FOURTH 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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EUROPEAN COMMISSION
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INDUSTRIAL RELATIONS
AND SOCIAL AFFAIRS

Social Europe

DOCUMENT

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Part One

Report on the Community Charter of the Fundamental Social Rights of Workers and on the Protocol on Social Policy annexed to the Treaty establishing the European Community

INTRODUCTION

1 The Community Charter of the Fundamental Social Rights of Workers was adopted by eleven of the heads of state and government at the European Council of Strasbourg on 8 and 9 December 1989. The Protocol on Social Policy states that "eleven Member States wish to continue along the path laid down in the 1989 Social Charter", and authorises them to "have recourse to the institutions, procedures and mechanisms of the Treaty for the purposes of taking among themselves and applying as far as they are concerned the acts and decisions required"; it goes on to say that this is "without prejudice to the provisions of the Treaty, particularly those relating to social policy which constitute an integral part of the *acquis communautaire*". For its part, the Agreement says that the "Community and the Member States shall have as their objectives the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion. To this end the Community and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Community economy."

2 The entry into force of the Treaty on European Union on 1 November 1993 automatically gave effect to the Protocol on Social Policy and to the Agreement on Social Policy.

3 Community action implementing the Charter and the Agreement is based, with a view to improving living and working conditions in particular, on three fundamental principles:

- the principle of subsidiarity, bearing in mind the specific nature of the social field, whereby each of the areas for action should meet with the most appropriate response (e.g. harmonisation, coordination, convergence, cooperation, etc.), having regard to the needs as ascertained and the potential added value of Community action;

- the principle of respect for the diversity of national systems, cultures and practices, where such diversity is a positive element in the realisation of the internal market;

- preservation of business competitiveness, having regard to the need to reconcile economic and social considerations. In any initiative, a balance must be sought and found.

4 The method adopted by the Commission for implementing these initiatives calls for a broad measure of prior consultation both of the Member States and of the social partners within the advisory committees, "ad hoc" consultations and more formal consultations under the social dialogue. As regards the social dialogue, the Commission wishes to underline the positive contribution made by the social

partners in developing the social dimension thanks to their wide range of joint opinions and declarations[1].

5 Mention should be made here of the important role which the European Parliament and the Economic and Social Committee have played in this regard. Parliament has frequently stressed that the social dimension is a fundamental condition for realisation of the internal market, while the Commission – despite Parliament's criticism of certain specific aspects of Commission proposals – agrees with Parliament that today's Community is proposing two new frameworks for fleshing out the legal aspects of the European social model: the Community Charter of the Fundamental Social Rights of Workers and the forthcoming European citizenship, which should emerge along with political union and in parallel to Economic and Monetary Union reforms[2]. The Economic and Social Committee has likewise been very constructive, particularly in the Charter's start-up phase; its opinions have made a positive contribution to the progressive and coherent realisation of Community social policy.

6 Paragraph 29 of the Charter calls on the Commission to establish each year a report on the application of the Charter. There have now been three such reports, merged with the earlier report on social developments in the Community (Article 122 of the Treaty on European Union). Article 7 of the Agreement on Social Policy states that the Commission shall draw up a report each year on progress in achieving the objectives of Article 1, including the demographic situation in the Community. In its communication on the application of the Protocol on Social Policy[3], the Commission decided that this report should, for practical reasons, be merged with the report on application of the Charter.

7 As regards the Social Charter, this report has been drawn up along the same lines as its three predecessors and as such constitutes an update of the third report as at 31 December 1994. However, for reasons to do with scheduling arrangements,

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1 Joint opinion on the creation of a European area for occupational and geographical mobility and improvement of the operation of the labour market in Europe (13 February 1990); on general education, initial training, vocational training and adult education (19 June 1990); on new technologies, organisation of work, flexibility of the labour market (10 January 1991); on the transition from school to adult and working life (5 April 1991); on the broadest and most effective access possible to continuing vocational training (20 December 1991); on occupational qualifications and certification (13 October 1992); on the action and future role of the Community in education and training, bearing in mind the role of the social partners (28 July 1993); on women and vocational training (3 December 1993).
Agreement of 31 October 1991 on the role of the social partners.
A new concerted growth strategy for more employment (3 July 1992). Joint declaration on the future of the social dialogue (3 July 1992). Recommendation by the ETUC, UNICE and CEEP on the operation of multisectoral advisory committees (June 1993). Management and labour proposals for implementing the Agreement attached to the Protocol on social policy in the Treaty on European Union (29 October 1993). Outline plan for the broad lines of economic policy (5 December 1993).

2 European Parliament, Social Affairs, Draft report on the European labour market after 1992, Part IX: the European social model, PE 151.130/IX, 30 May 1991, and Resolution A3-0238/92, 8 July 1992.

3 COM(93) 600 final, 14 December 1993.

the part concerning the application of the Charter by the Member States will be the subject of a separate report.

1. THE COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS

1.00 LABOUR MARKET EUROPEAN SOCIAL FUND

1 In 1994, after three consecutive years in which the numbers in work declined progressively, this came to a halt and the outlook improved significantly. We need growth to solve the unemployment and social problems but, as stated in the report on "Employment in Europe 1994", we "... need more than growth. We also need to create a more employment-intensive pattern of growth - using all the means and instruments available to us." In this context, the Commission set out its views on the causes and the strategy for addressing the underlying structural changes required to improve the employment situation in the White Paper on Growth, Competitiveness and Employment which was examined by the European Council in December 1993. One of the principal messages of the White Paper is that the employment-intensity of growth in the Community must be improved if a long-term solution to unemployment is to be found. During 1994 the Commission has been carrying out detailed studies on the various proposals in the White Paper and put before the European Council at Essen an Action Plan for Employment which sets the framework for the Member States' actions to address the structural issues involved.

In December 1994, the Essen Council established a priority for "continuing and strengthening the strategy of the White Paper in order to consolidate growth, improve the competitiveness of the European economy and the quality of the environment in the European Union and - given the still intolerably high level of unemployment - create more jobs for our citizens". The European Council committed the Member States to include in a multi-annual programme recommendations relating to the following five priority employment areas:

- Improve workers' employability by promoting investment in vocational training. This particularly concerns lifelong learning and access to training for all.

- Increasing the employment-intensiveness of growth, in particular by:

  - more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition;
  - a wage policy which encourages job-creating investments and in the present situation requires moderate wage agreements below increases in productivity;
  - and, finally, the promotion of initiatives, particularly at regional and local level, that create jobs which take account of new requirements, e.g. in the environmental and social services spheres.

- Lower indirect labour costs, particularly in respect of unskilled workers. On this point, proper targeting is the key to effectiveness.

- A more effective labour market policy, particularly with reference to the employment services.

- More effective measures in favour of groups particularly affected by unemployment, offering a brighter outlook for young people by offering them either work or training.

2 Set up by the Treaty of Rome to provide back-up for employment and to promote the geographical and occupational mobility of workers within the Community, the scope of the European Social Fund was extended by the Maastricht Treaty and by the 1993 regulations concerning the Structural Funds.

3 This new reform, which confirmed the operational principles of the Structural Funds as defined in 1988 (multi-annual programming, partnership and synergy between the various structural instruments), sees the Fund's remit extended to include the prevention of unemployment under a new Objective 4, which deals with adapting workers to industrial change and changes in production systems, and taking in educational activities in the poorest regions of the Union. It is also characterised by a quest for flexibility, in that the rules no longer lay down strictly what measures are eligible, meaning in turn that joint funding arrangements are available for training/employment measures under various Community structural policy objectives covered by the ESF, viz.:

- regional development objectives: Objective 1 (economic adjustment of regions whose development is lagging behind), Objective 2 (economic conversion of declining industrial areas) and Objective 5b (development of rural areas), to which must be added, with the enlargement of the Community, the new Objective 6 designed especially for the very sparsely populated regions of Sweden and Finland;

- the "horizontal" objectives, i.e. those applying throughout the Community: Objective 3 (combating long-term unemployment and facilitating the integration into working life of young people and of persons exposed to exclusion from the labour market) and Objective 4 (see above).

In more general terms, the new rules are characterised by a desire for a more strategic approach targeting the Community's priorities in the field of employment and the development of human resources, as defined in the White Paper on growth, competitiveness and employment and the White Paper on social policy.

4 To meet these varied demands, enhanced financial resources have been made available to the ESF: approx. ECU 25 billion were committed over the period 1989-93, compared with a likely approx. ECU 42 billion over the six-year period 1994-99 in the 15 Member States of the Community. Something like 90% of ESF resources are used in the context of multi-annual programmes (i.e. Community Support Frameworks or Single Programming Documents), which lay down the amounts and priorities for each Member State and each objective over the coming years. The rest is covered by programmes presented by the Member States under the Community Initiatives, which seek to promote local, innovative and transnational approaches in the field of training and employment. The Social Fund is particularly closely associated with two of these Initiatives:

- the Employment Initiative, with a budget of ECU 1.4 billion for the period 1994-99 and three main strands (NOW for equal opportunities on the labour market, YOUTHSTART for training and employment for the under-20s, and HORIZON for the most vulnerable people on the labour market, particularly the disabled);

- the ADAPT initiative (with a budget of ECU 1.4 billion over the period 1994-99), which is concerned with the adaptation of workers to industrial change.

5 The main decisions concerning the ESF for the coming years were made in 1994, i.e. the Community Support Frameworks and most of the operational programmes or single programming documents for the various objectives, along with the programmes presented by the Member States under the various Community Initiatives.

6 The CSFs and the SPDs for the various objectives (accounting for some ECU 40 billion in the period 1994-99) show a strong trend towards regions whose development is lagging behind (51% of measures) and for Objectives 3 and 4 (accounting for 31% of allocated monies), with the rest going to Objectives 2 and 5b. In addition, a total of approx. ECU 3.5 billion is available for the Community Initiative programmes (ECU 2.8 billion of which is earmarked for ADAPT and Employment).

7 The new CSFs reflect a more coherent and strategic approach to the development of human resources and improvement of the labour market, the aim being to concentrate resources on the more pro-active employment policy measures. The ESF's intention is to ensure that its resources are put to the most effective use for the Community's priorities, which means:

- improved access to, and quality of, education and initial training, more particularly by way of the progressive development of a programme guaranteeing education or skilled training for all young people (YOUTHSTART), and the realisation of human potential in the field of research, science and technology (under Objectives 1, 2, 5b and 3);

- enhanced competitiveness and prevention of unemployment by gearing workers for change through a systematic approach to continuing training (Objectives 1, 2, 5b and 4);

- improved employment prospects for persons at risk of long-term unemployment and exclusion, by way of "integration pathways" (under Objectives 1 and 3), with a range of measures to foster the occupational integration of the people concerned. Special attention will go to boosting the local approach, widening the partnership arrangements at regional and local levels and providing assistance for new sources of jobs. Finally, equal opportunities for men and women on the labour market constitutes a priority which applies across the board to all Social Fund measures.

1 In its action programme relating to the implementation of the 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 nature, 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".

The Commission takes the view that there can be no 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 define 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.

2 On the strength of these considerations, the Commission has proposed a set of fundamental provisions in respect of "non-standard work", comprising three instruments (part-time working, fixed-duration employment and temporary work) 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[4] (legal basis Article 118a of the EEC Treaty).

Of the three proposals, only that based on Article 118a, which covers temporary workers and workers with a fixed-duration contract, has so far been adopted by the Council of Ministers – on 25 June 1991[5].

The other two proposals (one with regard to distortions of competition, based on Article 100a, the other on working conditions, based on Article 100) which also cover part-time workers faced major difficulties in the Council, with very little progress being made in the period 1991–93.

The efforts of the Belgian presidency failed to produce a breakthrough in the Council in the second half of 1993. The German presidency made treatment of the pending proposals again a top priority. They were discussed in several meetings

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4 COM(90)228 final – SYN 280 and SYN 281, 13 August 1990.

5 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, 29.7.1991.

of the Social Questions Group and were the subject of an orientation debate in the Council meeting of 22 September 1994 and of a final debate in the Council meeting of 6 December 1994. At the latter meeting it was formally confirmed that unanimous adoption of the Commission proposals, or even of a part of them, by the twelve or fifteen Member States could no longer be expected in the near future.

The Commission strongly regrets the failure of the Council to make substantive progress on the Commission proposals on non-standard work. It considers in particular that action is urgently needed to ensure that part-time work is attractive and that part-time workers are properly treated, in order to reinforce the contribution which this form of work can make to reducing unemployment. As stated in the White Paper on European social policy, the Commission will initiate consultations with the social partners under the Agreement on Social Policy on the issue of working conditions for "non-standard" employees, in particular part-time workers, fixed-term workers and temporary agency workers.

3 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 adopted, on 1 September 1993[6], an opinion on an equitable wage, the final version reflecting the view of the European Parliament and of the Economic and Social Committee.

1.02 IMPROVEMENT OF LIVING AND WORKING CONDITIONS

1 After almost three years of negotiations between the European Parliament, the Council and the Commission, the proposal for a Directive concerning certain aspects of the organisation of working time[7] was adopted, under Article 118a of the TEU, by the Council on 23 November 1993[8]. The Directive applies to all sectors apart from transport, seafarers and doctors undergoing training and does not affect the Member States' freedom to apply or introduce provisions which are more favourable to workers.

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6 COM(93) 388 final.

7 COM(90) 317 final – SYN 295, 20 September 1990.

8 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993).

The Directive requires the Member States to take the necessary measures to ensure that workers have:

- a minimum daily rest period of at least 11 consecutive hours out of 24;
- a weekly rest period of at least 35 consecutive hours on average;
- entitlement to a rest break, to be agreed by the social partners or by national legislation, when the working day is longer than six hours;
- a minimum period of paid annual leave of four weeks pursuant to national legislation and/or practice;
- maximum weekly working time of 48 hours on average, including overtime.

The Directive further states that the normal working time of a night worker may not exceed eight hours on average per 24-hour period and that workers must have access to a free medical check-up before being assigned to night work and at regular intervals thereafter. Where workers have health problems associated with night work, they must be transferred, whenever possible, to a daytime job. Employers who regularly employ workers on night work are required to inform the authorities responsible for health and safety. In addition, night workers must enjoy a level of health and safety protection which is geared to the nature of their work and the requisite protection services or resources.

The Member States are required to implement the Directive by 23 November 1996. However, one Member State may opt not to apply Article 6 on the maximum weekly working time provided certain conditions are met, including compliance with the general principles of health and safety of workers.

Similarly, the Member States may, for the purposes of applying Article 7 (on annual leave arrangements) make use of a maximum transitional period of three years with effect from 23 November 1996, provided that, during this transitional period, workers are entitled to three weeks' paid leave and provided such leave is not replaced by a financial consideration, except in relation to the termination of employment.

2 Acting on a Commission proposal[9], the Council adopted a Directive on provision of a form of proof of an employment relationship[10]. The Directive makes it mandatory for employers to inform their workers of the conditions applicable to the contract or employment relationship, and 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. We are now

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9 COM(90) 563 final, 8 January 1991.

10 Council Directive (91/533/EEC) of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991.

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.

3 On 18 September 1991 the Commission proposed a Directive amending Directive 75/129/EEC concerning the approximation of Member States' legislation on collective redundancies[11]. Fifteen years of Directive 75/129/EEC 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[12]. 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.

4 On 8 September 1994[13] the Commission proposed a revised version of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses. This proposal sets out to revise the Directive in the light of the completion of the internal market, legislative tendencies in the Member States regarding ways of safeguarding firms in difficulties, the changing aspects of European Court of Justice case law, the already adopted revision of the Directive on collective redundancies, and the legislative provisions in force in most of the Member States. The essential changes are concerned with:

- clarifying the existing Directive's field of application and definitions;

- clarifying the way the Directive applies to the transfer of one single aspect of the undertaking's activities;

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11 OJ L 48, 22.2.1975.

12 Council Directive 92/56/EEC of 24 June 1992, OJ L 245, 26.8.1992.

13 OJ C 274, 1.10.1994.

- clarifying the way the Directive's obligations apply to international transfer decisions and to groups of undertakings;

- limiting the joint liability of the transferor and the transferee;

- allowing more flexibility when it comes to transfers effected under insolvency arrangements.

With a view to clarification and transparency, it is also proposed to repeal the Directive currently in force and recast the texts.

5 On the migrant worker front, the European Council meeting in Hanover in June 1988 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. Against this background, the Commission's report on the "Social integration of migrants from non-member countries residing permanently and legally in the Member States"[14] gave a first indication of the legal and *de facto* situation of immigrants.

6 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"[15] 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, shortly after the entry into force of the Treaty on European Union, the Commission transmitted, on 23 February 1994, to the Council and Parliament a communication on immigration and asylum[16] covering all aspects of the problem, including the integration of immigrants in host countries.

1.03 FREEDOM OF MOVEMENT

1 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[17]. 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

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14 SEC(89) 924 final, 22 June 1989.

15 SEC(90) 1813 final, 28 September 1990.

16 COM(94) 23 final.

17 COM(91) 230 final – SYN 346; OJ C 225, 30.8.1991.

of their workers carrying out temporary work on the territory of a Member State. The European Parliament gave its opinion on 10 February 1993, whereupon the Commission amended its proposal on 16 June 1993.

Discussion on this proposal was regarded by the German Presidency as a priority matter; however, despite all its efforts and despite a specially convened session of the Council of Ministers in December 1994, it proved impossible to achieve a common position on this important proposal.

2 With a view to making freedom of movement for workers more effective and working towards the creation of a genuine European labour market, the EURES system (European Employment Services) was set up[18] to act (a) as a European-level employment agency with a remit to inform, advise and place jobseekers throughout Europe and (b) as a forum for examining, at operational level, any question concerning employment in Europe. The network was officially launched in November 1994.

EURES is a cooperative network mobilising the public employment services in all the countries of the European Economic Area and other regional, national and international players involved in employment. 350 Euroadvisers, specially trained and covering the whole of the EEA, are the operational arm of EURES. The network makes it possible for all workers to find out what jobs are vacant in the countries of their choice. Any firm wishing to recruit workers from outside its national territory can take a look at mobility-motivated candidates and can circulate its job vacancies through the EURES partners. The network thus constitutes an additional resource for workers who wish to exercise their right to mobility, while for the major companies, it is a potential source of useful information and a means of recruiting labour. EURES also incorporates specific structures reflecting the problems of cross-border workers, grouped together under the heading "Cross-border EURES".

3 The Commission's systematic work on application of Article 48(4) of the EC Treaty (employment in the public services)[19] has proceeded satisfactorily. As a result of this work and of resultant infringement proceedings against all the Member States concerned, nationality is no longer a condition for access to a substantial number of public-service jobs in many of the Member States.

4 In its recommendation of 21 December 1993[20], the Commission advocated certain solutions with a view to resolving the tax problems of workers taking advantage of their right to freedom of movement, and particularly frontier workers, so as to guarantee equal treatment. The scheme proposed in this recommendation is that all persons exercising an economic activity (as paid employees and on a self-employed basis) in a Member State other than their country of residence should enjoy the same tax treatment as residents provided they obtain at least 75% of their total income in the country of work.

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18 Council Regulation (EEC) No 2434/92, OJ L 245, 26.8.1992.

19 OJ C 72, 18.3.1988.

20 OJ L 39, 10.2.1994.

5 On the basis of Article 8b(1) of the EC Treaty, as incorporated by the Treaty on European Union, the Commission presented to the Council a proposal for a Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by the citizens of the Union residing in a Member State of which they are not nationals[21]. This Directive, which was adopted by the Council on 19 December 1994[22], follows on from the Directive on the right to vote and to stand in European Parliament elections, and constitutes the second element of implementation of one of the principal rights of citizenship of the European Union as enshrined in Article 8b(1) of the EC Treaty, which provides that "every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections ... under the same conditions as nationals of that State". The Directive leaves it up to nationals of the Union to vote in their country of residence and, where appropriate, in their country of origin, and addresses the problem of access to the functions of mayor and deputy mayor by stating that Member States may reserve or limit access to such functions, and the election of a parliamentary assembly, to their own nationals. Generally speaking, the Directive is based on the principle that any derogation from the general rules must be justified by problems which are specific to a Member State and must be reexamined in connection with the report to be submitted by the Commission by the end of 1998. The derogations accepted by the Council are aimed more particularly at enabling Member States in which specific problems may arise as a result of non-nationals of that country exceeding 20% of the total number of citizens of the Union residing there to reserve the right to vote and to stand in elections to persons who have resided in that country for a minimum period. The transposition deadline is 1 January 1996; the Directive will be reexamined in connection with the report to be submitted by the Commission by the end of 1998.

6 The point should be made that Article 8b(1) constitutes an application of the principle of equality and non-discrimination between national and non-national citizens and a corollary to the right of freedom of movement and residence enshrined in Article 8a of the Treaty.

7 The Commission's proposals[23] for amending Council Regulation No 1612/68 and Council Directive 68/360/EEC regarding workers and their families moving and residing within the Community are still pending at the Council.

8 A proposal for a Regulation[24] designed to include special schemes for civil servants and to facilitate the coordination of schemes applicable to all persons not yet covered by the regulations – insofar as they are insured in a Member State – has been submitted to the Council.

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21 OJ C 105, 13.4.1994.

22 OJ L 368, 31.12.1994.

23 OJ C 100, 21.4.1989; OJ C 119, 15.5.1990.

24 Proposal for a Council Regulation amending Regulation (EEC) No 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) No 574/72 laying down the application arrangements for Regulation (EEC) No 1408/71, OJ C 46, 20.2.1992.

9 Bearing in mind the changes which Member States have made to their social security laws and the need to make certain technical changes, a Regulation was adopted on 30 June 1993[25] and a proposal for a Regulation presented[26] with a view to amending Regulations No 1408/71, 574/72, 1247/92 and 1945/93.

10 The Agreement on the European Economic Area (EEA) and the Protocol adjusting the Agreement on the European Economic Area[27] entered into force on 1 January 1994. Referring to Annex VI to the Agreement on Community rules concerning social security, Austria, Finland, Iceland, Norway and Sweden now form part of the coordination scheme, with a view to facilitating the free movement of workers throughout the EEA.

11 The Commission's programme of legislation for 1995 makes provision for consolidation of the Community rules on social security for migrant workers. The necessary preparatory work has already been taken in hand.

12 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 organise 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"[28], 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 communication was not intended to make any kind of value judgment on existing national systems, but merely to present an inventory of problems posed by supplementary schemes in respect of worker mobility. 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. In this respect the Commission, in accordance with the White Paper on European social policy, engages in consultations with a view to drafting a directive to establish a general framework. On the basis of these consultations, the Commission will adopt, in the first half of 1995, a draft directive to establish a general framework to protect the supplementary or occupational pension rights of workers who move across the Union. The aim of the directive is to ensure the appropriate protection of individual rights acquired or in process of being acquired by members and former members of supplementary pension schemes who move across national borders within the European Union. Such protection regards in particular the preservation and transferability of pension rights under both compulsory and voluntary schemes. The directive will apply to nationals of a Member State, stateless persons or refugees residing within a Member State.

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25 Council Regulation (EEC) No 1945/93 amending Regulation (EEC) No 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) No 574/72 laying down the application arrangements for Regulation (EEC) No 1408/71, and Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71, OJ L 181, 23.7.1993.

26 OJ C 14, 26.5.1994. The ESC opinion was adopted on 14 September 1994.

27 OJ L 1, 3.1.1994.

28 SEC(91) 1332.

1 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 1975-80 and 1984-88 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 (1989-94).

2 On 23 December 1992, the Commission adopted a communication entitled "Towards a Europe of Solidarity: Intensifying the fight against social exclusion, fostering integration"[29]. While respecting the principle of subsidiarity, the communication proposes overall guidelines for the action which the Community could take in this area.

3 On 22 September 1993 the Commission adopted a new programme ("Medium-term action programme to combat exclusion and promote solidarity")[30], which is designed to follow on from the Poverty III programme, terminated in June 1994.

4 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.

5 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[31]. The aim behind this draft recommendation was to get the Member States to recognise a general subjective right to a guarantee of sufficient resources and benefits, and to organise the ways and means of implementing that right. The Council adopted the recommendation on 24 June 1992[32]. In application of the recommendation, the Commission published, at the end of 1993, a first report on "Social protection in Europe", which describes the social protection situation in the Member States, analyses the Member States' policies and examines the main problems the Member States have to face in this field[33]. Subsequent reports will be published periodically by the Commission.

6 At the same time, and with a view to promoting harmonisation 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

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29 COM(92) 542 final.

30 COM(93) 435 final.

31 COM(91) 161 final, 13 May 1992; OJ C 163, 22.6.1991.

32 OJ L 245, 26.8.1992.

33 COM(93) 531 final.

States' social protection policies. This strategy, set out in the proposal for a Council recommendation of 27 June 1992 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[34]. 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 not be seen 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.

1.05 WORKER PARTICIPATION

1 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[35]. It relates essentially to participation by employees in their companies' profits and asset formation and to equity-sharing. 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[36].

2 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 shareholding trusts or company buy-outs.

3 The recommendation is principally concerned with company-internal collective, continuing and participatory schemes (with direct or indirect involvement) based on company results. The designated objective is to encourage wide-ranging use of the various forms of employee participation in company profits and trading results, either by profit-sharing or by equity-shareholding or a combination of the two.

The Council adopted the recommendation on 27 July 1992[37].

4 The adoption by the Council on 22 September 1994 of Directive 94/45/EC[38] on the transnational information and consultation of workers in Community-scale undertakings and groups of undertakings is bound to have a considerable impact

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34 92/442/EEC.

35 COM(91) 259 final, 3 September 1991.

36 Proposal for a Council recommendation concerning the promotion of employee participation in profits and enterprise results (including equity participation); OJ C 245, 20.9.1991.

37 OJ L 245, 26.8.1992.

38 OJ L 254, 30.9.1994.

on other proposals which are currently up for discussion within the Council on this or similar subjects.

The Commission intends to examine whether – and to what extent – the above directive might facilitate, or even speed up, the adoption of the other proposals currently pending at the Council. These concern the role of workers in the statutes for a European company, the structure of limited companies (the 5th Directive), and the European statutes for associations, cooperative and mutual societies.

1.06 EQUAL TREATMENT FOR MEN AND WOMEN

1 At the mid-term stage of the third medium-term Community action programme on equal opportunities for men and women (1991-95), the Commission believes that the strategic objective should be to move away from equal rights to equal treatment on the labour market, by way of equal opportunities in society in general. To this end, its initiatives are concerned with finding solutions to three basic problems: how to reconcile working life and family responsibilities, the horizontal and vertical desegregation of the labour market, and enabling women to participate in the decision-making process.

2 With a view to the full implementation of the fundamental right to equal pay, and in accordance with the undertaking given in the Third Programme, the Commission adopted, on 23 June 1994, a memorandum on equal pay for work of equal value[39], which explains and analyses current legislation and pertinent Court of Justice judgments. It is designed principally for employers, trade unions, legal experts, national equal opportunities organisations and others with a role to play in implementing legislation on equal pay. At a subsequent stage, the Commission intends to adopt a code of good practice on the equal pay issue.

3 One of the subjects which affects the quality of women's work is protection of the dignity of men and women at work. By adopting, in May 1990, a resolution on the protection of the dignity of men and women at work[40], the EU ministers demonstrated their support for the wide-ranging measures deployed to improve the quality of the workplace for both sexes. The Commission, for its part, adopted a recommendation[41] and a code of practice as a basis for action. It also decided to publish a guide on combating sexual harassment, taking the form of a practical and pragmatic guide bringing together aspects of general policy, equal treatment programmes, laws and court cases. Employers, trade unions, staff representatives and women's organisations will all find the guide useful in devising strategies to combat this kind of behaviour.

4 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

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39 COM(94) 6.

40 Resolution 90/C 157/02, 29 May 1990; OJ C 157, 27.6.1990.

41 Recommendation 92/131/EEC, 27 November 1991; OJ L 49, 24.2.1992.

in the safety and health of workers at work[42]. 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 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[43].

5 The lack of good-quality and affordable childcare facilities constitutes a major obstacle to women finding jobs and engaging in vocational training. This is why the Commission has assumed responsibility for following up the recommendation on childcare[44], which advocates a series of measures to enable men and women to reconcile their occupational and family responsibilities arising from childcare and child-rearing duties. A questionnaire was drawn up for the Member States with a view to collecting the necessary information for an evaluation report on implementation of the recommendation, in the light of which the Commission will decide what measures should be proposed.

Although the directives on equal treatment for men and women (75/117/EEC, 76/207/EEC, 79/7/EEC and 86/378/EEC) cover a fairly wide field, they did not take sufficient account of the special situation of self-employed women and women whose professional status was unclear (i.e. neither in partnership nor in paid employment). On 11 December 1986, therefore, the Council adopted a Directive on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood[45], which sought to identify the specific contribution of such workers to family income, give participating spouses a clearly-defined professional status and, consequently, guarantee their social security rights.

6 On 16 September 1994, the Commission adopted a report on the implementation of this Directive[46]. While it is true that, from the strictly legal viewpoint, the Directive can be said to have been implemented in the Member States, the fact remains that the practical results are not entirely satisfactory in terms of the primary objective, which was to bring about a general improvement in the status of the helping spouse. There would seem to be a need, then, for the Commission and the Member States to explore ways of making progress in this field.

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42 OJ L 183, 29.6.1989.

43 Council Directive 92/85/EEC, 19 October 1992; OJ L 348, 28.11.1992.

44 Council Recommendation 92/241/EEC, 31 March 1992; OJ L 123, 8.5.1992.

45 Directive 86/613/EEC, OJ L 359, 19.12.1986.

46 COM(163) 94.

7 Despite the efforts of the Commission and the Council presidency, it proved impossible to achieve adoption of the directives on parental leave and the burden of proof. With a view to advancing these dossiers, the Commission has therefore decided to make use of the Protocol on social policy. The social partners have been consulted on the basis of a Commission document concerning all aspects of the reconciliation of family and professional life. Commission will shortly submit to the social partners a consultative document on the subject of the burden of proof in equal treatment cases.

8 On 28 September 1994, the Court handed down six judgments interpreting Article 119 of the Treaty concerning (supplementary) occupational social security schemes. The purpose was to clarify the judgment of 17 May 1990 in *Barber*, in which the Court had clearly stated that benefits arising from an occupational scheme counted as remuneration within the meaning of Article 119 of the Treaty as regards equal pay for men and women. Consequently, as the said article does not allow for exceptions to the principle of equal pay, and as it takes precedence over any secondary legislation, certain provisions of Directive 86/378/EEC on equal treatment for men and women in occupational schemes, which purported to allow such derogations (under Article 9 of the Directive), are inapplicable and of no effect as regards workers in paid employment. For this reason, and for reasons of legal certainty, the Commission intends to present an amendment to Directive 86/378/EEC to bring it into line with Article 119 of the Treaty as interpreted by the Court of Justice.

1.07 VOCATIONAL TRAINING

1 More than ever before, the development and quality of vocational training are well and truly on the agenda and will play a major role in the Community's ability to deal successfully with the challenges facing it on the eve of the 21st century. This subject is at the very heart of the analyses and proposals which the Commission presented to the European Councils of Brussels and Corfu in its White Paper on growth, competitiveness and employment. The White Paper said that the Community must conduct an in-depth restructuring of its education and training systems, proposing as an objective an improvement in continuing, life-long learning and training schemes.

2 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 subsequent adoption by the Council of a series of other action programmes, such as Eurotecnet, Petra and Force, and the recommendation on access to continuing training adopted in direct application of point 15 of the Community Charter of the Fundamental Social Rights of Workers demonstrates the importance attached throughout the Community to vocational training as a fundamental policy in terms of economic growth and social equilibrium. These four programmes terminate at the end of 1994. They have achieved significant and concrete results in creating a basis for transnational cooperation. The European training market, transnational training partnerships and European training networks have all become watchwords in the European training field, constituting reference frames for the work of European training providers.

3 The pursuit of a Community policy on vocational training is laid down by Article 127 of the Treaty on European Union. On the strength of this article, the Commission has proposed a Council Decision establishing an action programme for the implementation of a European Community vocational training policy "Leonardo da Vinci"[47]. The Council adopted a common position[48] on the Commission's proposal and subsequently adopted the Decision on 6 December 1994[49]. The programme will cover the period 1 January 1995 to 31 December 1999.

4 The Leonardo da Vinci programme is therefore a Community action programme designed to support and supplement Member States' policies, excluding any element of harmonisation of Member States' legal and regulatory provisions. The Member States are solely responsible for the content and organisation of training. The most important elements of the programme are:

(a) The objectives: to promote high-quality vocational training and the capacity for innovation in the field.

(b) Operator support structures: to be nominated by the Member States; should be able to call on current programme structures as far as necessary.

(c) The role of the social partners: the social partners are essential players in Leonardo. They are involved in the consultation process at both Community and national levels. They act as operators for specific projects, whether or not on a joint basis. Special relations will be established between the programme and the social dialogue. The direct implementation of pilot projects by employers' organisations and trade unions, possibly bringing in other partners too, gives them the chance to become directly involved in designing specific training projects the results of which may be used by their organisations. These projects also constitute an important source of support for the development of the social dialogue at Community level, and an integrated monitoring mechanism for these specific projects will be put in place to this effect.

(d) The measures: divided into three strands reflecting the three aims:

Strand I: support for the improvement of vocational training systems and provisions in the Member States;

Strand II: support for the improvement of vocational training measures, including university/business cooperation concerning firms and workers;

Strand III: support for the development of language skills, knowledge and the dissemination of innovation in the field of vocational training.

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47 OJ C 67, 4.3.1994.

48 Common Position (EC) No 31/94, 18 July 1994; OJ C 244, 31.8.1994.

49 OJ L 340, 29.12.1994.

(e) Areas of training: all vocational training fields are involved: initial training and transition to working life; continuing training; university/business cooperation. Leonardo seeks to develop life-long learning arrangements.

(f) The players: all the vocational training players are involved: public authorities, undertakings, social partners at national and Community level, public and private-sector training organisations, universities. Partnership arrangements between these various players are also sought.

(g) Coordination and synergy of resources: Leonardo places special emphasis on coordination with other Community measures and seeks complementarity between measures and funding from the European Social Fund.

(h) Evaluation: evaluation provisions, on a partnership basis between the Commission and the Member States, are designed to boost the visibility and knowledge of Community measures and their impact on national systems.

(i) Enlargement: the Leonardo programme will also be open to the associate countries of central and eastern Europe and to Cyprus and Malta, so as to strengthen potential interaction between the development of vocational training policy in the Union and support given by the Union to vocational training measures in those countries.

5 In close conjunction with the social partners at Community level, a social dialogue back-up measure on continuing training has been set in place at the Commission's initiative. This is designed to identify, collect and analyse innovative continuing training practices involving dialogue between the social partners. It can therefore be used to pinpoint themes of common interest for the social dialogue and to support them by way of specific examples. This arrangement is closely linked to the social dialogue proper and is intended to evolve towards a lasting base of information and observation of innovative practices in the field of training, with a view to strengthening the dialogue between the social partners.

6 The social partners have also deepened their substantial contribution to the development of vocational training by their work within the social dialogue on two themes:

- under the third remit assigned to the Social Dialogue Education/Training Group by way of a draft joint opinion - which is now being finalised - on the "contribution of vocational training to the fight against unemployment and the reintegration of the unemployed in the labour market";

- under the fourth remit assigned to the same Group, which is to reexamine the joint opinions in the field of education and vocational training with a view to coordinating them, making them more consistent and, where necessary, updating them against the background of the White Paper on growth, competitiveness and employment. On this basis, new subjects could be dealt with on a joint basis so as to meet current challenges. On conclusion of this examination, and without prejudice to the result, the

Social Dialogue Committee will decide on what the outcome should be within the context of the social dialogue.

1.08 HEALTH AND SAFETY PROTECTION FOR WORKERS

1 Health and safety protection at work at Community level is covered by a set of binding provisions based, following the entry into force of the Single European Act, on Article 118a. The action programme implementing the Community Charter incorporated new proposals in a number of sectors in which safety is an important issue. There are ten proposals for individual directives based for the main part on the framework Directive (89/391/EEC), together with two further initiatives concerning occupational diseases and the creation of a European Agency for Health and Safety at Work.

2 Three-quarters of the proposals presented by the Commission under the programme have now been adopted:

- Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels[50].

- Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (8th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[51].

- Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (11th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[52].

- Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (12th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[53].

- Council Directive 93/193/EEC of 13 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (13th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[54].

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50 OJ L 113, 30.4.1992.

51 OJ L 245, 26.8.1992.

52 OJ L 348, 28.11.1992.

53 OJ L 404, 31.12.1992.

54 OJ L 307, 13.12.1993.

- Commission Recommendation 90/326/EEC of 22 May 1990 concerning the adoption of a European schedule of occupational diseases[55].

- Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (9th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[56].

- Council Directive 913/382/EEC of 25 June 1991 amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work (2nd individual Directive within the meaning of Article 8 of Directive 80/1107/EEC)[57].

3 In making its recommendation of 22 May 1990 on the adoption of a European schedule of occupational diseases[58], 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. As part of this process, consultations have taken place with government representatives, revealing that the Member States have already, to a very great extent, incorporated the European schedule. The Commission intends to pursue its reexamination of the list from the point of view of scientific and medical progress.

4 Subsequent to the Parliament's opinion at first reading, the Commission forwarded to the Council, on 9 June 1994, an amended proposal for a Directive on the protection of the health and safety of workers from the risks related to chemical agents at work. The Commission's amended proposal retains the structure and objectives of the initial proposal, but clarifies and amplifies certain of its provisions. The objectives are now:

(a) to lay down minimum requirements for the protection of workers from the health and safety risks arising from all chemical agents present at the workplace;

(b) to consolidate, update and adapt the existing provisions relating to chemical agents in the light of current knowledge and to align them with the measures provided for in Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work[59];

(c) to adopt additional requirements so as to improve the protection of workers from the risks arising from activities involving chemical agents;

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55 OJ L 160, 26.6.1990.

56 OJ L 245, 26.8.1992.

57 OJ L 206, 29.7.1991.

58 OJ L 160, 26.6.1990.

59 OJ L 183, 29.6.1989.

(d) to clarify the Community provisions on the health and safety of workers exposed to chemical agents and to improve the basis on which information is supplied to workers;

(e) to ensure that all the preventive measures at the workplace are based on accurate appraisal of the risks associated with the way the chemical agents are used and that the protective measures take account of the characteristics of the workplace, the activity, the circumstances and any specific risk.

5 As part of its drive for harmonisation of conditions in the field of health and safety protection at work, the Council adopted, on 12 October 1993, Directive 93/88/EEC, which makes provision for a classification of biological agents[60], supplementing Annex III to Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work[61]. Part of the added text concerns a classification of biological agents into groups (2, 3 and 4) according to danger level. The amended text covers some 300 organisms. In addition, the amendment incorporates a code of conduct featuring recommendations on vaccination practice. However, vaccination will continue to be governed by national laws and practice.

6 On 8 July 1994, the Council adopted a Regulation establishing a European Agency for Safety and Health at Work, with its headquarters in Bilbao[62]. The Agency's remit will be to collect and circulate technical, economic and scientific information on safety at work, promote and support exchanges of information and experience between Member States, organise conferences and seminars, provide the Commission with the information it needs to prepare and evaluate legislative texts, create a network linking up the Member States' national networks and, finally, collect and disseminate information on health and safety from outside the Union. The Commission will make a special effort to ensure that the Agency can become operative in 1995.

7 Council Directive 92/29/EEC[63] on the minimum safety and health requirements for improved medical treatment on board vessels will enter into force by 31.12.1994. Vessels are unlike other workplaces in that they are mobile and geographically isolated, with attendant occupational risks which are higher than elsewhere. It is therefore essential to have specific provisions whereby "seagoing workers" enjoy the same level of health and safety protection as that afforded to workers on dry land in the Community. Three types of minimum requirements are laid down in the Directive:

– Firstly, all vessels, whether seagoing or operating in coastal waters, will be required to carry medical supplies which, in terms of quality, meet the minimum specifications set out in an annex. The antidotes needed on board vessels carrying dangerous goods are also specified, and each life

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60 OJ L 268, 29.10.1993.

61 OJ L 374, 31.12.1990.

62 OJ L 216, 20.8.1994.

63 OJ L 113, 30.4.1992.

raft must be equipped with a watertight medicine chest. Large vessels with more than 15 crew members must have a sick bay, whilst those with a crew of 100 or more will be required to have a doctor on board. The responsibility for providing and replenishing the medical supplies, which are to be checked annually by the Member States, will lie exclusively with the owner, without any expense to the workers.

- Moreover, vocational training for seamen must include medical and emergency measures to be taken in the event of an accident or serious medical emergency.

