EUROPEAN PARLIAMENT

Directorate General for Research

WORKING PAPER

STRIKES AND SECONDARY INDUSTRIAL ACTION IN THE EU MEMBER STATES

Social Affairs Series

W - 8

DA DE EL EN ES FR IT NL PT FI SV

This publication is available in all official EU languages.

The study was carried out for the European Parliament's Directorate General for Research by

Mr. John Swabey and Mr. Mike Groushko, WATSON WYATT WORLDWIDE, Brussels.

Publisher: **EUROPEAN PARLIAMENT**
DIRECTORATE-GENERAL FOR RESEARCH
Division for Social Affairs, Employment, the Environment, Public Health and Consumer Protection
L-2929 Luxembourg
Tel. (352) 4300-2568
Fax: (352) 4300-7720

Editor: Pernille WINTHER, Principal Administrator

The manuscript was completed in September 1995.

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5 - 1996

CONTENTS

INTRODUCTION AND DEFINITIONS

This report summarises the basic laws and practices relating to industrial action by employees and employers in the 15 member states of the European Union, including participation by local unions and/or individuals in international industrial action where the main focus of conflict may be in a country other than their own.

The report also analyses the attitudes of employers and trade unionists to the national laws and practices discussed here, the extent to which those may be influenced by the European works council directive and the pending draft directive on posted workers, and the desirability or otherwise of some European-level regulation of industrial action.

This report is in two main sections, with annexes:

- Part 1 compares and contrasts national laws and practices, including a summarised overview.
- Part 2 looks at the views of the social partners.

The Annex 1 then provide country-by-country detail on the right to strike and to take secondary industrial action in the EU member states. This is only available in English.

A problem area is the definition of key terms. To cite one, "secondary action" (with which the report is much concerned) is a fairly well understood expression in several member states, where it is rooted in law and/or practice - for instance the UK. That is not the case in others, where the distinction between primary and secondary action hardly exists in statute or in practice - for instance Belgium. There are many other similar examples of definitions which pose problems of distinction in practice.

For that reason, the report does not essay any uniform and universal definitions of the terminology it uses. Where relevant, national definitions are summarised in the text. Otherwise, the guiding principle has been the highest common factor, used as a benchmark. So, for example:

- A strike is a collective cessation of work.

- A primary strike is a collective cessation of work directed at an employer by some or all of his own employees

- A secondary strike is a collective cessation of work directed at an employer, but not immediately related to the terms, conditions or continued employment of the strikers themselves. It can therefore cover both sympathy or solidarity action where the primary dispute is within the same company or group of companies, and those where the primary dispute is completely external or political.

- Primary picketing (attendance by workers outside a place of work during a strike) is directed at an employer's workplace by his own employees or ex-employees and associated trade union officials. All other picketing is secondary

- A primary lockout is a cessation of work instigated by the employer; it may be defensive, in response to actual or threatened industrial action; or offensive, intended to secure changes in the terms and conditions of employees.

- Insofar as secondary lockouts can be distinguished from primary ones, they consist of action by an employer not in dispute with his own employees, intended to support another employer who is in dispute. The concept seems largely academic, and almost all lockouts are clearly primary.

- Political strikes are considered to fall into two categories: those where the motives are "purely" political, and those where some of the issues at stake relate in some way to the strikers' economic or social conditions. The relevance of this distinction is discussed in the appropriate national context in the report.

- Industrial action which falls short of a strike action includes go-slows, works-to-rule, incomplete strikes, boycotts and the like. There is a sharp division between member states in their definitions and legal treatment of these "lesser" forms of industrial action. These too are discussed in the text.

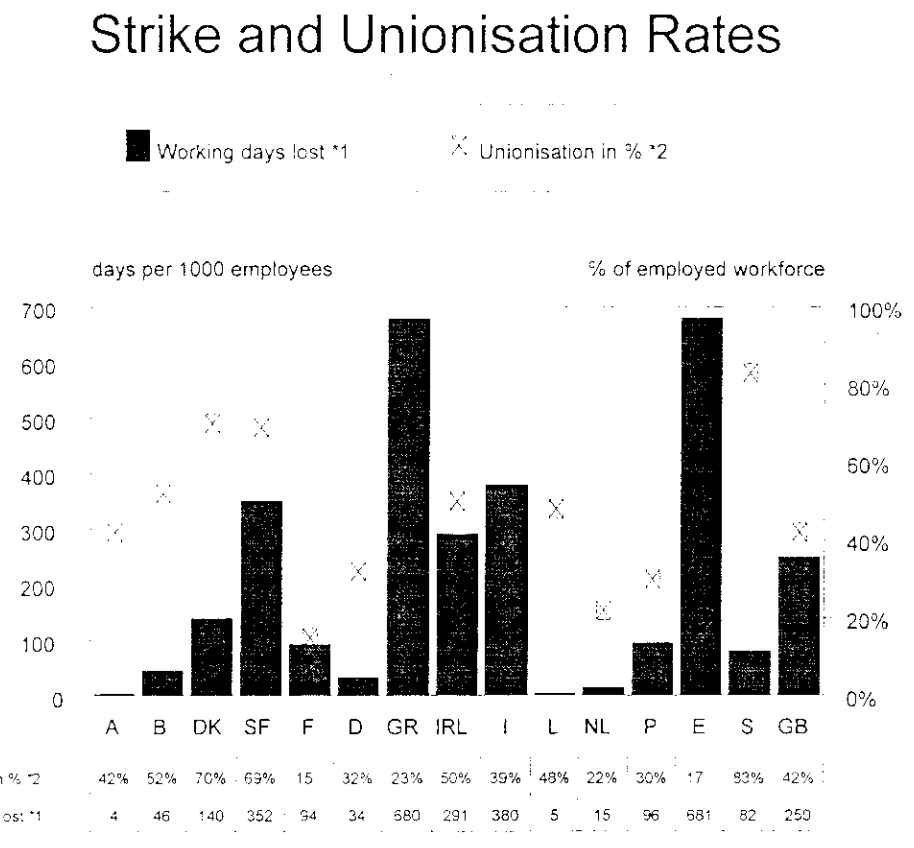
Again it is stressed that the working definitions above are no more than mental reference points to help in understanding the differences and similarities between the various approaches shown here.

PART 1 : NATIONAL LAWS AND PRACTICES

1. COMPARISONS

In order to consider the topic of strikes and other industrial action, whether primary or secondary, in context we also present here some historical data on the widely varying incidence of strike action in the member states.

Diagram 1:



*1 Annual average 1983-92 (Belgium 88-92): Eurostat

*2 Some estimates: after OECD, pub: 1991

The above diagram illustrates only some aspects of the incidence of industrial action. The figures shown for working days lost due to industrial action are averaged over the period mentioned.

Therefore, while useful in giving a general appreciation of country practice, just one particularly long or widely supported dispute can skew the data and mask underlying trends. There is evidence to suggest that, for example, in Denmark in 1985, Germany and the UK in 1984, and Finland in 1986, one year's exceptional experience has boosted the overall average picture.

Table 2: Number of Employees Involved in Stoppages of Work in 1992 ('000)

Country	Total	Country	Total
Austria	18.0	Italy	3,178.4
Belgium	30.2	Luxembourg	0.6
Denmark	32.9	Netherlands	52.4
Finland	102.6	Portugal	131.9
France	318.2	Spain	5,192.1
Germany	598.4	Sweden	18.0
Greece	243.1	United Kingdom	144.4
Ireland	13.1		

The different patterns of industrial relations and collective bargaining are also not properly reflected by Diagram 1. Table 2 shows the number of employees involved in stoppages for 1992.

From this we see that in Spain, Italy and, to a lesser extent, Germany, the numbers are comparatively high and indicate typical practice for disputes in these countries to be one day national strikes, or otherwise short in duration but widespread across an industry.

Many of the key features contained in the country sections of this report can also be usefully grouped into comparative tables, as follows.

Table 3:

	Right / freedom to strike	Main regulation	Peace obligation
Austria	Freedom	Case-law /academics	Assumed
Belgium	Freedom	Case-law (1)	-
Denmark	Freedom	Agreement	Agreements
Finland	Freedom	Statute	Statute
France	Right	Case-law (1)	-
Germany	Freedom	Case-law	Agreements
Greece	Right	Statute	-
Ireland	Freedom	Statute	-
Italy	Right	Case-kaw (1)	-
Luxembourg	Freedom	Statute (2)	Statute
Netherlands	Right	Case-law	Agreements
Portugal	Right	Statute	Agreements
Spain	Right	Statute	Statute
Sweden	Right	Statute	Statute
UK	Freedom	Statute	-

Notes: (1) Some statutory provisions relate to essential services.
(2) Luxembourg is the only member state with compulsory conciliation

Table 4:

	Regulation of secondary strikes	International disputes	Action short of a strike	Lockouts
Austria	Case-law/academics	-	As strikes	Academics
Belgium	Case-law	-	Unlawful	Case-law
Denmark	Agreement	-	As strikes	Agreement
Finland	Agreement	-	As strikes	Statute
France	Case-law	-	Unlawful	Case-law
Germany	Case-law	-	As strikes	Case-law
Greece	Statute	Statute	As strikes	Prohibited
Ireland	Statute	-	As strikes	Statute
Italy	Case-law	-	Unlawful	Case-law/statute
Luxembourg	Case-law/academics	-	As strikes	Statute
Netherlands	Case-law	Some case-law	As strikes	Case-law
Portugal	Case-law	-	As strikes	Prohibited
Spain	Case-law	-	Unlawful	Statute
Sweden	Statute	-	As strikes	Case-law/statute
UK	Statute	Statute	As strikes	Case-law/statute

2. COMMON GROUND AND DIVERGENCES IN NATIONAL LAWS AND PRACTICES

2.1 Basic rights to strike

The legal systems of all 15 EU member-states grant workers the power to strike. They can be broadly classified in two groups : eight where there is an explicit legal "right to strike"; and seven where there is somewhat more nebulous legal "freedom to strike". The classifications can be further broken down according to the fundamental legal source of the right or freedom, as follows :

Table 5:

	Right to strike	Freedom to strike
Austria	Via case-law	
Belgium		Constitution, via freedom of association
Denmark		Constitution, via freedom of association
Finland		Via statute
France	Constitution & statute	
Germany		Constitution, via freedom of association
Greece	Constitution & statute	
Ireland		Via immunity from legal claims
Italy	Constitution (& statute)	
Luxembourg		Via statute
Netherlands	Via case-law	
Portugal	Constitution & statute	
Spain	Constitution & statute	
Sweden	Constitution & statute	
United Kingdom		Via immunity from legal claims

2.2 Basic rights to lock out

The right or freedom of employers to lock out is, at least arguably, a counter-balance to the right or freedom of employees to strike. But some equivalence is explicitly recognised in just five of the national Constitutions. On the other hand, only two members -- Greece and Portugal -- totally reject it as a legal principle. They have banned all lockouts by statute, even though their Constitutions recognise the right to strike.

