 75 % of pensioner units had income from investment. On average, each of these components of income accounted for about one fifth of the average income of all pensioner units.

## SOCIAL PROTECTION

The UK social protection programme aims to provide an efficient and responsive system of financial help which takes due regard of wider economic and social policies, including long-term effects on public expenditure. Its structure has enabled resources to be directed effectively towards those most in need, encouraging independence and personal responsibility and providing incentives to return to the labour market. A national scheme of social assistance provides a guaranteed income, without time restriction, to lone parents and the elderly, sick or unemployed people. The Government's Citizen's Charter applies to the delivery of social protection. It is a sustained new programme for improving the quality of public services by offering choice wherever possible,

enabling the citizen to act when services are unacceptable and giving value for money to the taxpayer. Total social security expenditure amounted to UKL80.7 billion in 1992/3, an increase over the past 10 years of UKL23.2 billion in real terms, or 40%.

**Contributory benefits** to cover maternity, sickness and unemployment are provided for workers or those with recent employment records. **Non-contributory benefits** provide additional financial help for severely ill or disabled people (including those disabled as a result of an accident at work) and carers of sick and disabled people. They also provide financial assistance for families, paying a weekly cash benefit for all dependent children at a cost of UKL6.3 billion in 1992-93.

Family Credit helps employed and self-employed people with children by supplementing low or modest earnings. It is designed to ensure that most people are better off working than unemployed, thus providing parents with an incentive to return to or continue in work. In April 1992, the minimum number of hours that a parent needed to work to qualify for Family Credit was reduced from 24 hours a week to 16. The regulations were changed so that the first UKL15 of any maintenance received is disregarded when calculating eligibility for this benefit. Both these measures have widened the benefit's scope and enabled many more families to claim. The change has been of particular help to lone parents whose child care responsibilities often prevent them from working over 24 hours a week. The number of families receiving Family Credit increased from 389,000 in April 1992 to 457,000 in October 1992. Family Credit expenditure in 1992/93 was UKL864 million.

**Income Support** provides an income for those not in full-time work. It directs help to those identified as having special needs, with higher amounts for families, lone parents, and elderly, sick or disabled people. 5 million people receive Income Support. Also, a new addition for carers was introduced in October 1990. Housing Benefit and Council Tax Benefit (which replaced Community Charge Benefit in April 1993) are income related schemes which provide up to 100 % help with reasonable rent costs and Council Tax liability to those on Income Support and to people, whether they are in or out of work, whose income is equal to or below Income Support levels. These benefits are also available to people with incomes above Income Support levels, with help reducing as income rises.

The Government recognises that regular maintenance payments by absent parents provide lone parents and their children with a reliable source of income which can be used as a basis for cessing reliance on income related benefits. It is therefore implementing a programme of reform to ensure that absent parents make proper financial provision for children and the parents who have care of them. The Child Support Agency was set up in April 1993 and brings together work previously handled by DSS local offices and a range of UK civil courts. It provides a non-adversarial "one stop service" for the assessment and collection of child maintenance for all families. An independent appeals system operates and standards of decision making are be monitored independently with the results published annually. The Agency gives its customers a more effective and efficient service than the present system.

# ANNEX

## QUESTIONNAIRE ADDRESSED TO THE MEMBER STATES RELATING TO THE REPORT ON THE APPLICATION OF THE COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

Under the terms of paragraph 29 of the Charter, "the Commission shall establish each year, during the last three months, a report on the application of the Charter by the Member States and by the European Community".

## FREEDOM OF MOVEMENT

1. Are there any restrictions other than those justified on grounds of public order, public safety or public health which would prevent any worker of the European Community from moving freely ?

2. Are there any new initiatives to guarantee the right of residence to workers who, in exercising their right to freedom of movement, engage in any occupation or profession ?

Are there any obstacles preventing a worker who has exercised his right to freedom of movement from engaging in any occupation or profession under the same rules applying to nationals ?

Are there any new initiatives to reinforce the rights to freedom of movement and equal treatment in all types of occupation or profession and for social protection purposes ?

3. What measures exist to :

- encourage family reunification;
- encourage the recognition of diplomas or equivalent occupational qualifications acquired in another Member State;
- improve the living and working conditions of frontier workers ?