- Finally, in order to ensure better emergency treatment, the Member States will be required to designate one or more centres capable of providing vessels with free medical advice by radio.

8 Regarding the Directive concerning the minimum safety and health requirements for transport activities and workplaces on means of transport, the Commission presented the Council with an amended proposal in the late autumn of 1993[64].

9 Finally, in respect of the Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents, the Commission presented the Council with an amended proposal in July 1994[65].

1.09 PROTECTION OF CHILDREN AND YOUNG PEOPLE

1 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 youngsters are to be found in the United Kingdom (with more than a third of the total), Germany (15%) and Italy (12%).

2 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 of work and a ban on night work for workers of under 18 years of age. Paragraph

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64 COM(93) 421 final; OJ C 325, 2.12.1993.

65 COM(94) 284 final; OJ C 230, 19.8.1994.

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 a proposal on 15 January 1992[66], which was scrutinised by Parliament at first and second readings and gave rise to a Council common position, before being finally adopted on 22 June 1994[67].

3 This Directive applies to all people aged less than 18 years with an employment contract or employment relationship as defined by the law currently in force in a Member State and/or subject to the law currently in force in a Member State.

Groups of young people are defined as follows:

- young: any person under 18 years of age;

- child: any young person who is less than 15 years of age or who is still undergoing full-time compulsory education in accordance with national law;

- adolescent: any young person of at least 15 years of age but less than 18 who is no longer undergoing full-time compulsory education in accordance with national law.

The Member States may provide that the Directive should not apply to occasional or short-term work in relation to domestic service in a private household or work regarded as not being harmful, damaging or dangerous to young people in a family undertaking.

The Directive provides for Member States to take the necessary measures to ban work by children and to ensure that work done by young people is strictly regulated and protected pursuant to the conditions laid down in the Directive.

The Directive's principal objective is to ban work by children. However, the Member States may, subject to certain conditions, provide that this overall ban should not apply to:

(a) children performing work of a cultural, artistic, sports or advertising nature, provided prior authorisation is given by the competent authority in individual cases;

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66 OJ C 84, 4.4.1992; COM(93) 35; OJ C 77, 18.3.1993.

67 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work; OJ L 216, 20.8.1994.

(b) children of at least 14 years of age working under a combined work/training scheme, provided that such work is done in accordance with the conditions laid down by the competent authority;

(c) children of at least 14 years of age performing light work other than that covered by (a); light work may, however, be performed by children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.

4 On the question of working time, the Directive imposes limits on children who are undergoing compulsory full-time schooling. To ensure that no harm is done to their school work and hence their long-term development as a result of excessive daily working times, such work is only allowable up to 12 hours per week and 2 hours per school day. Time spent by young people on vocational training must be included in working time. For all adolescents and young people undergoing combined work/training, the maximum working time is 8 hours per day or 40 hours per week, although these limits may be subject to derogation in certain cases.

5 The Directive also provides for a ban on night work by children between 10 pm and 6 am and for adolescents between 11 pm and 7 am, with certain derogations possible in the latter instance.

6 The Directive further features provisions on:

- general obligations on employers, e.g. safety and health of young people, assessment of the hazards to young people in connection with their work, health assessment and monitoring arrangements, information for children's legal representatives of possible risks to safety and health;

- the kind of work which is covered by an outright ban for young people, e.g. work which is beyond their physical or psychological capacity and work involving harmful exposure to dangerous agents.

7 Each Member State is required to lay down any necessary measures to be applied in the event of failure to comply with the provisions adopted in order to implement the Directive. The Directive also includes a "non-reducing clause" relating to the level of protection afforded to young people.

8 The Directive has to be transposed into the Member States' national law by 22 June 1996. However, the United Kingdom has been given a longer deadline for the transposition of certain provisions regarding working time.

1.10 THE ELDERLY

1 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.

2 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[68]. In the wake of this measure, the Council adopted a decision dated 26 November 1990 on Community actions for the elderly[69].

3 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 proclaiming 1993 the "European Year of the Elderly and of Solidarity between Generations".

4 On the basis of the Commission's proposal of 10 January 1992[70], 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)[71].

5 On conclusion of the 1993 European Year, the Council adopted a declaration on the elderly, dated 6 December 1993[72]. On 24 February 1994, the European Parliament adopted a resolution on the elderly.

6 As set out in the White Paper on European social policy, the Commission has presented a proposal for a decision on further Union-wide action to help meet the challenges of an ageing population covering, in particular, the role and contribution of the active retired population, so as to take forward new concepts and practices within the European Union.

1.11 DISABLED PEOPLE

1 More than 10% of European Union citizens are affected, to varying degrees, by physical, sensorial or mental limitations which prevent them from becoming fully integrated, either professionally or socially. Taking as its premise the principle that only an overall and consistent policy on education, functional rehabilitation, training, employment and social integration is capable of delivering effective results, the Union has developed initiatives designed to aid such an approach and to create a synergy and knock-on effects in the Member States.

2 The European Social Fund and the Horizon initiative perform an important function in supporting and promoting training and vocational rehabilitation for the disabled. The Helios II programme, which was adopted by the Council on

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68 COM(90) 80 final, 24 April 1990.

69 OJ L 28, 2.2.1991.

70 OJ C 25, 1.2.1992.

71 OJ L 245, 26.8.1992.

72 OJ C 343/A, 21.12.1993.

25 February 1993 for a period of four years, is concerned with the exchange of information and the promotion of original experiments for integrating handicapped people developed by the Member States and non-governmental organisations (NGOs). As a result, more than 676 partners designated by the Member States and more than 250 projects organised by the NGOs are covered by the programme.

3 With a view to improving the mobility and safe transport of workers with reduced mobility, the Commission adopted a proposal for a Council Directive on 19 December 1991[73].

4 Following the resolution adopted by the Council and the representatives of Member States' governments on 16 December 1991 and of the White Paper on the future development of the common transport policy, the Commission submitted to the Council, on 26 November 1993, a report on measures to be taken in the Community with a view to making means of transport accessible to people with a mobility handicap. The Commission has proposed a range of Community measures on the technical standards applicable to means of transport, accessibility and the financing of transport infrastructure, signs and information for passengers, training on the special problems and needs of the disabled, and research and development.

5 Finally, the White Paper on European social policy sets out the broad lines of the next stage of development in Community action for the disabled, focusing on:

- building on the positive experience of the European Disability Forum to ensure that the needs of disabled people are taken into account in relevant legislation, programmes and initiatives;

- preparing an appropriate instrument endorsing the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities;

- encouraging discussions within the social dialogue on a model code of good practice in relation to the Commission's own personnel policies and practices with regard to disabled staff;

- proposing to enshrine in Community law an explicit reference to the fight against disability and other forms of discrimination.

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73 Proposal for a Council Directive on minimum requirements to improve the mobility and the safe transport to work of workers with reduced mobility. (Commission proposal: OJ C 68, 16.3.1991; amended proposal: OJ C 15, 21.1.1992.)

2. THE AGREEMENT ON SOCIAL POLICY

2.1 THE COMMISSION'S COMMUNICATION OF 14 DECEMBER 1993 CONCERNING THE IMPLEMENTATION OF THE PROTOCOL

1 Following the entry into force of the Treaty on European Union, the Commission submitted a communication to the Council and Parliament explaining how it intended to implement the Protocol and the Agreement on social policy, the aim of which is to translate into action the wish on the part of the Member States, with the exception of the United Kingdom, to advance the social dimension of Europe at the same pace as the economic, commercial and monetary dimensions.

2 The Commission points out that Article 2 (1) of the Agreement sets out the social policy objectives as mapped out in the 1989 Charter, covering the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment, and the combating of exclusion. These objectives supplement the general and specific tasks of the Community as set out in the Treaty establishing the European Community, as replaced by Article 2 of Title II of the Treaty on European Union.

In the first instance, the Agreement provides that the Council vote by qualified majority and after consulting the Economic and Social Committee on the following subjects:

- workers' health and safety;
- working conditions;
- information and consultation of workers;
- equal opportunities and equal treatment for men and women;
- integration of persons excluded from the labour market.

Secondly, Article 2 (3) provides for the Council to act unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, in the following areas:

- financial contributions for promotion of employment and job creation;
- social security and social protection of workers;
- protection of workers where their employment contract is terminated;
- representation of workers, including co-determination;
- conditions of employment for third-country nationals legally residing in Community territory.

Finally, Article 2 (6) explicitly places outside the jurisdiction of the Community any matters relating to pay, the right of association, the right to strike and the right to impose lock-outs.

The Agreement confirms the recognition, as already enshrined in Article 118B of the Single Act, of the fundamental role of the social partners. This recognition operates at two levels;

- at national level, in that "a Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to the Agreement" (Article 2 (4));

- at Community level, in that the Commission's task is to promote the consultation of management and labour at Community level and to take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties (Articles 3 and 4).

3 Social policy is therefore subject to autonomous and complementary legal frameworks:

Maastricht Protocol - Qualified majority (44/66) possible (Art. 2(1))	EC Treaty - Qualified majority (54/76) possible
– improvement in particular of the working environment to protect workers' health and safety; – working conditions; – information and consultation of workers; – equality between men and women with regard to labour market opportunities and treatment at work; – integration of persons excluded from the labour market.	– Art. 49: free movement of workers; – Art. 54: freedom of establishment; – Art. 57: mutual recognition of diplomas; – Art 100a: internal market, Art. 43: agriculture; Art. 75: transport; – Art. 118a: health and safety at work; – Art. 125 (new): ES (application decision); – Art. 127 (new): vocational training.

Unanimity (11) required (Art. 2(3))	Unanimity (12) required
– social security and social protection of workers; – protection of workers where their employment contract is terminated; – representation and effective defence of the interests of workers and employers, including co-determination; – conditions of employment for third-country nationals legally residing in Community territory; – financial contributions for promotion of employment and job creation. Explicitly excluded from Community jurisdiction (Art. 2(6)) – pay; – right of association, right to strike, right to impose lock-outs.	– Art. 51: social security (measures necessary for freedom of movement); – Art. 100: internal market; – Art. 130d: tasks, priority objectives and organisation of the Structural Funds; – Art. 235: attainment of the Community's objectives.

The Commission's principal aim is to promote the development of a European social policy which will be to the advantage of all workers and citizens of the Union. The Commission further wants – and will work to this end – social policy to be once again based on a single legal foundation: in this respect, the 1996 Intergovernmental Conference will be of decisive importance.

4 At the same time, the Communication points out that the Agreement does have a sound legal basis given that the Protocol on social policy, which was adopted by all the Member States and annexed to the EC Treaty, and thus ranks as a treaty, allows the measures to be taken by the Member States concerned. It is important to stress, though, that the Protocol does not preclude institutions from having recourse in the social field to the provisions of the EC Treaty pursuant to the procedures governing all the Member States. Social policy is therefore governed:

- by the provisions of the EC Treaty as amended by the Treaty on European Union; and

- by the provisions introduced by the Agreement, which will form a new basis for Community action, including the possible adoption, for the Member States concerned, of legislative measures.

5 The Communication points out that the Commission will decide on which procedure to adopt by taking the following considerations into account:

- the nature of the proposal;
- the attitude of the social partners to it;
- the need to ensure that the social dimension progresses at the same pace as other Community policies, and hence the possibility for the Council to reach decisions by qualified majority;
- the desire to ensure that all workers throughout the Community benefit from the proposed measure;
- the possibility for the 12 Member States to move forward together.

The Commission will decide on a case-by-case basis, in the light of the above criteria, whether or not to make use of the Protocol. However, if there is a legal basis in the Treaty with a decision-making procedure which is likely to bring about a decision, as in the field of safety and health at work, the Commission will give priority to instruments which enable a decision to be taken by all the Member States.

6 The Commission's Communication points out that the social partners now have a right[74] to be consulted by the Commission both on the direction of Community social policy and on the content of Community action in this area. In facilitating the social dialogue, the Commission must ensure "balanced support for the parties". Among the different measures which may facilitate the dialogue, mention

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74 Article 3(1) of the Agreement.

can be made of working groups and the provision of technical assistance deemed necessary to underpin the dialogue.

7 As regards the consultation procedure, what the Communication has to say is:

- As in the past, the Commission will engage in wide-ranging consultations so as to ensure that its policy is as appropriate as possible to the economic and social realities. Such consultation will cover all European (or national, as the case may be) organisations which may be interested in Community social policy.

- In accordance with Article 3 of the Agreement, the Commission engages in formal consultations with the social partners' European organisations in so far as these organisations meet the following criteria:

  - they must be cross-industry or relate to specific sectors or categories and be organised at European level;

  - they must consist of organisations which are themselves an integral and recognised part of Member State social partner structures, have the capacity to negotiate agreements and are representative of all Member States as far as possible;

  - they must have adequate structures to ensure their effective participation in the consultation process.

  On the basis of these criteria as set out in the Communication, the Commission has drawn up a list of organisations which will be formally consulted under Article 3 of the Agreement. This list will be reviewed in the light of experience and development of the social dialogue.

- The Commission feels that these specific consultation procedures under the terms of Article 3 of the Agreement should apply to all social policy proposals, whatever legal basis is eventually decided on. The Commission also reserves the right to engage in specific consultations on any other horizontal or sectoral-type proposal which has social implications.

- The formal consultation of the social partners provided for in Article 3 of the Agreement may lead to the adoption of opinions or recommendations.

8 As regards negotiations, the Communication points out that the social partners, having been consulted by the Commission on the content of a proposal for Community action, may inform the Commission of their desire to engage in a negotiation process with a view to reaching an agreement. The negotiations may extend over nine months and be extended with the Commission's agreement. At the end of this period, the social partners have to submit to the Commission a report taking stock of the negotiations and informing the Commission:

(a) either that they have concluded an agreement and jointly request the Commission to propose that the Council adopt a decision on implementation;

(b) or, having concluded an agreement between themselves, they prefer to implement it in accordance with the procedures and practices specific to management and labour and to the Member States;

(c) or that they envisage pursuing the negotiations beyond the nine months and accordingly request the Commission to decide with them upon a new deadline;

(d) or that they are unable to reach an agreement.

Where point (d) applies, the Commission will look into the possibility of proposing, in the light of the work already done, a legislative instrument in the field in question and will forward the result of its deliberations to the Council. The Economic and Social Committee and the European Parliament will also be consulted in accordance with the procedures laid down in the Treaty.

9 The Communication also states that agreements concluded at Community level are to be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 2 and at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The Council is to act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 2(3), in which case it is to act unanimously. The Communication goes on to say that "under the Agreement, the Commission is not legally required to consult the European Parliament on requests made to it by the social partners concerning implementation of an agreement by means of a Council decision. However, the Commission does intend to inform Parliament and to send it the text of the agreement, together with its proposal for a decision and the explanatory memorandum, so that Parliament may, should it consider it advisable, deliver its opinion to the Commission and to the Council", and that "if the Council decides, in accordance with the procedures set out in the last subparagraph of Article 4(2), not to implement the agreement as concluded by the social partners, the Commission will withdraw its proposal for a decision and will examine whether a legislative instrument in the area in question would be appropriate".

10 In addition, the Communication points out that Article 2 (4) of the Agreement establishes the general principle that directives may be implemented by collective agreement. This principle has been recognised and admitted, subject to certain conditions, in the case law of the Court of Justice. It is also in line with the implementation requirements of the International Labour Organisation and the Council of Europe.

11 The Communication's conclusions may be summed up as follows:

- The new situation created by the co-existence of two legal frameworks for action in the social field will be complex and difficult to manage.

- The new role for the social partners is an important step forward but will need time to grow and develop.

- The Commission will do all it can to operate these new procedures in an efficient but flexible manner. The important point at this early stage of implementing the new mechanisms is to allow space for natural evolution. The creation of heavy structures is not likely to yield the best results at this early stage.

- The Commission feels that this Communication lays down the ground rules for the implementation of the new procedures so that business can be conducted efficiently and openly. The Commission sees this as a dynamic process which will develop with time and will require reexamination at some later stage.

12 The Commission's Communication was the subject of detailed scrutiny in the European Parliament, the Council and the Economic and Social Committee.

13 At its special plenary session on 23 and 24 February 1994, the European Parliament adopted a first report on the new social dimension of the Treaty on European Union (rapporteur: Mrs Reding) featuring a resolution and, more particularly, a draft joint declaration of the European Parliament, the Council and the Commission to act as a basis for negotiation of an inter-institutional agreement on the application of the Protocol on social policy. In more specific terms, the draft declaration calls for the conditions for determining the representativeness of management and labour to be agreed jointly at Community level and for the Commission to inform the institutions which take part in the legislative process without delay of the progress of negotiations between the social partners. As regards implementation of an agreement between the social partners, Parliament stressed that a Council decision should implement the agreement as concluded. Should the Council intend to modify the agreement, the agreement is deemed to have been repudiated and Parliament may call for the normal legislative process to be initiated. Additionally, the proposal is that the Council may not refuse to implement an agreement until it has consulted and received the opinion of the European Parliament.

14 A second report (rapporteur once again Mrs Reding), conceived especially as a reply to the Commission's Communication, was adopted on 2 May 1994. Parliament was principally concerned about the criteria for selecting which organisations should be consulted under Article 3 of the Agreement, the consultation procedure itself and the kind of legal and institutional framework to be set up in application of Articles 3 and 4 of the Agreement. Parliament referred back to its draft joint declaration in connection with the first report.

15 Parliament's view is that the list of social partners to be consulted as drawn up by the Commission should be "revised so as to permit better representation of all employees' and employers' organisations". To this end, Parliament proposes alternative criteria to be fulfilled by the organisations consulted under Article 3 of the Agreement on social policy, stressing the right of organisations to be involved in collective bargaining at their specific level, although they must "have a mandate from their members to represent them in the context of the Community social dialogue and can demonstrate their representativeness".

16 Regarding the consultation and negotiation procedures, Parliament calls for an extra six weeks to enable the Commission to draft its proposal on any new initiatives (making three periods of six weeks each). In the course of negotiations, Parliament wants any possible extension to the nine-month negotiation period to be subject to additional constraints based on the principle that the Commission will "prevent the consultation period from being artificially prolonged .... and after consulting the European Parliament". Moreover, Parliament expects that "as soon as it proves impossible to reach agreement during the procedure, the Commission will examine the proposal and forward it to the Council and Parliament".

17 Finally, Parliament is in favour of introducing legislation to implement the Social Protocol, calling on the Commission to present, in accordance with the criteria set out in its report, a "legislative proposal on the implementation of Articles 3 and 4 of the Agreement on social policy, establishing the legal and institutional framework for the decision-making process of the social partners at Community level". Given that the right of association is outside the scope of legislative action under the Agreement on social policy, Parliament stresses that the next Intergovernmental Conference should make it possible to take such action on the right of association at Community level.

18 Two Member States (Belgium and Germany) have specifically set out their position on application of the Protocol on social policy. The note of 4 March 1994 from the Belgian Ministry for Employment, Labour and Equal Opportunities Policy underlines the wish that the Council be fully informed in connection with any consultation procedure engaged in by the social partners. At its meeting on 19 April 1994, the Council had a first exchange of views on the Belgian delegation's note. Subsequently, the German government presented a memo of its own on 30 May 1994; this has not yet been discussed in the Council.

19 At its plenary session on 24 November 1994, the Economic and Social Committee adopted an opinion on the Commission's Communication on application of the Protocol on social policy (Rapporteur: Mr Van Dijk). The Committee starts by underlining its commitment to the principle of "vertical subsidiarity" as recognised by the Court of Justice of the European Communities and as detailed in Articles 2(4), 3 and 4 of the Agreement on social policy. As regards which legal basis the Commission should choose on social policy, it comes out in favour of the Agreement, and also for the Agreement to be incorporated into the Treaty at the next Intergovernmental Conference.

20 Regarding the concept of representativeness and which social partners' organisations should be formally consulted under Article 3 of the Agreement, the Committee's stated view is that the Commission's criteria "should also include capacity to negotiate", bearing in mind that such criteria might help the social partners at Community level to achieve the objective of agreement-based relations at European level.

21 The Committee is in favour of a broad interpretation of the scope of the new consultation procedures. It welcomes the fact that the Commission intends to apply the formal consultation procedure in respect of any social policy initiative, regardless of the legal basis, and calls on the Commission to engage in such

consultations in respect of any other horizontal or sectoral-type proposal with social implications.

22 As regards the consultation and negotiation procedures themselves, the Committee insists on being kept fully informed throughout the process and proposes that the first phase of consultation of the social partners be of eight weeks and that the Commission should present its proposal for the second phase of consultations (likewise of eight weeks) within four months. The Committee stresses that the social partners are free to engage in negotiations at any time, i.e. during the first phase of consultations, during the second phase of negotiations or on a totally autonomous basis.

23 The Committee raises a number of questions on how an agreement between social partners should be implemented at Community level. As regards implementation in accordance with national procedures and practices, the Committee wonders about the scope of the declaration by the negotiating parties, considering that "the denial of obligations to take legislative action in support of implementation does not exclude the obligation to avoid legislation having a negative impact on the implementation of EC-level agreements". The Committee also raises the question of the legal nature of the Council decision under Article 4(2) and recommends a degree of flexibility on what form of binding legal instrument should be used.

24 The Committee is of the opinion that the Commission cannot refuse to propose implementing an agreement by way of a Council decision where such a decision is requested jointly by the signatories. At the same time, the Committee stresses that the Commission might propose that the negotiating parties envisage introducing amendments to their agreement with a view to implementation if the Council fails to reach a decision initially. At any rate the Committee considers that the agreement must be implemented as concluded and that the Committee and the European Parliament must be involved in the event of the Council refusing to take a decision.

25 Mindful of the practical arrangements for implementing the new consultation and negotiation procedures, the Committee proposes setting up an independent secretariat to give the social partners their own resources for preparing, organising and following-up social dialogue meetings.

2.2 APPLICATION OF THE AGREEMENT: INFORMATION AND CONSULTATION OF EMPLOYEES

1 The Commission's proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings and groups of undertakings for the purposes of informing and consulting employees[75] takes account of the principle of subsidiarity. Thus, the proposal does not affect Member States' internal information and consultation procedures concerning national undertakings, which remain subject to the law and practices of the Member States, and the social partners' autonomy has also been respected. The

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75 COM(90) 581 final, 25 January 1991.

Commission proposal was largely based on the joint opinion adopted under the social dialogue in March 1987 by the ETUC, UNICE and CEEP. So long as the conditions for establishing a European works council have been met, it is up to the social partners in the first instance to decide by negotiation on the nature, composition, functions and powers of such committees and their operational procedures. It is only where there is no agreement that the subsidiary requirements will apply.

2 Once it became obvious that it would be impossible to reach a decision on the part of all the Member States, the Commission decided to base its proposal for a Directive on the Agreement on social policy; this meant that the consultation and negotiation procedures provided for in the Agreement were tried out for the first time in practice.

3 Once it became obvious that the social partners were not going to be able to negotiate an agreement in lieu of a directive, in accordance with Article 4 of the Agreement, and since it felt that a Community initiative was still justified, the Commission activated the legislative procedure. On 13 April 1994, the Commission decided to adopt a fresh proposal[76] with a view to presenting it to the Council on the basis of Article 2(2) of the Agreement on social policy.

The Economic and Social Committee delivered its opinion on 1 June 1994[77].

The European Parliament delivered its opinion at first reading on 4 May 1994[78].

On 3 June 1994, the Commission adopted an amended proposal in accordance with Article 189a(2) of the EC Treaty, incorporating a number of amendments proposed by the European Parliament[79].

On 18 July 1994, the Council adopted a common position on the Commission's amended proposal[80].

The European Parliament examined the Council's common position at second reading on 15 September 1994 and approved it subject to 12 proposed amendments.

The Commission thereupon examined the amendments proposed by Parliament at second reading, incorporating a number of them into its reexamined proposal.

4 The Social Affairs Council adopted the directive unanimously (Portugal abstaining) during its meeting of 22 September 1994[81]. The key features of Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-

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76 COM(94) 134 final, OJ C 135, 15.9.1994.

77 Not yet published in the Official Journal.

78 Not yet published in the Official Journal.

79 OJ C 199, 21.7.1994.

80 OJ C 224, 31.8.1994.

81 OJ L 254, 30.9.1994.

scale groups of undertakings for the purposes of informing and consulting employees are as follows:

5 General: The Directive has been adopted by the Council on the basis of Article 2(2) of the Agreement on social policy. Consequently, it is only addressed to the Member States concerned by the Agreement on social policy and is hence not applicable to the United Kingdom.

6 The objective: The objective of the Directive is to improve the information and consultation of employees in Community-scale undertakings and groups of undertakings on transnational issues, i.e. those concerning at least two establishments situated in two different Member States. The risk here is that this aim may become dissipated in a range of procedures which makes it impossible to keep track of what is going on, and to this end it is proposed to set up a European Works Council where requested by employees or their representatives according to a transparent procedure, and insofar as the interested parties do not decide, by common accord, to set up some other information and consultation procedure.

7 Scope: It is provided that the establishment of a European Works Council or an employee information and consultation procedure be restricted to Community-scale undertakings and groups of undertakings with at least 1000 employees and at least two establishments in different Member States each employing at least 150 people. Of course, the mechanisms for informing and consulting employees which the Directive seeks to create at the level of Community-scale undertakings or groups of undertakings are in no way intended to prevent the coexistence and the development of decentralised information and consultation practices which are in line with current business practice or the specific needs of individual businesses. The Directive also covers cases where Community-scale undertakings or groups of undertakings have their headquarters in countries outside the territory of the Member States directly concerned by the Directive. Where this is the case, such businesses are treated in a similar way based on either the representative agent of the undertaking or group of undertakings or the undertaking with the highest number of employees in the territory of the Member States concerned. Community-scale undertakings and groups of undertakings with their central management in the United Kingdom will, of course, be subject to the same obligations as are imposed on undertakings and groups of undertakings from third countries.

8 Triggering requirement: The threshold requirements for triggering the procedure will now require the written request of at least 100 employees or their representatives in at least two Member States concerned.

9 The agreement: The main body of the Directive is intended to provide a legal framework within which an agreement can be concluded between central management and the employees' representatives. The parties are free to set up the information and consultation mechanism most suited to their needs, e.g. an information and consultation procedure instead of a European Works Council.

10 Period of negotiation: The Directive establishes that if an agreement is not reached within a period of three years, the rules laid down in the Annex will

apply. However, where central management refuses to commence negotiations, the Annex will apply after a period of six months. It will also apply immediately if the two parties so decide.

11 Confidentiality: The Directive obliges Member States to allow management, subject to certain conditions and guarantees, to withhold information, the disclosure of which could be seriously prejudicial to the undertakings concerned.

12 Existing agreements: Existing agreements on transnational information and consultation will be exempt from the obligations arising from this proposed directive. When these expire, the parties to these agreements may decide jointly to renew them. Where this is not the case, the provisions of the proposed directive will apply.

13 The Annex's subsidiary requirements: The Directive provides that, in addition to the annual information and consultation meeting provided for in paragraph 2 of the Annex, consultation meetings might also be held with a restricted delegation from the European Works Council (3 members). Representatives from the undertaking and/or establishments concerned by the measures in question also have the right to participate in these consultation meetings. This solution will make it possible to preserve the essential objectives of the Directive and to avoid the excessive cost and cumbersomeness of consulting the entire European Works Council (which can have up to 30 members) every time a decision is envisaged. The matters subject to consultation are any measure which is liable to have a considerable effect on employees' interests, particularly in the event of relocations, closures of undertakings or establishments or collective redundancies.

3. THE FUTURE OF EUROPEAN SOCIAL POLICY

3.1 THE GREEN PAPER AND THE CONSULTATION PROCESS

1 In November 1993 the Commission published its Green Paper on European social policy, which was preceded by a public appeal in the Official Journal for contributions and comments; 500 contributions were received from Member States' governments, various other bodies and individuals, testifying to the firm interest in various aspects of social policy.

2 The objective of the Green Paper was to stimulate a wide-ranging debate within all Member States on the future lines of social policy in the European Union, bringing in all interested parties including, of course, the social partners, as well as specific interest groups. The whole process took place at a moment when the attention of the Community was focused on the issue of how to reconcile economic and social objectives in the face of rising unemployment and growing concern about Europe's ability to remain competitive into the 21st century.

3 The Green Paper stresses that there is much debate in all Member States about how to address the problem of unemployment, much of which is now recognised as being structural in character. The issues under discussion include the need for greater labour market adaptability, the suggestion that wage differentials should be widened and that wages should vary more as a function of economic conditions, and questions about whether social benefits should be reduced or targeted so as to provide greater incentives to seek work. This is linked to the problems which all Member States are having in funding the growing demand on social protection systems and the search for greater efficiency in the operation of these systems as one means of making savings. At the same time, there exists a growing degree of public concern that, contrary to the objective of ensuring that economic and social progress should go hand in hand as clearly stated in the Treaties of Rome and Maastricht, the net impact of the integration process could be a levelling down of social standards. This is reflected in the fear that the creation of a single market could open the way to a form of social dumping, i.e. the gaining of unfair competitive advantage within the Community through unacceptably low social standards. But there is also a concern that, somehow, the imperative of action at European level can become a pretext for changes in social standards at national level.

4 The premise at the heart of the Green Paper is that the next phase in the development of European social policy cannot be based on the idea that social progress must go into retreat in order for economic competitiveness to recover. On the contrary, as has been stated on many occasions by the European Council, the Community is fully committed to ensuring that economic and social progress go hand in hand. Indeed, much of Europe's influence and power has come precisely from its capacity to combine wealth creation with enhanced benefits and freedoms for its people.

5 The Green Paper is in five parts. Part I sets out what the Community has already achieved in the social sphere. Part II looks at the social challenges now facing us

all. It examines the risks of declining social cohesion in Europe and the threats to important common goals such as social protection, solidarity and high levels of employment. A new medium-term strategy is needed which will draw together economic and social policies in partnership rather than in conflict with each other. Only in this way will sustainable growth, social solidarity and public confidence be restored. It is acknowledged that European production systems need to be based on the new technologies. There can be no social progress without wealth creation. But it should also be recognised that the consequent structural changes will have considerable impact on other important areas, such as employment intensity, working and living conditions, the quality of life and the development of industrial relations. Part III discusses the possible responses of the Union to these challenges, both in terms of what Member States want and of what the Community is trying to achieve. Part IV provides a brief conclusion, while Part V brings together the questions raised in different parts of the Green Paper. These will be the focus of the debate to follow.

3.2 WHITE PAPER ON EUROPEAN SOCIAL POLICY: A WAY FORWARD FOR THE UNION

1 The foundations for the White Paper were laid by last year's the last consultative Green Paper on European social policy "Options for the Union"[82].

2 In July 1994, the Commission adopted a White Paper on "European Social Policy: A way forward for the Union"[83]. At the invitation of the Commission, the European Foundation for the Improvement of Living and Working Conditions prepared a synthesis of the different submissions which was published – together with the responses received from the Member States and the Union Institutions – as an accompanying volume to the White Paper. Building on the aims and objectives of the Community Charter of the Fundamental Social Rights of Workers and the achievements of the Commission's 1989 Social Action Programme, the White Paper seeks to chart a way forward for the future development of European social policy into the next century.

3 The White Paper therefore sets out a strategy for consolidating and developing the Union's action on social policy for the future. It proposes a number of specific measures where concrete progress can be achieved in the short term. It also proposes other areas for consideration and development over a longer time frame. These actions will be consolidated in the incoming Commission's work programme, which will be presented during 1995 following consultations with the Member States, the Union Institutions and other interested bodies on the proposals set out in the White Paper. The key elements of the White Paper are as follows:

4 Employment: The fight against unemployment and the pursuit of more good, stable jobs is the top priority of the White Paper. Building on the Commission's White Paper on growth, competitiveness and employment and the 1993 Brussels European Council's conclusions, the White Paper proposes the preparation of a

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82 COM(93) 551 of 17 November 1993.

83 COM(94) 333 of 27 July 1994.

more detailed action plan at the level of the Union and the Member States, to be directed in the short term at reversing the trend of unemployment and, by the end of the century, significantly reducing the numbers of unemployed. An action plan was adopted by the European Council at its meeting in Essen in December 1994. The White Paper also proposes a series of related actions designed to improve the Commission's contribution to the achievement of the Community's employment objectives, such as the development of the annual Employment in Europe report, the strengthening of the employment observatory system, and a Communication on policy centred action-research programmes in the employment field.

5 Training: The White Paper emphasises the crucial importance of investment in education and training, and proposes a series of actions designed to develop progressively a vocational training policy at the level of the Union. It also details the specific contribution of the European Social Fund to human resource development, the fight against unemployment and the working of the labour market.

6 Labour law: The White Paper places priority on the adoption of the outstanding proposals from the Social Action Programme (posting of workers and non-standard work), but also proposes further work to complete the working time directive and to assess further the need for action in a number of other areas.

7 Health and Safety: The White Paper places priority on the adoption of the outstanding proposals in this area – transport activities, physical agents, chemical agents, travel conditions for workers with motor disabilities, work equipment (amendment) – together with the adoption of a fourth health and safety action programme in 1995.

8 Equality of opportunity for women and men: The White Paper seeks to make progress on the outstanding proposals in this area (parental leave and burden of proof), and proposes a range of other action, including the adoption of a fourth equal opportunities action programme in 1995 and the preparation of an annual Equality Report, starting in 1996.

9 Free movement of workers: The White Paper proposes to continue work to remove the remaining barriers to free movement, including the establishment of a high-level panel to review all aspects of the operation of the single market with regard to the free movement of people (employed, self-employed, students, pensioners and others), to assess the problems faced and to propose possible solutions to the Commission during 1995. It also proposes to continue work to improve the coordination of social security for migrant workers moving within the Community, and to further develop the EURES (European Employment Service) network. The White Paper also proposes further Community-level action to assist the integration of immigrants and to combat racism and xenophobia.

10 Social protection and social action: The White Paper proposes to continue to analyse and monitor social protection policies in Member States, notably through the Social Protection in Europe report, and to consider recommendations in this area. Starting in 1994, the Commission will also prepare an annual report on demography. In addition, priority will be given to taking forward Community-level action in the fight against social exclusion, notably on the basis of the

proposals already before the Council. The White Paper also makes proposals to promote the social integration of disabled people and older people, as well as work to demonstrate the added value of Community action to combat discrimination on the grounds of race, religion, age and disability, with a view to introducing a specific reference to combating such discrimination at the next revision of the Treaty.

11 Public Health: Building on the Commission's Communication on the framework for action in the field of public health[84], the White Paper proposes to take forward the programmes already before the Council (cancer, health promotion, prevention of drug dependence, AIDS), and bring forward further proposals as appropriate.

12 Social dialogue and the role of voluntary organisations: The White Paper makes proposals to promote and strengthen the social dialogue, particularly with an view to taking full advantage of the provisions of the Agreement on social policy annexed to the Treaty on European Union. It also seeks to strengthen the dialogue with voluntary organisations, notably by holding a social policy forum for debate and discussion of social policy issues, every 18 months.

13 International cooperation: The White Paper proposes to further develop cooperation with international organisations and bilateral contacts with other countries, and places a particular emphasis on the development of relations with the countries of Central and Eastern Europe.

14 Implementation and enforcement: The White Paper places a particular emphasis on the need to improve the implementation and enforcement of legislation in the social field, and makes a range of proposals aimed at improving the flow of information on Community legislation and social rights. In more general terms, the Commission feels that, in the immediate future, the consolidation and implementation of the existing corpus of legislation will, if we are to avoid a distortion of competition as a result of failure to transpose, be at least as important as the presentation of new proposals.

The situation may change once the labour law adaptation process which is currently taking place in all the Member States has stabilised. Once the new workers' rights models have been clarified at national level, attention will refocus on how best to support such models at European level. That being so, the Commission feels that, almost five years after adoption of the Social Charter, the time has now come to look to the future. It therefore intends to organise, in 1995, and in cooperation with the European Parliament, a joint meeting to evaluate what has been achieved, what problems remain and what the prospects are five years hence. This meeting will take as its basis the present 1994 assessment report on what has been done to achieve the objectives set out in Article 1 of the Agreement on social policy.

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84 COM(93) 559 of 24 November 1993.

ANNEX I

List of directives and regulations cited in the report:

INTRODUCTION

1.01 Employment and remuneration

91/383/EEC: Council Directive of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.
(OJ L 206, 29.7.1991, p. 19)

1.02 Improvement of living and working conditions

91/533/EEC: Council Directive 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, 18.10.1991, p. 32)

92/56/EEC: Council Directive of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the Member States pertaining to collective redundancies
(OJ L 245, 26.8.1992, p. 3)

75/129/EEC: Council Directive of 17 February 1975 on the approximation of the laws of the Member States pertaining to collective redundancies
(OJ L 48, 22.2.1975, p. 29)

93/104/EEC: Council Directive of 23 November 1993 concerning certain aspects of the organisation of working time
(OJ L 307, 13.12.1993, p. 18)

1.03 Freedom of movement

Council Regulation (EEC) No 2434/92 of 27 July 1992 amending the second part of Regulation (EEC) No 1612/68 on the free movement of workers within the Community
(OJ L 245, 26.8.1992, p. 1)

Council Regulation (EEC) No 1945/93 amending 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 and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, and Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71

(OJ L 181, 23.7.1993, p. 1)

1.06 Equal treatment for men and women

92/85/EEC: Council Directive of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers, workers who have recently given birth or are breast-feeding (10th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 348, 28.11.1992, p. 1)

86/613/EEC: Council Directive of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood
(OJ L 359, 19.12.1986, p. 56)
Corrigendum to Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood
(OJ L 32, 3.2.1987, p. 36)

1.08 Health and safety protection for workers

89/391/EEC: Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work
(OJ L 183, 29.6.1989, p. 1)

90/679/EEC: Council Directive of 26 November 1990 on the protection of workers from risks related to exposure to biological agents at work (7th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 374, 31.12.1990, p. 1)

91/382/EEC: Council Directive of 25 June 1991 amending Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work (2nd individual directive within the meaning of Article 8 of Directive 80/1107/EEC)
(OJ L 206, 29.7.1991, p. 16)

92/29/EEC: Council Directive of 31 March 1992 on the minimum health and safety requirements to encourage improved medical assistance on board vessels
(OJ L 113, 30.4.1992, p. 13)

92/57/EEC: Council Directive of 24 June 1992 on the minimum health and safety requirements for work at temporary or mobile worksites (8th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 245, 26.8.1992, p. 6)

92/58/EEC: Council Directive of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (9th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 245, 26.8.1992, p. 23)

92/91/EEC: Council Directive of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (11th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 348, 28.11.1992, p. 9)

92/104/EEC: Council Directive of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (12th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 404, 31.12.1992, p. 10)

93/88/EEC: Council Directive of 12 October 1993 amending Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (7th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 268, 29.10.1993, p. 71)

93/103/EEC: Council Directive of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (13th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)
(OJ L 307, 13.12.1993, p. 1)

Council Regulation (EEC) No 2962/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work
(OJ L 216, 20.8.1994, p. 1)

1.09 Protection of children and young people

94/33/EEC: Council Directive of 22 June 1994 on the protection of young people at work
(OJ L 216, 20.8.1994, p. 12)

2. AGREEMENT ON SOCIAL POLICY

2.2 Application of the Agreement: Information and consultation of employees

94/45/EEC: Council Directive of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees
(OJ L 254, 30.9.1994, p. 64)

ANNEX II

List of directives and regulations proposed but not yet adopted :

INTRODUCTION

1. Community Charter

1.01 Employment and remuneration

Proposal for a Council Directive on certain employment relationships with regard to distorsions of competition (Commission proposal OJ No C224, 8.9.90; amended proposal, OJ No C305, 5.12.90).

Proposal for a Council Directive on certain employment relationships with regard to working conditions (Commission proposal COM(90)228/I final) (OJ No C224, 8.9.90).

1.02 Improvement of living and working conditions

Proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (Commission proposal, OJ No C274, 1.10.94)

1.03 Freedom of movement

Proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (Commission proposal, OJ No C100, 21.4.89; amended proposals, OJ No C119, 15.5.90 and No C177, 18.7.90)

Proposal for a Council Regulation (EEC) amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Commission proposal, OJ No C100, 21.4.89; amended proposal, OJ No C119, 15.5.90)

Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services (Commission proposal, OJ No C225, 30.8.91).