By comparison with national laws and practices on industrial action by employees, employers' lockouts are relatively lightly regulated across the 15 as a whole. That is undoubtedly mainly due to their comparative rarity. Portugal and Greece aside, the member-states can be divided into four broad groups, according to their legal treatments of lockouts, as follows :

Table 6: Legal recognition of lockouts

	Explicitly allowed	Implicit in law	Aassumed	Tightly regulated
Austria			Academic writings assume so	
Belgium				Case-law
Denmark	By collective agreement			
Finland	By statute			
France				Case-law
Germany	Case-law (based on Constitution)			
Greece				[Statutory ban]
Ireland		Implicit		
Italy				Statute & case-law
Luxembourg		Implicit		
Netherlands			Academic writings assume so	
Portugal				[Statutory ban]
Spain	By statute			
Sweden	Constitution			
United Kingdom		(Implicit)		

2.3 Vesting of the right or freedom to strike

In practice, most strikes and other forms of industrial action in the member-states are called and conducted by trade unions. However, there are marked differences between countries in the degree to which this role of the unions is formally assigned.

That in turn can have an important bearing on a whole range of issues, discussed in more detail by country in the annexes. They include :

- Legal responsibilities arising from strikes.
- The enforceability of procedures for calling strikes and the validity of no-strike "peace agreements".
- The contract status of strikers.
- The applicability of such concepts as "official" and "wildcat" action.

Table 7: Who Can Organise Lawful Strike Action ?

	Trade unions only	Workers also
Austria		Ill-defined, although unions are the normal actors
Belgium		Ill-defined, although unions are the normal actors
Denmark	Signatories to collective agreements	
Finland	Signatories to collective agreements	
France		Constitution
Germany		If wanting to start a new union
Greece	Unions only	
Ireland	Unions only	
Italy		Constitution
Luxembourg	Unions only	
Netherlands		Ill-defined, although unions are the normal actors
Portugal	Unions only	In the absence of a unionised majority
Spain		Constitution, although statute moves away from this position
Sweden	Constitution	
United Kingdom	Unions only	

2.4 Constraints on the right or freedom to strike

In all 15 member-states, the right or freedom to strike, whether vested in individuals or trade unions, is not absolute. All restrict it, to a greater or lesser extent. But the restrictions vary widely, both in the forms they take and in the areas they cover.

The forms of restriction are :
- External regulation
- Minimal regulation
- Self-regulation

Table 8: Forms of restrictions

	External	Minimal	Self-regulation
Austria		□	□ □
Belgium		□	□
Denmark		□	□ □ □
Finland	□ □		
France			□
Germany			□ □ □
Greece	□ □ □		
Ireland	□ □		
Italy		□	□
Luxembourg	□ □		
Netherlands		□	□ □ □
Portugal	□ □ □		
Spain	□ □ □		
Sweden			□ □ □
United Kingdom	□ □ □		

Legend: □ = light
□ □ = moderate
□ □ □ = very strict

Note: External regulation in this context means government intervention through the use of statute law, decrees and the like.

The areas of restriction can be classified broadly as :
- Circumstantial
- Procedural
- Exclusions

One of the most prevalent circumstantial restrictions on strikes is the so-called "peace obligation". Broadly, it obliges signatories to a collective agreement not to enter into collective disputes directed at provisions of the agreement while those are in force. (Precise definitions and the impact of the obligation on individual members of a signatory organisation vary.) Procedural restrictions concern the formalities involved in calling a strike and providing notice of it.

Table 9: Areas of Restrictions

	Peace obligations	Procedural
Austria	Collective agreement	Self-regulated
Belgium	Relies on goodwill; & safety regs.	Self-regulated
Denmark	Collective agreement	Normally 14 days strike notice required
Finland	Statute	Detailed. 14 days strike notice over a new agreement.
France	Statute : Rare/Not enforceable. N.B. safety regs	5 days strike notice (public services only)
Germany	Collective agreement	Self-regulated
Greece	Not found. N.B. safety regs	Detailed. Minimum 24 hours strike notice.
Ireland	Good will	Detailed. Minimum 7 days strike notice.
Italy		20 days colling-off period in essential services
Luxembourg	Statute	Self-regulated
Netherlands	Collective agreement	Self-regulated
Portugal	Good will	Detailed. 5 days strike notice (outside public services)
Spain	Royal decree. N.B. safety regs	Detailed. 5 days strike notice (outside public services)
Sweden	Statute	Normally 7 days strike notice required
United Kingdom	Rare/Not enforceable	Detailed. Minimum 7 days strike notice.

All member-states exclude some occupational groups from the right or freedom to strike, typically, the judiciary, the police, higher-grade civil servants and the armed forces.

However, the long-term tendency in most has been to reduce the occupational exclusions. For example, blanket bans on strikes by civil servants were lifted in France in 1950 and in the Netherlands in 1979.

At the same time, there has been a tendency in some countries to subject strikes in essential public services to stricter controls than those elsewhere in the economy.

Belgium, France, Greece, Italy, Portugal and Spain all have statutory provisions in this area, although in Belgium's case the statute devolves much of the detail to collective agreement.

In other member-states, strikes in essential public services are governed by the general laws and practices on industrial disputes, in some cases supplemented by special collective agreement provisions (for example, Sweden) or codes of conduct (Ireland).

In the UK, statutory controls were regularly discussed, but eventually not implemented, by successive Conservative governments between 1979 and 1994. The idea is now thought to have been abandoned.

2.5 Lawful objectives of strikes

a) Primary strikes

For the purposes of this study, primary strikes were considered to be those directed at an employer by some or all of his/her own employees, and related to their employment terms and conditions.

This working definition does not appear in precisely those words in laws or agreements in any member-states. It represents the highest common factor. So in all member-states, any strike meeting the definition would in principle be lawful (or at least not unlawful) in respect of its aims.

The closest approximation to the working definition is found in statute in the UK. There, to be protected by law, a strike must be wholly or mainly related to specific issues at the workplace, and arise from a dispute between an employer and his own employees.

Elements of the same principle, that a strike must relate to workplace issues, occur in law in several other member-states (but by no means all of them).

The UK apart, France probably come nearest to the definition, in legal theory. There, a strike must be undertaken only for legitimate "occupational and professional motives". Furthermore, the affected employer must be in a position to satisfy the demands of the strikers. But in practice, these restrictions are broadly interpreted.

In Germany, a strike must only be for the purposes of securing improvements in working conditions through a negotiates collective agreement. In addition, the matters at issue must be "fit to be regulated" by collective agreement.

In Greece, strikes are permissible if they are rooted in the protection and promotion of the financial and general labour interests of employees. In Ireland, a lawful strike can arise only from disputes connected with employment or non-employment, or the terms and conditions of, or affecting the employment of, any person.

In Italy, a strike may only seek to protect or promote the direct and legitimate common interests of participants. In Spain, a lawful strike can relate only to the occupational interests of the employees involved.

In all member-states, strikes are unlawful if they are in pursuit of unlawful aims but in any event many member-states use additional legal concepts to govern the legitimacy of the motives behind primary strikes.

One of the most prevalent is the "peace obligation", which (as discussed above) holds that, with some limited exceptions, strikes may not be lawfully directed at the provisions of an applicable collective agreement in force. This principle is firmly adhered to in Austria, Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden. A statutory provision to the same effect has been adopted in Spain, and collectively, agreed peace clauses are widespread in Portugal.

Another is the concept of "last resort", that a strike, whatever its other motives, is fully lawful only after all other methods of settling an industrial dispute are exhausted. That is firmly and generally established in Austria, Denmark, Germany, Luxembourg and the Netherlands. To a certain extent, it also applies in Finland and Sweden. Elsewhere, the principle is not generally accepted as a legal obligation to the same degree, although it may be observed voluntarily under collective agreements.

A third concerns such matters as proportionality, fairness and reasonableness. These are largely case-law concepts, under which the justification for a strike is assessed against the harm it may cause. They have been most extensively developed in Germany and the Netherlands. But they have also been recognised by courts in Austria, Belgium, France, Italy, Portugal and Spain. To some extent, they are also implicitly recognised in statute laws relating to health, safety and plant maintenance during disputes, for example in Greece.

b) Secondary strikes

Most of the member-states, the UK apart, make little or no statutory distinction between primary and secondary strikes. The UK definition hinges on the fact that the employer to whom the strikers are under contract of employment is not the employer party to the (primary) dispute.

Besides the UK, only Greece specifically mentions secondary action (solidarity or sympathy strikes) in original legislation. Spain also did, in a Decree of 1977 that sought among other things to limit solidarity strikes, but the relevant provision was struck down as unconstitutional in the 1980s. In Ireland, the statutory definition of a strike specifically includes the case of workers striking to aid other workers vis-à-vis the others' employer. 1994 case-law confirms this situation.

Elsewhere, secondary action is permissible within certain limits. In most cases, those have not been clearly defined, but the weighing factors tend to be the legitimacy of the primary strike

and/or the degree of community of interest between the primary and secondary strikers (and see Table 10).

Table 10: Secondary Action

	Legitimate if there is a community of interests	Legitimate if the primary dispute is legitimate	Probably unlawful
Austria			✓*1
Belgium		✓*2	
Denmark		✓*3	
Finland		✓*3	
France	✓	✓	
Germany	✓*4		
Greece		✓*2	
Ireland		✓	
Italy	✓	✓	
Luxembourg			✓
Netherlands			✓*5
Portugal	✓	✓	
Spain			✓*6
Sweden		✓*3	
United Kingdom			✓

* Notes: [1] In Austria, such matters are instead dealt with as warning strikes
[2] Solidarity strikes of all sorts are in principle permissible
[3] By national agreements
[4] Germany's restrictions, established by case-law, are probably the most stringent. Secondary action is lawful only if the employer has shown himself less than neutral in the primary dispute.
[5] 1960 case-law
[6] Secondary strikes cannot be lawful unless the primary strike is itself lawful.

c) Political strikes

In principle, all strikes conducted for purely political purposes are unlawful in all member-states.