## EMPLOYMENT AND REMUNERATION

4. Are there any particular provisions, apart from the regulations governing each occupation, restricting the freedom of choice and the freedom to engage in an occupation for certain categories of people ?

5. Are there any legislative or agreement-based provisions, practices or judgements to guarantee fair remuneration for workers ?

Is there an equitable reference wage for workers subject to terms of employment other than an open-ended full-time contract ?

Where wages are withheld, seized or transferred, does national law make provisions for measures to enable the worker to continue to enjoy the necessary means of subsistence for him or herself and his or her family ?

6. Under what conditions does an individual have access to public placement services free of charge ?

## IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. Give a brief description of measures taken in the following areas :

- duration and organization of working time;
- forms of employment other than open-ended full-time contracts;
- procedures for collective redundancies and for bankruptcies.

8. Does every worker of the European Community have the right to annual paid leave and a weekly rest period ?

Are they organized on a legal basis or by collective agreement ?

What is their duration ?

Under what conditions are they granted ?

9. How are the conditions of employment of every worker defined ?

Is a written document required ?

Are they stipulated in laws ?

In a collective agreement ?

In a contract of employment ?

Are there any exceptions ?

## SOCIAL PROTECTION

10. How is social protection for workers organized in order to guarantee an adequate level of social security benefits ?

On what basis and according to which criteria ?

Is there a generalized social protection system ?

For what categories of persons ?

What provisions are there to allow persons excluded from the labour market and having no means of subsistence to receive sufficient benefits and resources ?

## FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

11. Are there any obstacles to prevent employers and workers of the European Community forming professional organizations or trade unions ?

Does an employer or worker have the right to join or not to join such organizations without suffering any personal or occupational damage ?

12. What are the procedures for negotiating and concluding collective agreements ?

Are there any obstacles preventing employers or employers' organizations and workers' organizations from negociating and concluding collective agreements ?

13. What are the regulations governing the exercising of the right to strike ?

What measures are there to encourage conciliation, mediation and arbitration procedures for the settlement of industrial disputes ?

14. With regard to the right to strike, what internal legal order applies to the civil service in general and to the police and armed forces in particular ?

## VOCATIONAL TRAINING

15. What are the conditions governing access to vocational training ?

Are there any new initiatives to offset or to ban discrimination on grounds of nationality with regard to access to vocational training ?

Are there continuing and permanent training systems enabling every person to undergo retraining ?

Are these systems the responsibility of the public authorities, of undertakings or of the two sides of industry ?

## EQUAL TREATMENT FOR MEN AND WOMEN

16. How is equal treatment for men and women implemented and assured ?

What initiatives have been taken to intensify action to ensure equal treatment for men and women ?

Are there any measures to enable men and women to reconcile their occupational and family commitments ?

## INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. Is there a system for information, consultation and participation of workers, particularly within companies established in two or more Member States ?

18. What measures or practices are there relating to the information, consultation and participation of workers ?

To which particular cases do such provisions refer ?

Is such information, consultation and participation implemented at least in the following cases :

- the introduction of technological changes into undertakings;
- restructuring operations in undertakings;
- collective redundancy procedures;
- where transfrontier workers in particular are affected by employment policies pursued by the undertaking where they are employed ?

## HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

19. In which areas or sectors do Community Directives lay down more favourable provisions than those currently in force in your country ?

With regard to health and safety, is there any provision for worker participation in decision-making, and what are the procedures ?

## PROTECTION OF CHILDREN AND ADOLESCENTS

20. What is the minimum employment age for young people ?

21. Are there specific provisions to regulate the remuneration of young people ?

What are the basic procedures ?

22. Are there specific provisions to regulate the duration of work, night work and vocational training for young people ?

23. Following the end of compulsory education, are young people entitled to initial vocational training aimed at enabling them to adapt to the requirements of their future working life ?

## THE ELDERLY

24. What provisions are there to ensure that every worker of the European Community is able, at the time of retirement, to enjoy resources affording him or her a decent standard of living ?

25. Is there a protection system enabling every person who has reached retirement age but who is not entitled to a pension to have sufficient resources and/or medical and social assistance suited to his or her needs ?

What are the basic procedures ?

## DISABLED PERSONS

26. What concrete measures are there to facilitate the social and occupational integration of the disabled ?

## IMPLEMENTATION OF THE CHARTER

27. How are the fundamental social rights contained in the Charter guaranteed ?