Proposal for a Council Regulation (EEC) amending 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 and Council Regulation (EEC) No 574/72 laying down the procedure

for implementing Regulation (EEC) No 1408/71 (Commission proposal, OJ C 46, 20.2.92)

Proposal for a Council Regulation (EEC) amending 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 and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945 amending Regulation (EEC) No 1247/92 (Commission proposal, OJ C 143, 26.5.94)

1.05 Worker participation

Proposal for a Council Regulation on the statute for a European company (Commission proposal, OJ No C263, 16.10.89)

Proposal for a Council Directive on procedures for informing and consulting the employees of undertakings (Commission proposal, OJ No C297, 15.11.80; amended proposal, OJ No C217, 12.8.83)

Amended proposal for a Fifth Directive [...] concerning the structure of public limited companies and the powers and obligations of their organs (Commission proposal, OJ C 240, 9.9.83)

Proposal for a Council Directive complementing the statute for a European association with regard to the involvement of employees (Commission proposal, OJ No C99, 21.4.92)

Proposal for a Council Directive supplementing the statute for a European cooperative society with regard to the involvement of employees (Commission proposal, OJ No C99, 21.4.92)

1.08 Health and safety protection for workers

Proposal for a Council Directive concerning the minimum safety and health requirements for transport activities and workplaces on means of transport (12th Individual Directive within the meaning of Article 16 of Directive 89/391/EEC); (Commission proposal, OJ No C25, 28.1.93; amended proposal, OJ No C294, 30.10.93)

Proposal for a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work (Commission proposal, OJ No C165, 16.6.93; amended proposal, OJ No C230, 19.8.94)

Proposal for a Council Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (Commission proposal, OJ No C77, 18.3.93; amended proposal, COM(94)284, 4.7.94)

Proposal for a Council Directive amending Directive 89/655/EEC on the minimum health and safety requirements for the use of work equipment by workers at work (Commission proposal, OJ No C104, 12.4.94

1.11 Disabled people

Proposal for a Council Directive on the minimum requirements to improve the mobility and the safe transport to work of workers with reduced mobility (Commission proposal, OJ No C68, 16.3.91; amended proposal, OJ No C15, 21.1.92)

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, 43 quater of 26 March 1991, 43 quinquies of 13 July 1993 and 43 sexies of 5 October 1993), 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 41 660.

- 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 *prorata* 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 services.

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 services 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 arrangements 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 over-arching 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, 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 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, 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 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 employment conditions of salaried employees are defined in various provisions, including the following:

- collective agreements for the sector or company concerned which may determine certain employment 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 employment 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 employment conditions specific to the worker concerned.

The hierarchy of the various provisions defining employment 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.

While contributions remain the main source of funding, other sources are State subsidies and, since 1994, alternative financing of social security through an increase in taxes on personal and real property and in indirect taxation.

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, viz. 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 employment 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 all people.

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 actually 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 authorisation, registration or approval are not required apart from in a few rare cases, such as the payment of unemployment benefits by a trade union organisation. There is one particular legal form: the Union Professionnelle (professional association). However, the use of this legal form is optional and does in no way affect 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 organisations other than professional associations or non-profit-making associations (ASBLs) are governed by the organisations' own rules.

The authorities do not intervene to appoint managers, monitor revenue and its allocation, or influence the organisations' 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 organisations (i.e. those which are organised 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 organisation 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 organisations.

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 losses result from the decision not to join such organisations.

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

2. A 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. A 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. A collective labour agreement concluded outside a joint committee applies to the employer or employers who are party to the agreement and all workers employed by such employer(s). 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 organisations 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) There are a number of regulations referring to strikes and designed to protect workers who participate in them or suffer from them 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 organisations.

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 written of 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 28 ff. 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. With the exception of Article 16(3) of the Law of 14 January 1975 on discipline in the armed forces, as amended by the Law of 21 April 1994, which prohibits military personnel from striking in any way, and Article 24/11 of the Law of 27 December 1973 on the regulations applicable to gendarmerie operational personnel, as amended by the Law of 24 July 1992, which contains an identical prohibition for policemen (civilian personnel have the right to strike as long as a minimum level of service is provided), there is no legislation prohibiting strikes in the

public services.

Article 44 of the Royal Decree of 26 September 1994 - establishing the general principles of the administrative and financial status of State employees applicable to the employees of the community and regional governments, the joint community commission, the French community commission or dependent legal entities under public law - states that participation by an employee in a concerted work stoppage may not result in action other than loss of pay. While the Council of State emphasises that Article 44 implicitly but surely establishes the principle of respect for the right to strike for public service employees, the government has stated that this provision merely regulates the administrative situation of an employee who has participated in a labour dispute.

The right to strike is a general principle of the regulations on trade unions and should therefore be regulated by law. The question of when and subject to which procedure a "concerted work stoppage" may take place thus remains open. In the absence of a legal framework for the start and conduct of a strike, no notice of intention to strike is required.

The Law of 11 July 1990 approving the European Social Charter and its Annex, which were done in Turin on 18 October 1961, incorporates those texts and thus gives civil servants the right to strike.

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 recent institutional changes mean that responsibility for vocational training in the French-speaking community now lies with the Walloon and Brussels regions.

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 can take vocational training:

- workers with employment contracts who take such training at the request of their employers;

- workers who take training outside of working hours (French-speaking community's definition) or after 18.00 or on Saturdays and Sundays (Flemish and German-speaking communities' definition).

The Walloon region and German-speaking community 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 directorate (FOREM) or employment service (VDAB) for one or more of their employees to be admitted 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 employment 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 wages, 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 December 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 take place through the conseil d'entreprise (works council) in companies with more than 100 workers, through the committee for occupational health and safety and the improvement of the working environment in companies with fewer than 50 workers, or, if there is no such committee, through 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 organisation 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 organisation 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 worker protection relating to occupational hygiene, workplace improvement and health are largely coordinated in the General Regulation on Health and Safety at Work. A number of recent provisions have not been incorporated into the General Regulation, as they are to form part of a new "Code on Well-being at Work".

Experience has shown that Community Directives on health and safety at work refine or supplement existing provisions.

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

As far as prevention is concerned, the individual approach is increasingly giving way to a rational and multidisciplinary risk analysis, in which various players within a company (employer, workers, company doctor, safety manager) have a role to play.

The regulations which transpose or will transpose the "social directives" (Article 118a of the Treaty of Rome) constitute the basis for the Code on Well-being at Work", which is intended gradually to replace the General Regulation on Health

and Safety at Work.

The directives already or soon to be transposed are those concerning:

- 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;
- minimum health and safety requirements for the use of work equipment by workers at work (individual directive);
- the protection of workers from the risks related to exposure to biological agents at work (individual directive);
- the implementation of minimum safety and health requirements at temporary or mobile construction sites (individual directive);
- minimum requirements for the provision of safety and/or health signs at work (individual directive);
- introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (individual Directive);
- minimum requirements for the mineral-extracting industries through drilling (individual Directive);
- minimum requirements for the surface and underground mineral-extracting industries (individual Directive);
- minimum requirements on board fishing vessels (individual directive).

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 comprises representatives of the most representative organisations 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 competent 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' organisations, 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 organisations 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 taken by the employer rather than the Committee, which is an advisory body.

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 and employed on a full-time basis are guaranteed an average monthly minimum income under Collective Labour Agreement No 33 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 recognised.

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 done between 20.00 and 6.00, 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.

23. The Law of 29 June 1993 on compulsory schooling increased the school-leaving age to 18, with the possibility of part-time school attendance from the age of 15 (provided that the student has completed though not necessarily passed the first two years of secondary education) or 16. 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 compulsory schooling and chooses to leave full-time education may:

- follow a vocational course with a reduced timetable, or
- take training officially recognised as meeting the requirements of compulsory schooling (e.g. training organised as part of a small business apprenticeship).

This part-time course or training may be supplemented by part-time work;

Those who remain in full-time education until the age of 18 may opt for grouped courses in the areas of technical, vocational or general education (French-speaking community) or general, artistic, technical or vocational secondary schooling (Flemish community).

A young person who has completed compulsory schooling and is registered as a job seeker may take vocational training courses organised 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 authorised 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 and does not draw a pension under the pension schemes for employees, the self-employed, the public sector, the SNCB (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, minimum guaranteed pensions are regularly increased on a non-index-linked basis.

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 actually live in Belgium.

This benefit is completely free, as no contributions have to be paid in order to receive it; it is 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 the applicant and applicant's spouse have been means-tested (unless they have

been legally separated or living apart for more than ten years). 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/social 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

The 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, viz. 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 social and occupational integration of the disabled).

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 entrusted to their funds the tasks of the National Fund for the Social Rehabilitation of the Disabled and the Fund for Medical, Social and Educational Care. Accordingly, the Flemish fund for the integration of the disabled into society provides individual material assistance, vocational training and employment, and intake, treatment and supervision in appropriate institutions or by services which enable disabled persons to continue to live in their own environment. It fulfils its duties by approving and subsidising institutions and structures and by direct individual measures to assist disable 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 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 apprenticeship contracts in small businesses, industry and the centres for intensive vocational training for the unemployed, the above-mentioned rehabilitation legislation makes provision for training contracts for persons who on account of the nature or degree of their disability are unable to enter into an apprenticeship contract (Flemish community) and vocational adjustment contracts 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", viz. 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 Bfrs 519 816 per year in income from work actually performed (amount as at 1 December 1994) 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 the Interior on foreigners' stays in Denmark in application of the rules of the European Union rules or the Agreement on the European Economic Area (Ministry of the Interior Order No 761 of 22 August 1994). The Order incorporates the provisions laid down in Council Regulation (EEC No 1612/68 on freedom of movement for workers within the Community and Commission Regulation No 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. The Order contains provisions in implementation of Council Directive No 64/221/EEC, 68/360/EEC, 73/148/EEC, 75/34/EEC, 90/365/EEC and 93/96/EEC.

2. It follows from the provision in the Order that EU/EEA nationals are issued with 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 issued only to EU/EEA nationals, while non-EU/EEA nationals may be granted residence and work permits. The average time taken to deal with applications for EU/EEA residence permits is around three months. In 1993 a total of 2 740 new EU residence permits were issued, 939 were renewed and in 25 cases renewal was refused. In 118 cases the conditions for issuing a EU residence permit were not satisfied. In 1993 residence permits were also granted to 85 members of EC residence permit holders' families and 47 family members had their permits renewed. No family members had their applications for renewal rejected and 7 applications for residence permits were refused.

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 EU 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 Member States via specialist services designated by the Member States - in most cases to the public employment agencies.

The EURES net (European Employment Services), under the Commission Decision of 22 October 1993 in application of Council Regulation No 1612/68/EEC on the free movement of workers within the Community, was officially introduced on 17 November 1994. This is a job and information exchange system based on approximately 360 European advisors, mainly in the public employment services, who have access to common databases which provide information on job vacancies and working and living conditions in the Member States. The Euroadvisors communicate with one another via an E-mail network. The system covers the employment services of the EEA Member States. In 1995 it is expected to be possible to introduce data transmission of job applications.

EMPLOYMENT AND REMUNERATION

5. In Denmark there is no special legislation restricting, for certain groups of persons, the freedom of choice and freedom to engage in an occupation, save for special provisions regulating specific occupations. It is not, however, possible for persons setting up as self-employed fishermen or farmers to receive the special start-up subsidy (*iværksætterklippekort*).

6. In Denmark there are no laws and probably no 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 the 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 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 employed or open-ended employment as regards wage terms.

Persons employed in job training schemes in private companies are employed under agreement-based pay and working conditions. The same applies to persons employed in job training schemes in the public sector, but pay in the public sector may not exceed Dkr 81.97/hour in local and Dkr 82.13/hour in central administration, excluding holiday pay, etc.

Young persons under 25 years of age, however, in receipt of cash assistance and participating in activity generation schemes (*aktiveringstilbud*) receive a special training allowance which varies according to age and previous involvement in *aktivering* 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.

Under the legislation governing an active labour market policy, a user fee (*brugerbetaling*) may not be required in the case of employees, whether they are in employment or seeking work or training.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

8. The Directive on working time adopted on 23 November 1993 is now being implemented and should be fully operational by November 1996.

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. The Directive on working time adopted on 23 November 1993 is now being implemented and should be fully operational by November 1996.

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 (mutually 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.

If 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 health insurance are financed out of taxation, and entitlement to benefits is not dependent upon prior employment or income.

Only the Labour Market Supplementary Pension (*ATP*) and unemployment benefit are based on contributions from employees.Membership of an unemployment insurance fund is voluntary.

Sickness and maternity benefits

This insurance scheme compensates for lack of occupational income during sickness or maternity leave. The scheme covers both employees and the self-employed, including assisting spouses.

Entitlement to the benefit depends on having been employed. Employees must have been in work during the 13 weeks preceding the onset of sickness (or before they stopped working because of pregnancy) and have worked for 120 hours within these 13 weeks. Self-employed persons must have been carrying out an economic activity on a self-employed basis for at least six months within the 12 months preceding the onset of sickness (or before they stopped working because of pregnancy).

Persons who have completed vocational training of at least 18 months' duration within the last month and unemployed persons in receipt of unemployment benefits, activity generation benefits (*aktiveringsydelser*) or the like are also entitled to sickness or maternity benefits.

In the event of sickness employees are entitled to a benefit from the first day of sickness. The employer pays the benefit for the first two weeks of the period of sickness (or, in the public sector, for the whole period) if he/she has employed the person concerned for at least 120 hours in the 13 weeks preceding sick leave. If the worker is eligible for benefit but is not entitled to a benefit from the employer, the municipality will pay the benefit from the first day of sickness. The municipality also pays the benefit of self-employed persons, but this does not start until after three weeks' sick leave. Self-employed persons can take out a voluntary insurance policy to cover them for the first three weeks of their sick leave. This voluntary insurance provides entitlement to a benefit corresponding to either the maximum or two thirds of this maximum. It is also the municipality which pays the benefit in the case of pregnancy, childbirth and adoption.

The benefit is calculated on the basis of the employee's present occupational income (after deduction of the labour market contribution). The maximum is Dkr 2 546 per week or Dkr 68.81 per hour (working time being 37 hours per week). The amount is determined by multiplying the hourly rate (or the hourly pay of the individual if this is lower) by the number of hours worked. If an employee tends to do more than the normal weekly working hours, the benefit will be based on actual hours worked for the first two weeks of sick leave.

In the case of self-employed persons, the benefit is calculated according to occupational earnings on the basis of the profits recorded in the most recent annual accounts. The assisting spouse's benefit is calculated on the basis of the proportion of the profits allocated to him/her in the annual accounts under the PAYE Act (*kildeskatteloven*).

Unemployed persons are entitled to the benefit they were receiving before they became ill.

In the case of partial incapacity for work a partial benefit is available.

In the case of sickness, the benefit is payable for a maximum of 52 weeks over 18 months. This does not include the first two weeks of sick leave or a benefit period covering pregnancy and childbirth. It is possible to extend the benefit period. Pensioners are entitled to a benefit for only 13 weeks in a 12-month period.

The maternity benefit is payable for four weeks before the expected date of birth and 24 weeks after the birth. The last ten weeks may be used by the father. The father is also entitled, in his own right, to two weeks' benefit within the first 14 weeks following the birth.

In the case of adoption, the benefit is payable for the first 24 weeks after receipt of the child. Both parents are entitled to the benefit for two weeks but for the remainder of the 24 weeks only one of the parents may receive the benefit at any one time.

The State covers the expenditure of the municipalities on benefits for the first 13 weeks of sick leave and expenditure on maternity and adoption benefits. The State also covers 50% of the municipality's expenditure on other benefits.

An employer who has been paying wages or salary during sickness is entitled to receive the benefit to which the insured person was entitled.

Social-security and early-retirement pensions

The social-security pension scheme covers the old-age pension, which is payable from the age of 67, and the early-retirement pension.

Acquisition of the right to a social-security pension is conditional upon three years' residence in Denmark between the ages of 15 and 67. Other conditions governing residence and citizenship also apply.

The pension is calculated on the basis of length of residence in Denmark. To acquire a full old-age pension, the person must have lived in Denmark for 40 years. Otherwise the pension is calculated according to length of residence. The same applies to early-retirement pensions.

An early-retirement pension can be awarded for permanent loss of earning capacity as a result of physical or mental disability. For persons of over 50 an early-retirement pension may also be provided for social reasons.

There are various types of early-retirement pension:

1. Highest early-retirement pension awarded to persons aged between 18 and 60 whose earning capacity is negligible.

The pension consists of:

Basic pension	Dkr 44 328 p.a.
Pension supplement (related to income)	Dkr 19 476 p.a.
Disability supplement	Dkr 21 576 p.a.
Work incapacity amount	Dkr 29 772 p.a.
Any special pension supplement for single persons	Dkr 24 468 p.a.

2. Intermediate early-retirement pension awarded to persons aged between 18 and 60 whose earning capacity is reduced by about two thirds and persons aged between 60 and 67 whose earning capacity is negligible.

The pension consists of:

Basic pension	Dkr 44 328 p.a.
Pension supplement (related to income)	Dkr 19 476 p.a.
Disability supplement	Dkr 21 576 p.a.
Any special pension supplement for single persons	Dkr 24 468 p.a.

3. Ordinary and increased ordinary early-retirement pension awarded to persons aged between 18 and 67 whose earning capacity is reduced by at least half for reasons of health and persons aged between 18 and 67 whose earning capacity is reduced by at least half, even if this is not entirely attributable to ill health.

The pension consists of:

The increased ordinary early-retirement pension awarded to persons of under 60

Basic pension	Dkr 44 328 p.a.
Pension supplement (related to income)	Dkr 19 476 p.a.
Early-retirement amount	Dkr 11 526 p.a.
Any special pension supplement for single persons	Dkr 24 468 p.a.

The ordinary early-retirement pension awarded to persons of over 60

Basic pension	Dkr 44 328 p.a.
Pension supplement (related to income)	Dkr 19 476 p.a.
Any special pension supplement for single persons	Dkr 24 468 p.a.

The ordinary early-retirement pension for persons of over 60 corresponds to the old-age pension.

A disability benefit may be awarded to persons aged 18-67 who are not in receipt of any other pension but who will be entitled to the highest

or intermediate early-retirement pension if they have not been gainfully employed. The disability benefit represents DKR 21 684 p.a.

The social-security pension is paid by the State through taxation. The State refunds municipality's expenditure on old-age and early-retirement pensions to persons of over 60 and refunds 50% of the municipality's expenditure on early-retirement pensions for persons of under 60.

Occupational injury insurance

Occupational injury insurance is compulsory and covers: accidents resulting from work or from the way in which it is performed; harmful effects - lasting at least five days - resulting from work or from the way in which it is performed; a range of occupational diseases. Occupational diseases include diseases resulting from effects on the parents before conception or after birth and diseases in children contracted before birth as a result of the work the mother was doing while she was pregnant. There is a register of occupational diseases covered by this insurance scheme.

The employer takes out an occupational insurance policy for his/her employees with a recognised insurance company.

In the event of occupational injury the insurance may cover:

1. Payments for treatment, rehabilitation and equipment if such expenditure is neither covered by the health insurance Act nor forms part of a course of treatment in a national health hospital.

2. Compensation for loss of earning capacity. Compensation is payable only for loss of earning capacity of at least 15% and takes the form of a regular benefit or a lump sum. The latter is applicable to earning capacity loss of under 50%. It can, however, be provided on request in the event of earning capacity loss in excess of 50%, but is then applied only to that part of the compensation which corresponds to 50% loss. Compensation is calculated on the basis of the annual earnings of the person concerned in such a way that it represents 4/5 annual earnings in the case of total loss of earning capacity. The maximum rate at the moment is DKR 293 000 and the rate is adjusted every year on the basis of trends in earnings.

3. Benefit for permanent disablement.

   The level of disablement is established according to the medical description of the injury and the extent of the damage, taking into account the adverse effects of the occupational injury on the life of the person concerned.

   Compensation takes the form of a lump sum adjusted according to average earnings. In the case of a 100% disability the benefit is DKR 355 000.

4. Transitional amount in the event of death.

   The surviving spouse or partner (if the partner has lived with the deceased for at least five years) - or possibly another survivor - may be paid a transitional amount which is at the moment DKR 92 000. The amount is adjusted to average earnings.

5. Compensation for loss of breadwinner.

   Spouses, partners or children who loose their breadwinner as the result of an occupational injury or who find that their support has been reduced are entitled to compensation in the form of a regular benefit. The spouse or partner may receive 30% of the deceased person's annual earnings (calculated as above under item 2) for a maximum of 10 years. The child may receive a regular benefit of 10% of the annual earnings of the deceased until he/she reaches the age of 18. The period can be extended if the child is undergoing education but only until that child reaches the age of 21. A child who has lost both parents is entitled to 20% of the annual salary.

Family allowances

A family allowance (*børnefamilieydelse*) is payable to families with children under 18 resident in Denmark.

To be entitled to the benefit the person who has custody of the child or the person who is caring for the child with a view to adoption must be a tax payer in Denmark under the PAYE system (*kildeskatteloven*).

A further condition is that the child has not married and is not in receipt of public welfare assistance in his/her own right outside the home (Act on Social Assistance).

The family allowance is Dkr 2 075 a quarter for children of under 7 and Dkr 1 600 a quarter for children of over 7.

The allowance, which is tax free, is paid automatically. It is administered by the customs and tax authorities at the place of residence.

The cost of the family allowance is borne by the State.

The children of single parents and of pensioners are entitled to the ordinary and special child allowances (*ordinære* and *særlige børnetilskud*), over and above the family allowance.

These child allowances are administered by the social services of the municipality and the cost is borne by the State. The conditions for entitlement differ from the conditions governing the family allowance. The tax requirement for persons with custody no longer applies but they must have Danish citizenship or have been resident in Denmark for a certain length of time. The other conditions do still, however, apply - namely that the child must be resident in Denmark, may not be married and may not be in receipt of public welfare assistance in his/her own right outside the home.

The ordinary child allowance for children of single parents and children of two pensioners is Dkr 1 100 a quarter. In addition to this allowance the children of single parents are entitled to an extra child allowance of Dkr 840 per family per quarter. The ordinary and extra child allowance for the children of single parents is paid only on application.

Children who have lost one or both parents are entitled to the special child allowance of Dkr 4 218 a quarter if the child has no parents and Dkr 2 109 per quarter is the child has lost one parent.

The special child allowance of Dkr 2 109 a quarter is also payable if one or both parents are pensioners.

Social assistance

If an employee looses his/her job, is not entitled to unemployment benefit as a member of an unemployment insurance fund and does not have sufficient means to support himself of his family, assistance may be granted under the Social Assistance Act. Under this Act 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.

Unemployment benefit

The general rules on unemployment insurance are laid down in the Act on 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 whose sole object is to ensure financial assistance in the event of unemployment.

There are 37 State-recognised unemployment insurance funds (35 for employees and 2 for the self-employed) with about 2 300 000 members. They are closely related to the trade unions and other occupational organisations but

admission to an unemployment insurance fund may not be made 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 labour market, members' and employers' contributions.

The labour market contribution (*arbejdsmarkedsbidrag*) in 1995 is 6% of occupational income and will increase in the years to come by 1% per year until it has reached 8% in 1997.

Employers also have to contribute to the fund. In 1997 employers will be paying 0.3% of expenditure on salaries, etc. and as from 1998 they will be paying 0.6%.

In addition to the labour market contribution, which is dependent on salaries paid, members of the unemployment insurance fund also contribute.

Employers pay, over and above the salary-based labour market contribution, an employers' contribution which forms part of the 3% VAT supplement which has replaced the former labour market contribution (AMBI) since 1 January 1992.

Membership is open to persons who:

1) have their residence in Denmark (except Greenland and the Faroe Islands).
2) are aged between 16 and 65,
3) fulfil one of the following conditions:
   a) are able to prove that they are employed as employees within the occupational field covered by the fund
   b) are able to prove that they have completed vocational training of at least 18 months duration within the occupational field covered by the fund or basic vocational training (*erhvervsgrunduddannnelse*) under the Basic Vocational Training Act, and file an application for admission within two weeks of completion of the course,
   c) are able to prove that they are self-employed (not on a temporary basis) to a significant extent,
   d) are able to prove that they participate in the self-employed activities of their spouse on more than a temporary basis and to a significant extent,
   e) are able to prove that they are performing military service
   f) are able to prove that they are working for the municipality as mayor, counsellor or committee chairman or are members of the Danish Parliament, government or the European Parliament.

Membership can be as part-time or full-time insured members.

In the event of dismissal, temporary lay-offs, expiry of a fixed-term contract, etc., the employer is required to pay members of an unemployment insurance fund - under certain conditions - unemployment benefit corresponding to the maximum daily rate calculated on the basis of 6.6 hours a day, which in 1995 corresponds to Dkr 456). This payment is made during the first 2 days' unemployment.

The employer is not obliged to make this payment unless the member has been employed by the employer under a full-time employment contract for 2 weeks out of the preceding 4.

Entitlement to unemployment benefit is conditional upon:

Length of membership

Entitlement to unemployment benefit is normally conditional upon one year's membership of a State-recognised unemployment insurance fund, but 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 reaches the age of 67 years.

Employment requirement

Entitlement is further conditional upon the member having been employed or self-employed for at least 26 weeks out of the previous 3 years. For part-time employees the requirement is 17 weeks. Only employment in membership periods is taken into account.

Availability

Unemployment benefit is conditional upon the unemployed person being registered as a job seeker with the public employment service and being available for work.

In a range of circumstances unemployment benefit cannot be paid because the member is not available for work, e.g. when the person

a) is sick
b) is on military service or is evading military service
c) is in prison or is evading this
d) is being cared for in an institution.

Unemployment benefit cannot, furthermore, be paid to a member who

e) is undergoing training
f) refuses work offered by the employment service or unemployment fund without due reason
g) stops working without due reason
h) is dismissed for a reason which can be attributed mainly to the person him- or herself.

A member who fulfils the conditions for entitlement to unemployment benefit can receive the benefit for a period of a total of 7 years. The 7 years are divided into a first period of 4 years and a second period of 3 years.

Unemployment benefit amounts to 90% of previous earnings but may not exceed Dkr 2 555 per week or approx. Dkr 133 000 per year. For part-time employees maximum benefit amounts to two-thirds of the benefit payable to full-term insured persons - Dkr 1 705 per week or approx. Dkr 88 500 per year.

A special lower rate of 80% of the maximum benefit, Dkr 2 095 per week or approx. Dkr 109 000 per year, applies to

- persons who have completed vocational training of at least 18 months' duration
- persons performing military service.

A member who is employed for less than normal full-time work can receive a supplementary benefit . The supplementary benefits is based on the normal rate reduced by 0.5% per working hour over 7.4 hours per week. It may not, however, be less than 80% of the maximum benefit.

The benefit is reduced according to the number of hours the member has worked within a week. The reduction does not depend on the rate of pay or on whether the work is paid or not.

During the first period full-time insured persons can opt for a scheme which entitles them to 70% of their previous benefit for a single consecutive period of 12 months and at the same time receive income for work of up to Dkr 40 000 per year without a reduction in benefit. In this case they do not have to be available for work during the 12-month period.

This scheme is conditional upon the person having been unemployed for at least 12 months within the previous 15 months.

Unemployment benefits are paid retrospectively for a five-day week but are never payable to self-employed persons for the first week after work ceases.

Unemployment benefits are taxable as category A income but are not subject to the labour market contribution.

They are, however, subject to the supplementary labour market pension contribution (ATP).

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.

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.

Young people who do not start their careers through training after compulsory schooling - or who are obliged to give up their training because of the lack of training places in companies - are offered apprenticeships in schools to replace either in full or in part the practical training they would have had in a company.

Under the government's new training programme to provide education for all, young people who are not motivated, drop out of training courses or are simply tired of being at school after their basic schooling, can take special courses involving either new subjects

or alternative routes to mainstream education.

The Danish adult and further education system is very broad based. It covers all types of vocational and general continuing and further education for adult employees. It is divided into three types of training: general education for adults, special vocational training courses for the labour market (*arbejdsmarkedsuddannelse* or *AMU*) and open education.

In 1994 efforts were stepped up in Denmark in the field of continuing and further education because of the need to raise the general level of qualifications to cope with the change-over from an industry-based society to an information and service-based society to meet the increasing need of companies for information and to face the fact that products are less durable.

A new Act has therefore been adopted on training leave, according to which employees over 25 who are entitled to benefits, can have one year's leave within a period of five years for State-recognised training. Unemployed persons entitled to benefits can have two years' leave within a period of seven years. During leave, the person concerned receives a benefit corresponding to the maximum unemployment benefit.

A new Act has also been adopted on open education, according to which the State subsidises training places; this covers both general and vocational training.

The reason why Denmark is investing more effort in continuing and further education is that the Danish government regards adult education as an important way of promoting an active labour market policy. Ten years ago every third adult underwent training and today this figure is one adult in two.

This means that some two million adult Danes take either evening classes in, for example, English or daytime vocational courses in new technologies (or vice-versa).

The legislation on vocational training for the labour market (*arbejdsmarkedsuddannelse* or *AMU*) was changed on 1 January 1994 giving labour and management more influence over the distribution of the financial resources available.

The purpose of AMU training courses is to maintain, develop and improve the vocational qualifications of the worker in relation to the needs of the labour market, to ease retraining and adaptation problems on the labour market and to develop and implement special training programmes for the unemployed and other training measures in line with labour market policy. AMU training courses are designed primarily for employees but the unemployed can also participate.

AMU courses are divided into three training programmes:

1) training to provide qualifications corresponding to the needs for labour market and to maintain, develop and improve the vocational qualifications of semi-skilled workers, people with training under the Vocational Training Act (*erhvervsuddannelsesloven*) and others in a similar position.

2) Introductory vocational training (*erhvervsintroducerende uddannelse*) to make it easier for participants to obtain training or a job.

3) Specially designed training courses for the unemployed and other groups with special training needs and other training measures in line with the labour market policy.

The target group of the first type of AMU training is semi-skilled workers, persons with training under the Vocational Training Act and other similar groups (foremen, laboratory assistants, technical assistants, etc.) in both the public and private sectors.

It usually takes place on weekdays during the day. Participants must normally be over 18.

The vast majority of training courses fall into this category.

During training participants receive an

allowance which corresponds to the maximum unemployment benefit.

EQUAL TREATMENT FOR MEN AND WOMEN

17. The first Danish legislation on equal treatment for men and 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 entered 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, sabbatical or childcare leave. In the case of sabbatical and childcare leave, an allowance equivalent to 80% of the maximum unemployment benefit is payable.

This allowance is reduced to 70% for leave agreements made after 1 January 1995. In the case of training leave, an allowance of 100% of the maximum unemployment benefit is payable. Parents with children up to the age of eight can obtain leave to look after their own children for a minimum of 13 and a maximum of 52 consecutive weeks. This applies to both parents for each of their children. One of the aims of the Act is to provide better conditions and motivation for both parents to take maternity/paternity and child care leave.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

18. Employees have a statutory right to co-determination in that those in pubic 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 improvements 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.

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 minimum age has been fixed for certain types of gainful employment. Thus, children who have reached 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 people under 15 and under 18 years may not perform and on conditions to which they may not be exposed at work. An EU Directive on the protection of young people at work was adopted on 22 June 1994. The Directive will apply from 22 June 1996 and the present Danish regulations will therefore be brought into line with it.

22. There are no special statutory rules on the wage 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. An EU Directive on the protection of young people at work was adopted on 22 June 1994. The Directive will apply from 22 June 1996 and the present Danish regulations will therefore be brought into line with it.

The organisation of vocational training is also 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 16 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 the Danish old age pension by virtue of their residence in Denmark. Each year's residence between the ages of 15 and 67 gives a right to 1/40 of the full amount of the pension. Entitlement to the 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 numbers of years' residence in Denmark. The full amount of the Danish old-age pension is at present Dkr 5 317 per month plus a special supplement for single persons of Dkr 2 039 per month; the 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 (*ATP*), which supplements their old-age pension as from the age of 67, or, in the event of their death, provides a benefit for the spouse or children. The level is calculated on an actuarial basis according to the contributions paid by the employee and the employer (a total of approximately 1% of earnings). At the moment this pension amounts to a maximum of approx. 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 on occupational activity. The social services in the municipality of residence offer a range of types of assistance for elderly: home help, meals on wheels, sheltered housing, homes for the elderly.

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 which employ disabled people can obtain financial support for the remuneration for a personal assistant for the disabled person for up to 20 hours a week. 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 up 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 parties 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 1.47 million workers (1993) out of the total workforce of about 2.9 million (1993), are affiliated to the Danish Federation of Trade Unions (LO). Others have joined the Federation of Public Servants' and Salaried Employees' Organisations (FTF) and the Danish Confederation of Professional Associations (AC). Over 80% of Danish employees are union members.

The employers belong mainly to the Danish Employers' Confederation (DA) and the Federation of Employers' Associations 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 ate 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 in 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 were held by the Commission to be contrary to Community law. The German government 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. The infringement proceedings initiated by the Commission have been discontinued.

   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 living in Germany with Greece (since 1988), Spain (since 1991), Italy and Turkey (since 1993) and Portugal (since 1994). These projects are seen as an initiative to promote freedom of movement and equal treatment in work/occupations, as well as social protection. 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 52.6 million made available in 1992 for the vocational and social integration of foreigners in the Federal Republic of Germany was increased in 1993 to DM 54.5 million.

   Federal funding of DM 36 million was made available in 1993 for the social counselling of foreigners.

   b) The Community rules on reciprocal recognition of diplomas and other qualifications also apply to employees. The above-mentioned work at Community level has been completed with the adoption of the Directive on a second general system for the recognition of professional education and training. The planned transposition of the directives on reciprocal recognition into German law will ensure that the qualifications of migrant workers are fully recognised for the purpose of access to occupations.

   c) There are a wide range of special provisions under European Community law (Regulation 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 Regulation (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. Daily working time is limited by law to a period commensurate with health protection requirements. In principle, the daily working time may not exceed eight hours. It may be increased to up to 10 hours, provided that the average daily working time over 6 months or 24 weeks does not exceed 8 hours. The parties to a collective agreement may extend the maximum permitted daily working time of 10 hours if workers are regularly on call for substantial periods during working time.

   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 supervisory authorities may authorise further exceptions.

   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 24 working days (four weeks) in the old and new *Länder* alike.

   This means that the German government has transposed into its national law the provision of the Directive on the organisation of working time prescribing a four-week minimum period of paid leave throughout the Community. The law in question will enter into force on 1 January 1995. 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, as a general principle, no work

may be done on Sundays or public holidays. Where, exceptionally, work is done on Sundays or public holidays, workers are entitled under law to corresponding days off in lieu during the week. At least 15 Sundays per year must be work-free.

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 (1993). They are now required to pay 19.2% of their pay up to a set ceiling (as against 17.5% hitherto). From 1 January 1995 onwards, the rate will be 18.6%. Otherwise, see last year's report.

All workers who are unfit for work due to illness continue to receive their pay from their employer for 6 weeks.

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

c) The unemployed are entitled to unemployment benefit provided that they have completed the qualifying period and meet the other condition under the Employment Promotion Act (AFG). Unemployed people who have one child to be taken into account under the provisions of fiscal law receive unemployment benefit of 67% of their estimated last (net) pay, and other unemployed people 60%. As a general principle, an unemployed person is entitled to unemployment benefit for 12 months, although older unemployed people are entitled to receive up to 32 months' unemployment benefit.

Unemployment relief is a subsidiary means-tested pay-replacement benefit which complements unemployment insurance. In principle, it is intended for unemployed people who have been drawing unemployment benefit or have performed work for which contributions must be paid. Unemployed people who have one child to be taken into account under the provisions of fiscal law receive unemployment relief of 57% of their estimated last net pay, and other unemployed people 53%. Unemployed people who have not been drawing unemployment benefit receive (primary) unemployment relief for a maximum period of 1 year.

Persons who cannot claim accident insurance or pension insurance benefits, unemployment benefit or unemployment relief can obtain subsistence benefit under the Social Relief Act if they do not have the means to provide adequately for their daily material needs.

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 their constitutional right of freedom of association, make use of the strike 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 under the dual system (i.e. organised by businesses and schools) is not dependent on a particular school-leaving certificate and is therefore, as a general principle, open to all. One condition, though, is that the trainee must sign a vocational training agreement with a business covering the essential aspects of the arrangement. If a person's social background or general level of education make it difficult for him to begin or continue such training, assistance is provided. There are also other forms of vocational training in full-time vocational training schools.

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) may be available from the Federal Labour Agency where a particular course of training is necessary so that an applicant who is either jobless or under threat of being made redundant may enter employment or is not made redundant or so that an applicant who has no vocational qualifications may obtain a qualification, and provided certain other conditions are met (e.g. occupational experience for participants who have not completed vocational training, contribution periods, etc.). 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

16a-b) The Federal Childcare Benefit Act described in the second (1992) 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-Württemberg, Bavaria, Rhineland-Palatinate, Thuringia and Saxony have complied so far. On 1 October 1994, Brandenburg introduced a flat-rate one-off congratulatory payment of DM 1000.

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 are granted, on application, a reduction of up to 50% of their working time if they actually look after at least one dependent minor or one close relative who has been certified by a doctor as needing care. An application for part-time work may not be turned down unless there are compelling work-related reasons for doing so. Civil servants may continue to work part-time for family reasons for as long as they meet the family-related conditions. 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 now required to make more of an effort to increase the percentage of women benefiting from all employment 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 with a high rate of female participation to ensure that an appropriate share of jobs go to women. The government also wants to make people more aware of part-time work and improve the job prospects of women in eastern Germany by making it more attractive, since part-time work is of more interest to women than men. The government's many awareness-raising measures as part of its broadly-based campaign for part-time work in the summer of 1994 made considerable progress in this direction. Future efforts will be designed to produce more ideas for the development of part-time strategies and to make employers more willing to consider recruiting women.

The scope of the new labour market instrument "Arbeitsfoerderung Ost" created on 1 January 1993 specifically for the new Länder was broadened by the entry into force of the Employment Promotion Act (Bfg) on 1 August 1994. The Federal Labour Agency now promotes the employment of male and female workers in projects designed to improve the environment, the social services or help for young people, not only in the new Länder, but throughout the country. Furthermore, the scope in the new Länder was extended to cover measures to promote sport for all, cultural activites and preparatory work for the preservation of historical monuments. 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. However, there should also be good openings for women in sport for all, cultural activities and the protection of historical monuments.

The law on equal rights for men and women (the second equal rights law of 24 June 1994) entered into force on 1 September 1994. 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.

The second equal rights law also includes provisions to improve the equal treatment of men and women at work, including entitlement to appropriate damages (of up to 3 months' pay) where an employer treats an applicant unfairly in respect of recruitment or promotion because of his/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.

The second equal rights law also extends the general legal entitlement to part-time work and leave for family reasons to managerial and supervisory functions.

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 where the care of children or other persons requiring care makes it impossible for them to participate in a training course 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 Works Council Constitution Act 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 Directive on the establishment of European works councils, which was supported by the German government, was adopted by the Council on 22 September 1994. The work of transposing this Directive into German law is under way.

18. a) Under the terms of the Works Council Constitution Act 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 planning, vacancy notices, in-house training, individual measures such as staff classification, movement and recruiting. In the event of dismissals or redundancies, the works council 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 Works Council Constitution Act 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. The qualifying period is 35 insured years.
    - 63-year-old insured persons. The qualifying period is 35 insured years.
    - 65-year-old insured persons. The qualifying period is 60 months.

    Retirement pensions (including partial pensions) are not paid to people under the age of 65 years unless their other earnings do not exceed a certain amount.

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 of convalescence and overcoming or alleviating the results of illnesses.

    Care relief is available to persons who, as a result of illness or disability, are 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 (independent professions) EEC nationals and which was issued in order to bring Greek legislation into line with the provisions of the EC Council Directives.

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 as decided by the Member States and the EC Commission in October 1991.

From 1992 to 1994 Greece participated in the reorganised SEDOC system, renamed EURES, through the training of Eurocounsellors organised by the Commission. More specifically, 16 officials of the *OAED* (Organisation for Labour Force Employment) were trained, and are currently dealing with employment issues in the regions of Athens, Thessaloniki, Corfu, Iraklio, Rhodes, Patras, Volos, Larisa, Xanthi and Ioannina.
Likewise, EURES network nodes have been operating since 17 November 1994 in the following cities: Athens, Thessaloniki, Patras and Iraklio, and during 1995 others will start up in the other regions where Eurocounsellors have been trained. Finally, *OAED* cooperation in training Eurocounsellors will continue.

The *OAED*, together with representatives of the Commission, is also examining the possibility of establishing in Greece a 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 (*EGSSE*) is signed each year and determines the wages policy for that year. Furthermore, under 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 (*EGSSE* of 14 February 1984).

For workers with any contractual employment

relationship with the public services, local government organisations 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 shop workers 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 recognised 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 organisations, 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.