However, this doctrine has been modified to some extent in many of them, so that strikes directed against political policies impinging on the social and economic conditions of workers or on workplace conditions may be legitimate, or at least tolerated if they are short.

That is broadly the case in France, Greece, Italy, the Netherlands, Portugal, Spain and, possibly, Belgium. It may also be true of Denmark, Finland and Sweden. (Although political strikes have in the past been held to be abusive in Finland, a clause in a recent national agreement provides for advance warning of them. In Denmark and Sweden, there is little regulation of motives.)

In Germany, definitions of lawful strikes preclude those with purely political motives. However, stoppages staged by the IG Metall union in 1986, in protest against legislation

withdrawing social benefits from certain people laid off because of strikes, ignored the restriction.

The definitions of lawful strikes in Ireland and the UK also exclude those with only political goals.

In Luxembourg, where the issues are not regulated by statute or even by case-law, analysis of the lawful strike suggests that it must relate to issues between the parties, which thus rules out a political strike.

2.6 Other forms of industrial action

One of the clearer divisions in member-states' labour law and practice relating to industrial action by employees lies in their treatment of actions falling short of a strike.

In certain countries, the right or freedom to strike relates only to a complete cessation of work. Other forms of action are thus not protected, and may be unlawful breaches of contract and/or abuses.

In a larger group, such actions are regarded as equivalent to a strike, and therefore may be lawful or unlawful according to the same criteria as strikes themselves.

a) In Belgium, France, Italy and Spain, the concept that a lawful action must entail a complete cessation of work is dominant. Work-to-rule, slowdowns, boycotts and the like are all unlawful.

   In Italy (by case-law) and Spain (by decree), rotating or selective work stoppages are also unlawful. But that is not necessarily so in France or Belgium.

   However, all these forms of industrial action may be tolerated by employers as a preferable alternative to a total stoppage. That is particularly true of Italy.

b) In Austria, Denmark, Finland, Germany, Greece, the Netherlands, Sweden and the UK, most forms of industrial action falling short of an all-out strike are regarded as strikes, and subject to the same tests of legality.

   In all those countries, they can be legitimate forms of secondary action in circumstances where a secondary strike is permissible.

2.7 Picketing and blockades

In all member-states, peaceful primary picketing is permitted or tolerated, as an extension of principles of free assembly and the like, when it accompanies a lawful strike. If it progresses beyond the peaceful - to involve, for example, physical obstruction, violence, damage to property - member states mostly deal with it through general provisions of civil and/or criminal law. In addition, offences committed by employees while picketing may be grounds for dismissal.

a) Only two member-states have specifically legislated on picketing.

In Ireland, peaceful picketing is expressly permitted, but must normally be confined to the employer's workplace. In the UK, it must be confined to the participants' regular place of work (or immediate past regular place of work). Both countries supplement their laws with codes of conduct, and make provision for officials of the trade union involved in the dispute to attend picket-lines.

Both the Irish and British laws thus virtually prohibit secondary picketing, although in Ireland there is a specific exemption if the secondary employer has actively assisted the primary employer in seeking to frustrate a strike.

In all other member-states, little clear legal distinction is made between primary and secondary picketing. Spain is a possible exception, as the Constitutional Court there has reserved the right to judge each case of picketing on its merit.

b) Physical blockades of premises are unlawful in all member-states, again under general legal provisions. However, in practice they are sometimes tolerated if brief.

2.8 Sanctions

Lawful participation in a lawfully-conducted strike is not of itself grounds for dismissal in most member-states, and usually serves only to suspend the employment contract.

a) However, this principle of suspension is not unequivocally established in statute or case-law in Austria, Denmark, Ireland or the UK.

In the UK, participants in a lawful strike can be fairly dismissed, provided they all are. Similarly, selective rehirings amount to unfair dismissals of those not rehired, if they occur within three months of the original dismissals.

In Ireland also, selective dismissals or rehirings as a result of lawful strikes can justify unfair dismissal claims.

b) In all member-states, participation in an unlawful strike may be grounds for dismissal. But it is not always so in every country, unless accompanying circumstances provide justification.

For example, Denmark, the Netherlands and Sweden operate systems of individual fines that may be considered sufficient punishment for limited breaches of strike rules.

In Germany, the courts are often reluctant to uphold such dismissals.

In France, there is a tendency to regard ringleaders of unlawful strikes as culpable, but not necessarily their followers. In Spain, instigators of illegal strikes may be dismissed, but not ordinary participants.

c) In many countries, individual participants in unlawful strikes can also be sued for damages in certain circumstances -- for example, Austria, Belgium, Denmark, Finland, France,

Ireland, Italy, Sweden and the UK. For obvious financial reasons, they rarely are.

d) Trade unions staging or condoning unlawful strikes are liable to fines and/or damages in most member-states. However, that is not the case in Belgium and Luxembourg, where unions do not have the requisite legal personality.
In Italy, the courts have consistently refused to make damage awards against unions. In France, they traditionally awarded only symbolic damages, but that appears to have changed.

3. INTERNATIONAL DISPUTES

3.1 Existing Law

Only two of the 15 member-states make specific reference in statute to international disputes.

Greece, in Law 1264 of 1982, permits solidarity or sympathy action by unionised workers in support of others abroad, provided both groups of workers are employed in enterprises controlled by the same multinational, and that the outcome of the dispute abroad will have direct consequences for the interests of the Greek workers involved. In addition, the Greek action must have the approval of the relevant national labour confederation.

The United Kingdom, in the Trade Union and Labour Relations (Consolidations) Act 1992, recognises that a trade dispute may exist under UK law even though it relates to matters occurring outside the UK. For any action by British workers to be lawful in such circumstances, the British workers must be "likely to be affected" by the outcome of the dispute overseas. That implies that both the British and overseas workers must share the same employer.

So far as can be ascertained, neither of these laws has been significantly used, let alone tested. it is considered that the most likely circumstances in which they could be applied involve rationalisations/transfers of production within multinational groups or the creation of European works councils.

In addition, Sweden's 1976 Co-determination Act stipulates that sympathy actions may not be undertaken in support of groups not permitted to take primary action. There is no geographic delineation, and it is considered the restriction would apply in international disputes.

In national case-law, the most significant judgement found arose in the Netherlands in 1960, in the so-called "Panhonlibco" affair. That involved some Dutch dockers in a "blacking" action in support of an attempted world-wide boycott of certain flags-of-convenience shipping, organised by the International Transport Workers' Federation. The Dutch dockers' unions were eventually deemed to have acted illegally in exhorting them not to load or unload the ships in question.

3.2 Possible principles

Greece and the UK apart, the whole issue of international action takes on a largely theoretical dimension.

Among those consulted to date, there appear to be three points of broad agreement:

- The action in the "secondary" country must be lawful in its own terms under national rules.

- There must normally be at least some community of interest in the outcome of the action between the participants in the "primary" and "secondary" countries.

- If the action in the "primary" country is unlawful, the one in the "secondary" country may well be unlawful, too.

The first point seems self-evident. The second and third can be deduced from statute and/or case-law relating to domestic secondary action in many member-sates, but remain largely matters of opinion in the international context.

A question in relation to the third point was raised in the course of research in Denmark -- namely, of whose law or practice is used to determine the status, in relation to the "secondary" country, of the action in the "primary" country. No definitive answer seems possible.

3.3 Community of interest

Most clearly, there is a community of interest when participants in both "primary" and "secondary" countries share the same employer. Many past attempts at cross-frontier action by trade unions have sought to capitalise on this.

(One often-cited example is the cooperation between Dutch, German, Belgian and Swiss trade unions to protest at projected plant closures by Dutch-owned Akzo in 1972. However, it has to be said that in the Akzo case the industrial action as such was largely confined to the Netherlands, with brief and limited support from some Akzo workers in Germany. A similar pattern of restricted response is found in most other examples of "across-frontier action" directed against individual multinationals in Europe since the 1960s).

Given the structure of many multinational companies, the definition of "same employer" itself raises considerable problems in national laws. The statutory formula used in Greece ("... enterprises controlled by the same multinational ...") is widely cast. By contrast, the British statute, in its key passage relating to secondary action (see Annex 1, United Kingdom), refers to "the employer under the contract of employment" -- a much more restrictive definition within international groups of companies.

However, community of interest may possibly be deemed to exist even when the employer (however defined) is not the same. Two recent cross-frontier "days of protest" in Europe were directed at, respectively, European unemployment levels and development plans for European railways.

Significantly, in both cases, accompanying work stoppages were brief and took place mainly in those member-states where strikes are relatively unregulated -- for example, France and Italy.

No information has been found to suggest legal action was taken against any of the participants in any country.

3.4 Conclusions

From the above, the member-states can be provisionally and loosely classified as follows :

Table 11: International Disputes

	Regulated by statute	Community of interest required, as for all secondary action	Not excluded by law or practice	Unlawful prima facie
Austria			✓	
Belgium			✓	
Denmark				✓
Finland			✓	
France		✓		
Germany		✓*1		
Greece	✓			
Ireland	✓*3			
Italy		✓		
Luxembourg			✓	
Netherlands			?*2	?*2
Portugal			✓	
Spain		✓		
Sweden			✓	
United Kingdom	✓			

* Notes:

1 By far the strictest limits are imposed in Germany, and would almost certainly require both groups to share the same employer. That is in principle also true of France.

2 The Netherlands might fall into the third category, prima facie unlawful, depending on the interpretation placed on the Panhonlibco case (see 1 above). However, international strikes in Holland are effectively lawful until a court decides they are not.

3 Secondary action explicitly lawful in Ireland

4. SUMMARIES OF LAWS AND PRACTICES IN THE MEMBER-STATES

4.1 AUSTRIA

There is no general right to strike recognised by law. An International Covenant of the United Nations on "Economic, Social and Cultural Rights" has been ratified by Austria, and that makes general references to the right to strike, leaving it to Austrian law to regulate matters.

Thus for any strike or other industrial action, primary or secondary, those organising it or taking part run the risk of criminal or civil proceedings against them, unless the action has no illegal features, i.e. its aims do not breach good morals, or the principles of reasonable cause and last resort.

Lockouts by employers are also not precisely legally regulated, and are subject to the same general principles.

For any action, relating to Austria or abroad, the further removed the industrial action is from the employer directly involved in the dispute, the more difficult it is to show that there is reasonable cause for the action.

4.2 BELGIUM

Statute law barely touches on the issue of strikes and lockouts, apart from two Acts aimed at maintaining essential public services and protecting plant and materials during work stoppages. Most regulation is left to the social partners through collective agreements and the procedural rules of joint sectoral commissions.

Although in theory civil law claims for damages can be brought in respect of any strike, they are uncommon. Trade unions have no legal personality, and cannot be sued as entities.

Both primary and secondary strikes are permissible. There is little to stop Belgian unions from staging action in support of groups of workers outside the country.

Lockouts, like strikes, are unprotected in statute. While those staged defensively may be lawful, offensive lockouts are probably not. But both types are rare.

4.3 DENMARK

Denmark's rules on industrial disputes are almost entirely established by binding collective agreement. All forms of industrial action are basically unlawful breaches of contract where they are directed against the provisions of a collective agreement in force.

However, strikes and lockouts may be legitimate final options, subject to tight procedural restrictions, in disputes over new collective agreements and certain other issues.

Secondary (sympathy) actions are specifically acknowledged, and lawful in limited circumstances. It is not thought they would be in relation to disputes outside Denmark.

4.4 FINLAND

Finnish legislation and agreements permit both primary and secondary action by workers, for a wide range of reasons and in a wide variety of forms, so long as -- in most cases -- it does not challenge provisions of an applicable collective agreement that is in force.

Employers' lockouts are also permissible, subject to the same constraint.

4.5 FRANCE

The Constitutional right to strike is vested in individual workers and only by extension in trade unions (which anyway have a combined organisation rate of less than 10%). There are few statutory controls except in public services. Most of the rules have been developed through case-law.

Primary strikes are permissible for occupational and professional objectives, so long as those are reasonable and capable of being fulfilled by the employer. There are some limitations for safety reasons and to prevent unwarranted disruption of the company's affairs as a whole.

Secondary strikes without the same company or group are generally lawful, and are thought to be so even when the primary dispute occurs abroad. However, secondary action in support of people with an entirely different employer is usually unlawful.

Political strikes are generally unlawful, except where there is a clear connection with employment issues.

Lockouts are not regulated at all in statute, but are not regarded as having any correspondence with strikes. They are unlawful breaches of contract except in very limited circumstances.

4.6 GERMANY

German rules on strikes and lockouts are almost entirely based on case-law, derived from Federal Constitution provisions on freedom of association and from contract law.

To be legal, strikes and similar actions may normally be conducted only under the auspices of trade unions, and only over matters that can be resolved in collective agreements. Concepts of proportionality and fairness apply. Peace clauses in collective agreements forbid industrial conflicts over disputes of right.

Secondary action is generally unlawful. However, there is theoretical scope for it when primary and secondary employers have close economic links.

Lockouts are not prohibited, but their use is strictly limited.

4.7 GREECE

The right to strike is protected by the Greek Constitution, subject to statutory limitations.

No real legal distinction is made between primary and secondary industrial action by employees, and many forms of both are permissible.

Legislation specifically permits Greek employees of multinational companies to stage sympathy actions in support of their fellow-workers abroad, subject to certain conditions.

All forms of lockouts by employers are prohibited.

4.8 IRELAND

There is no right to strike spelled out in the Constitution, or in any statutory text.

Instead, the law has developed by a system of immunities from what would otherwise be unlawful acts and which would have exposed the organisers and participants to criminal prosecution and to claims for compensation. These immunities are only available when the action complained of has been taken "in contemplation or furtherance of a trade dispute".

Lockouts by employers are recognised by law as a legitimate step by employers in an industrial dispute.

Secondary industrial action is broadly subject to the same legal tests as primary action, although a form of secondary picketing is specially regulated.

4.9 ITALY

The right to strike is protected by the Italian Constitution, but barely developed in statute. Case-law provides some further guidance, although it cannot be relied on too heavily for precedent. Provisions in collective agreements mainly attempt to avoid disputes of interest; in the last resort, they depend on goodwill.

A landmark Supreme Court decision of 1979 recognised the right of Italian workers to take secondary action where there is some community of interest with those involved in the primary dispute. It is presumed to apply when the primary dispute is abroad.

That decision apart, little distinction is made between primary and secondary action.

Employers' lockouts are not categorically prohibited. But they are usually treated as unlawful "anti-union conduct", except when deployed purely to safeguard plants from damage or theft.

4.10 LUXEMBOURG

The right to strike is not specifically protected by the Constitution, which just talks of a right of free association and trade union freedom. In the absence also of any special laws, deduced

from the Constitution is the right to strike.

To be lawful, a strike has to be preceded by compulsory conciliation.

Secondary industrial action is deemed to be illegal.

Lockouts by employers are deemed to be lawful on the same basis as strikes.

4.11 NETHERLANDS

Dutch law on industrial action is almost entirely judge-made. But it is generally accepted that strikes must be a weapon of last resort, and then only to be used if the damage they inflict is in proportion to the legitimate gains to be achieved. On that basis, their legality is determined case by case, and effectively presumed until a court decides otherwise.

Secondary action has been held to be generally unlawful -- in probably the first court case to arise from an attempt at a worldwide boycott by trade unions. However, the premise remains to be fully tested.

Lockouts are not prohibited, but their precise legal status is unclear. Employers have not used them in earnest in decades.

4.12 PORTUGAL

The right to strike is recognised by the Portuguese Constitution, with statutory implementation.

Strike action is the only right to industrial action which is mentioned, but that right covers a wide range of behaviour.

The Constitution specifically bars legislation from restricting the scope of interests which might form the subject of strike action, leaving that matter to the employees themselves. There is thus no legal distinction between primary and secondary industrial action.

All lockouts by employers are illegal.

4.13 SPAIN

The right to strike is guaranteed by the Constitution, but closely regulated in statute. Secondary strikes are permissible.

" Essentially political " strikes are prohibited, as are virtually all forms of industrial action apart from normal strikes.

Lockouts are also prohibited, except when they serve to protect health, safety and property, or when normal production is gravely hampered.

4.14 SWEDEN

Swedish trade unions have wide scope to take primary industrial action if they cannot achieve their ends by more peaceful means, provided it is not directed at provisions of a collective agreement actually in force.

Secondary action is also largely unrestricted, but must not be in support of illegal primary action.

Employers have equivalent rights to lock out. They used them on a national scale in 1980.

4.15 UNITED KINGDOM

British law on industrial action by employees is expressed largely in terms of statutory immunities, or exemptions from Common Law offences such as breach of contract that would otherwise attract civil penalties for damages.

A progressive reduction in these immunities characterised Conservative employment legislation between 1980 and 1993. They have been removed from all action not wholly or mainly arising from disputes between workers and their own employers over specific workplace issues. Even then, they do not apply unless the action follows strict procedural rules.

Political and secondary (sympathy) actions are completely unprotected. Secondary picketing effectively is, too.

By contrast, there are no statutory provisions regulating lockouts, and only very limited possible civil remedies for employees affected by them.

The involvement of British employees in international industrial action is specifically addressed in statute. Broadly, it is regulated by the same system of immunities that applies to domestic disputes.

PART 2 : VIEWS OF THE SOCIAL PARTNERS

This part of the report summarise the attitudes of national trade unions and employers' organisations to existing laws and practices in each EU country, with their suggestions for changes, and goes on to examine the EU dimension -- the potential impact on national laws and practices of the European works council directive and the proposed posted workers' directive, and the possible future role the EU itself might play in the regulation of strikes and lock-outs. Comments from both international and national labour and employers' organisations are included.

Very broadly, and with specific exceptions discussed where appropriate in the main text, the study finds national labour and employers' organisations appear reasonably satisfied with their present national systems regulating strikes and lock-outs. This may be attributed partly to the cosiness of familiarity, and partly to the fact that the study was carried out after a prolonged period of relative industrial calm in most member states -- when existing systems were not subject to undue stress.

Again with some exceptions, there was little enthusiasm from national organisations for any EU intervention in the field of strikes and lock-outs. Perception of an EU dimension to the issue as result of the European works council directive and the proposed posted workers' directive seems largely undeveloped at national level, although some of those consulted were reluctant to share their thinking too openly, because of the possible impact on domestic industrial relations..

International trade union bodies tend to favour legal intervention at EU level, while UNICE is against it. The ETUC see a need for some EU-level regulation of the subject, simply because of the lack of any existing rights at international level.

The study was specifically required to assess and analyse the legal and political arguments for including the area of industrial action within the competencies of the EU at the next Treaty revision in 1996. Those are mainly developed in Section 8, but may be summarised here as follows :

* The legal arguments for inclusion are considered to be quite strong, since a degree of competence is established in Article 118 of the Rome Treaty (though any legislative action would have to be taken under Art. 235), and there appear to be certain contradictions between Article 118 and the Maastricht Agreement Article 2.6. Furthermore, the Maastricht exclusions appear to be based on pragmatic, rather than legal, considerations.

* The political arguments are more complex. The existence of the Maastricht exclusion itself presupposes a significant number of member-governments do not favour EU intervention. The European Commission was said, at the time of Maastricht, to be against it, and no evidence has been found to indicate a change of Commission opinion. For their different reasons, neither the ETUC nor UNICE wished to pursue the matter at that juncture.

  At its 1995 conference in May, the ETUC agreed a proposal to press for EU-level legal measures to guarantee the right to free collective bargaining and the right to strike, inter alia. For its part, UNICE feels that-raising such matters at EU-level might upset a sometimes delicate legal balance at national level between the employers' and the trade unions' interests

Two practical arguments are also considered, with the following conclusions :

* The wide differences between national laws and practices make any general attempts at alignment between them extremely difficult, if not impossible. The survey indicated very little support for EU action in that area. And in any case it is considered unlikely to meet the subsidiarity test.

* Nevertheless, the advent of the European works council directive (in particular) may be said to introduce a European dimension to the issue of industrial action. It is possible to argue that dimension is capable of proper regulation only at EU level, thus passing the subsidiarity test. But any EU measure in this area would have to be of the minimal framework type, to avoid infringing individual states' prerogatives. And there is a counter-argument that individual states are themselves capable of regulating the matter, as British and Greek laws relating to overseas disputes may be said to show.

Table 12: National Rules - The Employer View

National employers' organisations in the 15 member states were asked whether they considered existing local laws and practices were too strict (□□□), about right (□□) or not strict enough (□) in the following areas.