Finally, Greek legislation was brought into line with EC Council Directive No 91/533/EEC of 14 October 1991 by means of Presidential Decree 156/94 on the "Employer's duty to inform workers about the terms governing their employment contract or relationship" (Government Gazette 102/A/05.07.1994).

With regard to information and consultation, in the event of collective redundancy, which falls within the competence of our department, the undernoted rules apply.

In accordance with Law 1387/83 (Articles 3 and 5):

Before an employer enforces a collective redundancy, he must consult the workers' 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 *EGSSE* 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 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.

Article 5 of Law 2224/94 (Government Gazette 112/A/06.07.1994) increases to 20 days the leave referred to in Article 2(1) of Law 1346/1983 which can be taken by workers sitting examinations who are over the age of 18 but not yet 25 years old and 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. Such leave may be granted in the form of consecutive days or in part.

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 organisations, 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 organisation. 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 organisation 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 organisation.

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 organisation.

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 organisation 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 uniform legal framework covering the social insurance benefits provided by the Organisation for Labour Force Employment (*OAED*) and, consequently, no generalised system of protection. Therefore, different laws apply to different types of benefit, viz.: unemployment (Legislative Decree 2961/54, Laws 1545/85, 1892/90 and 2224/94), family (Legislative Decrees 3868/58 and 527/84, Law 412/85), military service (Laws 2054/1952 and 2952/1952, Emergency Law 604/1968), insolvency (Law 1836/89 and Legislative Decree 1/1990), suspension allowances and special seasonal aids (Law 1836/1989) and maternity benefits (Presidential Decree 776/77).

Article 42(1) of Law 1140/81 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 by Decision of the Minister for the Social Services No 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 (Decision of the Minister for the Social Services No 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) disability (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 31.12.1982.

   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

The legislation at present in force in Greece does not seek to prevent or impose penalties for the creation of trade union organisations by workers: on the contrary, a number of provisions underpin and encourage the unhindered practice of this right.

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

More specifically, the basis for the principle of the right of collective organisation 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:

- Under 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 organisation in that undertaking or enterprise or branch of trade provided he satisfies the conditions for membership in the organisation's articles of association.

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

  If a worker is refused admission to a trade union organisation or if a trade union is refused admission to one of the organisations 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 organisation.

- 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 organisations and generally prohibits any interference whatsoever in the exercise of trade union rights including the right to establish trade union organisations 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 a) Article 19 of Law 1264/1982 as amended by Article 3 of Law 1915/1990, b) Article 20 of Law 1264/1982 and c) Article 2 of Law 2224/1994, which replaced Article 21 of Law 1264/1982, and are as follows:

a) Strikes are organised 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 organisation.

   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 a majority of the workers in an undertaking, public service, public corporate body or local authority. For workers in an undertaking, public service, public corporate body or local authority, if there is no staff association or company guild or 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) For the duration of the strike the trade union organisation which calls it is obliged to make staff available in sufficient numbers to guarantee the safety of the undertaking's installations and to prevent disasters and accidents.

   In the services, bodies and undertakings referred to in Article 19(2) of Law 1264/82, as supplemented by Article 3 of Law 1915/90, the trade union organisation must - in addition to such emergency staff - make available the staff required to maintain basic public services for the duration of the strike.

   The emergency staff and those maintaining basic public services work under the employer's direction for the purposes for which they have been made available.

   The abovementioned staff are chosen in agreement between the representative trade union organisation in the undertaking and the company management.

   In the case of state-sector or public utility undertakings, the specific public needs to be covered by the undertaking in the event of a strike, and the consequences of violating the agreement reached on this,

can be determined on the same basis as mentioned above.

The agreement is drawn up - under the procedure set out in Article 2 of Law 2224/1994 - at the latest by 25 November of each year and is submitted to the competent department of the Ministry of Labour within five days of being signed. The agreement is valid for the duration of the following calendar year.

If the procedure laid down for concluding the agreement is not followed, or the agreement is not concluded by 25 November and not submitted to the Ministry of Labour within five days, the parties involved are obliged to submit to the mediation procedure, in accordance with Article 15 of Law 1876/1990.

If such mediation does not lead to an agreement, each side is entitled to refer the issue to the committee mentioned in Article 15 of Law 1264/1982, as superseded by Article 25 of Law 1545/1985. This committee has three members, is chaired by a court representative and the other members are a workers' representative and an employers' representative.

Issues connected with determining the emergency staff and those maintaining basic public services can also be dealt with under collective agreements for all the undertakings, regardless of whether they are state-run or not and serve the public good or not.

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: 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 Organisation for Labour Force Employment (*OAED*) (Article 50).

   - Law 1545/85: National system to combat unemployment and other provisions (Section E).

   - Law 1566/85: Secondary 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 and prefectural committees (*PEEKA*s and *NEEKA*s respectively) 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 and prefectural committees (*PEEKA*s and *NEEKA*s) 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 *IEK*s 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 *IEK*s, 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 of programmes of further training for 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 *IEK*s 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 *IEK*s 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. *IEK*s 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 *IEK*s, which are already operational.

The programming of the vocational education and training courses in the *IEK*s will depend on the type of training and the educational level of the trainees.

In the second half of 1994 Greece had 57 *IEK*s attended by 13 000 trainees. In an attempt to improve the provision of vocational training the *OEEK* is starting to set up lending libraries in all *IEK*s and, in order to inject a European dimension into vocational training, has decided to implement measures to provide training at institutes or in industry in European Union countries (pursuant to Laws 2158/93 and 2083/92 respectively). Similarly, Decision E/7299/05.05.1994 set up the National System of Certification for the vocational training of students in state and private *IEK*s and for vocational training in trades lacking a recognised occupational title or for students at the old type of vocational schools. Such certification is based on final examinations, written and practical, at national and regional level, in line with the rules governing vocational training.

Furthermore, Decision 40216/94 of the Ministry of Labour issued pursuant to Law 2224/94 (replacing Decision 40091/89 issued pursuant to Law 1836/89) extends vocational training to include people of Greek extraction returning from the former Soviet Union and Albania (unemployed and workers, young people and adults) and also other sectors of the population accorded special attention by the European Union.

Likewise, in accordance with Article 11(4) of Law 2224/94, which replaces Article 6(1) of Law 709/77, people of Greek extraction and nationals of a Council of Europe member country bound by the European Social Charter, which was ratified by Law 1426/84, are entitled - provided they are legally resident in Greece - to take part in any type of vocational guidance or vocational training and education programme run by the *OAED*.

In accordance with Law 2150 of 16 June 1993, which was published in issue 98 of Volume I of the Government Gazette, a legal person under private law, 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 competitivness 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.

Furthermore, Article 16 of Law 2224/94 sets up the National Centre for Vocational Guidance (*EKEP*), a legal person under private law, whose aims are:

a) To provide scientific and technical support for the *OAED* in drawing up and implementing national policy on vocational guidance.

b) To promote contacts between and coordinate the activities of the public and private bodies providing vocational guidance services, the aim being to improve existing services through ongoing refresher courses, exchanges of experience and provision of information.

c) To set up a national information network encompassing all those interested in education and training and exchanges with the European Union countries.

d) To provide vocational guidance services to the *OAED*, the secondary and higher education sectors, vocational education and training centres and bodies, undertakings as well as employer and worker organisations.

e) To train the trainers and to provide update training for counsellors and specialists in the vocational guidance field.

f) To draw up and apply criteria and model approaches for assessing and selecting candidates for education and training.

Finally, Article 17 of Law 2224/94 sets up the National Centre for Certification of Continuing Vocational Training Structures, a legal person under private law, whose aims are:

a) To assist the *ESEKA*, *PEEKA*s and *NEEKA*s to accomplish their tasks efficiently.

b) To verify the suitability of the infrastructure in terms of premises, materials/equipment and training structures, and as regards training programmes, teaching staff and acquisition of vocational qualifications.

c) To draw up programmes for continuing vocational training, promoting teaching methodology and training the trainers.

d) To exchange information and to cooperate with the relevant bodies in European Union countries.

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" (Government 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 vocational 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 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 Organisation 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" (Government 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 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 and procedures governing implementation of the measures in question are set out in Law 1767/1988, as supplemented and amended by Article 8 of Law 2224/1994. Law 1767/1988 - on workers' councils - 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 this figure is reduced to 20.

Article 8(1) of Law 2224/1994 extends the scope of Law 1767/1988 to undertakings falling under Law 1365/1983 insofar as the workers' councils provided for thereunder have not been set up.

Law 1767/88, as supplemented by Article 8 of Law 2224/1994, gives workers the right, through their councils, to take decisions jointly with the employer on a number of subjects affecting the workers in the undertaking, as well as the right to be informed by the employer about any issue prior to implementation of any associated decisions taken by him; such topics include the undertaking's economic activity and its production programming.

In particular:

a) Article 8(3) of Law 2224/1994, which replaced Article 12(4) of Law 1767/1988, states that workers' councils shall take decisions jointly with the employer on the matters listed below, provided there is no trade union organisation in the undertaking and the said matters are not already regulated by collective agreements:

   i) formulation of the undertaking's internal regulations;

   ii) regulations governing health and safety in the undertaking;

   iii) drafting of documentation on programmes for new working methods in the undertaking and on the use of new technology;

   iv) programming of retraining, ongoing training and further training of staff, especially after any introduction of new technology;

   v) 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;

   vi) programming of regular leave;

   vii) the reintegration, at workplaces suited to their abilities, of workers disabled as a result of an industrial accident in the undertaking;

viii) programming and monitoring of cultural, recreational and social events.

All the above subjects are covered by a written agreement, which takes effect after it has been submitted to the competent department of the Ministry of Labour, and it has regulatory force. The agreement is posted on the workers' council notice board.

In the event of disagreement between the employer and the workers' council on any of the above matters, the difference is resolved through the mediation procedure and referral to arbitration, in accordance with Articles 15 and 16 of Law 1876/1990.

Similarly, in accordance with Article 12(5) of Law 1767/1988, the workers' councils study and propose ways of improving the productivity of all aspects of production.

Furthermore, the workers' councils - in keeping with Article 12(6) and (7) of Law 1767/1988 - propose measures to improve the terms of employment and working conditions, and designate the members of the health and safety committee from among their own members.

b) Under 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:

i) any change in the articles of association of the undertaking;

ii) total or partial transfer, extension or reduction of the undertaking's installations;

iii) introduction of new technology;

iv) changes in personnel structure, reduction or increase in the number of workers, and lay-offs or shiftwork;

v) annual programming of investments in health and safety measures in the undertaking;

vi) any information which the workers' council requests and which concerns the matters referred to in Article 12 of this law;

vii) programming of any overtime work.

2. Workers' councils also have the right to be informed of:

i) the general economic trend of the undertaking and of the programming of production;

ii) the undertaking's balance sheet and annual report;

iii) the undertaking's operating results.

c) Under the terms of Article 14, if there is no trade union in the undertaking, the workers' council is to be consulted by the employer:

i) in cases of collective redundancies, insofar as provided for by the legislation in force at the time on the monitoring of collective redundancies;

ii) 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 organisation.

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

Question 19a

1) Greek legislation

Greece has a large framework of legislation on health and safety at work stretching back to 1911 and consisting of 94 laws in all.

These can be broadly broken down into five categories:

a) Laws of a statutory nature, general character and wide scope.

b) Laws containing regulations for the protection of workers exposed to toxic substances or other harmful agents at work.

c) Laws specifying measures for particular types of work or work performed in certain places.

d) Laws containing specifications governing safety or the safe operation of work equipment.

e) Laws focusing on sectors in which occupational accidents have - not only in Greece but internationally as well - a high level of frequency and seriousness, as is the case for worksite accidents.

2) Law 1568/1985

Statutory law 1568/85 on the "health and safety of workers" was adopted in 1985.

This is a framework law of general scope which introduces new institutions/bodies and sets out the fundamental principles for a rational approach to the problem.

Drawing on Law 1568/1985, a large number of presidential decrees were subsequently issued on protection of workers from exposure to lead, asbestos, noise, physical, chemical and biological agents, etc. as well as on protection of workers in highly hazardous fields such as underground civil engineering, ship-building, etc.

The main regulations under this law are as follows:

- Section 1 introduces a number of bodies/persons responsible for improving working conditions in undertakings, viz.:

  - The Committee for Health and Safety at Work (*EYAE*) and the workers' representative for health and safety at work issues. These representatives have responsibilities and rights allowing them to participate in shaping the undertaking's policy on health and safety.

  - The safety engineer and occupational physician at the undertaking. These advise both the employer and the workers, and are mainly concerned with pinpointing and tackling occupational hazards in the undertaking.

- Section 2 establishes the bodies responsible for improving working conditions at

national level, both centrally and regionally.

A central body, the Council for Health and Safety at Work (*SYAE*), was set up at national level. This is a body with many members representing a broad spectrum of bodies and organisations (worker and employer representatives), both trade union and academic/scientific, and also includes representatives from the associated ministries. The *SYAE*'s main task is to voice its opinion on the adoption of new legislative and regulatory instruments concerning worker health and safety topics or on amendments to existing ones. It should be noted that it is obligatory for the *SYAE* to express its opinion before any such instruments are adopted.

At regional level, more specifically in each Prefecture, a Prefectural Committee for Health and Safety at Work (*NEYAE*) has been set up. As was the case for the *SYAE*, the *NEYAE*s consist of worker and employer representatives and representatives from the competent prefecture departments. Their task is to provide information, coordinate the activities of the prefecture's competent departments and organise programmes making workers in the region aware of issues related to better working conditions. The *NEYAE*s also discuss the schedules for and results of action by the labour inspectorate's technical and health divisions.

- Section 3 lays down for the first time the general principles and rules governing buildings, from the design to the construction stages, the aim being to incorporate safety as a fundamental objective from the very outset - i.e. at the design phase - and as one around which everything else revolves.

- Section 4 introduces general measures to tackle occupational hazards stemming from the use of machinery, tools and equipment, the aim being to incorporate safety right from the design stage through to manufacture. Parallel to this, it sets out the basic principles for protection from mechanical and electrical hazards.

- Section 5 stipulates the measures and procedures to be adhered to by employers, the aim being to prevent occupational hazards inherent in the use or introduction at workplaces of physical, chemical and biological agents.

- Section 6 sets out the administrative sanctions and penalties - including halting the production process, depending on the gravity, urgency and scale of the hazard - which can be imposed on employers ignoring the labour legislation governing worker health and safety.

3) Community Directives

a) Harmonisation of Greek legislation with Framework Directive 89/391/EEC:

i. Extends the institutions of the safety engineer, occupational physician and worker representatives to cover almost all workers.

ii. Introduces new employer obligations, viz.:

* written assessment of existing hazards at work;
* adaptation of work to people;
* drawing-up of prevention programmes, to cover work organisation and working conditions as well;
* duty of employers involved in work at the same site to cooperate and coordinate their activities in ensuring the necessary safety measures.

iii. Reinforces and spells out employers' duties as regards worker consultation and cooperation, information and training.

iv. Sets out in greater detail and expands workers' obligations.

v. Ensures monitoring of workers' health under the employer's duty to provide

the services of an occupational physician and under the national health system.

b) Harmonisation of Greek law with the directives introduced pursuant to Article 16 of Directive 89/391/EEC, more specifically:

i. Directive 89/655/EEC supplements and spells out in greater detail Section 4 of Law 1568/85 through the enactment of minimum health and safety requirements governing the use of work equipment (machinery) by workers.

ii. Directive 89/656/EEC; in addition to the employer's existing duty to provide workers with personal protective equipment, this lays down general rules for the choice, provision, assessment and use of personal protective equipment as well as obligations incumbent on the makers, importers and suppliers of such equipment.

iii. Directive 90/269/EEC lays down general rules for workplace organisation so as to avoid manual handling of loads and reduce the hazard specifically of back and lumbar-region injury to workers.

iv. Directive 90/270/EEC which, over and above the existing provisions for workers, stipulates minimum requirements for visual display units, and also the employer's obligation to arrange workplaces in such a way as to avoid hazards principally to the eyesight and musculoskeletal system of workers using VDUs.

v. Directives 90/394/EEC and 90/697/EEC were used to flesh out Section 5 of Law 1568/85 as regards exposure of workers to carcinogens and biological agents at work.

vi. Directive 92/57/EEC supplements the existing detailed legislation on construction and civil engineering worksites through introducing a) the requirement for there to be a coordinator for the design and execution stages and b) a health and safety plan and file.

vii. Directive 92/58/EEC supplements existing legislation on provision of signs at work with new requirements governing the marking of containers and pipes, fire-fighting equipment and traffic routes, and sets out the required acoustic and visual signs, signboards with pictograms, etc.

c) Harmonisation of Greek legislation with other Community directives will flesh out still further the legislative framework for workers' health and safety, the aim being to improve the level of protection.

Question 19b

Worker participation in decision-making on health and safety issues is broad, more specifically:

1. At undertaking level, the employer is obliged to meet the workers' representatives every three months to discuss health and safety matters and - with the assistance of the safety engineer and the occupational physician - to deal with in-house health and safety problem.

2. At prefectural and national levels, the workers participate - via their representatives - in the meetings of the *NEYAE*s and the *SYAE*.

3. Similarly, worker representatives take part in joint committees overseeing working conditions at building and civil engineering sites and in the ship-building and ship-repair industries.

4. Finally, it should be noted that the parties to collective agreements can decide jointly on worker health and safety issues.

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 authorised 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 recognised 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 arrangements 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 organised by the *OAED* which awards the young person a certificate for the course attended.

Under 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.

THE ELDERLY

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 the section 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 organisation, 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 organisation 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 PERSONS

The measures which have been taken by the State for the social and vocational integration of disabled persons are as follows:

1.1 Article 22 of Law 2224/94 (Government Gazette 112/A/06.07.1994) introduced the following amendments to Law 1648/86:

a) Protection for a disabled person's spouse as well when the level of disability is 67% or over.

b) Increase in the total percentage of protected persons from 7% to 8%, broken down as follows:

* 2% large families (parents and children);
* 2% disabled people;
* 1% children of war disabled, of peace-time disabled and of civilians disabled in war;
* 1% national resistance fighters and their children;
* 1% people having children, brothers/sisters or a spouse with serious mental, psychosomatic problems and at least 67% disabled;
* 1% all other protected individuals.

c) Repeal of Article 27(30) of Law 2166/93 (Government Gazette 137/A) and reinstatement of the provisions repealed earlier, repeal of Articles 1(2) and 12(2) of Law 1648/86 and of Joint Decision 30965/14.05.91 taken by the Ministers of National Defence and Labour "amending the percentages of persons placed in work and protected under Law 1648/86" (Government Gazette 390/A).

d) Promulgation of a Presidential Decree, following a proposal from the Minister of Labour, to govern the administrative sanctions, procedures and competent bodies for imposing the said sanctions in the event of non-application of Law 1648/86.

1.2 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 Article 1(4) of Law 1648/86 is set at 40%.

2. Decision No 31223/31.05.94 of the Minister of Labour setting up programmes relating to the contribution of the Organisation for Labour Force Employment *(OAED)* to the subsidy granted to employers of up to Dr 200 000 to cover ergonomic adaptation of workplaces for disabled persons.

3. Joint Decision 31793/17.06.94 of the Finance and Labour Ministers setting up programmes for subsidising private undertakings, public utility undertakings and organisations, cooperatives, trade groupings and associations thereof which employ disabled persons under the compulsory recruitment procedure (Article 2 of Law 1648/86), and in general for subsidising employers recruiting disabled persons. The latter receive a subsidy of Dr 3.800 per day for the first 12 months

and Dr 2.500 per day for the remaining 12 months without any further assistance from the *OAED*.

4. Decision 32333/05.08.94 of the Deputy Minister of Labour setting up a programme to provide a subsidy of Dr 900.000 to certain self-employed disabled persons active in the manufacturing and services sectors.

5. Under 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. According to the previous reports from the Spanish government, there are no restrictions other than those imposed for reasons of public order, public safety or public health.

2. Community legislation on freedom of movement for workers having been fully implemented in Spain, their right of residence is fully guaranteed in the terms of the European Union's own legislation. The EURES network set up by the European Commission Decision of 22 October 1993 (employment services in the Member States and the Commission), for example, is already operational in the Spanish National Employment Institute (INEM), and was presented officially and publicly to the media and social institutions on 17 November 1994. The system is administered within the INEM by 33 EURES Euroadvisers from 31 Provincial Directorates.

The Spanish authorities have also made a number of legislative changes and undertaken administrative restructuring with the aim of promoting the integration both socially and at work of persons exercising their right to freedom of movement by taking up employment in a Member State other their country of origin.

The incorporation of the Directorate-General for Migration into the Social Affairs Ministry under Royal Decree 1173/1993 of 13 July 1993 underlines the importance of the promotion and social integration programmes for immigrants.

Legislation includes the Order of 7 March 1994 issued by the Social Affairs Ministry, establishing action programmes for immigrants with the aim of facilitating their progress and integration into Spanish society in accordance with the principles of equal rights, equal opportunities and respect for their culture of origin.

The Social Affairs Ministry's Order of 16 February 1994 establishes and sets out the conditions for action programmes for emigrants and their dependent relatives in order to cater for specific economic needs and expenses arising from emigration or return to the country.

In addition to the financial aspect, this Ministerial Order provides for assistance with social integration and vocational guidance, improvement of their social situation in associative and cultural terms and management of employment abroad. The aim of providing assistance for management of employment abroad is, on the one hand, to facilitate mobility for young workers by providing opportunities for them to improve their occupational and language skills and acquire work experience abroad, with a view to offering travel possibilities via exchange programmes. The aid in question caters for specific needs in this sector on the Spanish side, outside the joint framework referred to in Article 50 of the EC Treaty while sharing its principles and objectives.

On the other hand, the assistance for management of employment abroad includes a series of measures enabling Spanish workers to obtain a job abroad, assistance being available to job-seekers wishing to work abroad, employers (individuals or firms, either Spanish or foreign) offering vacancies and other intermediaries recognised by the Directorate-General for Migration within the Ministry for Social Affairs.

3. There have been no changes during the reference period to legislation on family reunification and recognition of vocational qualifications, other than the Ministerial Order of 10 February 1994 establishing the National Coordination Unit for implementation in Spain of the Community's PETRA programme, set up by Decision 91/387/EEC.

EMPLOYMENT AND REMUNERATION

4. There have been no changes in this area since the previous report. The Spanish Constitution, Workers' Statute and other labour legislation all recognise the right to free choice of occupation, and any changes in the legislation referred to must be in keeping with the principles of equal treatment and non-

discrimination, and freedom of access to and choice of trade or profession.

5. As stated in the previous report, the general minimum wage, set annually, covers all workers irrespective of the type of contract or number of working hours. Concerning the withholding, seizure or transfer of wages, in addition to the provisions of Article 1449 of the Civil Indictment Act, under which personal property, books and instruments needed for the debtor's official trade, occupation or profession are non-seizable, wages and salaries, pensions, etc. up to the equivalent of the statutory minimum wage are also non-seizable in accordance with Article 27.2 of the Workers' Statute, under which the total statutory minimum wage is non-seizable.

However, Article 1451 of the Civil Indictment Act provides for an exception where such seizure is for the purposes of provisional or permanent alimony payments to the worker's spouse or children, awarded by the courts in cases of annulment, legal separation or divorce, in which case the amount to be withheld is fixed by the judge.

Law 11/94 of 19 May 1994 amending certain articles of the Workers' Statute and consolidated text of the Work Procedures and Social Order Offences and Penalties Acts has amended paragraphs 3, 4 and 5 of Article 32 of the Workers' Statute concerning wage guarantees and added a new paragraph 9 to Article 33 concerning the Wage Guarantee Fund.

Under the new version of paragraph 3 of the above-mentioned Article 32, "wage claims not covered by the foregoing articles shall be treated as priority up to an amount equivalent to three times the general minimum wage multiplied by the number of days of outstanding payment, this taking precedence over all other claims with the exception of those deemed indefeasible under the law".

Under paragraphs 4 and 5, the instigation of insolvency proceedings does not have suspensory effect on proceedings brought by workers to recover outstanding wage claims, and such claims maintain their recognised precedence where insolvency proceedings have been initiated or competing claims made on the firm's assets.

Under the new paragraph 9, "the Wage Guarantee Fund shall be considered an independent party in the arbitration proceedings for the purposes of meeting the obligations provided for in this Article".

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

7. The regulations governing the duration and, particularly, the distribution of working hours have been changed by Law 11/94 of 19 May 1994, amending certain articles of the Workers' Statute and the consolidated text of the Work Procedures and Social Order Offences and Penalties Acts.

Article 34 of the Workers' Statute, for example, as revised by Law 11/1994, stipulates that the length of the working day shall be determined by agreement, collective agreement or the work contract, with a maximum standard working week of 40 hours' actual working time averaged over the year.

The distribution of working hours may vary over the year if so arranged by collective agreement or, failing this, by agreement between the employer and the workers' representatives. The minimum daily and weekly rest periods as laid down by law must be complied with in all cases. The minimum rest period between working days is 12 hours and the maximum actual working time per day, except where variable working hours have been agreed, is 9 hours. In all cases, where a continuous work period exceeds 6 hours, a rest period of at least 15 minutes during that period is obligatory.

In addition to these standard regulations governing working hours, the Government is authorised by law, subject to consultation with the most representative trade unions and employers' organisations, to extend or restrict the duration and distribution of working hours and rest periods in sectors whose specific characteristics require special arrangements.

The employer is also obliged, as before, to draw up a work timetable for the year which must be displayed in a clearly visible place on the work premises. As well as annual distribution of working hours, this timetable should show weekly and annual rest periods, the latter as a general guide.

With regard to weekly rest periods, Article 37.1 of the Workers' Statute, as amended by Law 11/1994, provides as follows: "workers shall be entitled to a minimum continuous weekly rest period, cumulative over a period of up to 14 days, of one and a half days which shall, as a general rule, include Saturday afternoon or, as appropriate, Monday morning and the whole of Sunday".

The government's authorisation to establish alternative work timetabling arrangements extends to setting alternative rest periods for work in arduous or difficult conditions.

Also under Law 11/1994, Article 36 of the Workers' Statute concerning night work, shift work and work rate has been revised. Night work is defined as work carried out between 10 at night and 6 in the morning.

Companies regularly employing workers on night shifts must inform the labour authorities.

Night shifts may not exceed an average of 8 hours per day over a 15-day period, and overtime is not permitted. In this case too, additional restrictions and guarantees may be established over and above the general regulations for certain activities or certain categories of worker where night work presents a risk to health and safety. Pay levels for night work are set by collective agreement, except where pay scales already take account of the fact that the work is of a nature normally to be carried out at night or arrangements have been made for time off in lieu.

Shift work is defined and regulated in general terms, leaving the necessary leeway for adaptation to the specific circumstances, with a requirement for shift rotation in continuous 24-hour-a-day processes, and a limit on night working of two consecutive weeks unless workers opt for a longer period on a voluntary basis.

There are also regulations on overtime, tending towards restriction. The main change affects compensation for overtime. Such compensation is to be laid down by collective agreement or, failing this, in individual contracts, and takes the form of additional overtime pay at a specified rate, or time off in lieu. In the absence of such agreement, appropriate compensatory leave within the four months following the overtime worked is obligatory. Minimum overtime pay rates are now calculated on the same basis as a standard working hour, abolishing the previous statutory supplement. A further means of controlling overtime has been introduced in the form of an obligation to record overtime worked per day, calculating the total for each worker over the period to which overtime pay is applicable.

Each worker receives details of the overtime worked along with his salary statement.

The conditions governing work contracts other than full-time and open-ended have been amended by Royal Decree 2317/1993 of 29 December 1993 concerning work experience, apprenticeship and part-time contracts; by Law 10/1994 of 19 May 1994 on urgent measures to promote employment; by the Labour and Social Security Ministry's Order of 19 September 1994 laying down certain regulations governing apprenticeship contracts, by Royal Decree 2546/1994 of 29 December 1994 implementing Article 15 of the Workers' Statute concerning recruitment, and by Law 42/1994 of 30 December 1994 concerning fiscal, administrative and social order measures.

Law 10/1994 comprises a series of measures to optimise existing placement possibilities, giving priority to finding jobs for young people without specific vocational training or work experience and creating more work opportunities generally. Non-profit-making placement agencies (as distinct from public employment services) are therefore permissible under the law, as are temporary work agencies, which are covered by the provisions of Law 14/94 of 1 June 1994.

Law 10/1994 also facilitates the creation of job opportunities for young people whose main obstacle to finding employment is lack of specific vocational training or work experience, using solutions such as work experience and apprenticeship contracts combining actual work with training and defining in exact terms the obligations incumbent on both parties.

For part-time work, the Law allows working time to be calculated over the year, thus enabling work organisation systems to be adapted to the firm's production requirements and the worker's family or personal circumstances.

Finally, the Law provides for an 18-month extension of temporary contracts concluded under the employment promotion arrangements for a maximum of three years and due to expire between 1 January and 31 December 1994.

The above-mentioned Royal Decree 2546/1994 implements Article 15 of the Workers' Statute, extending the legal framework covering use of the various forms of fixed-term contract, providing in Article 1 for the possibility of fixed-term contracts in the following circumstances:

- to carry out a one-off job or service;
- to adapt to market circumstances, clear backlog of work, orders, etc.;
- to cover for permanent employees in their absence;
- to launch new activities.

Law 42/1994 of 30 December 1994 amends the text of Law 10/1994 to allow part-time contracts in all the circumstances envisaged in Articles 15 and 17.3 of Law 8/1980 of 10 March 1980, and in the Workers' Statute except in connection with apprenticeship contracts. Contribution periods and the base for social security benefits are, under this Law, calculated exclusively on the basis of hours worked. Where the time worked is less than 12 hours per week or 48 hours per month, all the employers for whom the worker concerned works for less than this period are taken into account for the purposes of calculating social security benefits.

This Law also sets out the provisions for the 1995 employment promotion programme, stating that, for the period 1 January to 31 December 1995 inclusive, companies may take on unemployed workers in the following categories on temporary contracts to carry out any form of activity:

- those in receipt of unemployment benefit under a contributory or non-contributory scheme, who have been registered as unemployed for at least one year;
- workers aged over 45;
- disabled workers.

Such contracts must be for at least 12 months and no more than three years, those concluded for less than the maximum period being extendable for periods of not less than 12 months.

The regulations covering collective redundancy and bankruptcy procedures are set out in Article 51 of the Workers' Statute in the version established by Law 11/1994 of 19 May 1994. The main feature of this procedure is the requirement for conformity in formal and material terms with the principles of Law 30/1992 of 26 November 1992 concerning the jurisdiction of the public authorities and the common administrative procedure, with particular emphasis on speed and streamlining of procedures and protection of citizens' rights in their relations with the public authorities.

The new regulations are based on strictly labour-related considerations of improving and clarifying the conditions regarded as sufficient justification for termination of contracts by the firm via this administrative procedure. Not only has there been an increase in the number of grounds (economic, technical, organisational or production-related), but new fundamental interpretative criteria have been established to be taken into account both by the company initiating the redundancy procedure and by the labour authority with jurisdiction in arriving at a settlement.

In addition, a dual legal and administrative procedure has been established for effecting redundancies on the said economic, technical, organisational and production-related grounds,

dependent on the number of workers affected and the nature of the protected legal interests mainly concerned, both individual and collective.

A further change over the previous legislation is the introduction of more solid guarantees and an improved right to information for workers' representatives, who must now be given simultaneous access to the documentation to be submitted to and processed by the authorities before proceedings can be initiated. In order to increase companies' adaptability to changes in the market situation, negotiation possibilities for the social partners have been extended, allowing negotiation and conclusion of agreements not only with staff representatives and works councils but also with union delegates who meet certain conditions, i.e. those who represent the majority of the members of the works council(s) of the concerns affected by the redundancy procedure.

A further change was brought in by Law 42/1994 of 30 December 1994 on fiscal, administrative and social order measures, which amended paragraph 8 of Article 33 of the Workers' Statute to the effect that, in addition to the existing provision for payment from the Wage Guarantee Fund to cover the statutory compensation for workers in firms employing fewer than 25 persons in the event of redundancy as a result of a measure implemented under Article 51 of the Workers' Statute, the same provision is now made in the event of redundancy due to an objectively justifiable need to shed an individual post, where it is not possible to transfer the worker affected to another job within the firm in the same locality (Article 52.c of the Workers' Statute).

Furthermore, in the same interests of protecting and guaranteeing the rights and interests in dispute, the authorities are expressly required to give adequate grounds for their decisions and ensure that they are consistent with the initial application, and the responsibility for inaction by the authorities, for whatever reason, is now placed with the authorities themselves rather than with the citizen applying for authorisation to adopt measures to secure the company's future viability, in that an estimation is made of the harm caused by the authorities' alleged action in failing to reach a decision by the deadline laid down in the Workers' Statute.

8. The statutory minimum entitlement to paid holiday is 30 calendar days. According to Article 38.2 of the Workers' Statute in the version established by Law 11/1994, the periods within which leave may be taken must be established by agreement between the company and the worker concerned, as specified in the relevant collective agreement on timetabling of annual leave. If the parties are unable to reach agreement, the period is established through a special summary procedure by the competent authority, whose decision is final.

The regulations on weekly rest periods have already been covered in a previous paragraph.

9. Working conditions are established for all workers, as laid down in Article 3 of the Workers' Statute, via the labour relations instruments, i.e. national legislative provisions, collective agreements, the agreement of both parties as set out in the work contract, which must not contain conditions which are less favourable to the worker or which conflict with the provisions and collective agreements referred to above, or, in the absence of such, customary local practice the occupation concerned, except by express derogation.

With regard to individual workers and individual work contracts, neither the current version of Article 8 of the Workers' Statute, established by Law 11/1994 referred to above, nor the previous version lays down a general requirement for a contract to be set out in writing before it is regarded as valid, although either party may demand this at any time during the contract. The exceptions to this rule are specified in the Workers' Statute or the specific regulations governing the type of contract concerned. The Law states that contracts shall be in writing wherever a legal provision so dictates, which is the case for work experience and apprenticeship contracts, part-time and homeworking contracts, one-off contracts for a specific job or service and

contracts for workers recruited in Spain to work for Spanish firms abroad. All fixed-term contracts of over four weeks' duration are also subject to this requirement. Non-compliance does not directly affect working conditions, but any contract thus established is legally assumed to be open-ended and full-time unless evidence can be provided to the contrary.

SOCIAL PROTECTION

10.1 The basic structure of the Spanish social security system has not changed at all over the reference period, although 1994 saw the publication of a revised version of the General Social Security Act, approved by Royal Decree-Law 1/1994 of 20 June 1994, incorporating in duly regularised, clarified and harmonised form most of the precepts contained in Decree 2065/1974 of 30 May 1974 approving the revised version of the General Social Security Act, along with certain specific provisions on social security taken from regulations with the force of law from other branches of the legal system.

The following innovations have been brought into the legislation:

- the Ministerial Order of 3 August 1993 has extended the deadline for emigrants and their children to sign the special social security agreement;

- Royal Decree 1575/1993 of 10 September 1993 legislates on the freedom of choice of doctor in the primary health care services of the National Health Institute;

- Law 10/1994 of 19 May 1994 on urgent measures to promote employment lays down the conditions for apprenticeship contracts and the social protection arrangements applicable, including cover for industrial accidents and occupational diseases, standard medical cover, maternity benefits, pensions and the Wage Guarantee Fund.

  New legislation has also been established governing part-time work contracts. Social assistance for persons working less than 12 hours per week or 48 hours per month, who are paying contributions to the social security system, includes cover for industrial accidents and occupational diseases, standard health cover, the Wage Guarantee Fund and maternity benefits.

  Workers on part-time contracts working more than 12 hours per week or 48 hours per month are entitled to the same social protection benefits as workers on full-time contracts, with certain adjustments according to hours worked, laid down by legislation or established through collective bargaining.

- Royal Decree 2222/1993 of 17 December 1993 sets the social security contribution rates for 1993 for standard risks in the special social security scheme for the coal-mining industry.

- Law 21/1993 of 29 December 1993 on the General State Budget for 1994 fixes the level of the state contribution to health care under the social security system, implemented via the National Health Institute, and to the pension supplements under the contributory scheme. It also lays down the social security contribution rate and social security pension adjustment criteria for the financial year.

- Law 22/1993 of 29 December 1993 on taxation measures, civil service reforms and unemployment protection.

  Under this law, various measures have been adopted, including the following in the area of social protection:

  - in certain specified conditions, contributions prior to registration with the special social security scheme for self-employed or independent workers are taken into account for the purposes of calculating benefits;

  - self-employed workers who have opted for cover for temporary incapacity for work under the appropriate social security scheme can now choose to take out such

cover with the relevant management body, a mutual insurance company specialising in occupational accidents and industrial diseases, or a social welfare mutual insurance society;

- the regulations on payments of social security debts, including unpaid contributions, have been revised.

- Resolution of 30 December 1993 by the Secretariat-General for Social Security, provisionally recognising as an occupational disease the illness identified in the textile spray-printing industry in the Autonomous Community of Valencia.

- Royal Decree 2319/1993 of 29 December 1993, revising the level of social security pensions and other public social protection benefits for 1994, sets the maximum income for entitlement to dependent child allowance at Ptas 1 035 000 per year from 1 January 1994 and establishes the amounts for specific categories of dependent child allowance for 1994 as follows:

  - Ptas 391 620 per year for children aged 18 or over with a minimum of 65% disability;

  - Ptas 587 460 per year for dependent children aged 18 or over with a minimum of 75% disability who need the assistance of a third party to carry out the basic everyday functions.

- The Order of 19 January 1994 of the Ministry of Labour and Social Security sets out the maximum and minimum contributions to the general social security and unemployment insurance schemes and the Wage Guarantee and Vocational Training Funds for 1994, implementing Law 21/1993 of 29 December 1993 as follows:

  - maximum earnings subject to contributions: Ptas 349 950 per month;

  - minimum earnings subject to contributions for workers aged 18 or over: Ptas 70 680; minimum for workers under 18: Ptas 46 650.

Contributions to the general social security scheme have been set at 29.3% for basic cover, 24.4% to be paid by the employer and 4.9% by the worker. The reduction of 10% in the current contributions for cover for industrial accidents and occupational diseases has been maintained and is payable exclusively by the employer.

The specific contribution bases and rates for the various special schemes within the social security system are also laid down.

Special arrangements have also been established in respect of contributions applicable to part-time and apprenticeship contracts.

- Royal Decree 150/1994 of 4 February 1994 regulating the 1994 rural employment programme.

- Order of 17 May 1994, issued by the Ministry of Labour and Social Security, extending the scope of Royal Decree 2805/1979 of 7 December 1979 on inclusion in the general social security scheme of Spanish nationals non-resident within Spanish territory with the status of civil servants or employees of international intergovernmental organisations, to include Spanish nationals resident in Spain who are working for the European Space Agency; and establishing a special arrangement for officials of the Organisation of Ibero-American States for Education, Science and Culture, referred to in Royal Decree 317/1985 of 6 February 1985, with a new deadline for signing the special social security agreement.

- The arrangements for military service were approved by Royal Decree 1410/1994 of 25 June 1994, according to which contributions are credited and full social security protection is maintained wherework contracts are suspended for

the duration of compulsory military service.

- Order of 5 October 1994, issued by the Ministry of Labour and Social Security, providing for benefits to be payable prior to normal retirement age to workers affected by company restructuring. The benefits are intended to provide financial support for workers made redundant for economic, technical, organisational or production-related reasons until they are eligible for a contributory retirement pension under the social security system.

- The Order of 19 October 1994, issued by the Ministry of Health and Consumer Affairs, revises the maximum prescription charge payable by social security beneficiaries for medicaments listed in Annex II of Royal Decree 83/1993 of 22 January 1993. The increase is linked to the consumer price index, and has been set at (maximum) Ptas 419.

  Law 42/1994 of 30 December 1994 on fiscal, administrative and social order measures amends the collection procedure applicable to social security payments, as provided for in the revised version of the General Social Security Act, which refers to the recovery of debts owed under the social security system, with particular reference to contributions, with a view to rendering the administrative procedures for collection of such debts as fast, efficient and simple as possible.

  The same law has also amended social security cover, combining the current benefits payable for temporary incapacity for work and temporary invalidity into a single "temporary incapacity" benefit, while giving separate status, unrelated to temporary incapacity for work, to maternity cover, the benefit payable representing 100% of the corresponding statutory base. The statutory base is established on the same basis as that for temporary incapacity benefit derived from the standard cover calculations. The declaration and recognition procedures for permanent invalidity for the purposes of social security benefits under the public scheme have also been standardised, the National Social Security Institute being responsible for their management, and, finally, the section of the revised version of the General Social Security Act concerning the regulation of mutual insurance societies specialising in industrial accidents and occupational diseases has been revised in the interests of greater administrative transparency.