	Primary strikes etc.	Secondary strikes etc.	Lock-outs
Austria	□ □	□ □	□ □
Belgium	□	□	□ □
Denmark	□ □	□ □	□ □
Finland	□	□	□ □
France	□ □	□ □	□ □
Germany	□ □	□ □	□ □ □
Greece	□ □	□	□ □ □
Ireland	□	□	
Italy	□	□ □	□ □ □
Luxembourg	□ □	□ □	□ □
Netherlands	□ □	□ □	□ □
Portugal	□	□ □	□ □
Spain	□	□	□
Sweden	□	□	□ □
UK	□ □	□ □	□ □

Table 13: National Rules - The Union View

Trade unions in the 15 member states were asked whether they regard national rules as too strict (□□□), about right (□□) or not strict enough (□) in the following areas :

	Primary strikes etc.	Secondary strikes etc.	Lock-outs
Austria	□ □	□ □	□ □
Belgium	□ □	□ □	□
Denmark	□ □	□ □	□ □
Finland	□ □	□ □	□ □
France	□ □	□ □	□
Germany	□ □	□ □	□
Greece	□ □	□ □	□ □
Ireland	□ □	□ □ □	□ □
Italy	□ □	□ □	□ □
Luxembourg	□ □ □	□ □ □	□ □ □
Netherlands	□ □	□ □	□
Portugal	□ □ □	□ □	□ □
Spain	□ □	□ □	□ □
Sweden	□ □	□ □	□ □
UK	□ □ □	□ □ □	□ □

1. PRIMARY INDUSTRIAL ACTION

Representatives of national employer organisations and labour organisations in the member-states were asked whether they considered the laws, agreements and/or practices governing primary strikes, picketing and related industrial action in their countries are too strict, not strict enough or about right.

1.1 Employer organisations

Employer representatives in Austria, Denmark, France, Germany, Greece, Luxembourg and Netherlands considered local regulation of primary strikes etc. to be about right. Those in Belgium, Finland, Ireland, Portugal, Spain and Sweden considered they are not strict enough.

1.2 Trade unions

Unions in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Spain and Sweden all considered local regulation of primary action to be about right.

NB: Some participants who said they regarded local regulation as about right nevertheless suggested changes (see Section 2 below).

In Portugal and the UK, the unions see the current law as too strict, and suggest several changes (see Section 2, below).

Table 14: Primary Action

Employer bodies and trade unions in the 15 member states were asked whether they regard national rules on primary industrial action as too strict (□□□), about right (□□) or not strict enough (□) :

	Employers	Trade Unions
Austria	□ □	□ □
Belgium	□	□ □
Denmark	□ □	□ □
Finland	□	
France	□ □	□ □
Germany	□ □	□ □
Greece	□ □	□ □
Ireland	□	□ □
Italy	□	□ □
Luxembourg	□ □	□ □ □
Netherlands	□ □	□ □
Portugal	□	□ □ □
Spain	□	□ □
Sweden	□	□ □
UK	□ □	□ □ □

2. CHANGES TO RULES ON PRIMARY ACTION

Participants were asked what specific changes they would like to see in the current regulation of primary industrial action.

2.1 Employer organisations

In those member-states where employers feel the present rules on primary industrial action are not strict enough, they advocate the following changes :

Belgium: Attribution of legal personality to trade unions, so they can be sued. A legal "freedom to work" in parallel to the freedom to strike. A clampdown on picket-line intimidation and violence towards non-strikers. Belgian employers assert the lack of regulation of strikes "poses a threat to the economic life of companies, sectors and the nation".

Finland: Compulsory mediation of certain strikes, notably those by small groups of key employees. Compulsory ballots on strike settlement offers.

Italy: General legal regulation of industrial action, to include advance notice of stoppages and other restrictions on the conduct of and motives for strikes. Full application of the law on strikes in essential public services. "Any change would be for the better".

Portugal: Employers are in general reasonably happy with the right to strike, but consider that the application of that legal right is not strict enough. They would like to see more restrictions

on the right to strike and to curtail the situations where strikes are allowed.

Spain: There should be a clearer distinction between legal and illegal strikes, and the legality of all strikes should be established before they are allowed to take place. There should also be a requirement for certain employees to keep up minimum maintenance services during strikes. The principle that pickets are only allowed to provide information should be strictly enforced. All available alternatives for resolving conflicts must be encouraged.

Sweden: Restrictions on strikes in essential public services. The introduction of cooling-off periods. Some degree of compulsory conciliation. Easier dismissals of employees involved in illegal action.

In those member-states where employers said regulation is about right, some nevertheless offered comments on possible changes :

Denmark: With the trend towards decentralised bargaining, some amendment may be needed to the Mediation Act.

France: Minimum service guarantees.

Germany: The equality of the bargaining parties is not entirely guaranteed. Judicial decisions are not always satisfactory.

Luxembourg: Strike ballots should have to take into account the views of non-union members who would also be directly be affected by the outcome of industrial action.

2.2 Trade unions

In the UK, the unions feel the present law is too strict and suggest that employers should lose the right to dismiss participants in legal disputes; that rules on strike ballots should be less prescriptive, although some form of modified strike ballot requirement should be retained; and the definition of disputes and thus the rules on union liability should be less rigorous.

In those member-states where trade unions said present regulation is about right, some nevertheless suggested changes :

Belgium: Restrictions on the role of the courts in labour disputes. Union participants added they will continue to resist attribution of legal personality to trade unions, and that any further regulation of strikes should be left to the social partners (see Belgian employer comments above).

France: Opposed to any further legal regulation, although the CFDT spokesperson says the organisation is prepared to consider minimum service guarantees (see French employer comments above).

Greece: The unions would like a reduction from four days to two in the required notice period for strikes in essential public services.

Ireland: The fact that the governing law only dates from 1990 means there is very little

clarification as yet under case-law. Specifically, it is not clear whether deficiencies in the balloting procedure would render a strike illegal or, as the Minister assured the unions would be the case, merely give a cause of legal action against the union to union members. However, the law on can give rise to diffculties and needs some clarification concerning the distinction between primary and secondary action, especially in situations where multiple companies in a single corporate group negotiate together

Portugal: Unions are generally satisfied wiht the right to strike, but consider that the application of that right is too strict, and the changes in 1992 to the 1977 legislation were unhelpful. They would like to see more flexibility in terms of the *"serviços mínimos"*, namely the tasks or jobs that cannot be interrputed during strike action.

Spain: The system under which minimum essential services are maintained must be changed to reconcile the right to strike with the basic rights of citizens to those services. The fact that a strike has been declared should not suspend the right of employees to meet and express their opinions within the company.

3. SECONDARY INDUSTRIAL ACTION

Participants from both sides of industry were asked whether they consider the present state of regulation of secondary industrial action too strict, about right or not strict enough.

3.1 Introduction

As noted above, virtually all forms of secondary action are unlawful in the UK, by statute. Legal commentators hold secondary actions are also unlawful in Luxembourg, The Netherlands and (unless presented as warning strikes) Austria. But in all three countries there is no statute and little if any case-law.

Secondary action is severely restricted by case-law in Germany.

Elsewhere, only Greece and Ireland refer to secondary action in statute, without closely defining the circumstances in which it is lawful. Irish law makes a distinction between secondary picketing (at the premises of someone who is not your employer, and only lawful in closely defined circumstances) and supportive strikes or other action (against your own employer but in support of the employees of another employer). Spain also sought to regulate it by statute, but the relevant provision was deemed unconstitutional.

In Denmark, Finland and Sweden, solidarity actions are permissible under collective agreements, subject to the general rules on strikes and the legitimacy of the primary dispute.

In France, Italy and Portugal, secondary action is permitted by case-law, subject to a community of interest between secondary and primary strikers and the legitimacy of the primary dispute. There is virtually no regulation in Belgium, where solidarity strikes of all types are permissible in principle.

3.2 Employer organisations

Employer representatives in Denmark, France, Germany, Netherlands, Portugal and the UK considered the national regulation of secondary industrial action to be about right. So did one of the two Italian employer representatives interviewed.

The second Italian participant and employer representatives from Belgium, Finland, Greece, Ireland, Spain and Sweden considered national regulation is not strict enough.

3.3 Trade unions

Labour representatives considered the national regulation of secondary industrial action to be about right in : Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal, Spain and Sweden.

Those from Germany, Greece and Sweden had additional comments, reported in Section 4 below, "Changes to the Rules on Secondary Industrial Action".

The Irish and UK unions feel that the present curbs on secondary action are far too strict (and see Section 4, below).

Table 15: Secondary Action

Employer bodies and trade unions in the 15 member states were asked whether they regard national rules on secondary industrial action as too strict (□□□), about right (□□) or not strict enough (□) :

	Employers	Trade Unions
Austria	□ □	□ □
Belgium	□	□ □
Denmark	□ □	□ □
Finland	□	□ □
France	□ □	□ □
Germany	□ □	□ □
Greece	□	□ □
Ireland	□	□ □ □
Italy	□ □	□ □
Luxembourg	□ □	□ □ □
Netherlands	□ □	□ □
Portugal	□ □	□ □
Spain	□	□ □
Sweden	□	□ □
UK	□ □	□ □ □

4. CHANGES TO RULES ON SECONDARY INDUSTRIAL ACTION

Participants were asked what specific changes they would like made to current national rules on secondary industrial action, or what regulation should be introduced where little exists.

4.1 Employer organisations

In those member-states where employers consider the regulation of secondary action is not strict enough, they advocate the following changes :

Belgium: Limitations on strikes where the employer affected has no power to settle or influence the settlement.

Finland: A longer, compulsory notice period to supersede the present, voluntarily-agreed four days. An entitlement to hire replacements for participants in unlawful strikes. The enforcement of fines against illegal strikers.

Greece: While the employer representative regarded the controls on secondary action as too lax, he could offer no suggestions for further restrictions in the context of the present law.

Italy: Interviewees stressed they are "not against" sympathy actions in principle, in support of other workers at home or abroad. But they felt the rights and duties of secondary strikers should be clearly specified, and certain types of secondary action falling short of strikes -- such as blacking, sit-down stoppages and works-to-rule -- should be categorically outlawed.

Sweden: Employers want a restriction on sympathy strikes to permit them only when the outcome of the primary action is "of direct concern" to the secondary strikers. They want a restoration of the ban (imposed by the previous government, but lifted by the present Social Democratic one) on actions directed at small businesses with no employees or employing only family members. And they favour a peace obligation in demarcation disputes.