10.2 The following changes have been made in legislation on unemployment protection:

- Law 22/1993 of 29 December 1993 on fiscal measures, civil service reforms and unemployment protection has brought in the following changes to the unemployment protection system:

  - For persons officially registered as unemployed, there is a greater emphasis on the involuntary nature of the termination of the work contract where this is at the decision of the employer during the probationary period, with the requirement that termination of the contract in the previous job must also have been involuntary or must have occurred more than three months previously, or three months must have elapsed following a ruling of unfair dismissal, where applicable.

  - The minimum benefit under the contributory scheme for workers with no dependent children has been adjusted to 75% of the statutory minimum wage, being maintained at 100% for workers with dependent children.

  - Justificatory grounds for withdrawal of benefit now include voluntary renunciation of entitlement.

  - With regard to continued payment of social security contributions while in receipt of benefits, the beneficiary is responsible for 65% of the worker's contribution, the administrative body

crediting the employer's contribution and the remaining 35% of the worker's contribution. For workers covered by the special agricultural scheme, the reduction in the worker's contribution is 72%, which is credited by the administrative body.

- Certain amendments have been made to the conditions for obtaining non-contributory unemployment assistance. The conditions affected are: waiting period, lack of personal income and family responsibilities.

  - During the compulsory waiting period of one month in certain assistance cases, as well as being obliged to accept any appropriate job offer, the individual concerned is not entitled to refuse participation in promotional, training or retraining activities.

  - To qualify for non-contributory unemployment benefit, all applicants and beneficiaries must have a total income from all sources of less than 75% of the statutory minimum wage.

  - To qualify for non-contributory assistance on the grounds of family responsibilities, the beneficiary must have a dependent spouse and children aged below 26, or incapacitated majors, the combined income of whom, divided by the number of family members the unit comprises, must not exceed 75% of the statutory minimum wage.

- In the case of unemployment benefit following loss of a part-time job, the amount of benefit is proportional to the hours previously worked.

- Certain amendments have been brought in strengthening the obligation to actively seek employment and be registered with the public employment services as available for work; most of the changes concerning offences and penalties applicable to employers are with a view to improving the functioning of the labour inspectorate.

- Law 10/1994 of 19 May 1994 on urgent measures to promote employment has affected the unemployment protection system in the following areas:

  - Social protection of apprentices in the new apprenticeship contracts does not include cover for unemployment.

  - In the new regulations governing part-time contracts, social protection where working time is less than 12 hours per week or 48 hours per month does not include unemployment cover; for other part-time contracts, contribution periods and the statutory base for calculating unemployment benefit only take into account hours worked in the terms laid down by the relevant legislation.

  - Concerning the employment promotion programmes:

    - A specific programme has been set up to provide incentives for employers to take on persons in receipt of contributory and non-contributory unemployment benefit, granting reductions of between 50 and 100% in the employer's social security contributions.

    - Emphasis is placed on promoting community work for unemployed persons in receipt of benefit.

    - Royal Decree-Law 1/1994 of 20 June 1994 approving the revised version of the General Social Security Act which entered into force on 1 September 1994, which regularises, systematises and harmonises the provisions on

unemployment protection found in various acts of legislation, incorporating them into a single text along with the other social security regulations. All provisions on unemployment protection are now contained in Title III of the revised version, which repeals Law 31/1984 of 2 August 1984 on unemployment protection.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

12. There were no changes in the constitutional and ordinary legislation on collective bargaining over the reference period in respect of negotiation procedures and conclusion of collective agreements. In basic terms, pursuant to Article 37.1 of the Spanish Constitution, which recognises collective autonomy, the right to collective bargaining and the binding force of agreements, Title III of the Workers' Statute lays down the conditions for collective bargaining and agreements (statutory agreements). Furthermore, particularly since the reform of the Workers' Statute brought in by Law 11/1994 of 19 May 1994, which amended certain articles of the Statute and the consolidated text of the Work Procedures and Social Order Offences and Penalties Acts, the law now refers to agreements between the contracting parties in the employment relationship other than those within the scope of the above-mentioned Title III, known as extra-statutory agreements, which are covered by the Constitution in the same way as statutory agreements.

There is therefore nothing to prevent collective bargaining, without prejudice to compliance with the regulations on co-existing (statutory) agreements or, of course, other inviolable regulations governing the employment relationship. The possibilities for negotiation are manifold since, while negotiation on a statutory basis requires specific authorisation, non-statutory bargaining only requires mutual recognition and willingness to negotiate by the parties concerned.

With regard to publishing collective agreements, Law 42/1994 of 30 December 1994 on fiscal, administrative and social order measures amended paragraph 3 of Article 90 of the Workers' Statute to the effect that all officially registered agreements must be published free of charge in the national Official Journal, and, depending on the geographical scope of their applicability, in the Official Journals of the relevant Autonomous Communities, within 10 days of their registration. The aim of this amendment is to simplify and facilitate access to publication of collective agreements, which have so far been published, depending on their geographical applicability, either in the provincial Official Journals and the Official Journal of the relevant Autonomous Community, or in the national Official Journal. With effect from this amendment, all those which are national, interprovincial or intercommunity in scope will be published in the national Official Journal, and the remainder in that of the relevant Autonomous Community.

13. The legislation governing the right to strike, which is recognised in the Constitution, has not changed at all since the last report from the Spanish government. There have been certain significant rulings by the Constitutional Court which are indicative of the way in which this right is interpreted, such as Judgment 148/1993 of 29 April 1993 on the inadmissibility of suspension of the Andalusian government's legislation on guaranteeing minimum services during the general strike, and the Judgment of 14 June 1993 which also examines issues connected with the right to strike from the standpoint of other fundamental rights such as equality in the eyes of the law, particularly the question of non-strike bonus incentives, all in connection with collective bargaining.

VOCATIONAL TRAINING

15. The legislation applicable to vocational training in Spain is basically unchanged from that quoted in the previous report, although certain innovations have been brought in:

- The Order of 13 April 1994 implementing Royal Decree 631/1993 of 3 May 1993

laying down regulations for the national vocational training and placement programme. Main features of the Order are authorisation of establishments to participate in the programme and approval of training specialisms, planning and selection of students. It also sets out the various arrangements for grants and awards to be made available under the national vocational training and placement programme, including in this section students participating in European vocational training programmes.

- Agreement by the Council of Ministers setting up the interministerial vocational training unit. The main aim of the unit is to coordinate the functions of the education and employment authorities in the area of vocational qualifications and associated training requirements, by establishing appropriate methods and identifying the technical and logistic instruments which will provide the most effective way of achieving the objectives of the national vocational training and placement programme.

- Law 10/1994 of 19 May 1994 on urgent measures to promote employment contains provisions on two types of training contracts: work experience contracts and apprenticeship contracts. The main aim of the latter is to provide young people aged between 16 and 25 with the opportunity to obtain the theoretical and practical training needed to carry out a skilled job, helping this group, which has particular problems in gaining access to the labour market due to lack of relevant qualifications and specialised training, to find employment. The apprenticeship contracts combine actual work experience with periods of theoretical training to help young people gain a foothold in the world of work.

  The Resolution of 18 October 1994, issued by the Directorate-General of the National Employment Institute, implemented the Order of 19 September 1994, which laid down provisions on specific aspects of training in apprenticeship contracts aiming to guarantee the quality of theoretical training under such contracts, without making the system excessively rigid.

  The work experience contract is intended for holders of university degrees or intermediate or advanced vocational training or an officially recognised equivalent, to prepare them for entering their chosen profession within four years of completing their studies. The basic objective is to enable workers to apply and further their technical knowledge while obtaining work experience appropriate to their level of education.

- Order of 3 August 1994, issued by the Ministry of Labour and Social Security, regulating the programmes of training workshops and work/training centres, and the promotion and development units of the business enterprise centres. It lays down the training requirements for young people of both sexes aged under 25 in the employment and training programmes of the workshops and work/training centres.

  Most of the training for this group is in the form of combined work/training schemes, with an emphasis on employment opportunities in restoration, conservation or promotional activities in connection with the artistic, historic and cultural heritage or improvement of the urban environment and living conditions in urban areas.

  The national vocational training programme, approved by the government at the request of the General Vocational Training Council, sets out the qualitative and quantitative objectives and financing arrangements for vocational training over the period 1993-1996. Among the priority groups to benefit under this programme are the disabled, migrant workers and other groups of first-job seekers. Provision is to be made for an estimated 80 000 students from these groups, with a budget of Ptas 35 200 million over the four-year period.

  In addition, the national agreement on

continuing training establishes the possibility for employees to negotiate with employers for individual training release to enable them to participate in training activities leading to an officially recognised qualification, with entitlement to a grant equivalent to average pay in the sector for the category of occupation concerned. The cost of this, plus the worker's contributions for the duration of the training period, is financed by a National Continuing Training Commission.

The political configuration of Spain with its Autonomous Communities has resulted in the management and running of the vocational training programmes being spread over a number of institutions. At the moment, seven Autonomous Communities (Cataluña, País Vasco, Galicia, Navarra, Generalidad Valenciana, Andalucía and Canarias) have full powers in the administration of vocational education, and the Ministry of Labour and Social Security has initiated the process of transferring administration of vocational and occupational training to the Autonomous Communities of Cataluña, Andalucía, Galicia, Comunidad Valenciana and Canarias which, under their respective statutes of autonomy, are responsible for its management and functioning, particularly in connection with the national vocational training and placement programme, central government having overall power for drafting regulations and general planning.

Finally, the continuing training mechanisms described in the previous paragraph are, as stated, the responsibility both of employers and social actors, signatories to the national agreement referred to, and of the government, which contributes financial and technical support.

EQUAL TREATMENT FOR MEN AND WOMEN

16.1 Since the previous report, Law 11/1994 of 19 May 1994 amending certain articles of the Workers' Statute and of the consolidated text of the Work Procedures and Social Order Offences and Penalties Acts has amended Article 28 of the Workers' Statute concerning equal pay for men and women, to the effect that the obligation of equal pay, free of any form of sexual discrimination, applying to both basic pay and supplements now uses as its term of reference "work of equal value", to eliminate the possibility of indirect discrimination left open by the expression "equal pay for equal work", despite the fact that such indirect discrimination should already have been ruled out by existing legal interpretations of the concept of "equal work", particularly that of the Constitutional Court.

Also under Law 11/1994, the new regulations on job classification and promotion at work state that any job classification system established through collective bargaining or by agreement between employers' and workers' representatives must employ criteria to define the categories which apply the same rules for both sexes.

With regard to promotion, Article 24.3 of the Workers' Statute as amended by Law 11/1994 states that the criteria for promotion within a firm must apply the same rules for both sexes.

Examples of rulings by the Constitutional Court applying the principle of equality in the eyes of the law and non-discrimination on grounds of sex include: Judgment 187/1993 of 14 June 1993 concerning the right of nursing mothers to reduced working hours and Judgment 173/1994 of 7 June 1994 in a case of dismissal infringing the principle of equality and non-discrimination on grounds of sex.

A further measure, brought in by Law 10/1994 of 19 May 1994 on urgent measures to promote employment, was to grant concessions for the year 1994 to companies converting fixed-term contracts into open-ended contracts, which included a subsidy of Ptas 500 000 to companies applying this to women working in occupations in which they are under-represented.

16.2 Apart from the second equal opportunities programme for women (1993-

1994), to which reference was made in the previous Spanish report, other initiatives stepping up action promoting equal treatment for men and women were:

In December 1993, the Institute for Women's Affairs and the National Institute for Industry signed an agreement promoting an equal opportunities programme in companies within the INI-TENEO group with the aim of increasing the number of women in management positions.

- Agreement with the Centre for Health Programmes and Analysis (CAPS) on organising an international conference on "Women, health and work".

- Cooperation agreement between the Ministries of Education and Science, Health and Consumer Affairs and Social Affairs to promote health education, including sex education, from an equal opportunities angle.

16.3 Between 15 October and 15 November 1994 a publicity campaign was run on sharing responsibilities, with the motto "a home is a shared responsibility: living together in equality".

This campaign was part of the second equal opportunities programme, linking in with the following objectives:

- protection of women's employment to ensure that there was no backsliding in the progress already achieved;

- changing women's image to give a true reflection of their actual position in society;

- access to positions of responsibility in all fields, promoting the possibility for both men and women of reconciling work with family responsibilities.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

17. According to the previous report from the Spanish government, the right of workers or their legal representatives to information and consultation is fully guaranteed in Spanish labour legislation.

The adoption of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, created a Community legal basis for recognising the collective rights of workers at Community level which is of crucial importance for development of the social dimension.

18. In addition to the information given in the previous report, the following references to circumstances requiring information, consultation and participation of workers are expressly included in the Workers' Statute as revised by Law 11/1994 of 19 May 1994, already extensively quoted in this report: the identification, by collective agreement, of one-off tasks which could be subject to an individual contract for the specific job or service (Article 15.1.a of the Workers' Statute); the amendment, also by collective agreement, of the duration and reference period of contracts to clear backlogs of work or orders (Article 15.1.b of the Workers' Statute); establishing a job classification system, either through collective agreement or, failing this, by agreement between the employer and the workers' representatives (Article 22.1 of the Workers' Statute); determining the promotion structure within the job classification system (Article 24.1 of the Workers' Statute); determining salary scales, and how they are paid, either by collective agreement or by agreement between the employer and the workers' legal representatives (Articles 26.3 and 29.1 of the Workers' Statute); determining working time and irregular distribution of working time over the year, and establishing whether breaks should be considered as working time or not (Article 34.1.2 and 4 of the Workers' Statute); establishing collectively the rules on overtime (Article 35.1 of the Workers' Statute); determining collectively the rates of pay for night work (Article 36.2 of the Workers' Statute); establishing the timetabling

of holidays over the year in collective agreements (Article 38.2 of the Workers' Statute).

The employer must also inform the workers' representatives of certain aspects of mobility required for the firm's operation; geographical mobility affecting individual workers; and there is a new requirement for a consultation period with workers for mobility arrangements affecting them collectively (Article 40 of the Workers' Statute); an agreement to end the consultation period must be by majority consent in the terms of Article 40.2 of the Workers' Statute; notification by the employer of any decision involving a substantial change in working conditions for individuals; changes affecting workers collectively are subject to a consultation period with the workers' legal representatives (Article 41 of the Workers' Statute); participation in establishing the arrangements for collective redundancy, which is understood as the termination of work contracts for economic, technical, organisational or production-related reasons in the conditions set out in point 1 of Article 51 of the Workers' Statute.

Law 10/1994 of 19 May 1994 on urgent measures to promote employment makes two factors concerning the duration of work experience and apprenticeship contracts subject to collective bargaining.

The statutory duration of work experience contracts of between six months and two years can vary between these limits by arrangement through collective agreement within the sector, depending on the characteristics of the sector concerned and the type of work experience involved.

For apprenticeship contracts, the statutory duration of between six months and three years can be changed by collective agreement, depending on the specific characteristics of the sector and jobs concerned.

PROTECTION OF HEALTH AND SAFETY AT WORK

19. As stated in previous reports, transposal of most of the Community Directives on health and safety at work adopted to date will not greatly affect current Spanish legislation, although in certain cases, such as Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment, transposal does in fact involve considerable health and safety improvements for work with this type of equipment, as the current provisions specifically in this area are in the form of practical recommendations and are not binding.

There have been no changes in legislation on workers' participation in decision making on health and safety matters during the reference period.

PROTECTION OF CHILDREN AND ADOLESCENTS

20. The minimum employment age has not changed since the previous report, which gives full details.

21. Royal Decree 2318/1993 of 29 December 1993 sets the general minimum wage for workers aged under 18 at Ptas 1 334 per day or Ptas 40 020 per month, depending on whether wages are paid daily or monthly.

As stated in previous reports, apart from the amount, the regulations on minimum wages are the same as those for workers over 18. A minimum is also set for casual and temporary workers aged under 18 working for the same company for no more than 120 days a year.

In apprenticeship contracts covered by Law 10/1994 of 19 May 1994 on urgent measures to promote employment, pay for apprentices aged under 18 must not be less than 85% of the general minimum wage for the corresponding age group.

22. Article 34.3 of the Workers' Statute as revised by Law 11/1994 of 19 May 1994 amending certain articles of the Workers' Statute and the consolidated text of the Work Procedures and Social Order Offences and Penalties Acts prohibits workers aged under 18

from working more than 8 hours a day, excluding breaks but including, where relevant, time spent on training and, where the young person concerned works for several employers, the time spent with each employer.

Within the working day, if continuous working time exceeds four and a half hours, workers aged under 18 are entitled to a rest period of a minimum of 30 minutes. Young workers are also entitled to a minimum of two continuous days' rest per week.

Workers aged under 18 are prohibited from night work and overtime.

The aforementioned Law 10/1994 also encourages the employment of young people with no vocational training via apprenticeship contracts, the first supplementary provision stating that "the benefits and conditions established in Law 22/1992 of 30 July 1992 on urgent measures to promote employment and protection against unemployment through conversion of work experience and training contracts into open-ended contracts shall also apply to conversion of training contracts into open-ended contracts under the present Law".

23. There has been no change since the previous report in the legislation governing vocational training for young people aged under 18.

THE ELDERLY

24. The General State Budget Law for 1994 provides for both contributory and non-contributory social security pensions to be increased in 1994.

This Law was implemented by Royal Decree 2319/1993 of 29 December 1993, which introduced the following increases:

1. Contributory retirement pensions

The provisions cover retirement pensions under both the general social security scheme and the special schemes.

These pensions were increased by 3.5%, in line with the forecast increase in the consumer price index for 1994.

The updated pensions are capped at Ptas 254 140 per month, excluding special payments. The annual ceiling is set at Ptas 3 557 960. 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 aged over 65
  - with dependent spouse: Ptas 807 520
  - without dependent spouse Ptas 686 280

- Pensioner aged under 65
  - with dependent spouse: Ptas 706 650
  - without dependent spouse Ptas 598 990

2. Pensions under the former compulsory old age and invalidity insurance system (SOVI), which are not concurrent with another pension, are being increased up to a maximum of Ptas 490 700 per year.

3. Non-contributory retirement pensions have been increased by 3.5% for 1994 to Ptas 32 635 per month.

4. Certain pensions falling outside the social security system enable qualifying persons to receive an income when they reach retirement age. These are:

- non-contributory pensions for the elderly, infirm and persons incapacitated for work, which were set at Ptas 24 935 per month for 1994, with entitlement to two special payments of the same amount;

- non-contributory old age pensions for Spanish emigrants, with the same ceiling as standard non-contributory old age pensions, i.e. Ptas 32 635 per month. Although this pension category has been abolished, it is still payable to existing beneficiaries

25. The social security system provides pensioners with the following social assistance

and social services. These were mentioned in the previous reports from 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. As at 31 December 1993, there were 48 homes run by the National Institute for Social Services (INSERSO) with 10 227 places, and 78 social services approved homes with a total of 2 927 places.

- Day centres and clubs. The total membership of such centres was 1 267 259 as at 31 December 1993.

- Holidays. 323 513 persons benefited from this programme in 1993.

  7 000 places were also reserved for Spaniards resident in other European countries in 1993. In 1993/94 Spanish senior citizens resident in Latin American countries also became eligible.

- Subsidised thermal cures. In 1993, over 49 790 persons benefited from this programme.

- Day-care centres. This service is intended for dependent or semi-dependent elderly persons with physical or mental disabilities whose families are unable to care for them adequately due to excessive stress or work responsibilities. In 1993 there were 23 such units, 14 of which were in homes and day centres run by the social services, with a total availability of 432 places.

- Home helps. This programme is run either directly by the INSERSO or jointly with other public or private bodies. A total of 24 411 elderly persons benefited from this service in 1993.

Fiscal provisions

With regard to the 1993 tax returns, Law 18/1991 of 6 June 1991 on personal income tax provides for the total tax due to be reduced by Ptas 30 000 for each relative in the ascending line aged over 75 who lives with the taxpayer.

The same law provides for a deduction of Ptas 15 000 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 up to the year 2000. Consideration was given to the changing characteristics of the elderly over the next ten years and the economic and social consequences of the ageing of the population. Finally, the resources available for services to senior citizens 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" bodies (NGOs, senior citizens' associations, etc.), with a certain emphasis on rectifying the imbalances between the various Autonomous Communities.

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 new services such as day care facilities, personal alarms, short-

term residence and sheltered housing.

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 631/1993 of 3 May 1993.

In 1993, the INSERSO ran 294 vocational training courses for 3 740 students with financial support from the European Social Fund. The total cost of the courses was Ptas 1 170 253 061.

A total of 18 332 persons benefited from vocational guidance in 1993.

In order to promote labour recruitment, Law 10/1994 of 19 May 1994 on urgent measures to promote employment provides for reductions in social security contributions for employers taking on disabled persons on apprenticeship and work experience contracts, and the possibility of subsidising the conversion of temporary contracts into open-ended contracts in the case of disabled employees. Under the same law, disabled persons working on apprenticeship contracts are not taken into account in establishing the maximum number of apprentices firms can take on according to the size of the workforce, and persons in receipt of non-contributory invalidity pensions working on apprenticeship contracts are automatically entitled to continuation of the pension immediately upon expiry of the contract, any income from the work concerned not being taken into account in their annual income calculation. This provision is currently contained in Article 144.1.d) of the revised text of the General Social Security Act.

The employment promotion programme for 1995, governed by the provisions of Article 44 of Law 42/1994 of 30 December 1994 on fiscal, administrative and social order measures, allows the temporary recruitment specifically of disabled people and certain other groups. Furthermore, if the worker concerned is in receipt of unemployment benefit, the recruiting employer is entitled to a 75% reduction in the social security contribution for standard cover, or 100% for the first such worker taken on by the firm.

Provision is also made for various job creation support programmes, including integration of disabled persons into special employment centres and self-employment, the criteria for which are set out in the Ministerial Order of 22 March 1994.

This Order provides for subsidies for job creation projects for the disabled in the special centres in order to finance technical assistance, investment in fixed assets and lowering of the interest rates on loans, also for the purposes of investment in fixed assets.

The three types of subsidy may not jointly exceed 2 million pesetas per job created. Labour cost subsidies are also made available to maintain the jobs created in the special employment centres, covering up to 50% of the general minimum wage and 100% of the employer's social security contribution for each disabled worker on the staff. Provision is also made for financial assistance for adapting workstations, financial restructuring and balancing budgets, and for technical assistance to maintain the jobs concerned.

As at 31 December 1993, there were 351 special employment centres for the whole of Spain, employing a total of 9 249 disabled persons.

26.2 Social integration

Economic measures

Non-contributory pensions covered by Law 26/1990 of 20 December 1990, for persons aged over 65 and disabled persons aged between 18 and 65, guarantee a regular income to this group. The amount for 1994 was set at Ptas 32 635 per month, with entitlement to two special payments of the same amount. This represents an increase of 3.5% over the 1993 figure.

As at 31 December 1993, a total of 93 854 disabled persons were in receipt of this benefit.

Persons qualifying for a non-contributory invalidity pension whose level of disability or chronic illness is officially assessed at 75% or over and who need the assistance of a third party to perform the basic everyday functions are entitled to a supplement of, in 1994, Ptas 228 445 per year.

In addition, the following benefits provided for under Law 13/1982 of 7 April 1982 on social integration of disabled persons are still payable to the existing beneficiaries, although these benefits have since been replaced by contributory pension schemes:

- Income guarantee allowance, minimum income, monthly income support set at Ptas 24 935 per month for 1994, plus two special additional payments.
- Carers' allowance. This is paid in 14 instalments set for 1993 at Ptas 9 725.
- Mobility and transport allowance. This is paid in 12 instalments of Ptas 5 305.

Benefits are also payable to families with dependent disabled children, the amount varying between Ptas 6 000/month and Ptas 32 635/month according to the degree of disability.

There have been no changes in the fiscal provisions since the last report from the Spanish government.

In the area of social assistance or social services, the State guarantees all disabled people health care and access to education either in the mainstream education system or, where appropriate, in special schools.

The INSERSO has also implemented various care programmes for the disabled promoting their integration through individual holistic care. These include:

- Basic care programme for the disabled

This is a multidisciplinary programme carried out in the standard establishments and providing information and guidance, appraisal of disabilities, rehabilitation and treatment, training and recuperation. A total of 451 809 persons benefited from these services in 1993.

- Care and therapy programme for disabled persons in residential centres

This programme covers all the measures designed to provide appropriate care and specialist treatment on a residential and half-board basis to the physically and mentally disabled.

Establishments offering this type of care are:

- for the physically disabled:

Care centres for the physically disabled (CAMF) – the INSERSO has five such centres with a total of 645 places;

and

rehabilitation centres for the physically disabled (CRMF) – the INSERSO has four such establishments with a total of 528 places.

- for the mentally disabled:

Care centres for the mentally disabled (CAMP). The INSERSO has 14 centres with 1 644 places, and there are four occupational centres offering 525 places.

A further 1 106 places have been made available by arrangement with private establishments.

There are also programmes designed to promote social integration and independence for disabled persons, viz.:

- Home help programme. 11 149 disabled persons benefited from this programme in 1993.
- Holidays for the disabled. Aimed at mentally and physically handicapped persons aged over 16. In 1993, there were 6 635 participants in total, comprising 1 791 leaders and staff and 4 844 disabled holidaymakers.
- Technical assistance. Designed to promote independence for individuals.

IMPLEMENTATION OF THE CHARTER

27. The 1992-1993 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, since the previous report, ILO convention No 172 concerning working conditions in hotels, restaurants and similar establishments adopted in Geneva on 25 June 1991 has been ratified by Spain and was published in the National Official Journal on 3 March 1994.

STATISTICS ON THE ACTIVITIES OF THE LABOUR AND SOCIAL SECURITY INSPECTORATE

PERIOD COVERED: 1992-1993

NATIONAL TOTAL

FIELD OF ACTIVITY	NUMBER 1992	NUMBER 1993	% 93/92
1. EMPLOYMENT			
1.1. PLACEMENT	313.527	423.610	135,1
1.2. RECRUITMENT	137.473	49.286	35,9
1.3. UNEMPLOYMENT BENEFIT	198.276	260.811	131,5
1.4. EMIGRATION AND FOREIGN RESIDENTS	10.098	15.404	152,5
TOTAL	659.374	749.111	113,6
2. SOCIAL SECURITY			
2.1. REGISTRATION, MEMBERSHIP, COVER AND CONTRIBUTIONS	673.046	614.112	91,2
2.2. BENEFITS	15.489	28.287	182,6
2.3. ENTITIES	279	375	134,4
2.4. OTHER ACTIVITIES	85.792	214.408	249,9
TOTAL	774.606	857.182	110,7
3. LABOUR RELATIONS			
3.1. INDUSTRIAL DISPUTES, STRIKES AND LOCK-OUTS	3.750	3.299	88,0
3.2. MINORS *	1.525	495	32,5
3.3. BASIC RIGHTS	8.784	9.523	108,4
3.4. ILLEGAL EMPLOYMENT	16.752	1.616	9,6
3.5. PAY	17.159	23.155	134,9
3.6. WORKING HOURS, REST PERIODS, HOLIDAYS AND OVERTIME	17.186	16.492	96,0
3.7. REGULATION OF EMPLOYMENT			
- TERMINATION OF CONTRACTS	5.611	10.213	182,0
- SUSPENSION OF CONTRACTS	3.099	4.916	158,6
3.8. OCCUPATIONAL CLASSIFICATION	6.184	5.345	86,4
3.9. INCENTIVES AND WORKING METHODS	1.513	1.897	125,4
3.10. GEOGRAPHICAL MOBILITY, SUBSTANTIAL CHANGES IN WORKING CONDITIONS AND PROVISION OF LABOUR	8.796	9.511	108,1
3.11. REPRESENTATION RIGHTS OF WORKERS AND UNIONS	7.106	6.215	87,5
3.12. COOPERATIVES AND WORKERS' LIMITED COMPANIES	483	240	49,7
3.13. OTHER ACTIVITIES	13.654	17.488	128,1
TOTAL	111.602	110.405	98,9

FIELD OF ACTIVITY	NUMBER 1992	NUMBER 1993	% 93/92
4. HEALTH AND SAFETY			
4.1. COMMUNICATION OF OPENING OF WORK PREMISES	22.599	21.210	93,4
4.2. INDUSTRIAL ACCIDENTS (FATAL, VERY SERIOUS, SERIOUS, SLIGHT, ACCIDENTS AFFECTING MINORS, ACCIDENTS WHILE TRAVELLING)	18.702	15.321	81,9
4.3. OTHER ACCIDENT REPORTS AND COMMUNICATION OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES	5.661	8.103	143,1
4.4. OCCUPATIONAL DISEASES	641	666	103,9
4.5. WORK IN NOXIOUS, ARDUOUS AND DANGEROUS CONDITIONS	1.291	783	60,7
4.6. PREVENTION AND MONITORING ACTIVITIES	149.682	164.056	109,6
TOTAL	198.576	210.031	105,8
5. OTHER ACTIVITIES			
5.1. CONSULTATION AND COUNSELLING	8.904	7.315	82,2
5.2. ACCEPTANCE AND CONTESTATION OF OFFICIAL REPORTS	51.032	42.924	84,1
5.3. OFFICIAL COMPLAINTS	1.437	1.388	96,6
5.4. CERTIFICATION OF LABOUR INSPECTORS' REPORTS AND OTHER DOCUMENTS	368.194	403.069	109,5
5.5. NOTIFICATION OF ASSETS	1.269	2.063	162,6
5.6 INJUNCTIONS	21.162	20.216	95,5
5.7. OFFICIAL WARNINGS	3.439	2.888	84,0
5.8. OTHER ACTIVITIES	20.806	25.065	120,5
TOTAL	476.243	504.928	106,0
GRAND TOTAL	**2.220.401**	**2.431.657**	**109,5**

*** These include activities concerning the employment of minors in 1992.**

SOURCE: Directorate-General of the Labour and Social Security Inspectorate "Noticia"

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 stated 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. This Decree has been repealed and was replaced by Decree No 94-211 of 11 March 1994, which now regulates the conditions for entry and residence in France for nationals of Member States of the European Community taking advantage of the right to freedom of movement of persons.

This text has two objectives: (a) to transpose the three directives of 28 June 1990 and 29 October 1993 granting a right of residence to categories of Community nationals not hitherto covered by the Treaty of Rome (retired persons, students and other economically inactive persons), (b) to take account of legislative changes made since 1981 to the *ordonnance* of 1945 and the changing nature of Community law.

A circular issued by the Ministry for the Interior and Land Use Planning of 7 June 1994 sets out the residence conditions for the various categories of European Union nationals and will be supplemented shortly by a joint Social Affairs/Interior circular regarding the movement of European Union nationals and their families exercising an economic activity in France.

Refusal to grant a residence permit to a European Union national taking advantage of his/her freedom of movement was upheld in the Decree of 11 March 1994, but only the public order motive is upheld (Article 6 of Decree No 94-211) "if it is found that the applicant has one of the illnesses or infirmities set out in a list appended to the Decree and which may jeopardise public order or public safety".

Article 13 of the Decree of 11 March 1994 reiterates such refusal for reasons of public order and adds a new provision based on the system applicable to foreigners covered by the common law: consultation of the Residence Commission, as provided for in Article 18bis of the *ordonnance* of 2 November 1945 (as amended), prior to any refusal to issue a residence permit.

A joint Interior/Social Affairs circular will shortly be supplementing these instructions, incorporating in detail the provisions applicable to Community nationals exercising an economic activity and reflecting relevant changes in Community law in this regard since 1981.

Secondly, the French Official Journal published Decree No 94-821 of 21 September 1994 amending the social security code and concerning certain application arrangements for the said code to nationals of Member States of the European Community or states signatory to the Agreement on the European Economic Area and members of their family, regardless of nationality. The essential purpose of this text is to facilitate the work of social security funds, having regard to the rule of equal treatment for Member States' nationals and Community nationals which gives persons to whom Regulation No 1612/68 or Directives 90/364 (non-active persons), 90/365 (retired persons) and 93/96 (students) apply an absolute right to benefit from the provisions of the social security code and the resultant benefits.

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 opening-up of employee categories and jobs accessible to nationals of the European Union, under the conditions set out in Article 5(a), has taken the form of statutory decrees in Council prepared by each ministry (for the State public service), by the minister for local authorities (for the local and regional public service) and by the minister for health (for the hospital public service). Access to open competitions for applicants from another Member State of the European Union must be specifically provided for in the statutes governing the categories of employees concerned.

As a result, decrees already published (see list below) mean that 70% of the French public service has now been opened up to nationals of the European Union (more than 80% in the case of the State public service) and brought French law into line with Community case law concerning freedom of movement for public servants in Europe.

LIST OF DECREES INTENDED TO IMPLEMENT
ARTICLE 5(bis) OF TITLE I OF THE GENERAL STATUTE

1. Teaching

- General education (Decrees 92-1146 of 30 November 1992 and 93-60 of 13 January 1993)
- Youth and sport (Decree 93-853 of 11 June 1993)
- Agriculture (Decree 93-1169 of 11 October 1993)
- Teacher training colleges (Decree in draft).

2. Health and social affairs

- Hospital public service (Decrees 93-101 of 19 January 1993 and 93-659 of 26 March 1993)
- Armed services veterans = INI and ONAC hospital staff (decrees in draft)
- Nurses and social workers attached to State central administrations (decree in draft)

3. Research

- Administrative and technical research staff (Decree 93-769 of 26 March 1993)

4. Postal service and telecommunications

- Decree 92-1309 of 16 December 1992
- Decrees 93-514 and 93-5198 of 25 March 1993 for new staff statutes

5. Local and regional public service

- Decree 94-163 of 16 February 1994

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.

As regards the question of the freedom to provide services discussed in the third Report, the legislative and regulatory framework put in place by the French authorities in 1993 and 1994 can be described as follows.

- The five-year law on labour, employment and vocational training No 93-1313 of 20 December 1993 states, in Article 36, that foreign workers (i.e. Community and non-Community workers) posted by an undertaking which is not established in France, within the framework of the provision of services, are subject to the same conditions as national employees working in an undertaking in the same branch of activity, in respect of social security, pay, length and conditions of work.
- Decree 94-573 of 11 July 1994 supplements the above legislative provisions and provides for a declaration to be made by each and every foreign undertaking posting workers to France, with a view to informing the supervisory

authorities, and the labour inspectorate in particular, of these persons' arrival.
- A circular currently being drawn up by the departments concerned (i.e. the labour relations directorate, the interministerial liaison group set up to tackle illicit work, undeclared employment and labour trafficking, and the population and migration directorate) will cast more light on this aspect of the new legislative and regulatory provisions.

Question 3

Article 1(K) of Decree No 81-405 of 28 April 1981, which incorporated the provisions of Article 10 of Regulation No 1612/68 giving family members qualifying for family reunification the right to settle with the worker, has been repealed and replaced by Article 1(n) of the Decree of 11 March 1994, which sets out details of the family members who have the right to join either a Community worker or a person qualifying for the right of residence:

- for workers (whether employed or self-employed): the spouse, dependent children of less than 21 years of age and dependent relatives in the ascending line;
- retired and other economically non-active persons: the spouse and any dependent relatives in the descending or ascending line;
- students: the spouse and dependent children.

The family members installed with a worker from an European Union 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.

Mutual 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 Education and the Ministry of Higher Education and Research do, via their NARICs (National Academic Recognition Information Centres), sponsor student and teacher mobility within the European Union. The Ministry of Education's NARIC has, since certain public-sector jobs were made open to European Union nationals, handled applications for open competitions for teachers in primary and secondary education, providing information on what certificates and diplomas are required.

The Ministry for Higher Education's NARIC handles information on studies and university courses abroad.

The recognition of diplomas for occupational purposes is covered by two Council Directives. The first of these, No 89/48 of 21 December 1988, deals with a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. The second, No 92/51 of 18 June 1992, relates to a general system for the recognition of vocational training supplementing Directive 89/48. These Community texts have been transposed into national law by the various ministerial departments (or, in a few cases, are in the process of being transposed).

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 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).

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 1994, the minimum growth wage stood at FF 35.56 per hour, giving a monthly remuneration (for 169 hours) of FF 6009.64 gross and FF 4793 net (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, since 1990, encouraged employers and employees to negotiate. The Commission nationale de la négociation collective has laid down the objectives which must be achieved through sectoral negotiation:

- 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 1994) shows marked progress over the original situation. Of a sample of 169 branches with more than 10 000 employees, the percentage of branches with no minimum pay level below the SMIC improved from 39% on 1 February 1990 to 75% on 1 June 1994. 43 sector agreements on category adjustments have been concluded, affecting almost 4.5 million employees. This operation has, generally speaking, helped revitalise sectoral bargaining in general.

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.

In the event of seizure of part of the worker's pay, he or she must be left with the minimum amount (RMI) of FF 2 298.

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 19 June 1987 redefines and harmonises certain procedures for organising working time, including compensatory leave, flexibility 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.

The five-year law of 20 December 1993 on labour, employment and vocational training created a new, simplified form of modulating working time, accompanied by a mandatory reduction in the length of working time.

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 and the five-year law of 20 December 1993 make provision for developing part-time working, more particularly by creating provisions for reducing employers' social security contributions. They also seek to develop collective bargaining with a view to promoting 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 economic grounds, but must merely be informed of 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 are 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.

With effect from the Law of 11 June 1994 on the prevention and handling of difficulties in undertakings, amending the Law of 1985, the courts may, once the procedure has been set in motion, declare companies to be in liquidation where they feel that there is no prospect of their recovering.

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 financial 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.

Question 9

The law provides that "the labour contract is subject to the rules of common law. It may take whatever form the contracting parties wish to adopt". In other words, a written form of contract is not compulsory except in particular cases.

However, the Council Directive of 14 October 1991 makes it compulsory for the employer to inform the worker in writing of the essential elements of the contract or of the employment relationship within two months of such relationship commencing. Where there is no written contract, this information may be supplied in the form of a letter or one or more documents provided that one of these documents contains the information elements set out in the Directive.

In accordance with the Directive, which was transposed by Decree No 94/761 of 31 August 1994, the Labour Code makes it compulsory to

hand the employee, on recruitment, a written document, which must contain the information set out in the declaration prior to recruitment. This prior declaration and the pay slip constitute the written support for the elements of information which the employer is required to communicate to the worker.

In certain cases, the Labour Code says that the contract must be in writing. Such is the case with part-time contracts, fixed-duration contracts, temporary work contracts, apprenticeship agreements, work/training contracts, contracts concluded by a group of employers, and contracts covered by job creation schemes. Where there is no written element, an apprenticeship agreement becomes null and void and in all other cases, a contract automatically becomes an open-ended one.

Certain collective agreements make it compulsory to conclude a written contract, but they rarely make this rule into a condition for the contract to be valid.

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, giving entitlement to one year of non-cash benefits; 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 equivalent during the same calendar year, giving entitlement to two years of non-cash benefits 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 3 081 per month plus FF 1 027 per dependent child as from 1 July 1994).

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, unions which are signatories to an agreement but not to an extension which would reduce an individual or collective advantage created by the agreement may oppose the entry into force of this extension. As regards texts signed at undertaking level, such opposition is subject to the condition that the unions concerned must have obtained the votes of more than half of the registered voters at the last elections to the staff committee or, failing that, of the staff delegates. For texts signed at sectoral level, such opposition will only have an effect if it is expressed by the majority of trade union organisations or signatories to the agreement.

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 service 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

The French provisions on vocational training are based on the Law of 16 July 1971 and have subsequently been supplemented by a range of texts, the most recent of which is the five-year Law of 20 December 1993, which seeks to enhance the effectiveness of the vocational training system by way of four main objectives:

- improving initial and continuing training schemes
- seeing the region as the appropriate context for setting up and coordinating initial and continuing vocational training policies for young people
- improving the way funding is organised
- developing in-service training on a lifelong basis.

The vocational training system depends on the situation of the individual.

Persons exercising an economic activity

A. Private-sector employees

These persons may receive training as part of their company's training plan or by taking training leave. Other forms of training are available to help combat the effects of redundancy.

The training plan

Any company may set in place training schemes or skilling measures in its training plan. Such forms of training are decided by the employer either on his own initiative or on the initiative of an employee or staff representatives, depending on the company's operational objectives. The financing arrangements take into account the firm's statutory obligation to participate in the funding of continuing vocational training. The plan is drawn up under the employer's responsibility and has to give rise to consultation with the staff representatives.

The person undergoing training remains in a master-servant relationship and is still eligible for all the elements arising from his employment contract: pay, social protection, training costs, etc.