4.2 Trade unions

Of those national unions that felt their present arrangements on secondary action are about right, some offered further comments :

Germany: The unions and some of their political supporters are currently (April 1995) in the final stages of a constitutional appeal to overthrow legal provisions allowing unemployment or short-time benefits to be withheld from workers laid off as a result of a dispute in a bargaining region other than their own, but in whose outcome they have a clear interest.

Greece: The unions would like wider scope to take international solidarity action within multinational companies, already permitted to them under certain conditions in Law 1264 of 1982.

Sweden: The unions want a clear right to take international solidarity action (at present permitted to them in case-law, provided the overseas primary action is lawful).

The Irish unions see the present law on secondary picketing as overly restrictive. They would wish to see some relaxation, to permit solidarity picketing where only a small number of employees are directly employed and thus eligible to picket.

The UK unions also feel the present law is too strict, and say that secondary action should be allowed where the individuals involved have a direct interest of an occupational or professional nature in the outcome of the primary dispute.

5. LOCKOUTS

Participants were asked whether present national rules on lock- outs are too strict, not strict enough or about right, and what changes, if any, they would like to see.

5.1 Introduction

Lock-outs are banned entirely by statute in Greece and Portugal. Their use is tightly restricted in France (by case-law) and Italy (by case-law and statutory prohibition of "anti-union" activities).

Lock-outs are explicitly permitted in certain circumstances in Denmark (under collective agreement), Finland (by statute), Federal Germany (by case-law drawing on the Constitution), Spain (by statute) and Sweden (in the Constitution).

Freedom to lock out is implicit in statute in Ireland, Luxembourg and, to some extent, the United Kingdom, but with little or no regulation or protection. It is presumed by legal commentators to exist in Austria and the Netherlands, but in both countries there is no statute or recent case-law.

There is no statute or recent case-law in Belgium, either. Lock- outs there are not totally prohibited, but they are not protected. The presumption is that they would be lawful only in very restricted circumstances.

5.2 Employer organisations

Participants in Belgium, Denmark, Finland, France, Netherlands, Portugal and Sweden all felt that current national arrangements relating to lock-outs are satisfactory, and no change is needed. That was also the view of one interviewee in Italy.
The second Italian interviewee said the present presumption that lock-outs are virtually always illegal is "too strict". The Spanish employers also feel that the current restrictions make lockouts practically impossible, and that there should be the right to use them where there are strong enough grounds e.g. in response to an illegal strike.

The Greek participant advocated a removal of the total ban on lock-outs "in the name of equality (of bargaining power)", but added it is not a priority issue for employers.

The issue of bargaining parity was also raised in Germany, where the participant said the employers' position should be strengthened somewhat. Referring to the current case before the

Constitutional Court (relating to the withdrawal of benefits from certain workers laid off because of a strike -- see Section 4 above), he maintained any change in the present rules would further distort the balance between the parties, in favour of the unions. Although lockouts are extremely rare in the Netherlands, an employer spokesperson said : "The lockout is always there as a threat and we can use it. The problem is that it merely extends the conflict.". The Portuguese employers would not wish to demand any rights in this area, as it would damage their image without giving them any worthwhile powers.

5.3 Trade unions

Trade union participants in Denmark, Finland and Sweden (where lock-outs are explicitly permitted) all considered the present national arrangements about right. The Swedish interviewee added that "some kind of balance (of bargaining power) is necessary".

Union officials in Austria (not legally regulated), Greece (statutory ban), Ireland (implicitly allowed) Italy (severe restriction), Portugal (statutory ban), Spain (only defensive lockouts permitted) and the UK (implicit freedom to lockout) also regarded current arrangements as broadly satisfactory. Unions in the Netherlands (permissible, but rare) say they are "against the power of the lockout".

In Belgium and Germany, participants suggested lock-outs should be forbidden in general -- although the German interviewee admitted that is probably not constitutionally possible.

The three French participants all declared themselves to be "against lock-outs", but without suggesting a total ban or expressing dissatisfaction with current tight case-law restrictions.

Table 16: Lockouts

Employer bodies and trade unions in the 15 member states were asked whether they regard national rules on lockouts as too strict (□□□), about right (□□) or not strict enough (□) :

	Employers	Trade Unions
Austria	□ □	□ □
Belgium	□ □	□
Denmark	□ □	□ □
Finland	□ □	□ □
France	□ □	□
Germany	□ □ □	□
Greece	□ □ □	□ □
Ireland		□ □
Italy	□ □ □	□ □
Luxembourg	□ □	□ □ □
Netherlands	□ □	□
Portugal	□ □	□ □
Spain	□	□ □
Sweden	□ □	□ □
UK	□ □	□ □

6. THE EUROPEAN WORKS COUNCIL DIRECTIVE (OJ L 254/94, p. 64)

Participants were asked whether they consider the new European Works Council directive will have any impact on national law and practice relating to strikes and lock-outs in their countries, and, if so, in what way.

6.1 Introduction

The replies of most national-level participants (see 6.4 and 6.6 below) indicate that they have not yet given much thought to the application of the directive, and even less to its possible impact on national law and practices.

That is to be expected, as the directive has not been transposed into national measures anywhere. It is understood that the present aim of the European Commission is to secure more-or-less simultaneous activation in all affected member-states at or shortly before the deadline of September 1996. However, it is suggested by some sources this deadline might not be met, given the problems the Commission working-group dealing with transposition is said to have encountered already.

Therefore, a general analysis is offered as a prelude to the specific replies received.

6.2 General analysis

In the view of Prof. Dr Roger Blanpain of the Catholic University of Leuven (one of the most respected commentators on the subject), the directive does not establish a right for employee representatives to bargain on wages and conditions at European level, nor to call for industrial action.

In his opinion, neither European works councils nor the alternative information and consultation procedures available under the directive "can, legally speaking, be vehicles for international solidarity action" (Blanpain and Windey).

On the basis of the text itself, that is undoubtedly correct insofar as it goes. However, it is suggested there are two sets of circumstances in which a European works council might be a focus for international industrial action, while, as Prof. Blanpain says, not being a vehicle for solidarity action as such.

i) The first arises from the creation of the European works council itself. Under the terms of the directive (Article 6.1), central management and the special negotiating body on the employee side are required to negotiate "in a spirit of co-operation with a view to reaching agreement" on detailed arrangements for informing and consulting employees.

Should these negotiations break down (in the view of the employee side), the negotiating process is halted for a minimum of two years unless otherwise agreed. At the same time, the default provisions set out in the Annex to the directive shall not apply (Article 5.5).

These arrangements are obviously intended by the directive's authors to minimise the risk of breakdown, since if one is deemed by the employers side to have taken place, employees may

well have to wait for two years or more until work on installing the information and consultation machinery resumes.

However, it is considered this is a point at which international industrial action within the company might well occur -- to put pressure on central management to concede the matter that, in the employee-side's view, led to the breakdown, and/or to resume negotiations.

(It is possible to envisage other scenarios in which in-company action could occur over the creation of a European works council, but the above best exemplifies the directive's in-built attempts to deter it.)

It should be added that the directive does not require members of the special negotiating body to be trade unionists. But it can be safely assumed the unions will work hard to secure the inclusion of their members on the SNBs, and that, as organisations, they will seek to fill the role of expert advisers to the SNBs, for which the directive provides (Article 5.4).

ii) The second set of circumstances in which a European works council could become a focus for international industrial action stems from its actual existence, requiring the physical assembly of employee representatives from several member-states in one place at least once a year.

This provides an employer-paid opportunity for an ad hoc meeting (outside the European works council's formal order of business) in which national representatives can compare notes, discuss and plan strategies and tactics, and so forth.

Since long before the European Commission made funds available for such meetings (solely in the context of promoting European works councils), the international trade secretariats have been organising them in the form of "company world councils" or similarly-named bodies (see Section 8 below). But financing them, and securing the time off for attendees, was a perennial problem.

There are provisions for "emergency meetings" of European works councils (or selected members) in the Annex to the directive (Article 3) and in certain existing agreements, to discuss such issues as closures, transfers and collective redundancies. It is possible to foresee the initiation of such meetings as a form of industrial action (without the name) in itself, and as an opportunity for participants to consider and debate more over types of international action.

6.3 International employers' organisations

Given the early stage of development of practice under this directive, UNICE does not have a formal policy on the issues. However, it is thought likely that although pay is not formally an agenda issue for these councils, other matters will relate at least in passing to industrial action at the national level but to be influenced by inter-national contacts, e.g. redundancies on plant closures / international moves.

6.4 National employers' organisations

Employer participants in Belgium, Denmark, France, Germany, Greece, Ireland, Luxembourg,

Portugal, Spain, Sweden and the UK all considered the European works council directive will be unlikely to have any noticeable impact on national laws or practices relating to strikes and lockouts in their countries.

The Austrian and Finnish participant considered any impact unlikely in the short term. The Austrians consider there may be some greater pressure for solidarity in future although it is still too early to say how things will develop, and the Finns thought the directive might ultimately mean changes in Finland's rules on sympathy actions.

One Italian participant felt the directive might serve to diminish conflict, but saw no other changes resulting.

The Dutch employer representative commented : "You can never tell the consequences of these things in five years' time. Any legislation from Brussels is only a hindrance in this sense, as it has no added value."

The Portuguese employers feel that there has been a trend towards reduction of employee involvement in their country since the revolution, and it does not seem likely that employees will reactivate this type of activity.

6.5 International labour organisations

The International Transport Workers' Federation (ITF) thinks the directive will be a stimulus to cross-frontier solidarity, and thus possibly to some alignment of EU national laws. But it stresses the difficulties involved in that process.

The European regional organisation of the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) see the directive as a complement to, not a substitute for, national level collective bargaining arrangements. Note that FIET is already involved in some conflicts about issues relating to the directive. Marks & Spencer is a case in point, where FIET and its affiliate unions are boycotting what they describe as the purely one-sided structures set up by management without any consultation with FIET or its affiliates-in the member states. The position of FIET and its unions is thus that management's structure is not a substitute for a proper European Works Council such as to satisfy the directive.

Such a stance is echoed by Mr Emilio Gabaglio at the ETUC in a letter to the Financial Times, of London. The ETUC also regard the development of European Works Councils as a building block in the European system of industrial relations. They expect that the discussion among participants, taking place outside the meeting proper, will inevitably lead to greater integration of procedures, eliminating some existing difficulties.