The law of 20 December 1993 calls on the social partners to conclude an intersectoral national agreement or, failing that, sectoral agreements on setting up "training time capital" under the firm's training plan. The aim here is to give annual entitlement to a minimum number of training days for employees, and hence to improve the relevance of vocational skills and help prevent redundancies.

Training leave for learning or research purposes

During his or her professional life, any employee may follow, on his/her individual initiative, training courses independent of participation in courses organised under the company's training plan. To be able to apply for such leave, the employee must have a certain level of seniority and have been back at work for a reasonable time after the previous course. The employer may defer the leave in the interests of the service.

The course requested by the employee must be regarded as a training scheme and must come under one of the categories set out in Article L.900-2 of the Labour Code. Such courses may or may not be of a professional nature.

The employee must ask the parity body responsible to fund the leave; such funding is granted as a function of priorities and within the limits of the money available. In all cases, the employee is covered for social protection.

Finally, each employee may, as part of his individual training leave, avail himself of individualised training entitlement as a means of acquiring a vocational qualification at level V, i.e. equivalent to the *brevet d'études professionnelles (BEP)* or the *certificat d'aptitude professionnelle (CAP)*. State involvement is on a significant scale.

Employees may also obtain other types of leave for training purposes, more particularly:

- for the purposes of analysing their vocational and personal skills with a view to deciding on what vocational or training course to follow;
- to enable them to exercise research or teaching activities (the Law of 20 December 1993 has made the conditions for obtaining such leave more flexible).

Redundancy and training

In addition to training measures provided for under a redeployment agreement, employees at risk of redundancy may avail themselves of their right to continuing vocational training up to the end of the pre-notification period.

B. State and local government employees

The Law of 13 July 1983 on the rights and obligations of public servants makes provision for a right to ongoing training and training leave for public-sector employees. The law also states that public servants may have a statutory duty to undergo training.

Conditions for undergoing training differ depending on whether the employee works for the State, for local government or for the hospital service.

C. Independent persons

The Law of 31 December 1991 gave members of the liberal professions, traders and non-wage-earners in the agricultural sector and in the craft trades 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.

The various forms of training accessible to non-wage-earners may be associated with:

- setting-up of a business
- refresher and advanced training
- promotion and conversion of various activities.

Integration of young people

Since 1975, young jobseekers of between 16 and 25 years of age have been eligible for special training schemes to make it easier for them to find jobs after an initial training period.

Nowadays, in addition to special training schemes for the lowest skilled young jobseekers, other young persons seeking work may undergo particular training measures (in the form of a work experience scheme or unemployment contract.

A. Training schemes for young jobseekers

The law of 20 December 1993 makes provision for a gradual transfer of State jurisdiction to the Regional Councils concerning the training and occupational integration of young people. This transfer is in two stages:

- on 1 July 1994, qualification schemes organised hitherto by the State become the responsibility of the Regions;
- by 1 January 1999 at the latest - or earlier as agreed - mobilisation, pre-qualification and skilling schemes run by the State concerning the information, guidance and follow-up of vocational training for young people will likewise be transferred to the Regions.

The Law of 20 December 1993 also enshrines a right to occupational initiation, whereby all young people have a right to vocational training before finally leaving the educational system.

The individualised training entitlement scheme was set up in 1989 for young people of between 16 and 25 years of age without a job and without vocational qualifications. It was extended in 1990 to employed persons qualifying for individual training leave, and in 1991 to adult jobseekers.

The scheme is intended to give all unqualified young jobseekers an appropriate and individualised form of training leading up to a recognised vocational qualification at level V (e.g. CAP, BEP, CFP).

B. Individual employment contracts and training for young people

This section covers apprenticeship contracts for young people undergoing initial training and combined work/training schemes as part of continuing vocational training. Both types of contract combine practical training in a firm with theoretical training in a special centre.

Combined work/training starter contracts

Guidance contracts

These cover a period of between three and six months and are intended for young people of between 16 and 23 years of age who have completed secondary education but not obtained a school-leaving certificate. The aim is to give such people a start by giving them some form of career guidance and a first look at training provision.

Qualification contracts

These cover a period of between six months and two years, and are targeted at young people of between 16 and 25 years of age who failed to obtain any qualifications during their compulsory schooling, or whose qualifications were not good enough to enable them to find a job. The aim is to give them a recognised vocational qualification.

Adaptation to work contracts

These may be for a fixed or open-ended period, and are targeted at young people of between 16 and 25 years of age who are looking for work but who need some additional training to enable them to take up a specific job rapidly.

Apprenticeship contracts

These are for a period of one to three years and are intended to help young people of between 16 and 25 years obtain a vocational qualification at level V or above, with a suitable diploma or certificate. To make it easier to go in for this form of training, the

Law of 20 December 1993 replaced prior approval from the firm taking on the apprentice by prior declaration.

Jobseekers

A range of measures have been put in place to facilitate the occupational integration or reintegration of people who are out of work.

Some of these concern all forms of jobseekers, taking the form of State-approved or region-approved schemes, or business access schemes. Others are targeted exclusively at jobseekers with special labour market reintegration problems.

These various measures may attract funding either under ASSEDIC redeployment agreements (where private-sector employees have been made redundant for economic reasons) or under retraining allowance arrangements (where the jobseeker has made a certain number of days' contribution to the unemployment insurance scheme).

Payment for other people undergoing vocational training comes from the public purse, more specifically the State and the Regions.

A. Training courses for all jobseekers

Courses approved by the state or a region for the purposes of making payment to vocational trainees

These courses are organised by the State or region and are intended to enable persons who wish to enter or reenter working life to gain access to jobs which require a formal qualification or to prepare for new occupational activities. They may comprise a period of practical training in a company. Payments made to trainees vary according to the trainees' situation prior to starting the course. Trainees have a right to social protection.

Access to business courses

These courses are run by the *Agence nationale pour l'emploi (ANPE)* in conjunction with firms, and are intended to enable jobseekers to acquire the professional skills they need to be eligible for a job notified to the ANPE.
Jobseekers receive payment during the course and have access to social protection.
These courses are also open to employed persons, enabling them to broaden their skills base and to be eligible for a different job in the firm.

B. Courses intended for unemployed people with special integration problems

Certain categories of job eekers who are in a particularly insecure situation may follow a course for employment integration and training, conclude a back-to-work contract or an employment-solidarity contract, or avail themselves of the individualised training entitlement scheme. In addition, the funds designed to encourage women in difficulty to go in for training may make a financial contribution to vocational training projects financed by the State or a local or regional authority.

Employment integration and training courses

This type of course, which was introduced by the Law of 20 December 1993, provides a common framework for occupational reclassification courses, integration and training courses and special courses for single women. The aim is to make it easier for jobseekers to get back into the labour market. Part or all of the course may be in the working environment. It may be either individual or collective in nature. The training varies from 40 hours to 1 200 hours, and the trainee is paid during the course.

Return-to-work contracts

These are intended to make it easier for people who have been away from the labour market for a long time to reintegrate into the world of work. The contracts are either open-ended or of fixed duration and are organised by the employer on the basis of an agreement with

the State. Provision may be made for working time training. The trainee has the status of an employed person.

Employment-solidarity contracts

Such contracts are used in application of an agreement concluded between the Prefect of the *département* and local authorities, non-profit associations or public establishments. Contract life is between three months and one year. It enables people with special labour market integration problems to work half-time under a part-time work contract. Persons covered by such contracts may follow a complementary course of training, but will not be paid for it.

Funds to encourage women in difficulty to undergo training

These funds are intended to provide a financial input for women in difficulty who may wish to follow a course of vocational training financed by the State or a local or regional authority.

Jobseekers' training entitlement

This is designed to enable any jobseeker to follow an individualised form of training with a view to obtaining a level V qualification.

EQUAL TREATMENT FOR MEN AND WOMEN

Question 16

1. *Employment*

Law No 83-635 of 13 July 1983 transposed Directive 207/76/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 Mrs Simone Veil, Minister of State at the Ministry for Social Affairs, Health and Urban Affairs; Mr Michel Giraud, Minister for Labour, Employment and Vocational Training, is the Vice-Chairman. 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. It will meet to hear the fifth report in the first quarter of 1995.

The Council's standing commission, which met on 27 September 1994, formally created the three working parties as announced at the Council meeting in June 1994.

The first of these deals with the comparative situation of men and women in terms of pay. The second addresses the diversification of working time, career profiles and occupational equality, while the third investigates what can be done for occupational equality in the various occupational branches, firms and establishments.

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); the employment law of December 1993 modifies this diagnostic instrument in companies with fewer than 300 employees. Essentially, the various

elements in the report are grouped together in the form of an economic, financial and social report;
- 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 specific provisions, there are several measures of a general nature under the jurisdiction of the Ministry of Labour, Employment and Vocational Training, which now cover the occupational equality dimension: these are vocational training development commitments and forward planning study contracts, run by the Delegation for Vocational Training, and aid to works councils, a measure run by the Delegation for Employment.

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:

a) the means used ("orders, threats or constraints")
b) the intended objective ("for the purpose of obtaining favours of a sexual nature")
c) the position of the perpetrator ("abusing the authority invested in the person's functions").

This provision entered 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.

Law No 92.1179 of 2 November 1992 on the abuse of authority for sexual purposes in employment relationships forms part of the general provisions on occupational equality for men and women, setting up a form of protection for employed persons against sexual harassment as a form of sexual discrimination. Witnesses to such behaviour are given the same degree of protection. A ban is imposed on any form of discrimination in connection with recruitment and with the execution or cancelling of an employment contract. Disciplinary sanctions may be imposed on any employee found guilty of behaviour tantamount to sexual harassment. It is up to the firm's managing director to take whatever steps are necessary to prevent such behaviour. The firm's internal rules must reiterate all these principles.

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).

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 4 million each year from the State.

3. 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 Law of 25 July 1994 gave employed persons the right to undertake vocational training during parental child-rearing leave or during a part-time arrangement for the purposes of child-rearing. In such cases, no payment is made, but the persons concerned are covered by legislation on social security and occupational illnesses as provided for occasional trainees. The persons concerned are also entitled by right 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.

For non-agricultural non-wage-earning categories, a similar provision is likely soon to be the subject of a draft law relating to social security provisions.

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 the third child.

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.

The AGIRC (representing management-grade pensioners) has, following a national-level agreement of 9 February 1994, set the survivor's pension entitlement date at 60 years for men and women alike.

Although this new measure conforms to European-level provisions and establishes equality of treatment for men and women, the fact remains that it does constitute a "levelling down" for women who, prior to the agreement, were eligible for a pension of this kind from the age of 50.

Nonetheless, special situations can still be given consideration as no age condition is required for men and women suffering from a disability and for people with two dependent children of less than 21 years.

Recipients of the social security surviving dependent's pension may obtain their AGIRC survivor's pension at the same age (i.e. 55 years).

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.

a) 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 opportunity 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 been amended; Decree No 91-987 of 5 September 1991 (Article D.742-25-2 of the Social Security Code) sets out the practical arrangements.

b) 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).

c) 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. The conditions for membership are set out in Decree No 93-425 of 17 March 1993.

d) 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.

Law No 94-629 of 25 July 1994 regarding the family (para VI of Article 25) introduces a distinction, for the purposes of maternity cover, between women who are members of their own right and helper spouses.

A draft law making provision for various social elements is currently being studied. Article 10 seeks to improve non-cash maternity insurance benefits for women who are members of the self-employed scheme in their own right.

Finally, Law No 89-1008 of 31 December 1989 provided 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.

e) For all craft, commercial and liberal professions, it has to be pointed out that workers who pursue an employed occupation on a part-time basis of up to half the working day and who help in their non-wage-earner spouse's work may be members of their spouse's old-age insurance scheme (Article L.94-126 of the Law of 11 February 1994). The implementing Decree No 94.738 dates from 26 August 1994. This provision concerns all the above occupations and professions apart from lawyers, for whom a draft implementing decree is currently in the pipeline.

Measures to improve childcare facilities for young children

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, permanent or temporary, for small children (under 6) and for older children.

The government is keen to develop various types of childcare by improving grants for childminders and developing 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 11 838 - as at 1 January 1995 - 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 allowance is extended - at half-rate - to children of between 3 and 6 years. Each quarter, the Family Allowances Office pays the social contributions due on the employee's pay direct to the Union for the Recovery of Social Security Contributions and Family Allowances.

Only one allowance is payable per family regardless of the number of persons employed and the number of children being cared for.

Households also benefit from a tax reduction amounting to 50% of expenditure (maximum FF 26 000 per year per family, rising to FF 45 000 from 1 January 1995).

Service jobs: the service voucher system

Law No 93-1313 of 20 December 1993 defines the principle of a service employment voucher system, the aim of which is to facilitate the

development of jobs in the service sector. Following an initial trial period, the system was extended to the whole of mainland France on 1 December 1994.

Service cheques represent a form of payment and a means of declaration for jobs done at home (e.g. homehelps, attendance on sick persons, childcare, aid for the elderly, schoolwork back-up, etc.). The system is, however, limited to jobs of a maximum duration of eight hours per week or one month per year. The employee's pay may not be below the net hourly minimum and must include a paid leave allowance (10% of the sum paid) or, at least, 10% of the hourly net minimum wage. As at 1 December 1994, 300 000 voucher booklets had been distributed free of charge by banks and post offices to interested employers, the system not being mandatory.

The advantage for the employer is that there is no need to draw up an employment contract, a pay slip or the prior declaration to the Union for the Recovery of Social Security Contributions and Family Allowances.

The idea behind the system is to make it as easy as possible to recruit people for home tasks, to create proper service trades and to combat illicit labour.

Childcare facilities for children under school age

Law No 94-629 of 25 July 1994 makes provision for the development of childcare structures.

Resources available to the family allowances funds for supporting the development of childcare structures for young children will be increased: with an additional FF 600 million in 1995 and a total of FF 3 billion once the scheme has become fully operational in 1999. This should make it possible to create some 100 000 new places in day nurseries, family nurseries and temporary centres.

For occasional childcare, day nurseries currently offer approximately 59 900 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 fluid 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 186 600 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 make it possible to improve the quality of this alternative. These cover:

Family aid

Law No 90-590 of 6 July 1990 set up aid for families for the employment of an approved childminder, with effect from 1 January 1991.

The family aid for employing a childminder at home effectively reduces the cost of childcare services until the age of six.

The Family Allowances Fund pays a monthly amount of FF 530 if the child is younger than three and of FF 318 for children of between 3 and 6. With effect from 1 January 1995, these amounts will be increased to FF 800 and FF 400 respectively.

The Fund also pays direct to the Union for the Recovery of Social Security Contributions and

Family Allowances the social contributions due on the childminder's pay.

The increase is additional to the single-parent allowance and occupational integration minimum income.

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 along 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.

Breakdown of children of less than 3 years of age by type of childcare facility

	1982	1990
Total number of children of below 3 years	2 250 000	2 260 000
of which:		
– at school	200 000	250 000
– looked after at home	1 510 000	1 350 000
• by the mother	1 350 000	1 190 000
• by a member of the family	120 000	110 000
• by another person	40 000	50 000
– looked after outside the home	540 000	660 000
• in a collective nursery	90 000	140 000
• by an approved childminder	230 000	280 000
• by a member of the family	140 000	160 000
• by another person	80 000	80 000
Children of economically-active mothers	1 160 000	1 410 000
of which: mothers in employment	990 000	1 150 000

Source: INSEE, population censuses and family surveys 1982 and 1990, "Données Sociales" 1993

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).

Nursery schools

In 1992/93, 34.8% of 2-year-olds were at nursery school, compared with 99% of 3-year-olds and 100% of 4-year-olds.

Special leave for working parents

Parental leave

Parental leave is designed for employees who wish to interrupt their career or revert to part-time working on the birth (or adoption) of a child.

Such leave concerns both men and women and all birth rankings and may apply up to the child's third birthday.

All employees may claim such leave as of right provided they have been with the firm for one year. In addition, with effect from 1 January 1995, the right will be available to all employees regardless of the company's workforce, the workforce limit (firms with more than 100 employees) having been removed by the Law of 25 July 1994.

Parental leave is unpaid. It may be added to maternity leave or be separate from it, provided it is used before the child attains its third birthday.

Parental leave may be taken in two forms:

- the employed parent (man or woman) may suspend his/her employment contract and take the leave in the form of part-time work;
- the employee concerned may work part-time within a band ranging from 16 hours per week to 80% of full-time working.

These arrangements are available to both parents, who may make use of them simultaneously or successively.

The initial period of parental leave is chosen freely by the parent, but must not exceed one year; it may be extended up to the child's third birthday. The parent who, initially, has suspended his/her employed contract may, when the arrangements come up for renewal, opt for a further suspension or ask to switch to part-time work, or vice versa.

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 child-rearing allowance

Law No 94-629 of 25 July 1994 provides for parental child-rearing allowance to be payable from the second child to the parent who does not exercise any professional activity or who works part-time, up to the child's third birthday. The allowance is payable up to the child's sixth birthday in cases of multiple births of three or more children. However, certain conditions have to be met:

- for the second child: professional activity (or vocational training or registered unemployed) for two of the past five years;
- for the third child: professional activity for two of the past ten years.

The parental child-rearing allowance (full-time) is FF 2 929.

Post natal 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 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

Multiple births and adoptions

In the event of a multiple birth, the Law of 25 July 1994 makes provision for maternity leave to be extended (with effect from 1 January 1995) for children born on or after 31 December 1994. For twins, the length of maternity leave is extended from 18 to 34 weeks; for triplets or more, maternity leave is extended from 28 to 46 weeks. In addition, each child qualifies for allowance payment up to their third birthdays.

Parents who adopt a child abroad without going through an agency qualify for adoption leave with effect from 1 January 1995 provided they have received the approval provided for for anyone wishing to adopt a child and provided the child has been authorised to enter French territory. In the case of the adoption of full sibs, adoption leave is extended to 22 weeks.

An adoption allowance will be paid on arrival in the family of one or more children who have been adopted or released with a view to adoption for a maximum period of six months, the amount available being FF 616 per month.

Finally, in the public service, there is automatic entitlement to half-time working arrangements for civil servants in connection with every birth and up to the child's third birthday or third anniversary of adoption, as is the case for people providing care for a spouse, a dependent child or a dependent relative in the ascending line with a handicap which necessitates the presence of a third person.

Civil servants who are on parental leave or are on secondment may apply for internal recruitment competitions.

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

The Law of July 1994 made statutory provision for leave where a child is ill.

This special form of unpaid leave has been made available to any employee in the event of an illness or accident, backed by a medical certificate, of a dependent child of less than 16 years of age. The maximum duration of the leave is three days per year, which may be extended to five days if the child is less than one year old or if the employee assumes responsibility for at least three children of less than 16 years of age. Date of entry into force: 1 January 1995.

As regards part-time working for family reasons, 1 January 1995 saw the introduction of a right to part-time working for employees with at least one year's seniority, in the event of a serious illness, accident or handicap affecting a dependent child.

The period of part-time working is initially six months at most, but may be extended once only for a further period of at most six months.

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 616 perchild, and the partial rate (all other cases) FF 462 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 3 081 for the parent and FF 1 027 per dependent child, from 1 January 1994.

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.

Finally, important provisions have been enacted to combat isolated women's unemployment by means of specific social and occupational integration measures (training or retraining). The Law of 25 July 1994 provided for surviving dependents' pensions to be increased from 52% to 60% by 1999.

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 Death of child	"	2 days	"	"
Marriage of child	"	1 day	"	"
Death of father Death of mother	"	1 day	"	"
Law of 19 January 1978 grants workers with at least 3 months' service:				
Death of brother 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

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Question 17

France is currently looking into ways of transposing the Directive of 22 September 1994 on the establishment of a European works council or a worker information procedure in Community-scale companies or groups of companies.

The following firms have now joined the list of companies mentioned in the previous report as having already set up, by agreement, an information procedure for their employees at European level: Accor, Lafarge Coppée, Renault, Crédit-Lyonnais and Eurocopter.

(Extract from the previous report: "Nevertheless, 9 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 (as updated following adoption of the five-year Law of 23 December 1993).

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.

Information and consultation of workers come under the main functions of works councils, which are concerned with all economic and vocational questions. 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.

Since the last report, new legislative texts have extended or strengthened the obligation to inform and consult the works council:

- Law No 92-722 of 29 July 1992 extends the economic redundancy procedure, and more particularly the obligation to consult staff representatives, to any form of interruption of employment contract on economic grounds, i.e. including voluntary departure for economic reasons;
- Law No 93-121 of 27 January 1993 sets out the nature of the "social plan" which must be communicated to staff representatives under the procedures for economic redundancy; where this is not done, the procedure is null and void.

The five-year law on work, employment and vocational training of 23 December 1993 includes a chapter on representative staff institutions. These provisions are designed to:

- harmonise a number of rules concerning staff delegates and works committees with a view to simplifying the job of managing directors and of staff representatives and consolidating the rules wherever possible and where there is no obvious reason not to do so;

- adapting the staff representation system to the specific nature of small and medium-sized businesses with a view to encouraging representative staff organisations and fostering the social dialogue.

	WORKS COMMITTEES	WORKFORCE DELEGATIONS	UNIONS	
			UNION REPRESENTATIVES –on the works committee –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. (1)	Election: –compulsory in all industrial, commercial and agricultural concerns, public and ministerial offices, liberal professions and partnerships, trade unions, mutual societies, social security institutions, and associations or other bodies established under private law with at least 11 employees; –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: –of a representative at works committee meetings; –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: –set up a union branch in any concern; –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. (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. –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. –Term of office: 2 years renewable	–Term of office 2 years renewable	Appointment by trade union organisations: –the representative on the works committee must be selected from among the concern's workforce and must meet the works committee eligibility criteria; –the assistance workforce delegate may be an employee of the concern of an external person, as long as trade union organisation; –term of office: at the discretion of the trade union organisation.	Appointment by the representative unions in the concern: –the union delegate must be at least 18 years of age and have worked in the concern for 1 year; –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. –Social and cultural matters: management of social and cultural activities in the concern; monitoring of certain social institutions. –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. –Communication to the works committee and CHSCT of suggestions from the workforce. –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. –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. –To participate in the trade union delegation negotiating and concluding collective agreements. –To direct trade union action in the concern.

Source: "Liaisons sociales" Special edition of 23 May 1991; amended following adoption of the Law of 23 December 1993

(1) The five-year Law of 23 December 1993 on labour, employment and vocational training allows undertakings with fewer than 200 employees to set up a single staff delegation. In this case, the staff delegates constitute the staff delegation to the works committee; the employer is therefore not required to organise elections to the works committee.

The three essentially new measures introduced by the above law are:

- harmonisation of the term of office of staff delegates and works councils and organisation of elections on the same date; staff delegates' term of office has been simplified at two years, with steps being taken to ensure that they are elected at the same time as the works council.
- The possibility of setting up a single staff delegation in firms with fewer than 200 employees; this is the main staff representation change in small and medium-sized businesses. In such firms, which do not have the material and human resources for setting up representative staff institutions along the same lines as major companies, a single staff delegation, elected directly, can act both as the staff delegation and as the works council (receiving individual complaints, running social and cultural activities, making certain payments, etc.). This essentially enables firms where there is no representative staff institution, and where there is reluctance to set up what seems to be a relatively cumbersome organisation, to overcome the 50-employee threshold. Setting up a single, optional delegation has the advantage of not calling into question the two institutions - where they already exist to the satisfaction of the managing director and his employees. The powers of the staff delegates and the works council remain unchanged: the same people in effect exercise all the powers devolved to these two institutions. This is why, for the firm, the effect is a major simplification in terms of the overall number of representatives, the number of hours which have to go in to such work, the organisation of elections and the conduct of meetings.
- Rationalising the presentation of the periodic information which has to be made available to works councils in firms with more than 300 employees. The works council has to be told about economic and social matters affecting the firm, it being the prime institution for dialogue between management and employees' representatives. The law requires the employer to provide the works council with certain reports at varying intervals, imposing a particularly severe obligation on small firms. This measure is designed to ease matters by grouping the information to be made available to the works council in a single annual report. A special decree sets out the content of the report in a form of a table which can be put into effect directly by firms and the social partners.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Question 19

Community Directives and labour law

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. France has now taken the necessary measures to transpose all the directives adopted in this field on the basis of Article 118a.

It is evident from the creation of a Europe-wide domain of health and safety at work that certain risks were not specifically covered by French regulations and that regulations in some areas had become obsolete.

European law has on occasion helped 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. By introducing the idea of mandatory coordination on the safety front, transposition of the Directive on temporary and mobile worksites effectively extends application of the safety rules to self-employed workers and improves the situation of all employees in the high-risk construction sector.

In most cases, European law has helped modernise French legislation. This is particularly true of the manual handling of loads, a field in which a regulatory provision based on a prior analysis of jobs makes it easier to assess the risk and provide more effective protection for a wide range of workers. The same is true of protection against the risks related to carcinogens, and the design and use of machinery, plant and personal protection equipment. As far as dangerous substances and preparations are concerned, the Community-induced forthcoming changes will help to update French rules and regulations.

As regards the more general directives, e.g. protection of pregnant women and of young people at work, these are areas which are already closely regulated in France, which implies that the Community input will be more limited.

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 Labour Code enshrines the principle that children may not become involved in the work process before they are properly released from compulsory schooling, which was extended to 16 years of age by the Order of 6 January 1959.

However, the following exemptions are allowed:

- 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.

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 amount of the pension takes account of the following:

1) Average annual wage or salary (S), based on the pay actually received by the insured person. Up to 31 December 1993, this was the average of the best ten years after 1947. With effect from 1 January 1994, this number is increased by one year per generation, beginning with the generation born in 1934. This progressive increase will cover a period of 15 years, so that by 1 January 2008, the average annual wage or salary will, for all insured persons, be calculated on the basis of the best 25 years.

2) A rate (T) applied to this annual average wage or salary and worked out as a function of:

   - the insured period and periods recognised as being equivalent, all basic pension schemes.

     Up to 31 December 1993, this period had to be 150 quarters in order to qualify for the full 50% rate from the age of 60.

     With effect from 1 January 1994, this period has been increased by one quarter per generation, commencing with the generation born in 1934. This increase will apply progressively until, for all insured persons, the total is 160 quarters at 1 January 2003.

     Where the required insured period is not complete at 60 years, the 50% rate is reduced by 1.25% per missing quarter, although the rate can never the less than 25%.

   - The insured person's age. Where the insured person is 65 or more, he

   qualifies for the full rate regardless of insured period.

3) The number of insured quarters acquired under the general scheme (N).

The maximum number of quarters taken into account is 150. Where the actual number is less, the pension is pro rata (in 150ths) to the actual number of quarters.

Thus, the retirement pension is calculated according to the formula:

$$P=S\times T\times\frac{N}{150}$$

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) 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 period of cover necessary under the general scheme.

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 3 058 per month (as of 1 January 1994) for a complete career. 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, by 1 January 1994, up to the level of the benefit paid to former employed workers (FF 1 360.91 per month) (Article L.814–2 of the SSC) and then, where applicable, to the "old age minimum" through a supplementary allowance amounting to FF 1 832.66 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 38 323 for a single person and FF 68 750 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 five 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 2 298.08 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 3 193.58 per month (as of 1 January 1994).

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.

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, accommodation (for the elderly and/or disabled), personal insurance contributions and medical care at home - the latter subject to three years' residence in metropolitan France.

The mother's allowance may be boosted by the FNS supplementary allowance. Both are subject to means-testing.

DISABLED PERSONS

Question 26

Action undertaken in 1993 and 1994 for the handicapped was based on Law No 75-534 of 30 June 1975 and sought to guide work towards the most suitable form of social integration for each category of the disabled by improving resources for assessing the handicap (I), by adopting specific measures to facilitate the daily lives of handicapped persons as well as in education, training and work (II), and by transforming and creating establishments and services to guarantee the disabled continued care within an outward-looking framework (III).

I. Improved guidance for the disabled

For a number of years now, there has been an obvious need to improve the work of the guidance committees (CDES and COTOREP), which play a vital role in the recognition, evaluation and guidance of disabled persons. To this end, certain specific measures have been adopted.

For instance, a new assessment scale for entitlement to various rights and advantages for the disabled entered into force in December 1993. This long-awaited reform constitutes a major step forward, offering a renewed reference instrument (closely modelled on concepts developed by the WHO international classification of handicaps); it is common to all disabled persons and will generate more consistency and greater equity in decisions taken.

New procedures for managing the guidance committees have been laid down, based on the principle of differentiated treatment and geared to computerisation and to providing backup for the committees in their main task of generating decisions and in their two secondary functions of providing users with information and giving guidance and help in terms of occupational integration.

II. Encouraging and facilitating disabled people's involvement in ordinary life

In terms of resources designed for the disabled, efforts made by the authorities over the past few years have sought - in accordance with the recommendations formulated by a number of

studies and reports - (a) to clarify and adjust the purpose and conditions of such resources so that the money goes to those who are really disabled (e.g. by laying down a minimum rate of incapacity for eligibility for the AAH; checks on the effective use of monies paid to persons eligible for the ACTP); and (b) to supplement these benefits to encourage independent living at home (e.g. a supplement to the AAH).

Improved access to public places and means of transport received a significant boost over the past two years. A wide range of measures were adopted in application of Law No 91-663 of 13 July 1991, which is concerned with measures designed to promote access for the disabled to housing, places of work and public establishments: prior checks on accessibility in connection with planning applications; application of the accessibility rules to public and private workplaces employing at least 20 people; creation of an interministerial fund for accessibility to State buildings; inclusion of the accessibility factor in the "public transport" chapter of the agreement between the State and the Ile-de-France region; participation in design work on the European standard for bus design, etc.

Finally, efforts continued over the past two years on ways of improving employment prospects for the disabled in the mainstream working environment, as provided for in the Law of 10 July 1987. For instance, the increase in the number of jobs reserved for the disabled in the mainstream environment rose from 3.7% in 1992 to 4.3% in 1994, showing (although the rate of 6% laid down initially by the Law has not yet been reached) a sense of dynamism which is all the more remarkable in that it took place against the background of an economic recession. There was also proof and confirmation of the effective role of the AGEFIPH, the association responsible for collecting and managing contributions from firms failing to employ the required number of disabled workers or subcontracting insufficient work to the sheltered sector. Finally, State action in 1993 and 1994 was in line with application of the plan for the employment of disabled workers, adopted on 10 April 1991: priority access for the disabled to certain special provisions (e.g. return-to-work contracts up from 11 136 in 1992 to 14 450 in 1993; employment-solidarity contracts up over the same period from 9 389 to 33 269); agreement between the State and the Association for adult vocational training on improved treatment for the disabled in the AFPA's training centres; further development of preparation and follow-up teams on vocational retraining (EPSR) with a view to better coverage of the national territory.

As regards the employment of the disabled in public administration, the Inspectorate-General for Administration and the Inspectorate-General for Social Affairs were made responsible for putting forward specific proposals.

The report submitted to the Public Service Ministry recommends a number of proposals centred on the following broad lines: improved knowledge of the status of the disabled in the public service with a view to enhanced integration; making the various ministries aware of the employment for the disabled issue; speeding up recruitment procedures; accompanying measures to facilitate integration of the disabled; creation within each ministry of a special department to deal with the disabled; encouraging public administrations to make use of the services available from the sheltered environment.

This is a firmly-based set of proposals which should shortly give rise to practical implementation measures and amendments to existing texts.

III. Creating an appropriate and diversified network of structures to meet all the needs of the disabled

Developments affecting the disabled over the past 15 years made it essential to set up an active policy for creating a sufficient number of places and acquiring the necessary resources to bring about an improvement in the way establishments and services operate.

To this end, the redeployment of resources, wherever possible, and the implementation of multiannual programmes for new places

(within a decentralised and partnership context), particularly in establishments fordisabled adults, have been the main means of improving available resources by the 1993 deadline.

When these programmes concluded on 31 December 1993, there were a total of 12 487 places in protected workshops, 80 217 places in CAT centres, 8 897 places in MAS establishments and 3 330 places in FDT centres. The work continued in 1994, with the creation of a further 500 places in protected workshops, 2 000 in CATs, as well as extension of the MAS plan to regions with longer implementation deadlines. In 1995, 2 000 new CAT places were written into the finance act.

At the same time, the effort to boost existing capacity called for a renewed qualitative approach affecting the way such establishments are run, to enable such establishments to offer the disabled a range of solutions geared to their particular needs and guaranteeing continued care and the greatest possible level of social integration.

For the 2 000 special establishments and services caring for some 120 000 disabled children and adolescents, the major post-1989 reform should terminate in 1995, offering the opportunity to give priority to school integration and, by developing outpatient back-up services, to integrate the most disadvantaged categories of children (e.g. autistic children and children with multiple handicaps).

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 system for the exchange of information on employment opportunities in Member States of the European Union (EU) and European Economic Area (EEA). EURES has been available since January 1, 1994, for use by people who travel to work within the EU and EEA. It was launched officially in November 1994.

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 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.

Co-operation links have been established between FAS and The Netherlands, Germany and United Kingdom. FAS staff are now located within the State employment services of these 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. Joint Labour Committees normally operate in those sectors which are not well served by free collective bargaining and where wages tend to be low. There are currently 16 Joint Labour Committees in operation covering some 100,000 workers.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

The Framework Agreement on Hours of Work which was negotiated under the Programme for National Recovery (1987-1990) provided for a reduction of working hours by one hour in cases where the normal working week was at or above 40 hours. This reduction in working hours has generally been implemented throughout all sectors of the economy.

The European Commission conducted a Labour Market Survey among employees in the European Community in 1994. That survey asked employees "how many hours per week do you have at present, according to your working contract". The response showed the weighted average number of hours worked per week in 1991 was 35 hours.

The Conditions of Employment Acts, 1936 and 1944 stipulate 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).

It is proposed next year to introduce legislation to give effect to the terms of the EU Directive

on the Organisation of Working Time. The implementation of this Directive will require a review of the afore-mentioned legislation - the Conditions of Employment Acts and the Shops (Conditions of Employment) Acts.

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 (as amended by the Unfair Dismissals (Amendment) Act, 1993)
- Worker Participation (State Enterprises) Act, 1977 and 1988

Regular part-time employees are defined as those who normally work at least 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 s/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 employment in that year is entitled to paid leave at the rate of 1/4 of a week for each calendar month during which s/he worked at least 120 hours (110 if under 18 years).

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 Programme for Competitiveness and Work contains a commitment that a review of existing holidays legislation will be carried out and a Discussion Document published. That Discussion Document has recently been published and views received in response to that Discussion Document will be examined in the context of formulating proposals for new holidays legislation.

The Terms of Employment (Information) Act, 1994 was enacted to implement Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract of employment or employment relationship. The Act requires employers to provide their employees with a written statement of specified particulars of employment within two months of commencement of employment. The Act replaces and expands provisions in the Minimum Notice and Terms of Employment Act, 1973 which required employers to provide less detailed particulars of employment to their employees.

Employees who were in employment when the Act was enacted are entitled to a written statement of the particulars of their terms of employment within two months of requesting such a statement.

Notification of any change in the terms of employment must be notified to the employee within one month of such change.

In general, the Act applies to employees who are normally expected to work at least 8 hours per week and who have been in the continuous service of the employer for at least one month.

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 limits hours of work, hours which may be worked on overtime and prohibits night work. An EU Directive on the Protection of Young Persons at Work was adopted in June, 1994 and it is proposed next year to introduce legislation to give effect to the provisions of the Directive. In the context of the implementation of that Directive, it will be necessary to review the operation of the 1977 Act.

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, unlike the right to form associations, is not expressly guaranteed by the Constitution. Although the power of the Oireachtas (Parliament) to regulate freedom of association is limited, 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 implied 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 or employers' associations and one or more trade unions.

Certain basic rights covering such matters as redundancy, dismissal, 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 Acts, 1941-1990 certain principal conditions must be met by the body:

- 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£20,000 to 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 negotiation licence. However, a foreign-based union must have a controlling authority, every member of which must be resident in Ireland, which has power to make decisions in relation to issues of direct concern to members of the trade union resident in 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 State's function is to provide legislative and institutional support. The principal dispute-settling bodies provided by the State 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. The Commission is comprised of 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 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 Relations Commission has drawn up a Code of Practice on "Dispute Procedures including Procedures in Essential Services", which aims to ensure that disputes are resolved

without recourse to industrial action by providing practical guidance on procedures for the resolution of such disputes. Particular emphasis is placed on the avoidance of disputes in Essential Services with the Code setting out additional safeguards for inclusion in employer/trade union agreements.

The Labour Relations Commission has also prepared a Code of Practice on "Duties and Responsibilities of Employer Representatives and the Protection and Facilities to be afforded them by their Employer".

The Labour Court was set up in 1946 and since the establishment of the Labour Relations Commission is the court of last resort in dispute resolution. It is an independent body with an equal number of members nominated by employer and worker organisations, as well as an independent Chairman and Deputy Chairmen, appointed by the Minister. 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
- Local Training initiatives
- Alternance

Special training and development programmes are also provided for unemployed young persons, particularly those with inadequate education or vocational qualifications:

- School Leavers Scheme (Options)
- Youthreach Programme (including Special Vocational Preparation and Training & Linked Work Experience)
- Skills Foundation Programme

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 & Travellers Training Workshops

FAS and the French Minister for Labour, Employment and Vocational Training (& AFPA) further developed the bilateral agreement for the Mutual Recognition of Certification in 1994. A further seven FAS certificates have been accredited (titres homologues) in France and the FAS Board has recognised the corresponding eight French certificates. Work is being carried out to further extend the list of mutually recognised qualifications in 1995.

CERT, the Irish Tourism Training agency, has joined the France/Ireland mutual recognition initiative and two CERT certificates were accredited in France in 1994 and the CERT council formally recognised the corresponding French certificates.

The FAS/City and Guilds of London Institute

Joint Certification agreement, which has been in operation since 1990, was reviewed by the FAS Board in 1994 and extended for a further two years until 1996.

FAS has initiated work with relevant German authorities with a view to improving mutual recognition of Irish and German trade qualifications. Progress is expected in 1995.

FAS is participating in the EUROQUALIFICATION Programme which is designed to facilitate the mutual recognition of vocational certification throughout the Member States. The first phase of EUROQUALIFICATION is now involved with 12 different vocational sectors of development and a total of 42 occupations are being used to provide training for individual trainees.

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 25 designated trades. Subject Matter Experts nominated by the employer bodies, trade unions, the Department of Education and FAS were engaged to use their own expertise and findings from the surveys to write the curriculum.

In September 1993, 15 trades started operating under the new Standards-Based system, 5 more started in September 1994, with a further 5 to commence in September 1995.

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 1993, women accounted for 38% of all persons completing FAS Training Programmes and 31% of participants on Employment Schemes.

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 Act also applies to 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 (Programme for Economic and Social Progress) and a survey of three sectors - state sponsored bodies, local authorities and health boards - was undertaken by the former Department of Labour. The survey was completed by the Department of Equality and Law Reform and a Report on a Survey on Equal Opportunities in the Public Sector was published at the end of 1993.

The promotion of equal opportunities in the public sector has also been strengthened by the continued profile of equality policy in the Government Programme. The establishment of the Department of Equality and Law Reform, the creation of a Minister for Equality and Law Reform as a member of the cabinet and the publication and follow-up to the Report of the Second Commission on the Status of Women have impacted across all of Irish society including the public sector. A significant development towards equality in the public sector is the Government's introduction of a policy to promote a gender quota of 40% in respect of all appointments to the boards of public sector bodies.

Following on this Report, the Programme for Competitiveness and Work included a commitment that all public sector employers which had not already introduced equal opportunities policies and programmes would be requested to do so by the end of 1994.

Sexual Harassment

As a consequence of a commitment in the Programme for Competitiveness and Work (PCW) a national Code of Practice on Measures to Protect the Dignity of Women and Men at Work has been issued by the Department of Equality and Law Reform, following consultation with the social partners. This code is being promoted, monitored and reviewed by the Employment Equality Agency. It is planned to grant the code legal status under employment equality legislation to be introduced under the PCW.

Equality Awards

The Department of Equality and Law Reform has launched an Action for Equality Awards Scheme for the promotion of equality in two categories - gender and disability. The purpose of the Equality Awards Scheme is to recognise good equality practices in Irish Society.

Childcare Facilities

The Minister for Equality and Law Reform launched a Pilot Childcare Imitative during 1994. This Scheme is being operated by Area Development Management (ADM) - an independent company designated by the Government to support integrated local economic and social developments.

The purpose of the imitative is to support and facilitate a limited number of innovative projects for the setting up, on a pilot basis, of childcare measures utilising the skills of suitably trained local people so as to enable local residents to avail themselves of education, training, retraining and employment opportunities which they might otherwise be unable to undertake in the absence of a child-minding facility.

The scheme is targeted at designated disadvantaged areas and the £1 million exchequer funding available during 1994 is to assist with start-up capital costs such as adaptation of premises, purchase of equipment, etc.

The references to childcare in the Programme for Government and the PCW and the recently published Report by the Working Group on Childcare Facilities for Working Parents have ensured increasing attention to progress in this area. Furthermore, childcare has been specifically profiled in the National Development Plan prepared in the context of EU Structural Funds. In addition, there has been some progress in relation to the provision of creches in some of the larger public sector employments.

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Comprehensive legislation exists in Ireland relating to safety, health and welfare at work. The Safety, Health and Welfare at Work Act, 1989, sets out, in relation to all workplace :

- the full scope of workplace safety
- the organisation and systems necessary to achieve it
- the responsibilities and roles of employers, self-employed and employees
- the enforcement procedures where the law is not observed.

Amongst the principal Regulations made under the Act are the Safety, Health and Welfare at Work (General Application) Regulations, 1993 (S.I.No. 44 of 1993) which transpose the following EU Directives into Irish Law:

* New 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. They extend the duties of employers, the self-employed and employees under the 1989 Act.

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.

The legislation is administered and enforced by the Health and Safety Authority, established under the 1989 Act as a tri-partite state-sponsored body under the aegis of the Department of Enterprise and Employment.

Arising from Council Directive 92/85/EEC of 19 October 1992 a new Health and Safety Benefit was introduced for working women who are pregnant, have recently given birth, or who are breastfeeding and who cannot continue at their job because of a risk to their health and safety in the workplace. The new benefit applies where the employer cannot either remove the risk or find suitable alternative work for them.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

A Joint Declaration on Employee Involvement in the private sector was adopted by the Irish Business and Employers Confederation 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 current National Programme for Competitiveness and Work (PCW) commits the Government and the social partners to develop the national level partnership arrangements of the two previous National Programmes. The development of partnership arrangements at the enterprise level is given a particular focus. To this end, all parties to the PCW have undertaken to support the Irish Productivity Centre in fulfilling its role in developing initiatives for employee involvement, new work organisation, etc.

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. However, provision is made 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.

THE DISABLED

The National Rehabilitation Board (NRB), which is an executive agency of the Department of Health, has responsibility for approving and monitoring vocational training for people with disabilities. Persons with a disability are socially excluded from society to a large extent and are also excluded from the labour market because of their disability.

Training is provided by a range of training agencies, both statutory and non-Governmental (voluntary or private), which specifically cater for the special needs of people with disabilities. The main sectors which training is focused on are new technology, manufacturing, tourism and catering, agriculture and horticulture, the service industry and co-operative ventures.

The NRB works closely with local employers to identify local labour markets and to heighten the awareness of employers to the special needs of people with disabilities. All vocational training programmes for people with disabilities are monitored and reported on by the NRB. The NRB also requires that all courses lead to the award of nationally recognised certification to ensure that trainees leaving special training centres have the same qualification as those leaving mainstream training centres. All courses are classified according to the level of training, and the levels which apply in special training centres are thus linked to national and European training levels via certification. The NRB has also been involved in administering integrated pilot programmes e.g. courses for trainees with a disability held in mainstream centres; courses where the trainee target group include people with disabilities.

The NRB with FAS, CERT and Teagasc, as a EUROFORM initiative, have developed certification in Introductory Skills for trainees in their respective centres. Design and delivery briefings were conducted on an integral basis (e.g. mainstream and special trainers).

The NRB has participated in EU Training Exchange programmes funded by HORIZON

for specialist trainers. Through negotiations with FAS, CERT and Teagasc, the NRB has not only gained access for disabled trainees to national certification but has also increased these organisations' awareness of the needs of people with disabilities and stimulated them to look at their policies.

SOCIAL SECURITY

Administration

Social Security Services in Ireland are under the general control of the Minister for Social Welfare. The Department of Social Welfare is responsible for administering the State's statutory and non-statutory social security services. The primary function of the Department is one of income maintenance and it provides cash benefits for people at certain stages of their lives or when contingencies such as sickness or unemployment arise.

Services are divided into two categories: Social Insurance and social Assistance. The range of services provided covers all of the internationally recognised branches of social security, e.g. old age/retirement pension, survivors, sickness, unemployment, maternity and employment injury. It also administers the family support schemes of Child Benefit and Family Income Supplement.

In addition to cash benefits, benefits in kind such as dental and optical benefit, free travel and free electricity for the elderly and the disabled are provided. The Department also administers a scheme of grants for voluntary organisations in the social services area and is responsible for the Combat Poverty Agency which was established in 1986 and the Pension Board which monitors supplementary pension schemes in Ireland.

Social Insurance Contributions

All employees, irrespective of their level of earnings are compulsorily insured from the age of 16 years to 66 years. Insurance contributions are earnings-related but the percentage of salary payable varies according to the nature of employment. Entitlement to various benefits is subject to being insured in an appropriate contribution category. Since April 1988 self-employed persons are liable for social insurance contributions which entitle them to certain long-term benefits.

In order to improve employment opportunities for the unemployed, a special scheme of exemption from employers' social insurance contribution was introduced for employers who take on additional employees from the Live Register between 19/10/92 and 19/3/93. The new employee must represent a net addition to the employer's workforce, and must have been registered as unemployed prior to taking up the job. If the necessary conditions are fulfilled, the employer is exempt from social Insurance contributions in respect of the additional employees for two years (from 6/4/93 to 5/4/95). The employees pay the normal employee contribution, and retain entitlement to benefits on the same basis as other employees. In 1994 this scheme was extended to cover new employees who were registered as unemployed prior to taking up work between 6/4/94 and 5/4/95. Persons taken on must represent a net increase in the number of workers employed as at 21 February 1994. This net increase must be maintained throughout the period of exemption, i.e. 6/4/94 to 5/4/96.

A number of changes were introduced to improve the work incentive for lone parents and those on low incomes. The means test for Lone Parent's Allowance was eased, the Health Contribution and the Employment and Youth Training Levy for those with full eligibility for health care was waived.

Other measures were also introduced in 1994 to maintain/stimulate employment including the introduction of a reduced rate contribution of 9% for employers in respect of employees earnings less than IR£9,000.

Social Insurance Benefits

Entitlement to a Social Insurance Benefit depends on the claimant having a certain standard of pay-related social insurance (PRSI) contributions recorded.

Subject to appropriate statutory conditions (but without regard to the recipient's means) the following flat-rate insurance benefits are available: Disability Benefit, Invalidity Pension, Unemployment Benefit, Maternity Benefit, Survivor's Pension, Deserted Wife's Benefit, Orphan's Allowance, Treatment Benefit, Retirement Pension payable at 65, Old Age Pension payable at 66 and a Death Grant. The cost of social insurance benefits is met by pay-related social insurance contributions from employers, employees and the self-employed with the balance of the expenditure being paid by the Exchequer.

Occupational Injuries Benefit

The Insurance services also provide for payment of benefits in respect of injury, disablement or death, as well as medical care resulting from an occupational accident or disease. These benefits are available to employees, irrespective of age. No statutory contribution conditions exist for entitlement to these benefits.

Social Assistance Schemes

Social assistance is paid to those who do not satisfy the contribution conditions necessary for receipt of social insurance benefits, or to people who have exhausted their entitlement to insurance benefits. To qualify for social assistance, the claimant must satisfy a means test.

The following assistance services are subject to a means test: non-Contributory Widow's and Orphan's Pension to the survivors of persons whose lack of insurance (or inadequate insurance record) precludes payment of contributory pensions; Deserted Wife's Allowance for women over 40 years of age with no child dependants whose husband is in prison; Lone Parent's Allowance for persons who are widowed, separated, deserted, unmarried or a prisoner's spouse where they are bringing up a child or children without the support of a partner; Old Age Pensions payable at age 66 to persons not entitled to insurance pensions; blind pensions payable at age 18; Unemployment Assistance; a Carer's Allowance to people looking after an invalided pensioner.

In addition there is Supplementary Welfare Allowance which is payable when a person has no other resources or when such resources are insufficient to meet his or her needs. It is usually payable where the person has no means or insufficient means to meet essential needs and where the conditions for receipt of disability benefit and unemployment benefit/assistance are not satisfied. The allowance is a safeguard measure that ensures that the person receives a basic income maintenance entitlement.

Child Benefit is payable without a means test in respect of children under 16 years of age and children between the ages of 16 and 18 who are in full-time education or physically or mentally handicapped.

A Back to Work Allowance Scheme was introduced on a pilot basis in October 1993. Under the scheme unemployed people and lone parents can continue to receive 75% of their weekly social welfare payments for one year and 50% of their payments for a second year when they take up work in indigenous industries or while setting up self-employed ventures.

Improvements in Rates of Payment

In recent years the extent of the increases in social welfare payments announced in the annual budget have been equal to, or greater than, the prevailing rate of inflation. In addition, special increases have been provided for those on the lowest payments such as the long-term unemployed. In 1993, all weekly payments were increased by 3.5% with an increase of 4.9% on lowest payments. In 1994 all weekly payments were increased by at least 3% with some 20% of social welfare recipients receiving increases of 6% or more. (Cost of living expected to increase by 2.5% in 1994.) The weekly rates of Sickness Benefit and Unemployment Benefit were increased by 10% in 1994 to compensate for the abolition of the pay-related benefit supplement.

The Elderly

A Retirement Pension is payable at age 65 years to persons who are no longer in full-time work. It is based on a person's contribution history over their working life. Persons over 66 years of age may be entitled to either a contributory or non-contributory old age pension. The non-contributory pension is subject to a means test while the contributory pension is subject to satisfying a contribution test.

A range of non-statutory benefits in kind are also available to pensioners over 66 years of age living in Ireland. They include free travel, free electricity allowance, free TV licence, free telephone rental allowance. With the exception of free travel, pensioners must, unless they are over 75 years of age, be living alone or with excepted persons to qualify for these benefits in kind.

In relation to supplementary pensions, preservation of pension entitlements for people who leave employment and have a minimum of 5 years qualifying service in the scheme, of which at least 2 years is after 1 January 1991, came into effect on 1 January 1993.

In July 1993, new regulations were introduced by the Minister for Social Welfare providing for inclusion of members' representatives as pension scheme trustees. In order to allow time for elections of such representatives, the regulations did not come into effect until January 1994.

ITALY

FREEDOM OF MOVEMENT

Points 1, 2 and 3

In 1992, as the previous report showed, endeavours were focussed on overhauling the SEDOC system and appointing the Euroadvisers. In 1993 and 1994, the emphasis shifted to making the new EURES system, which replaces SEDOC, operational and to this end a large number of concrete measures were taken.

The first of these, still at the promotional stage, was a demonstration given recently in Brussels (using a number of stands of a high technical quality) of the EURES information system, which is designed primarily to improve interaction between labour demand and supply.

EMPLOYMENT AND REMUNERATION

Points 4, 5 and 6

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 1993 and 1994.

The economy is showing signs of recovery in Italy as elsewhere, and this is resulting in fewer redundancies and less need for mechanisms such as the wages guarantee fund, early retirement and redeployment. However, at present only certain areas with traditionally stronger economies seem to be benefiting from this recovery.

The following measures have been introduced by the State in the field of vocational training, which is the key to developing human capital and improving competitiveness:

1) work/training contracts: Law No 451/1994, amending Decree-Law No 299/1994, drew a distinction between training leading to an intermediate level of vocational qualifications and training leading to a higher level of vocational qualifications;
2) plans for the integration of young people into the labour market in the Mezzogiorno, areas affected by industrial decline and other areas with severe imbalances between labour supply and demand, again under Law No 451/1994;
3) the recent bill put forward by the Minister for Labour and now before Parliament provides for integration or reintegration training contracts, aimed at giving trainees practical experience at the workplace and enabling them to acquire new skills, and also for specific traineeships at the workplace.

Law No 236/93 provides that the Minister for Labour, the regions and the independent provinces may provide funding for and enter into agreements with joint bodies, set up in implementation of agreements with the trade unions, to analyse local employment situations and carry out surveys to identify training needs and to support continuing training, refresher training or retraining programmes set up to encourage the redeployment of workers in CIGS (Cassa Integrazioni Guadagni Straordinaria - Wages Guarantee Fund), self-employed workers and workers in cooperatives.

In view of the demand for greater flexibility in the use of the workforce, in terms of working hours and forms of employment, as a means of ensuring that economic growth does translate into more jobs, the Government firmly intends to introduce innovatory legislation specifically aimed at encouraging the use of atypical contracts, instead of the standard full-time and open-ended contract.

The above bill therefore places great emphasis on the use of part-time work and fixed-term contracts, as a way of overriding the rigidity of current legislation and create more jobs. It is therefore planned to extend the possibilities for opting for these types of contract, no longer confining them to certain very specific types of work, but allowing them to be used to meet organisation and production requirements and also to enable workers to reconcile home and working life.

There are also plans to introduce a Decree-Law on temporary work, authorising companies and

cooperatives which offer certain guarantees to protect the rights of workers to supply temporary labour. This is certainly an innovation in Italy, where there has always been a public monopoly on placement.

The recruitment procedures of the public employment offices were recently simplified by Decree-Law No 572/1994, which introduced a new system whereby undertakings notify them after filling a post, rather than having to request authorisation beforehand. In addition, the regional employment offices and agencies were given a greater role to play in information, consultation and preselection, to ensure that posts are filled as rapidly and efficiently as possible.

As regards combating long-term unemployment, since 1991, as part of the legislative reform of recruitment procedures, Italian undertakings have been required to recruit a specific quota of long-term unemployed, in order to help specific categories of vulnerable individuals on the labour market (Law No 223/1991). The proposed introduction, mentioned earlier, of integration or reintegration training contracts for persons aged over 32, who are therefore over the age limit for work/training contracts, including those registered on redeployment lists, is another measure to help the long-term unemployed.

Legislation governing "socially useful" areas of work (cultural heritage, management of the environment, urban renewal, research, vocational training, services to small and medium-sized undertakings and individuals) has also been reformed (Law No 451/1994), with a view to the redeployment of workers registered as unemployed for at least two years, who are mobile, members of a CIG and belong to specific categories identified by the Regional Employment Committees. This reform is also in response to the need for productive use of funds which would otherwise be used merely to maintain the incomes of subjects who often by now have no hope of finding employment.

Youth employment, in the current phase of recovery in the production sector, hinges on other important financial measures (Decree-Law No 357/1994).

Employers recruiting young people in their first job or people unemployed for more than 24 months, and who increase the number of open-ended contracts, may benefit not only from the usual concessions provided for by special laws but also from three-year tax relief of 25%.

What is becoming increasingly clear is that the employer now has at his disposal a wide range of incentives which he can adapt to his own needs, according to production requirements, legislation and the existing and potential qualifications of the new employee, enabling him to opt for an appropriate form of recruitment, including, under certain conditions, employment without contract.

A recent agreement, made on 1.12.1993 between the Government and the trade unions on the Financial Law gave priority to intensifying public commitment to investment in the Mezzogiorno and other depressed areas by mobilising domestic and Community instruments and resources and increasing spending on research and vocational teaching and training, in line with the provisions of the earlier agreement of 23.7.1993.

Remuneration

Following the pattern set in 1992, income growth continued to fall in 1993, as a result of the extension to 1993 and 1994 of the measures provided for in the agreement on labour costs concluded in July 1993 between the Government and the two sides of industry.

The cost to employers of gross wages and salaries and social charges amounted to a total of LIT 687 163 thousand million, compared with 680 008 thousand million in 1992.

The total earnings of employees amounted to: 483 446 thousand million for gross wages and salaries, 170 878 thousand million for compulsory contributions and 32 819 thousand million in the form of contributions to lay-off schemes and fringe benefits.

The fall in the growth of gross wages and salaries is largely due to the extension over the whole period of the effects of abolishing the sliding scale, provided for in the above agreement between the Government and the two sides of industry in July 1992. By 1993 therefore the "bumping up" of the cost-of-living allowance, which was still continuing in 1992, had been cancelled out, but salaries were increased by the LIT 20 000 awarded, in accordance with the previous agreements, to all employed workers (with the exception of certain categories) from January, various wage adjustments, a small number of new collective agreements and improvements in social contributions provided for by collective agreements in 1992.

IMPROVEMENT IN LIVING AND WORKING CONDITIONS

Points 7, 8 and 9

Although there have been no significant changes on the legislative and contractual front since the first report, trends towards a more functional organisation of working hours based on agreement did emerge in the period 1992-1994 (annual calendar, Saturday work, weekend work).

Arrangements concerning working hours and flexibility were the focus of much attention in collective bargaining at various levels and in legal measures in 1993-1994.

This important issue, which affects the way in which single people and couples alike live (reconciliation of work and family life), is now very much on the agenda, as implementation of the working time Directive, which has now begun, requires legislative measures and collective bargaining.

SOCIAL PROTECTION

Point 10

As a follow-up to what was said in the first report, developments in 1993-94 are set out below.

Unemployment

The Italian welfare system provides for unemployment benefits based solely on contributions, thus excluding those seeking their first job from any form of social protection.

The most recent provision adopted on this subject (Decree-Law No 299 of 16 May 1994, as amended on 19 July 1994 – Law No 451), laying down urgent measures on unemployment and providing for state payment of part of employers' social charges, fixes standard unemployment benefit at 30% of the average monthly wage until 31 December this year.

This benefit applies to workers in industry, commerce or agriculture who have been insured for at least two years and have paid contributions for at least one year in the last two years, and is payable for a maximum of 180 days a year.

Special benefits are paid to workers in industry (Law No 1115 of 5 November 1968), in the construction and allied industries (Law No 427 of 6 August 1975) and in the agricultural sector (Presidential Decree No 1049 of 3 December 1970), amounting to 80% of the last salary received for workers in the construction sector and 40% or 60% for the agricultural sector.

Workers in industry are protected not only against redundancy, but also against partial redundancy, i.e. reduction in working hours or temporary lay-off, through the Cassa Integrazione Guadagni, which makes up lost earnings for hours not worked. This payment, now the same for white-collar and manual workers, amounts to 80% of total earnings and is paid for a period of three consecutive months, which may be extended in exceptional cases to a maximum of 12 months in a two-year period.

The maximum sums which may by paid by the ordinary CIG for white-collar and manual workers are as follows:

- LIT 1 248 021 per month, or

- LIT 1 500 000 per month where the salary on which the calculation is based is over LIT 2 700 000 per month.

Pensions

Firstly, the reform of pensions paid by the General Compulsory Insurance Fund for Invalidity, Old Age and Survivors of Employed Workers, managed by the INPS (National Social Security Institution), is now in preparation. The full text of the reform of the pension system was sent by the Italian Government to DG V of the European Commission on 1 February 1994. However, a number of measures were introduced in 1993 and 1994:

- Decree-Law No 124 of 21 April 1993 – Measures governing supplementary pensions.

Decree-Law No 124 of 21 April 1993 governs supplementary pensions, in other words the types of social security which provide for supplementary pensions under the compulsory state system, to give higher levels of welfare cover.

Articles 3 and 9 of the Decree specify how supplementary pension schemes may be set up:

a) through collective contracts and agreements, including company agreements, or, failing that, agreements between workers promoted by trade unions which have signed collective labour agreements;
b) through agreements between self-employed workers or between members of the liberal professions;
c) under the regulations of companies whose employment relationships are not governed by collective agreements or by company agreements;
d) through initiatives of SIMs (Società di Intermediazione Mobiliare), insurance companies authorised to manage commercial life insurance, compulsory insurance bodies, provided, however, that funds are "open".

The provisions of Article 9 of this Decree are of particular importance, as they provide for the establishment of "open" pension funds through agreements with the bodies listed in d). Not only that, it clarifies one of the basic principles of the new rules laid down by Decree No 124/1993, that, in general, bodies setting up insurance schemes may not manage funds collected directly, and not only may they not provide insurance themselves, management of the funds must be by agreement with other bodies: SIMs, insurance firms, compulsory insurance firms.

The management model proposed by Decree-Law No 124/1993 is therefore based in essence on that of the agreement with the competent bodies.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Points 11, 12, 13 and 14

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 1993 of the following trend which has become steadily consolidated in Italy over the past decade: 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 "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 wages. Information on the content of this protocol will be given in 1993.

VOCATIONAL TRAINING

Point 15

The following measures have been introduced by the State in the field of vocational training, which is the key to developing human capital and improving competitiveness:

1) work/training contracts; Law No 451/1994, amending Decree-Law No 299/1994, made a distinction between training leading to an intermediate level of vocational qualifications and training leading to a high level of vocational qualifications;
2) plans for the integration of young people into the labour market in the Mezzogiorno, areas affected by industrial decline and other areas with severe imbalances between labour supply and demand, again under Law No 451/1994;
3) the recent bill put forward by the Minister for Labour and now before Parliament provides for integration or reintegration training contracts, aimed at giving trainees practical experience and enabling them to acquire new skills at the workplace, and specific traineeships at the workplace.

Law No 236/93 provides that the Minister for Labour, the regions and the independent provinces may provide funding for and enter into agreements with joint bodies, set up in implementation of agreements with the trade unions, to analyse local employment situations and carry out surveys to identify training needs and support continuing training, refresher training or retraining programmes in order to encourage the redeployment of workers in CIGS (Cassa Integrazioni Guadagni Straordinaria - Wages Guarantee Fund), self-employed workers and workers in cooperatives.

It should also be stressed that, in the protocol agreement of January 1993 on vocational training and joint bodies comprising the two sides of industry, the General Confederation of Italian Industry (Confindustria) and the trade unions reasserted the strategic importance of vocational training for the maintenance and development of the possibilities for the integration and employment of young people and other workers, and for the maintenance of competitiveness in the face of growing internationalisation of the economy.

EQUAL TREATMENT FOR MEN AND WOMEN

Point 16

The Italian Government continues to be firmly committed in this sensitive area and at Community level too is extremely active in promoting equal pay. The Government has, in fact, approved the adoption of the Directive on the reversal of the burden of proof, in the work context, which has been awaiting approval for some time (although Law No 125/1991 already provides for partial reversal of the burden of proof onto the defendant in cases where the plaintiff complains of indirect discrimination on grounds of sex and can provide the court with figures to back the accusation).

Approval of this Directive could make it easier for workers suffering discrimination to have recourse to the law, because it has often been impossible to furnish sufficient evidence of discrimination on whatever grounds in court.

In addition, again at Community level, the Memorandum on Equal Pay was approved, and this led to the adoption of the opinion on equal pay by the European Commission. In this document, the Commission calls on the Member States to carry out a check on the earnings of workers, to ensure that they are sufficient to guarantee a decent standard of living, are in relation to the productivity of the work and linked in some way to the "sacrifice" made by the worker carrying out the job: one example given by the Commission is that of a poorly paid worker who deserves to be paid more to compensate for the discomfort caused by the nature of the work. Various measures have therefore been proposed to increase the

transparency of earnings, such as the collection and dissemination of statistics and the adoption of legislation aimed at ensuring observance of the right to equal pay (to reinforce the prohibition of any kind of discrimination against workers: sex, race, religion, ethnic origin, etc.), including for those types of work which it is harder to monitor (for example, homeworking).

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Points 17 and 18

In 1993 and 1994, there were no significant changes to legislation or collective agreements.

However, for information, various draft laws are being examined by the competent bodies concerning amendments to the Statute of Workers, particularly as regards trade union representation and representativeness and to amend the RSU - Rappresentanze Sindacali Unitarie (Unified Trade Union Representation).

Various parties are also proposing an amendment to Article 39 of the Constitution. Finally, there has also been a proposal to hold a referendum on the repeal of Article 19 of the Statute of Workers (Law No 300/70).

HEALTH PROTECTION AND SAFETY AT THE WORKPLACE

Point 19

The following new provisions were introduced in 1993 and 1994: The 1993 Community law empowered the Italian Government to ensure the full application of the framework Directive on the safety and health of workers (391/89) through a law scheduled to come into force by the end of 1994.

Directive 391/89 covers all employees in employment, including therefore employees at sea or in the air.

In the above Directive and in Article 2.1 of Law No 877 of 18.12.1973 on "Protection of home work", homeworkers are given some level of protection in that they are prohibited from undertaking activities involving the use of substances or materials which are toxic or harmful to themselves or their families.

Finally, the 1993 Community law implementing Directive 89/391 deals with self-employed workers only in general terms, for example if they enter into a work contract and/or work environment with employed workers.

The general problem of protecting the health of self-employed workers, at international level as well, is that it is very hard to find a practical way of ensuring implementation of the rights of this category of workers which a law could very easily provide for in strictly theoretical terms.

Lastly, under Decree Law No 626 of 19.9.94, implementation of the provisions of the 1993 Community law has been staggered to ensure that they are more effectively implemented; so far, framework Directive 391/89 and the first seven individual directives have been implemented.

By 19.3.1995, the remaining five individual directives adopted so far by the European Union should be implemented. This first set of measures has established the following basic principles:

- compulsory application of the legislation to all individuals (public and private);
- the drafting of legislation providing more protection for workers;
- compulsory health surveillance (already in force under Italian law) where required;
- a system for coordination of safety between the State and regions has been set up: a national advisory committee and subcommittees at national level provide for joint participation by the two sides of industry and experts on safety issues.

PROTECTION OF CHILDREN AND ADOLESCENTS

Points 20, 21, 22 and 23

No significant changes in legal or contractual provisions.

Emphasis is again placed in 1993 and 1994 on measures by the Ministry for Employment's labour inspection departments to obtain 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 in the previous report, by a simultaneous check on current problems in the sector carried out by the Committee for the problems of persons under legal age, comprising members representing all the ministeries and competent departments, within the Ministry of the Interior.

THE ELDERLY

Points 24 and 25

As mentioned in the third report, the problem of the elderly continues to be one of the main priorities for the current Ministry for Social Affairs, on the basis of the above-mentioned Presidential Decree .

DISABLED PERSONS

Point 26

Law No 104/1992, or the Framework Law on the disabled, mentioned earlier, reasserts the necessity of cooperation in defining integration as the need for each individual to attain independence and to acquire skills (motor, perceptive, cognitive, communicative and expressive) as well as the necessary social tools; integration is therefore "social" and does not end with compulsory schooling but extends throughout life, in the day-care centre, in vocational training and at work.

Statistical tables are enclosed on regional training measures introduced by the State with EC funding (including data on courses and financing) under Objective 3, Priority 5 (disadvantaged groups). On the basis of Law No 56 of 28.2.1987 (mentioned in earlier reports), various other important training measures aimed at placement of the disabled in public and private enterprises have been set up and are still continuing.

The employment agencies of Lombardy, Lazio, Veneto, Trento and other regions have been particularly active in this field.

Despite the concern of the Committee of Independent Experts, we must repeat that even today the regulations on compulsory recruitment (Law No 482 of 2 April 1968 and subsequent amendments) aimed at protecting citizens in particularly difficult situations, through their integration or reintegration into the working community, are outmoded and excessively rigid. This Law provides that approximately 12% of jobs be reserved for the disabled, a percentage which is now considered to be rather generous for satisfying the needs of the protected workers.

On 30 June 1993, approximately 309 000 workers were registered in the lists for compulsory recruitment, while approximately 312 000 workers were employed in private undertakings and local public authorities. This final figure is not necessarily accurate, however, as not all bodies, particularly in the public sector, will give figures.

It should also be remembered that many disabled people are recruited through normal placement procedures and are not included the above figures.

As regards the compulsory recruitment of blind switchboard operators, in accordance with Law No 113 of 29 March 1984, 11 782 blind switchboard operators were registered in the relevant national list on 31 December 1993; in the course of 1993, 415 new registrations were made. At the same time, 1 456 blind masseurs

or massophysiotherapist (Law No 686/61) were registered in the national list, 35 of them during 1993.

The consolidated text of reform bills on compulsory recruitment referred to in the previous report became null and void along when the former Government fell from power.

This reform, in line with EEC Recommendation of 24.7.1986 on the employment of the disabled, proposes an improvement in the current system by means of careers guidance and vocational training measures, the promotion of integrated cooperation, rehabilitation agreements and the rationalisation of recruitment procedures.

The new Government has not yet tackled the problem, but it may be supposed that the new Minister for the Family and Social Affairs, who trained in child neuropsychiatry and himself was born disabled, will give the problem sensitive and considerate treatment.

IMPLEMENTATION OF THE CHARTER

Point 27

The observations made in the first report remain valid.

Although many draft directives submitted by the Commission still have to be discussed in detail (see draft amendment to the Directive on transfer of businesses), the activities of the Social Affairs Council slowed down considerably in 1993 and 1994, although in 1993 the Directive on working time and various other special Directives on safety at work were adopted.

The French Presidency, which will begin in January 1995, will put various directives before the Council's Working Party on Social Affairs, such as the detachment of workers, "part-time work and fixed-term contract work". In addition, discussions on the relaunching of the fourth programme to combat social exclusion must be discussed again, this time with more determination. These issues, together with vocational training measures (see the Leonardo programme now adopted) and measures concerning equality between men and women, will be the first concrete steps towards achieving the social policy outlined in the Community Charter of Fundamental Social Rights and, with greater emphasis, in the Social Protocol of the Maastricht Treaty.

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 or profession.

– Public sector: See reply to question 4.

c) Negative answer.

Question 3

a) In accordance with the Community regulations (cf. Regulation (EEC) No 1408/71 and Regulation (EEC) No 1612/68), there must be no hindrance to the reunification of families of workers from the Community working in Luxembourg.

The government has modified the erstwhile Immigration Service's remit. The law of 27 July 1993 concerning the integration of foreigners in the Grand Duchy of Luxembourg and the social action programme for foreigners govern the remit of the new Foreigners Commissariat, which is responsible for coordinating policy on and for foreigners.

The Commissariat reports to the Ministry for Family Affairs.

The law states that the Commissiariat is particularly responsible for helping "foreigners to adapt to social, economic and cultural life by way of material and psycho-social aid, ... family reunification" (Article 2b). It is also responsible for assisting and advising foreigners who are seeking accommodation.

The above law also created an interministerial committee to coordinate policy on foreigners, this committee being chaired at present by the Government's Commissioner for Foreigners.

In 1994, the interministerial committee focused its attention on the need or otherwise for legislation on family reunification for non-Community citizens.

The Ministry of Justice is responsible for entry arrangements into Luxembourg and rules on applications for family reunification and, where appropriate, issues the requisite residence permits.

In principle, the Luxembourg authorities comply with the resolution of 2 June 1993 adopted in Copenhagen by the Ministers responsible for immigration regarding the harmonisation of national policies on family reunification.

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).

Proceedings are currently pending before the Court of Justice of the European Communities due to the fact that Luxembourg failed to react as required by the Commission to the various notices and reasoned opinions.

By application lodged on 20 December 1993, the Commission brought an action for a declaration that:

a) by maintaining the requirement for nationality as a condition for workers from other Member States to gain access to jobs as civil servants or public-sector employees in public sectors concerned with research, teaching, health, land transport, post and telecommunications services, water, gas and electricity distribution services, the Grand Duchy of Luxembourg has failed to comply with its obligations under Article 48 of the EEC Treaty and Articles 1 and 7 of Council Regulation No 1612/68.

b) order the Grand Duchy of Luxembourg to pay the costs.

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 general definition 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, 28 December 1988 and 23 December 1994.

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. *Sliding scale scheme for wages and salaries*

The Law of 27 May 1975 gave general effect to the sliding scale 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 the Grand-Ducal Regulation of 28 December 1990.

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 withheld, 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. Recourse to fixed-term contracts

The law stresses the exceptional nature of fixed-term contracts, stipulating that employment contracts must be open-ended.

Only in cases and under conditions provided for in the law may contracts of employment be for a fixed period, such period to be laid down on signature of the contract or to be terminated on 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 nature of fixed-term contracts

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 certain 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 three months for employees whose qualifications are below CATP level;
  - two weeks to a maximum of six months for employees with the CATP or with equivalent or higher qualifications;
  - two weeks to a maximum of 12 months for employees earning a monthly salary of Lfrs 21.622 or more (base 100 index-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. Part-time contract

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.

4. Temporary work and labour detachment

The law of 19 May 1994 lays down a very strict framework for such employment relationships.

Labour detachment (i.e. the hiring-out of labour) is now possible only in limited conditions and has to be authorised by the Ministry of Labour.

Similarly, temporary labour firms have to be authorised by the Ministry of Labour, a temporary work relationship being governed by a dual contractual link between the providing firm and the using firm on the one hand (i.e. a provision-of-labour contract) and between the temporary employment firm and the employee on the other (i.e. a "mission" contract). The two contracts must incorporate a number of compulsory items.

Recourse to temporary labour is limited to the same cases as recourse to fixed-term contracts. The maximum duration of temporary employment is twelve months, including any renewals.

The rights of temporary workers (in terms of remuneration, working conditions, health and safety) must be the same as for payrolled workers in the user firm.

c) *Collective redundancy and bankruptcy procedures*

The law of 23 July 1993 concerning various proactive employment measures regards collective redundancy as the termination of employment of at least seven employees for a period of 30 days or the termination of

employment of at least 15 employees for a period of 90 days.

The employer is required to enter into negotiations with the workers' representatives with a view to reaching agreement on a "social plan".

To enable the workers' representatives to formulate constructive proposals, the employer must provide them with written information on the planned redundancies, the number and categories of workers concerned, the number and categories of workers normally employed and the period over which it is planned to implement the redundancies.

Negotiations must bear on ways and means of avoiding or reducing the number of collective redundancies and on ways of alleviating the consequences.

The results of these discussions are set down in a signed agreement known as the "social plan", copies of which are sent to the Employment Administration and to the Labour Inspectorate.

Where no agreement is reached, the two sides must approach the National Conciliation Service.

Collective redundancy arrangements have to be notified by the employer in writing, at the latest by the date of commencement of the above negotiations, to the Employment Administration, which in turn forwards a copy

to the Labour Inspectorate, and to the workers' representatives.

The employer may only make individual notification of redundancy to the employees concerned once the social plan has been signed or the report of the National Conciliation Services has been issued.

Generally speaking, collective redundancies take effect for individual workers on expiry of a 75-day period.

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.

In addition to the ordinary annual leave, employees have a right to certain forms of special leave.

For instance, a worker has a right to special leave on personal grounds, allocated as follows:

- one day for the death of a relative or in-law of the second degree
- two days for the birth of a child, the marriage of a child or for moving home
- three days for the death of a spouse or of a relative or in-law of the first degree
- six days for the employee's marriage
- two days for the reception of a child of less than 16 years of age with a view to adoption, unless the employee is entitled to adoption leave.

In the case of the adoption of a child who is not yet of age to enter the first year of primary education, one of the parents in paid employment may claim eight weeks adoption leave.

Sports leave limited to ten working days per year and per person may be granted to top-

level sportsmen or sportswomen and their essential training staff.

Educational leave limited to 60 days in all and 20 working days per two-year period is granted to enable employees – particularly young people – to take part in visits, conferences and study trips, sessions or meetings whose programme is approved by the Ministry for Youth.

Finally, the law allows time off for the performance of certain public and civic duties.

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 descending line, brothers and sisters or in-laws of the employer, where their sole occupation is with the firm.

  This derogation concerns one-man firms, but also companies where the proprietor is affiliated to the liberal professions and 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

Social protection is spreading to all population strata, with the differences between the various schemes becoming less and less. To take an example, with effect from 1 January 1994, persons not in paid employment now qualify for the maternity allowance during maternity leave (VL of 27.7.92).

In addition to the traditional social security mechanisms, there is a "guaranteed resources" mechanism, subject to different conditions (cf. the law of 26 July 1986), which bestows a right to a guaranteed minimum income for

any person resident in Luxembourg, the aim being to ward off poverty and provide the wherewithal for people to live in conditions of dignity.

The law of 26 February 1993 and certain implementing regulations adopted in 1994 extended the scope of measures under this law and raised the guaranteed minimum income levels according to the family situation.

The guaranteed minimum is index-linked so as to guarantee the value of this State-sponsored social benefit.

The legislation is also subject to periodical review in terms of its real value. Other benefits, viz. the special allowance for the severely disabled and the care allowance, have been increased by 15%.

Under the law of 19 June 1985, family allowances are deemed to be a child's personal right and are not subject to professional status or means-testing.

Over recent years, family allowances have been steadily increased and extended. With effect from 1 January 1993, there was a substantial linear increase so that, currently, basic family allowances amount to Lfrs 3.292 per month for one child, rising by age and number of children to Lfrs 18.012 per month for three children.

With effect from 1 July 1993, half of the non-means-tested education allowance is paid to a parent who works only half of normal working time, the quantum of the education allowance being increased by his/her half and charged to the State. Currently, the education allowance amounts to Lfrs 16.058 per month. In accordance with the recommendations set out in the Commission's White Paper on growth, competitiveness and employment, the law of 17 June 1994 included in the budget the private-sector inpayments designed to fund family allowances.

Taken in conjunction with tax allowances, family allowances constitute a global social system for recognising social obligations and compensating for family burdens.

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 Lfrs 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.

a) 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.

b) 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

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.

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 Lfrs 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 psychological 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 initiatives 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.

The Grand-Ducal Regulation of 29 June 1993 extends eligibility for 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.

The Law of 4 April 1924 provides for the representation of employers and workers in various socio-professional categories by the creation of elected professional chambers. The three employee-side chambers, viz. the Chamber of Labour, the Chamber of Private-Sector Employees and the Chamber of Civil Servants and public-sector employees, play a part, along with the employers' representatives, in the procedure for adopting laws and implementing regulations.
With effect from 1993, all persons covered by the Chamber of Labour and the Chamber of Private-Sector Employees can stand and vote in elections to their respective chambers, regardless of nationality and regardless of residence status (i.e. resident or frontier workers).

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 situation 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, turn-over, overall production and opera-ting 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 assembly.

All these documents must be communicated before being presented to the general assembly 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 program-ming 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 the employer's representatives' group and the staff 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) The new laws of 17 June 1994 concerning occupational health services and the health and safety of workers at the workplace are designed to implement the Council Framework Directive 89/391/EEC of 12 June 1989. The purpose of the legislation is to ensure the protection of the health of workers at work by organising medical surveillance and preventing occupational accidents and diseases.

Ten Grand-Ducal Regulations have been adopted in application of this Law.

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.

Luxembourg passed a law on 20 December 1993 ratifying the International Convention on the Rights of the Child.

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-operation production processes.

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.

3.3. 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.

3.4. 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 steadily improved over recent years to enable the elderly to benefit from the general improvement in living conditions and to give retired persons on a minimum pension a decent standard of living.

As with the contributory scheme, the law of 8 June 1994 extended the principle of "baby years" (i.e. taking account of years spent bringing up children) to the public service, both as regards pension eligibility and the inclusion of certain years for the amount of the pension.

In addition to pensions proper, there are other benefits designed to provide or improve elderly people's financial resources.

These have undergone constant improvement. For instance, in 1993, the care allowance, a means-tested benefit payable to persons aged above 65 (law of 22 May 1989), was increased by 15% to reflect the needs of the dependent elderly, and currently amounts to Lfrs 14.153 (index 535.29), the aim being to enable elderly people to obtain the necessary care and attention. The government is currently looking into the possibility of introducing dependent care insurance for all dependent people.

Persons with no pension or whose pension is not adequate may qualify either for the guaranteed minimum income or for the provisions under the legislation on home care.

Local authority social services, along with sectoral social services, deal with the elderly poor.

As regards services available to the elderly according to need, the Ministry for Family Affairs has proposed a national programme for elderly people which was adopted by the government on 11 March 1988. The programme provides for the fair and equitable distribution of services to the elderly. More than 80% of the country is covered by the means-on-wheels scheme, and the Ministries for Family Affairs and Health run a home help and health care scheme which covers virtually the whole of the country.

Over recent years, substantial investment has gone into improving and reorganising care structures for the elderly (e.g. day centres, old people's homes, State centres for the elderly, sanatoria and special geriatric units) to provide help for all elderly people regardless

of personal financial resources.

The person's financial contribution depends on his/her situation and resources. The State guarantees a minimum level of resources to elderly people and shares with the local government social services the difference between expenditure and the person's resources.

The Advisory Committee for the Elderly, which is a consultative organisation reporting to the Ministry for Family Affairs and which takes in the most representative associations for the elderly, is responsible for monitoring the implementation of the policy on the elderly, including application of Articles 24 and 25 of the Charte

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 vocational integration of disabled workers, the law 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.

The Ministry for Family Affairs is responsible for coordination on policy affecting the disabled. With effect from 1995, this Ministry is likewise responsible for the disabled and for casualties.
Over the reporting period, the Ministry has put in a major effort, with agreements covering more than 400 places in eight centres run by private organisations, the State contributing more than Lfrs 300 million towards the cost of accommodation and care.