6.6 National labour organisations

Union participants in Austria, Finland, France, Greece, Ireland, Portugal and Sweden and the UK expect no changes to result in national law and practice on industrial action from the directive..

Those in Belgium are waiting for it to be transposed before forming a view.

The Danish official expected no immediate effect, but thought it might have one later, though without elaborating.

In Germany and Italy, union representatives believe the directive will have an impact on cross-frontier information exchanges and collaboration between national unions, but felt it too early to forecast what changes that might lead to in national laws.

Spanish unions believe that the European Works Councils will need to co-ordinate labour action in more than one country and therefore will lead to harmonisation of the regulations in every EU state.

According to Dutch union officials, the directive provides an international link hitherto missing from national law on employee representation, and as such is "the first step to international progress".

Irish unions commented that the directive would have an impact on the range of issues negotiated about domestically, and might well lead to some pressure for harmonisation of law and practice concerning industrial action. The directive would accelerate the process by which employees are becoming aware of the need to be involved in a much wider range of business strategy and issues than hitherto.

6.7 Conclusions

In the light of the foregoing, it seems possible to draw certain tentative conclusions about the relationship between the European works council directive and the laws and practice on industrial action in the member-states.

i) Any action directed at securing the creation of a European works council as described in 6.2 above and carried out by the international company's own employees would have a motive that is legally permissible in all affected member-states, as national laws and practices stand.

That holds true in principle of the United Kingdom, too, even though the UK is at present excluded from the directive's scope -- since matters related to "machinery for...consultation" are lawful grounds for action.

If the company or group concerned has a unitary structure, the action would be a primary one and thus not bound by the restrictions imposed on secondary action in any member-state.

However, most international companies are not structured in that way, so the position becomes more complex. For example, in the United Kingdom, the tight legal definition of the employer as "the employer under the contract of employment" might rule out action deemed to be secondary because it is directed at the central management of a group headquartered outside the UK, rather than the local management.

In Austria, Germany, Luxembourg and The Netherlands, similar considerations might arise. However, in Germany at least, the case-law requirement that secondary strikes can be directed only at employers who have shown themselves to be "less than neutral" in a primary dispute would seem to be met automatically.

In Greece, the loose definition of "the same multinational" used in the statutory definition of permissible secondary action in support of workers abroad appears to cover groups and fragmented structures.

In all other member-states, such action, even if deemed to be secondary, would seem to be lawful, since the participants have a clear vested interest in the outcome. The possible exception is Denmark, where it has been suggested that secondary action in support of workers overseas would be prima facie unlawful (but see below).

Needless to say, whether an action in support of the creation of a European works council is regarded as primary or secondary, in each country it will have to comply with the local requirements on procedures and forms to ensure its legality.

ii) If national law deems such action secondary, another legal problem arises. As a general principle throughout the member- states, the legality of secondary action depends on the legitimacy of the primary action it supports, so it becomes necessary to establish what constitutes the primary action. That would appear to be difficult if workers in several countries are involved in simultaneous action designed to secure a European works council.

There is very little guidance in national case-law on this point. However, a court settlement reached in Denmark in 1959 and relating to international boycott campaigns sought by the International Transport Workers' Federation (ITF) against flag-of-convenience shipping (see also Section 8 below) indicates one possible approach.

The settlement recognised that the relevant Danish union was entitled to take part in ITF-engendered sympathy campaigns subject to normal national procedures and "to the same extent as they are in fact carried through in the other countries or in a substantial number of western European countries which are affiliated to the ITF" (cited in the Judgement of July 1, 1976, Danish Industrial Court). On the basis of this 1959 settlement, Danish participation in an attempted ITF boycott limited to the Nordic countries in 1976 was held to be unlawful, because no parallel actions had been started in Germany, The Netherlands or Britain (though they had in Finland and Sweden).

In other words, the 1959 settlement dispensed with the notion of primary action (whose location would be hard to identify in an international boycott) and substituted geographical scope as the criterion for the legality of the Danish sympathy action.

An alternative approach, in the context of disputes arising from the creation of a European works council, would be to define the primary action as the one occurring in the member-state where the company concerned has (or is deemed to have) its central management for the purposes of the directive (Article 4.1-2).

In purely legal terms, that has the advantage of being clear-cut. But it would almost certainly raise objections of unfairness, because of the wide differences in the levels of restriction on industrial action between the member-states.

A solution that might be investigated would be to attribute temporary legality to all such secondary action (subject to national rules on motives, forms and procedures), until the legality of the primary action has been determined under the relevant national rules. But that may be unlikely to find favour with employers.

iii) Many of the issues discussed so far also have considerable bearing on international action that, while not officially co-ordinated by a European works council, might be considered to be more likely because one exists (see 6.2 above).

The main difference, it would seem, is that in such cases the distinction between primary and secondary action may be easier to make. For example, if a company decided to reorganise plants in certain member-states, with resulting closures and redundancies, protest action against the employer in those plants by the employee categories affected would be primary action that is in principle lawful, subject to national rules.
Protest actions by non-affected staff in the same plants or in other plants in the same member-state would be governed by national rules on secondary action.

However, there is in most member-states a gap in law and practice (as traced throughout these reports) when it comes to actions by non-affected staff in member-states where reorganisations are not scheduled to take place -- "international solidarity actions".
Those might still be deemed to be primary actions subject to national law, for instance where there is an inward transfer of production which the workers concerned refuse to handle, ostensibly or genuinely because it involves changes in their conditions (though examples of this happening on any significant scale have not been frequent, particularly at current levels of unemployment, as the Hoover case illustrated).

When even that dimension is not present, the status of international solidarity action is murky in most member-states apart from Greece and the UK. As noted above, very few interviewees at national level expect the European works council directive to hasten its clarification.

7. POSTED WORKERS (Commission proposal for a Council Directive concerning the posting of workers in the framework of the provisions of services - COM(91) 230 and COM(93) 225)

Participants were asked whether they consider the proposed European directive on posted workers would have any impact on national legislation or practice relating to strikes and lockouts and, if so, in what way.

7.1 Introduction

The posted workers' directive, originally submitted by the Commission on June 17, 1991, was stalled in the Council of Ministers at the time of these studies. Substantial points of disagreement remained between the 15 member-states over several aspects of its contents.

The main one concerned the immediacy of application of the directive's provisions relating to minimum pay rates and holiday entitlements, on which no agreement even by qualified majority could be reached at the Council meeting of March 27, 1995. Others related to the possible sectoral scope of the directive beyond the construction industry (to which it was not originally confined), and the possible list of social conditions to which it could be extended.

Because of the uncertainties, few of the national employers' federations and labour organisations consulted have yet formed views on the directive's likely impact on national laws and practices relating to industrial action. But most tend to believe it will have little effect (see 7.4 and 7.6 below).

7.2 General analysis

The basic aim of the original draft directive is to ensure that workers temporarily transferred to work in a member-state other than the state whose laws govern their employment contracts are not deprived of certain minimum employment conditions available to their local counterparts. The listed conditions include pay, worktime, health and safety protection and equal treatment.

In other words, the measure seeks to prevent "social dumping" -- in this context, the importation of temporary labour whose pay and conditions under contracts concluded elsewhere were significantly inferior to those prevailing locally.

For the purposes of the directive, the national minimum conditions to be observed in respect of posted workers are derived from "laws, regulations and administrative provisions, collective agreements or arbitration awards, covering the whole of the occupation and industry concerned having an *erga omnes* effect and/or being made legally binding in the occupation and industry concerned" (Article 3.1a).

The draft builds on principles established in the EEC Convention Regarding the Law Applicable to Contractual Obligations, originally drawn up in 1980 and operated by Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg and the United Kingdom since 1991. (Spain has since ratified the Convention, while The Netherlands has endorsed many of the same principles in case-law since 1971 and Austria has more favourable arrangements under national legislation of 1978).

According to the Convention, in the absence of an agreement between the parties to the contrary, the national law governing an employment contract is generally the law of the country where the work is carried out (*lex loci laboris*).

However, that is modified to some extent in certain cases. For workers temporarily transferred to another country for relatively short periods while habitually working elsewhere, the prevailing national law (unless agreed otherwise) is normally that of the worker's base country or the base country of the business through which he was engaged.

The draft directive now seeks to amend that provision, so that temporary transferees are not deprived of local pay and conditions where the applicable local minima are superior to their contracted arrangements.

Some member-states (Belgium, France, Luxembourg) have already anticipated the directive by preparing national rules of their own (outside the EU, so has Norway). Germany is currently debating a law to the same effect, and the issue is under examination in The Netherlands. However, for most the EEC Convention remains the only benchmark.

There have been occasional examples of attempted industrial action in some member-states directed against the import of "cheap" foreign labour -- for example, in Denmark. The Danish Labour Court held in two cases in 1988-89 that the unions were not entitled to pursue recognition and inclusion claims against foreign contractors using wholly-imported labour on local projects (although such claims were legitimate if the contractor employed some Danes, directly or indirectly).

More notably, a somewhat similar ruling in Sweden led to a change in the law in 1991, subsequently repealed, but then reinstated by the current Social Democratic government. Under the "Lex Britannia" amendment to the 1976 Co-determination Act, Swedish trade unions are specifically permitted to take action in support of any group of foreign workers in Sweden, even where those workers are covered by a collective agreement governing their terms and conditions and reached in their country of origin. "Lex Britannia" thus creates an expectation to Sweden's general legal ban on action directed against a party bound by a collective agreement with the object of nullifying that agreement.

7.3 International employers' organisations

UNICE have no formally prepared view on the matter, as things have yet to develop but, it is thought, its members do not view this proposal as a real concern for industrial relations. Instead, the main issue here is liberty of provision of services.

7.4 National employers' organisations

Employer participants in Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the UK believe the draft directive will have no effect on national laws and practices relating to strikes and lock-outs. Those in Belgium and Greece said they have formed no opinion in the matter. The UK add that one might perhaps expect the proposal to reduce protest action in the host country.

In Denmark, the employer participant believed the directive could eventually have an impact on national practice through case-law. One possible area would be the legitimisation of union action against non-Danish employers of non-Danish labour operating within the country, hitherto held unlawful by the courts (see 7.2 above).

The Luxembourg employers are not in favour of the proposed directive because of its cost implications, and see it as possibly having a negative influence on industrial relations.

7.5 International labour organisations

The International Transport Workers' Federation (ITF) thinks the advent of such a directive may stimulate cross-border solidarity, and says the whole issue of people working outside their own country is an important and wide-ranging one.