On 30 July 1993, the government adopted a national programme on the disabled at the behest of the Ministry for Family Affairs. This programme also takes account of social integration and employment. It enshrines the principles of subsidiarity and mainstreaming with a view to integrating the disabled into their social and professional environment. The Luxembourg contribution to the Helios II and Handynet programmes likewise provides specific help for the handicapped in this area.

IMPLEMENTATION OF THE CHARTER

Question 27

Virtually all the laws implementing the fundamental social rights of workers at national level are accompanied by administrative and/or 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), the Netherlands has adopted its own Directive on the General System for Recognition of Higher-Education Diplomas (education levels HBO/WO, i.e. higher vocational/ university). A similar Directive on recognition of vocational training courses (levels MBO/Lerlingwezen, i.e. senior secondary vocational/apprenticeship) recently came into force.

- 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. 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 full-time 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, the Central and Local Government Personnel Act applies.

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

- In March 1994 a bill for a new Hours of Work Act was sent to the Lower House. The bill prescribes the hours of work and rest periods for almost all categories of public-sector and private-sector employment, thus obviating the need to obtain permits for particular work patterns. Pending its adoption the "old" Factories Act of 1919 remains in force, together with the permit system based on it.

  The maximum working time is 8.5 hours per day. Employers have various options for extending this but a permit must be obtained from the Labour Inspectorate I-SZW (Ministry of Social Affairs and Employment).

  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 49 hours and the maximum four-week period 180 hours.

Finally, there is also an ad-hoc permit for situations in which the above-mentioned permits are not sufficient. The ad-hoc 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. A new bill on hours of work is currently before Parliament.

- It has been government policy for some considerable time to improve the legal position of part-time workers where necessary.

  In the field of supplementary pensions, for example, the Netherlands has now eliminated 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 Cabinet has decided to prepare a bill whereby part-time workers would be entitled to equal treatment with full-time workers in respect of employment conditions. 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 is 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 is also 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 home-work 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 adopted by 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, and confirmed in the EC directive on the protection of young people at work. Under collective labour agreements, regulations or individual work contracts the minimum entitlement can be adjusted upwards.

  Civil servants' entitlements regarding annual leave and weekly rest periods are laid down in various regulations covering the status of civil servants. 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. 1.1.94 saw the entry into force of the Act implementing the EC Directive on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

  Working conditions of civil servants are governed by regulations based on the 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.

The amount of the supplementary allowance varies depending on the beneficiary's family situation, ranging from the difference between 70% of the statutory minimum wage and the income to the difference between the full statutory 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. Where there is conflict with a legal provision, the law prevails.

  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. A bill for the repeal of this Act on 1.1.95 is currently before Parliament.

In the civil service, terms of employment are negotiated with the Civil Service Unions. Technically, the government implements such terms unilaterally.

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 legislation, 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.

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. Moreover, the General Act on Equal Treatment entered into force on 1 September 1994. An Equal Opportunities Commission has been set up to ensure compliance with this legislation. 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 Child-Care Subsidy Scheme led 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. The scheme has been extended to the end of 1996.

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. A bill to bring civil servants under the cover of the Works Councils Act is currently before Parliament.

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 amended Working Conditions Act (in conjunction with

the implementation of the EC Health and Safety Framework Directive), 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 from the Labour Inspectorate to comply with the Working Conditions Act, Art. 35(1);
d. 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) and 5, second paragraph (obligation on an undertaking or establishment to produce a work safety report).

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

- On 16 March 1994 a "Bill for a new law on hours of work and rest periods (Hours of Work Act)" to replace the present Factories Act of 1919 was put before Parliament. The new bill, like the 1919 Factories Act, treats children as a category of persons exposed to particular risks and accordingly contains provisions designed to promote their safety, health and development. It basically outlaws work (whether under an employment contract or otherwise) for children under 16, on the grounds that such children are normally still in full-time compulsory education, but provides exemptions for certain categories of work where child workers face no specific risks through lack of experience, ignorance of real or potential risks, or immaturity. The employer must catalogue and evaluate the work to be performed by the child and thereby demonstrate that the work in question carries no safety risk and will not detrimentally affect the physical or mental development of the child.

The exemptions to the ban on child work cover the following categories of work:
- work prescribed by a court as an alternative form of punishment, from age 12;
- light, non-industrial work, from age 13;
- light, education-related work (vocational guidance/work experience), from age 14;
- morning newspaper delivery, from age 15;
- participation in performances of a cultural, scientific, educational or artistic nature, in fashion shows, in audio, visual or audiovisual recordings and comparable light, non-industrial work.

Pending the adoption of this bill the "old" Factories Act remains in force, together with the permit system based on it.

The minimum employment age for young people, and the exceptions thereto, is covered in the 1919 Factories Act (Staatsblad 624) and the Stevedores Act (Staatsblad 1914, 486).

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, save where particular conditions relating to children are laid down in the relevant Acts.

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 provisions of the Hours of Work Bill relating to young workers are geared to socially relevant questions, such as job opportunities, training opportunities and safeguarding of the young person's physical and mental development. The provisions concerning hours of work and rest periods take account of the views expressed by the Youth Policy Council and the employers' and workers' representatives in the Socio-Economic Council. These provisions impose the following conditions:

  - an unbroken weekly rest period of at least 36 consecutive hours;
  - no Sunday work, unless the nature of the work or the business circumstances make this necessary, in which case the young worker must be given at least four Sundays free in each 13-week period; however, employers and workers may arrange, within the framework of a collective agreement, that the young worker must be given 13 Sundays free per year;
  - no work to be performed by a young person on the day preceding Sunday work;

- a statutory daily rest period of at least 12 hours, which must include the period between 23.00 and 06.00;
- no more than 9 hours' work per day and 45 hours per week, the average not to exceed 40 hours per week in any period of 4 consecutive weeks;
- the hours spent in education, including breaks, to be counted as working time.

Pending the adoption of this bill the "old" Factories Act remains in force, together with the permit system based on it.

- 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, of 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 provided independently of the above. The most important one is the allowance for adaptation of a vehicle. Apart from this, wheelchairs and communication aids can be provided, as well as special home help over and above the standard home help.
- As regards suitably adapted accommodation, claims for assistance under the Financial Aid Scheme for Accommodation for the Disabled can 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 to 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.
- A new facilities scheme for the disabled, covering both housing and day-to-day living (including transport), recently came into force. It is run by the municipalities, which can tailor it to suit local circumstances and, if they wish, introduce a contributory system whereby beneficiaries pay a proportion of the costs.

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 following the conclusion in October 1990 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 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 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 1994, the statutory minimum wage was increased to Esc 49 300 per month for workers in all sectors other than domestic service, for which the minimum was set at Esc 43 000. This represented an increase over the 1993 figures of 4% and 4.9% respectively.

In 1993, 298 collective agreements and two regulatory Decisions were issued. The average wage increase under the new regulations was 7.9%. The total number of workers covered by the new regulations represented barely 58.5% of those covered by the 1992 regulations. This was largely due to the fact that collective agreements in certain major activity sectors were not updated.

198 collective agreements were issued in the first half of 1994, establishing an average wage increase in the relevant sectors of 5.2%. 54% more workers were covered by these agreements than by those of the corresponding period of 1993. The increase in the number of collective agreements and the number of workers covered was due to the agreements in certain major sectors having been updated.

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. In cooperation with the social partners, Decision 1324/93 provides for systematic measures to prevent and combat unemployment, focussing particularly on medium and long-term unemployment and comprising aid for training, employment/training programmes, job and business creation schemes, work schemes for the unemployed, placement schemes and general assistance measures.

The services provided by the public employment centres are unconditionally free of charge.

In December 1993, new special measures were introduced aiming to help the unemployed or potentially unemployed to enter or reenter the labour market. These measures include vocational training, employment/training schemes, job and business creation schemes and placement measures for the unemployed.

In July 1994, a Decision was adopted revising the arrangements for the total payable in unemployment benefit to be claimed as a lump sum by beneficiaries wishing to set up in self-

employment. This is known as the self-employment scheme.

IMPROVEMENT OF LIVING AND WORKING CONDITIONS

The *working conditions* of employees are governed by legislation, collective agreements, decisions arrived at through arbitration, government decree (in exceptional cases where there is no possibility of a collective agreement) and individual work contracts. Occasionally, the expression "instruments of collective regulation" is used generically to cover collective agreements, arbitration decisions and government decrees.

Under Decree-Law 5/94 of 11.1.94, implementing Directive 91/533/EEC of 14.10.91, employers are obliged to inform workers of the most important elements of the work contracts concerned.

Until January 1991, *normal working time* was not permitted by law to exceed 48 hours a week and 8 hours a day. Under the Economic and Social Agreement, however, a reduction to 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. 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.

Pursuant to the 1990 Economic and Social Agreement, working hours were reduced under certain collective agreements. In the beverages industry, for example, the working week is, in many cases, 42 hours, or 40 hours for office workers. Some commercial sectors have introduced a 40-hour week by agreement from 1995. In agriculture, the working week is now 40 hours in many regions; certain collective agreements in the building industry have established a 41-hour week from 1994 and a 40-hour week from 1995; in the footwear manufacturing industry, factory workers now work a 43-hour week and office workers a 40-hour week; the tanning industry has reduced the working week to 40 hours as from 1994.

Some collective agreements opted for flexible working hours, allowing for longer weeks at particularly busy times while ensuring that average hours worked did not exceed the standard maximum. This is the situation in some sectors of construction, the graphics and ceramics industries, abattoirs and aircraft maintenance.

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 needed to cope with increases in workload 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. In the case of fixed-term contracts, if the employer fails to give such notice and the worker concerned does not wish to terminate the contract, it is extended for a period equivalent to the initial term or, if such extension would exceed the maximum number of renewals or maximum duration of this type of contract, it is converted into an open-ended contract. In the case of contracts for an unspecified term, if the employer fails to give due notice, the contract terminates as specified, but the employer must pay compensation to the worker concerned equivalent to the pay he would have received for the missing notice period. 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.

Part-time work contracts are legally permissible and not subject to any form of restriction. Part-time work is regulated by legislation and collective agreement on the same terms as full-time work, except that minimum pay is proportional to the hours worked.

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. Temporary workers are entitled to the highest minimum pay level within the appropriate category in the collective agreements applicable to the employer and temporary employment agency to whom they are under contract. The existence of a statutory minimum does not, however, preclude the worker's right to a higher level of pay agreed with the temporary employment agency or in line with the hiring firm's usual rate for performance of the same functions.

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*, 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.

Workers to whom money is owing under their contracts have a general claim on fixed and movable assets, which takes precedence over the claims of the tax authorities, the State or the local authorities. In 1993, a new special code of procedure for recovery of the assets of bankrupt undertakings came into force, under the terms of which, in the event of a bankruptcy declaration, the State, local authorities and social security institutes no longer have a preferential claim, this being on a footing with the claims of other creditors.

At all events, if the contract of employment is terminated, a wage guarantee fund (financed by the social security system) ensures that workers are paid for the last four months immediately prior to the legal declaration of bankruptcy. However, the maximum monthly amount of this remuneration may not exceed three times the minimum wage guaranteed by law for the sector of activity concerned.

SOCIAL PROTECTION

Social protection for workers is available under the general social security system, which provides compulsory cover for all employed and self-employed workers and by the social security schemes 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 for employed workers covers sickness, maternity, industrial accidents and occupational diseases, unemployment, invalidity, old age, death and family responsibilities.

Cover for occupational accidents is the responsibility of employers. However, they may transfer their responsibility to insurance companies.

The self-employed must be covered for maternity, invalidity, old age and death. They can opt for extended protection which, along with these contingencies, also covers occupational illness and family responsibilities.

As is the case for civil servants, the risk of unemployment is not covered.

Voluntary social insurance protects insurees in the event of invalidity, old-age and death as well as, for certain specific groups, sickness, 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.

The rules governing calculation of unemployment benefit have been changed, in that the period used as the basis for calculating average remuneration has been extended. In addition, provision has been made for benefit for the unemployed aged over 55 to be payable up to the age of 60, in effect bringing forward entitlement to old age pension in such cases.

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, generally to persons in a difficult socioeconomic situation.

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.

The social welfare departments are responsible for developing measures to prevent and combat social exclusion, providing services and facilities or implementing specific projects for social sectors at risk or those which are already victims of some form of exclusion.

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.

Revision of collective agreements or decisions arrived at through arbitration cannot be commenced until 10 months have elapsed from the date on which they were lodged with the appropriate office of the Department of Employment. Twelve months must elapse from this date before a revised version of the original decision or agreement can enter into force.

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.

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.

National legislation lays down some rules in this area, specifying who may call a strike, the compulsory nature of the notice to strike, the effects of a strike, obligations during a strike and the consequences for workers of not complying 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.

Lasting three years and open to young people who have completed nine years of schooling, technical vocational education leads to a secondary school-leaving diploma and a technical vocational training certificate.

In the vocational schools, which are open to young people with nine or six years of schooling, courses are split into modules of varying duration corresponding to progressively higher levels of education and vocational qualification and leading to a certificate of qualification at levels 1, 2 or 3 and a diploma equivalent to the 10th, 11th or 12th years of the mainstream education system.

The following legislation has also been passed: Regulatory Decision No 140/93 on special vocational training; Executory Decision No 15/94 on assistance under the (ESF) Community Support Framework; Regulatory Decision No 465/94 on maximum expenditure cofinanced by the ESF; Executory Decision No 66/94 on labour-market related training activities; Executory Decision No 68/94 on the general conditions for issue of training and aptitude certificates.

Finally, it may be noted that any foreign citizen resident in Portugal with the intention of entering the national labour market has access to vocational training.

EQUAL TREATMENT FOR MEN AND WOMEN

The principle of equal opportunities for men and women is enshrined in the Constitution and is implemented by ordinary legislation in all areas. Equal opportunities and treatment at work in both the private and public sectors is guaranteed by Decree-Laws 392/79 of 20.9.79 and 426/88 of 18.11.88. 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 Institute for the Development and Inspection of Working Conditions 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, the official equal opportunities body, initially created in 1977 and restructured in 1991. This Commission is responsible to the Minister of Employment and Social Security, and has as its aim the promotion of equal rights and opportunities for women and men at all levels of family, occupational, social, cultural, economic and political life.

The Commission has an Advisory Committee composed of representatives of various government departments and women's and other non-governmental organisations, including the two trade union confederations.

The Commission develops training and information activities and also has a say in legislative amendments, being consulted on new bills and proposals for legislation. It also develops pilot projects in the areas of training support and (re)employment programmes for women.

Under the NOW initiative, the Equal Opportunities Commission is running the "Bem-Me-Quer (Daisy)" project, which set up Infocentres in five municipalities: Covilhã, Loures, Montalegre, Montemore and Odemira in cooperation with their respective councils, four of which are still running the Infocentres. The aim of the project was to assist women wishing to return to work by helping them to identify their own personal and vocational skills and providing assistance with finding a job or setting up their own businesses or cooperatives. Assistance included fostering cooperation in this sphere between partners at local and regional level.

77 projects are currently being run under the NOW initiative, coordinated by the Institute for Employment and Vocational Training.

Equal opportunities for women is an integral part of all the programmes within the new Community Support Framework under the European Social Fund 1994-99, priority being given to vocational training and employment measures which expressly pursue this aim.

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.

All protective legislation on parenthood is, however, currently under review for the purposes of transposing Directive 92/85/EEC of 19.10.1992.

With the objective of ensuring equal opportunities, efforts have been made to create facilities and provide services for childcare and care of the aged.

Under Decree-Law 329/93 of 23.9.93, the retirement and pension entitlement age for women covered by the social security scheme is gradually being raised (by 6 months per year, starting in 1994) from 62 to 65, putting women on a par with men by 1999.

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

The representative bodies exercising the rights of workers to information, consultation and participation are the *workers' commissions*. Workers are constitutionally guaranteed the 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; establishment of the annual holiday programme; alteration of hours of work; modification of the criteria on which occupational classifications and promotions are based; change in the location of the enterprise or 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.

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 comprising three sections:

A – Prevention of occupational risks, including specific measures on:
i) Increasing awareness of occupational risks and their prevention; ii) training and qualifications in occupational risk prevention; iii) improving working conditions to improve the quality of life at the workplace and increase firms' competitiveness: iv) organising prevention and ensuring health protection at the workplace.

B – Compensation, including specific measures on:
i) Updating the schedule of occupational illnesses; ii) updating the national schedule of disabilities; iii) revising compensation and pension scales;

C – Rehabilitation, including measures on:
i) Situation of workers with permanent partial disability and permanent absolute incapacity for their habitual occupation; ii) promotion of part-time work for persons with partial disability and permanent absolute incapacity for their habitual occupation; iii) promotion of unpaid leave to enable disabled workers, in certain situations, to receive vocational training.

Pursuant to this agreement, Decree-Law 441/91 of 14.11.91 adopted the principles on promotion of health, safety and hygiene at the workplace and implemented in national legislation various Community standards and the principles of ILO Convention No. 155, ratified by Portugal. 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, appropriate education, training and information to promote health, safety and hygiene at work, and effective monitoring of the application of legislation in this field.

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 the 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 9/92 concerning the protection of workers against the risks of exposure to noise at work.

In 1993, the Institute for the Development and Inspection of Working Conditions (IDICT) was founded, with responsibility for the following areas of health and safety at work:
i) Promoting the development, dissemination and application of scientific and technical knowledge; ii) promoting specialised training for workers and supporting professional organisations in providing training for their representatives; iii) providing support for public and private bodies in the identification of occupational risks, the application of preventive measures and the organisation of health and safety at work; iv) promoting and supporting action programmes in the field of health, safety and hygiene at work; v) monitoring, via the General Labour Inspectorate, the application of legislation on health, safety and hygiene at work. In the Autonomous Regions of the Azores and Madeira, this is the responsibility of the regional authorities.

In 1993 and 1994, the following legislation was passed:
i) Decree-Law 330/93 of 25.9.93 on the manual handling of loads, under which employers are responsible for the assessment of risk factors and for safety conditions; ii) Decree-Law 331/93 (25.9.93) on the use of machinery, under which employers are responsible for selecting appropriate equipment and working methods to guarantee worker health and safety; iii) Decree-Law 347/93 of 1.10.93 laying down minimum health and safety requirements for the workplace, excluding temporary or mobile work sites, the extractive industries, fishing vessels, the interior of transport vehicles and agricultural land; iv) Decree-Law 348/93 of 1.10.93 and Decision 988/93 of 6.10.93 laying down minimum health and safety requirements for the use of personal protective equipment; v) Decree-Law 349/93 of 6.10.93 laying down minimum health and safety requirements for VDU equipment at the workplace; vi) Decree-Law 387/93 of 20.10.93 on asbestos concentrations, threshold values and exposure levels at the workplace; vii) Decree-Law 390/93 of 20.11.93 on safety and health protection for workers exposed or at risk of exposure to carcinogenic agents; viii) Decree-Law 24/84 of 1.2.84 on the organisation and running of health, safety and hygiene activities at work. Health promotion and protection for certain groups of workers, including the self-employed, seasonal agricultural workers, those in the craft trades and in domestic service, can be provided by the National Health Service.

PROTECTION OF CHILDREN AND ADOLESCENTS

The minimum legal working age is fixed at: i) 16 years from the 1st of January of the year following that in which the first pupils complete the new 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. The types of light work which may legally be carried out by minors aged over 14 who have completed compulsory schooling are defined in Decision 714/93 of 3.8.93.

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 or adaptation 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. The types of work prohibited or subject to adaptation for minors to protect their physical, mental or moral development are defined in Decision 715/93 of 3.8.93.

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, or where such work is an essential part of their vocational training.

Minors are not permitted to do overtime.

There are special reception and care services for children and young people within the social services.

A fostering service provides temporary foster homes with suitable families and pastoral care for children and young people from broken homes. Childminders and creches are available for children aged between 3 months and 3 years while their parents are at work, and nurseries are provided for children between 3 years and school age, for at least part of the day. There are special reception centres for children in case of temporary and urgent need. Free time activities and holiday centres are also organised for children and adolescents, providing many leisure opportunities. Homes for children and young people are in the form of collective accommodation for youngsters who need temporary or permanent foster care.

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 1 600 000 provided their monthly income does not exceed three times the statutory monthly minimum wage. 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.

Old age pensions may be drawn concurrently with earnings from employment, in the interests of helping pensioners maintain a socially and professionally active life.

Under the pension scheme reforms, the calculation method for old age pensions has been changed, taking different elements into account in establishing average pay, which serves as the basis for calculating pensions, with a view to increasing pension amounts.

A non-contributory, non means-tested supplementary benefit has also been introduced to guarantee a specified minimum pension.

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.

The National Commission for Policy on the Elderly, set up in 1988, has implemented and overseen numerous activities, including research into ageing and awareness and information campaigns on the situation of elderly persons. Since 1994, this Commission has been coordinating the Integrated Support Programme for the Elderly, funded by 25% of the net takings of the national Joker game. The Programme's objectives include providing the emergency and permanent care facilities which will, as their primary consideration, enable elderly people to live independently at home in their accustomed environment; measures to guarantee mobility and access to services and benefits for the elderly; and providing support for families caring for dependent elderly relatives.

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 to companies (compensation subsidies, subsidies for eliminating architectural obstacles, adapting 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 occupational activities and for the setting up of occupational rehabilitation centres.

These occupational rehabilitation programmes

are accompanied by other measures intended to ease the full social integration of the disabled:

- provision of technical assistance in the health, educational, vocational training, 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;
- information to increase awareness in the economic world and society in general to promote the integration of disabled persons;
- statistical studies on the disabled population, including available resources, current projects and degree of integration;
- support for research projects intended to improve the quality of life and the personal and social independence of disabled persons;
- training of specialists in the areas of rehabilitation and social integration.

The social services have special schemes and facilities for the disabled. Support is available for disabled or potentially disabled children below the age of six and their families to provide early stimulus and assistance with integration. Occupational activity centres offer activities for young people and adults with serious disabilities. Rehabilitation centres for the blind provide help with physical and psychological adjustment and family and social integration. Residential educational care centres provide support for children removed from their accustomed environment and those in need of foster care. There are also homes for adults and young people aged over 16 with disabilities requiring specialised care whose families are temporarily or permanently unable to care for them.

DRUG ADDICTS

Help for drug addicts is provided by day centres, which run occupational therapy and motivational activities, creating a supportive environment for breaking the drug habit and providing social rehabilitation; long-stay residential communities for recuperation, readjustment to life without drugs and social reintegration; and half-way houses for ex-addicts, which offer counselling, vocational training and help with reentering the labour market.

UNITED KINGDOM

THE LABOUR MARKET

Introduction

The workforce changed over the past decade. 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. The 1990s is 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 December 1979 and June 1990, the peaks of the economic cycles, the UK workforce in employment increased by 1.5 million to 27.2 million. After a fall between 1990 and 1992, recent evidence, from the Labour Force Survey, indicates a growth in employment since Winter 1992/3.

2) Changing patterns of employment

New patterns of employment have evolved. There has been continued 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

As in most industrial countries the last decade saw a decline in the number of people employed in manufacturing and an increase in service sector employment. The proportion of employees in the service sector in the UK increased from 59% in June 1979 to 73% in June 1994, while the proportion of total employment (including the self employed) increased from 58% to 71%. There has also been strong growth in the creation of new businesses.

4) Changing occupational structure

Managerial and professional occupations now account for over a third of people in work compared with a quarter in 1979, while the proportion of manual workers fell from a half to two fifths.

5) More women in employment

The number of women in employment has grown significantly, rising from 10.1 million in June 1979 to 11.6 million in June 1994, an increase of 15% compared with an 11% decrease for men. Women now form 46% of the workforce in employment, compared with 39% 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 an increased demand from women for jobs and the growth of job opportunities that suit women particularly flexible working arrangements including part time work.

The UK approach to employment affairs

The UK Government's labour market policies reflect the important changes in the labour market during the 1980s and 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 labour market which encourages employment growth and promotes choice and opportunity.

In the UK Government'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 Appeals 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.

- Most employees have a statutory right to compensation, based on earnings and length of service, if they become redundant. This is backed by a Government guarantee of payment where the employer is insolvent or otherwise unable to pay.

- 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 wage and other debts owed by insolvent employers. These guarantee arrangements go well beyond the scope of the relevant EC Directive.

- In 1993/94 the Government made payments, totalling some UKL268 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. Thus, the UK does not believe that general, overall working time controls are necessary. 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 37% for men and 56% 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 penalise 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 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 an individual believes 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 has diminished. 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' organisations or workers' organisations 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 (latest available figures).

There is an increasing trend away from collective bargaining altogether. According to research, the proportion of employees in the UK who are actually covered by any collective bargaining arrangements fell to below 50% by

1990 and by 1993, only one third of private sector employees worked in workplaces at which trade unions were recognised by management for the purpose of bargaining and conditions of employment.

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 1990 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 both stoppages and working days lost (at 0.5 million in calendar year 1992) ever recorded, since records began in 1891 (1993 figures are slightly higher.

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 duty 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 1993, ACAS dealt with 1,211 requests for collective conciliation, and over 75,000 for individual conciliation. Furthermore they arranged 163 arbitration and mediation hearings.

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. .

The Government believes that employee involvement produces the best results when it is flexible and tailored to the needs and culture of each organisation. The Government does, however, recognise that it has a role to play in promoting the voluntary development of employee involvement, through for instance:

(i) Good practice: On 25 May 1994 the Government published "The Competitive Edge", a booklet which aims to improve business performance by encouraging employers to use the knowledge, skills

and enthusiasm of their employees by involving them more effectively. The booklet gives 26 examples from successful organisations and emphasises the potential benefits of employee involvement.

A further example is the Government's joint campaign with the Confederation of British Industry (CBI) to promote good practice in employee involvement through a series of management guidelines which highlight the links between key business issues and employee involvement. To date nine guidelines have been produced on: Quality; Motivating for Performance; Customer Care; Involving Employees in the Community; Involving Employees in the Environment; Involving Employees in Health and Safety; Involving Employees in Pension Schemes; Involving Employees in Continuous Improvement and Teamworking; and Involving Employees in Financial Participation.

(ii) 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 research into employees' views on employee involvement (published in June 1994), for example, show that 85% of employees reported the use of at least one method of employee involvement at their workplace.

(iii) 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.

In April 1993, the UK Government published the booklet "Sharing in Success", which describes incentives for financial participation and promotes a greater awareness of such schemes by presenting them as a partnership between employers and employees.

In 1979, there were only 30 approved share schemes open to all employees on similar terms. By May 1994 more than 2,300 such schemes had been approved. About 3.1 million employees are estimated to have benefited since the introduction of these schemes, receiving shares, or options over shares, with an initial value of about UKL12.5 billion. In addition, by the middle of 1994 over 1.5 million employees were covered by registered Profit-Related Pay schemes.

FREEDOM OF MOVEMENT

The European Economic Area (EEA) Agreement which came into force on 1 January 1994 has extended existing EC rights of free movement and residence to Austria, Finland, Iceland, Norway and Sweden and to nationals of those countries. The UK Government regards the freedom to take work and provide services anywhere in the EEA as being vital, both for individual EC nationals, and for business in the single market. EC initiatives should facilitate the movement of workers and not erect artificial barriers to the provision of services.

EEA 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. EEA nationals may also reside in the UK in any non-economic capacity provided they are self-sufficient financially. The rights of free movement and residence of EEA nationals have been implemented in the UK by the Immigration (EEA) Order 1994. 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.

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.

A second Directive (92/51/EEC) was adopted on 18 June 1992 and work is underway to implement it into UK law.

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 Secretary of State for Employment published his strategy on vocational education and training, "Prosperity through Skills", in December 1993. The overall goal of the strategy is to increase individual and national prosperity by stimulating enterprise and developing excellence in skills.

To achieve this goal, there are four priorities for vocational education and training in Great Britain:

- Priority One: employers, the self-employed, and individual people in the workforce, investing effectively in the skills needed for business creation and growth, and for individual success;

- Priority Two: people who are out of work or at a disadvantage in the labour market acquiring and maintaining relevant skills;

- Priority Three: encouraging and enabling young people to gain the skills and enterprising attitudes needed for entry to the workforce;

- Priority Four: making the market for vocational education and training more responsive to the changing needs of individuals and employers.

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 network of TECs (Training and Enterprise Councils) in England and Wales, and LECs (Local Enterprise Companies) in Scotland. TECs and LECs are locally based, employer-led companies which tailor training and enterprise activities to meet the skill needs of their communities;

- a comprehensive network of sectoral, employer-led, independent industry Training Organisations, which monitor skill needs in their sectors, set skill standards and encourage employers to invest in training;

- 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 and Scottish Vocational Qualifications, based on standards of competence defined by lead bodies representing sectors of industry and commerce, ensures that training is relevant to the needs of the job and help progression by individuals.

A set of National Targets for Education and Training lie at the heart of the national vocational education and training strategy. These were drawn up by the Confederation of British Industry and are supported by the Government, the Trades Union Congress and key players in education and training. There are quantifiable targets for both foundation learning for young people and lifetime learning for the existing workforce. Progress towards achieving the targets is monitored by the National Advisory Council for Education and Training Targets which involves business and education leaders.

The UK has developed a range of policies to enable and motivate individuals to build on their skills throughout working life. 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. "Gateway to Learning" enables TECs to develop local networks of quality assured guidance providers. It aims to stimulate both the supply of, and demand for, guidance. The Skill Choice initiative provides individuals with credits to help them purchase guidance and assessment or Accreditation of Prior learning services of their choice.

In addition, individuals paying for training leading to National Vocational Qualifications are eligible for tax relief at source. The Government also offers Career Development Loans which in 1993/94 helped over 12,000 people invest almost £35 million in their own training.

The Employment Department plans to spend over UKL2.3 billion on training, enterprise and vocational education programmes in England in 1994/95, broadly the same in cash terms as last year. Employers, who have the prime responsibility for training, are estimated to spend over UKL20 billion a year on employee training and development. The Labour Force Survey shows that three million employees of working age received training in the four weeks before interview in the Spring 1994, 79% more than in the Spring 1984.

The Government encourages and recognises effective investment in skills by employers through the Investors in People National Standard. This aims to improve business performance by linking the training and development of employees to business objectives.

EQUAL OPPORTUNITIES FOR MEN AND WOMEN

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 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 30,000 in 1994 (28% of the total), compared with 14% 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% in 1970 to 80% in 1994.

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 anyone who feels 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 work and family life successfully 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.

In March 1992 the Government published an 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 practice.

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 help the career development of women.

Recent initiatives

The Employment Department has organised 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. Ten events were held, starting in Manchester in January 1993 and finishing in London in November 1994. 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 recognises 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.

Since October 1994, certain childcare costs have been taken into account in assessing the income-related benefits, Family Credit, Disability Working Allowance, Housing Benefit and Council Tax Benefit.

New initiatives

The Employment Department is providing UKL45 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. Nearly 13,000 after-school and holiday childcare places have been set up in England since April 1993.

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 OECD's comparison of national fatal and non-fatal work accident statistics from major OECD countries published in 1989, and by the Health and Safety Executives' 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's continuing commitments to a policy of full and timely implementation of Directives in the field of health and safety, to the sensible enforcement of such legislation at home, and to the development of common elements of labour inspection throughout the EU are

indicative of a 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 that applies to all workers.

Due to their inexperience and immaturity there is, in addition, further protection for young workers from 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 UK framework of protection for children undertaking appropriate part-time jobs is in many respects equivalent to and stricter than the Young Workers Directive. For example, the minimum age for full-time employment is 16, the same as the minimum school leaving age. Children are prohibited from working in factories, construction, mining, transport and shipping. In other sectors, light non-industrial work is permitted from the age of 13, but only for a limited daily and weekly hours and provided this does not put them at risk and does not interfere with their education. Night work is also prohibited between 7 p.m. and 7 a.m.

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) which are used to certify the training of young people both in further education and at work. They are based on standards, set by employers, which define the knowledge and skills needed in the workplace;

- General NVQs (GNVQs) which form the third path to qualifications, alongside the academic and vocational routes. 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;

- introducing Modern Apprenticeships which will provide young people with high quality work-based training to NVQ level 3 and above;

- 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 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. In particular, Compacts, which are local agreements between employers and schools and colleges, aim to improve achievements at school and increase participation in further education and training. Through Compacts, young people agree to work to agreed targets, and employers provide a range of employment related incentives, such as further training and jobs, for those attaining the targets. There are currently over 100 Compacts involving 10,000 employers, 800 schools and 180,000 people.

All school pupils, school leavers and non-university students are entitled to free careers guidance services from local Careers Services. Over 2.7 million careers interviews were carried out by the Careers Service in 1993. In its May 1994 White Paper, "Competitiveness: Helping Business to Win", the Government announced plans to enhance the provision of quality careers guidance at critical decision making points, particularly at ages 13, 15 and 17.

There are now 128 Education Partnerships in England and Wales, 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. On 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.

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 4 million young people have been trained. 77% of those who complete their planned training in England and

Wales go into jobs or further training or education (69% of all leavers).

A Youth Credit is an entitlement to train to approved standards, mainly for 16 and 17 year-olds who have left full time education. Each credit has a financial value and can be presented to an employer or training provider to pay for an approved training course leading to at least NVQ level 2 or its equivalent. In around a third of TEC areas young people use Youth Credits to access YT. The Government has made funding available for all remaining TECs in England to be ready to offer Youth Credits by April 1995.

In December 1993, the Government announced plans to introduce Modern Apprenticeships. This is a major reform of the training system, which will provide mainly 16 and 17 year-old school and college leavers with work-based training at technician, craft and supervisor levels. Accelerated Modern Apprenticeships for 18 and 19 year-olds were announced in the May 1994 White Paper, "Competitiveness: Helping Business to Win". The aim of Modern Apprenticeships and Accelerated Modern Apprenticeships is to increase to over 70,000 a year the number of young people qualified to NVQ level 3 or higher. They will be available in England from 1995/96 and will be funded through Youth Credits.

II - People with disabilities

A wide range of services is provided for people with disabilities in the UK by health authorities, voluntary organisations, Training and Enterprise Councils and Local Enterprise Companies and the Employment Service. They cover a very broad spectrum - medical and nursing care, rehabilitation, vocational training, 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. In addition there is a comprehensive system of benefits for sick and disabled people.

The UK is committed to the aim of eliminating discrimination against disabled people. Earlier this year a wide range of proposals was published in a consultation document. As a direct result of this exercise the Government recently announced a series of measures and legislative proposals designed to bring greater independence and dignity to the lives of disabled people.

The proposals would make it unlawful for employers to discriminate on the grounds of disability; provide a right of access to goods and services, including financial services and establish a National Disability Council to advise the government on issues affecting disabled people. In addition other steps are being taken on education, transport and care in the community.

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 at work. Many people with disabilities use mainstream services. However, there is also a wide range of specialist provision (which is accessed through the Employment Service's national network of Placing Assessment and Counselling Teams) 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 through the Access to Work programme introduced in June 1994. Help includes adaptations to premises and vehicles, communication services, fares to work, special aids and support workers. Help is also provided for severely disabled people in the supported employment programme. Training and Enterprise Councils are contractually obliged to provide training for disabled people. Training for severely disabled people is provided in Residential Training Colleges and Training and Enterprise Councils are able to purchase appropriate local provision where this is available.

Programmes and services are developed to meet both local and individual needs. Since April 1993 unemployed disabled people have

had priority for a place on each of the Department's main employment and training programmes for which they are suitable and eligible. 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 UKL19 billion in 1993/4. Expenditure on benefits for long-term sick and disabled people is estimated to reach UKL19 billion in 1994-95, representing an increase by approximately UKL14 billion in real terms since 1978-79. Help with income maintenance is provided through a recently reformed system of 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.

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

Older Workers

As many as 40% of employers discriminate on the grounds of age. They set age bars in recruitment - sometimes as low as 30 or 40 and refuse to train or promote their older workers. Yet research shows that older people offer employers skills, reliability and experience. They are as adaptable as their younger counterparts, and their commitment and loyalty is as great or even greater.

The UK Government believes that it is wasteful and shortsighted to discriminate against people because of their age and that everyone with the ability and desire to work should be encouraged to do so, for as long as they wish.

The UK Government is determined to persuade employers that it makes sound business sense to abandon age discrimination. In 1993 an Advisory Group on Older Workers was set up to advise Ministers on how best to ensure that older people play their full part in the workforce. Its eleven members bring wide experience and expertise in commerce, industry, personnel, race relations, research and equal opportunities.

"Getting On", a booklet to encourage employers to select, develop and retain people on merit, regardless of age, was launched in March 1994. There are plans for new booklets in 1995 for older workers themselves and for recruitment agencies.

A series of seminars for employers, designed to set out the benefits of an older workforce, took place in 1994. These were organised in conjunction with the Carnegie Third Age Programme, the Industrial Society and the Policy Studies Institute. These seminars will continue in 1995 as part of a series of regional roadshows which will also offer help and advice to older workers about finding work and making the most of their careers.

Pensions

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 married women with a basic 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 pension 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 the State retirement pension every year in line with the movement in prices so that it maintains its value.

The Government is committed to the equalisation of state pension ages for men and women and published a White Paper, "Equality in State Pension Age", on 1 December 1993 announcing plans for a new state pension age of 65. To give women and employers ample time to prepare for this, no change will be made until 2010 when women's pension age will be raised gradually to 65 by 2020.

Additional proposals included in the White Paper will extend equal treatment throughout the state pension scheme and significantly improve the retirement incomes of many people who have family and caring responsibilities; and also some people with disabilities.

Additionally, on 23 June 1994, the Government published a White Paper on proposals for pensions reform, entitled "Security, Equality, Choice: The Future of Pensions". It contains proposals designed to give more security for members of occupational pension schemes; to make it easier for contracted-out schemes to give equal treatment to men and women; and to allow people to have more choice in the way they plan their finances for retirement. The Government proposes to introduce legislation to implement these proposals at the earliest opportunity.

Anyone over pension age who is habitually resident and who still has inadequate resources may claim Income Support, Housing Benefit and Council Tax Benefit (from April 1993), subject to the Directives 90/365/EEC and 90/364/EEC. 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 1992, the average net income, before housing costs, rose by 50% for all pensioner units (i.e. a household headed by a pensioner). After housing costs, net income increased by 58%. 60 % of all pensioner units received income from an occupational pension, whilst 76% of pensioner units had income from investment.

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 who are habitually resident. Total social security expenditure amounted to UKL88.9 billion in 1993/4, an increase over the past 10 years of UKL27.8 billion in real terms, or 45%.

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 1993-94.

Family Credit helps as 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 to 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 the benefit.

From October 1994, certain childcare costs have been taken into account in assessing Family Credit and other income-related benefits. Up to £40 a week of charges for formal childcare of children up to the age of 11 are offset against the person's earnings in calculating their entitlement to benefit. Each of these changes has widened the benefit's scope. They have been of particular help to those who were either prevented from working as many as 24 hours a week because of childcare responsibilities or for whom the cost of childcare made it financially impracticable to work as many as 16 hours a week. The number of families receiving Family Credit increased from 389,000 to 542,000 between April 1992 and April 1994; and, in the long-term, is expected to rise by another 70,000 as a result of the introduction of the help with childcare charges. Family Credit expenditure in 1993/94 was about UKL1.1 billion.

Income Support provides an income for those not in full-time work and who, since 1 August 1994, are habitually resident. 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. An 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 not in receipt of incomes support, on a sliding scale, according to income.

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 ceasing or reducing reliance on income related benefits. It therefore introduced a programme of reform to ensure that absent parents make proper financial provision for children and the parent who has 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. An independent appeals system operates and standards of decision making are monitored independently with the results published annually.

Jobseeker's allowance

Jobseeker's Allowance will replace Unemployment Benefit and Income Support for unemployed people from April 1996. It is designed to improve the service offered to unemployed people. Jobseeker's Allowance will have a contributory and a means-tested element. Unemployed people who have paid sufficient National Insurance contributions will get a personal rate of 6 months irrespective of their capital or partner's earnings. Those who do not qualify, or whose needs are not met by the contributory element may qualify for income-related help for themselves and their dependants, if their income is insufficient for their needs. This help will be provided for as long as it is needed, if the qualifying conditions continue to be met.

JSA will specifically encourage efforts to look for work. The introduction of a back to work bonus provides a new incentive for unemployed people and their partners to work part-time while still on benefits. It will provide a financial reward of up to £1000 when either the claimant or partner leave JSA to go into full-time work (16 hours or more in the case of the claimant; 24 or more hours in the partner's case).

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 ?

European Commission

Fourth 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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