The ETUC see the proposed directive as capable of getting rid of problems in some sectors, especially construction. Without this proposal, it is possible that not much impact will be felt until a "crunch" issue arises, and the objective must be to avoid such a damaging disturbance.

7.6 National labour organisations

Union officials in Austria, Belgium, Finland, France, Germany, Greece, The Netherlands, Portugal and Sweden thought the directive would have no effect on national laws and practices relating to strikes -- in Sweden, so long as the so-called "Lex Britannia" (see 7.2 above)

remains in force. The Danish unions say it is of "little significance, though attempts at social dumping have been made in the past" (but see Danish employer comments under 7.4 above). The Austrians warmly welcome the proposals as confirmation of their present situation, and support for their existing pay market.

In Ireland, the unions commented that the current law only provides employees with legal protection when taking strike action if they are members of a union with a negotiating licence in Ireland. Many foreign employees posted there would thus be exposed to legal difficulties if they took part in strike action, and it was not clear whether this sort of point would be covered by any implementing legislation

In Italy, the unions think it may help to clarify national provisions on strikes.

The Spanish union consulted said the proposed directive is "another objective element in favour of harmonising labour relations in the European Union".

7.7 Conclusions

It is considered that the posted workers' directive might hold implications in certain areas relevant to this study. They include :

* Organisation and representation of the posted workers, and their freedom to participate in industrial action.
* Recognition of local unions as representative of the posted workers by the relevant employer.
* The entitlement of local unions to direct primary or secondary action against the relevant employer.

As a general principle, the laws or practices governing industrial disputes are those operating in the place where they occur. Nothing in the original text of the draft directive appears to modify that. So it can be assumed that both the posted workers themselves and local unions seeking to represent their interests will, in the absence of any new provisions to the contrary, be bound by current national law and practice.

In that sense, therefore, the directive as it stands will have little direct and immediate impact on local laws and practices relating to industrial action, as most national participants in the accompanying survey agree. It does not have the supra-national dimension present in the European works council directive (see Part 2, Section 6 above).

Longer-term, the directive may exert some influence through modifications to national case-law (see the Danish example cited under 7.4 above) and to collective agreements, where those, rather than statute law, are used as the main vehicle for detailed transposition.

In the latter context, current German developments on posted workers may provide an indicator. While the government proposes to legislate, some commentators believe legislation would infringe Constitutional guarantees of free bargaining. Should that view prevail and the matter is determined largely by the social partners, some of the topics listed above may well be raised for inclusion by the union side.

It might also be argued that the directive could exert an influence for closer alignment of

national provisions on the topics listed above and other related to them, by highlighting the discrepancies that currently exist. However, that seems an even longer-term prospect. It also depends on the extent to which posted workers become a focus for industrial action. Even now, such instances are relatively uncommon, and the directive is considered more likely to reduce than to increase them.

A final, indirectly related matter might be the use of posted workers as strike-breakers, as happened in the Hertz case of 1976 in Denmark. That led to the conclusion in the OECD and ILO codes of conduct for multinational enterprises (see Section 8 below) of a recommendation that enterprises should not transfer employees from their operations in other countries in such circumstances.

However, the codes are voluntary. A European Court of Justice ruling of 1990 confirmed the right of employers to transfer workers temporarily from one member-state to their operations in another -- and the right of the second member-state to impose local rules concerning employment terms and conditions in respect of the workers concerned.

Strike-breaking was not the issue in the case in question, but by an extension of the principle the transfer would presumably be impermissible where the use of strike-breakers is forbidden locally -- for example, in most circumstances in Spain.

8. STRIKES, LOCK-OUTS AND THE EU

8.1 The official texts

There are three principal primary textual sources relating to freedom of association, collective bargaining and the right to strike and lock out in the European Union.

* The Treaty of Rome (Article 118 charges the European Commission with promoting close co-operation between the member-states in the social filed, particularly in relation to (inter alia) :

  "The right of association, and collective bargaining between employers and workers".

* The EU Social Charter of 1989 (Title 1, pars 11-13) refers to the rights of association of both employees and employers in connection with the defence of their economic and social interests, and their right to negotiate and conclude collective agreements. Paragraph 13 states :

  "The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements."

* The Agreement accompanying the Social Protocol to the Maastricht Treaty, which charges the Commission with supporting and complementing the activities of member-state in various employment-related fields, states (Articles 2.6) :

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

Three preliminary points need to be made on these texts :

i) The Treaty of Rome is the only one of the three that is currently binding on all 15 EU member-states. The Social Charter does not have direct legal force, and has not been endorsed by the United Kingdom. The Maastricht provisions are presumed to be legally binding on the signatories, but again the UK has excluded itself.

ii) Article 118 is not of itself a basis for EU legislative action in the areas under consideration (which would only at present be taken under Article 235, requiring unanimity). Therefore, although there are several seeming contradictions between the texts, analysed below, the specific preclusion by Maastricht of EU directives in those areas is not one of them.

iii) The right of association is clearly recognised in the Rome Treaty, both of itself and as an area in which the Commission has competence to promote co-operation. Collective bargaining is an area of similar Commission competence in the Rome Treaty, but the punctuation of the standard English text leaves ambiguous its status as a right.

The right of association is developed to include the rights of collective bargaining and of strike (but note of lock-out) in the Social Charter.

The Maastricht Agreement specifically excludes the rights of association, strike and lock-out from the Council of Ministers' competence to adopt directives and, depending on interpretation, also from the Commission's competence to "support and complement the activities of the member states" (see also 8.3 below).

In sum, all three texts acknowledge a right of association. A right of collective bargaining is clearly acknowledged in the Charter. The Charter and the Maastricht Agreement (en passant) acknowledge a right to strike. But only Maastricht specifically acknowledges (again, en passant) a right to impose lock-outs.

Table 17: "RIGHTS" EXPLICITLY MENTIONED IN TEXTS

	Rome Treaty	Social Charter	Maastricht
Association	✓	✓	✓
Collective Bargaining	(1)	✓	(2)
Strike	-	✓	✓
Lock-out	-	-	✓

(1) Collective bargaining mentioned, but not as explicit right.
(2) There is no mention of "a right" of "collective bargaining" in the relevant passages.

8.2 A European "right to strike"?

By specifically mentioning the rights to strike and lock out, the authors of Maastricht assume they exist in European Law. The authors of the Social Charter made the same assumption about strikes, but did not mention lock-outs.

Indeed, the Maastricht Agreement might be argued to have explicitly established those rights

in European law in respect of all member-states apart from the UK.

If so (and the matter has yet to be tested in the European Court of Justice), it represents a considerable extension of national law in most member-states. As the previous study showed, an explicit right to strike exists in the Constitutions of only six members (France, Greece, Italy, Portugal, Spain and Sweden), and can be held to exist also in The Netherlands, derived from the Council of Europe's Social Charter of 1961. Furthermore, a Constitutional right to lock out is explicitly recognised only in Sweden, and lock-outs are categorically prohibited in Greece and Portugal.

Therefore, it clearly cannot be asserted that the Maastricht Agreement references merely sum up the existing legal situation at national levels.

By omitting all mention of lock-outs, the Social Charter avoid the legalistic problems posed by the lock-out bans in Greece and Portugal. But it is still confronted by the absence of any clear-cut legal "right to strike" in seven member-states, the more so because it subjugates the "right" to "national regulations and agreements". And in any case, it is not directly binding.

Alternatively, it is possible to attempt an a priori argument from the Rome Treaty reference to the "right of association". As Part 1 pointed out, four member-states (Austria, Belgium, Denmark and Germany) ground their rules on strikes and lock-outs in Constitutional guarantees of free association, in the absence of any or much relevant labour statute.

However, as was also pointed out, this creates an adduced "freedom" to strike or lock out, not a "right". (The distinction is made by many European jurists. It need not be over-laboured, but it is felt to be important here).

Therefore, it can be argued the Social Charter is not entitled to speak of a "right to strike" (nor for that matter can it logically adduce a right or freedom to strike without a corresponding one to lock out, as the reasoning is precisely the same in both cases). Similarly, the Maastricht Agreement can adduce only a freedom to strike or lock out from the Rome Treaty.

It must also be said that not all jurists recognise a direct link between a right of association and freedom to strike. Courts in North America and the British Commonwealth, in particular, have on occasion declined to draw it. In one landmark case (Collymore v. The Attorney-General of Trinidad & Tobago, 1969), the judge declared that just because an individual has a right to join a trade union, it does not follow that he or she has the right to join it for the particular purpose of striking.

A very similar a priori argument can be constructed from the Rome Treaty's reference to collective bargaining, if the text is interpreted as conveying a right to bargain collectively (as previously noted, it is somewhat ambiguous). Internal textual evidence suggests the authors of the Social Charter followed the logical progression :

Association > Collective bargaining > Strike

This progression is recognised, particularly, in Germany (where it culminates, as the Charter does not, in : > Strike/Lock-out). To be legal, German strikes must be intended to result in a negotiated collective agreement and, as a corollary, their objectives must be fit to be regulated by such an agreement. In other words, in the view of German law, strikes are a last-resort

extension of collective bargaining.

However, in the final analysis, the German national model, too, produces a "freedom" to strike, not a "right".

Two conclusions may be drawn from the above :

* If the right to strike exists in European law, it derives from the Maastricht Agreement and applies to the EU14. It is accompanied by a right to impose lock-outs, so the absolute bans in Greece and Portugal are an infringement.

* If the Maastricht Agreement does not convey a right to strike and lock out, the most that can be adduced from other texts (the Rome Treaty) is a freedom to strike -- which already exists, in one form or another (and in some cases as a right), in all 15 member-states. By a similar process, freedom to lock out can be adduced, so the absolute bans in Greece and Portugal are again an infringement.

8.3 Maastricht v. Rome

There is a corollary to these points. If the Maastricht text is read to exclude the right of association from the Commission's area of competence to "support and complement the activities of the members states", it appears to sit uneasily with the Rome Treaty's statement charging the Commission with promoting "close cooperation between member states" in the same area. On that basis, it is possible to argue that the respective treaty provisions should be clarified.

But in that case, if the Maastricht exclusion relating to right of association were *amended*, it is logical to suppose the right of strike assumed in the previous paragraph of Maastricht could well unravel, too. Any perceived European-level "right to strike" would then lack a basis in a legally-binding text.

Without further Treaty amendments (such as the incorporation of the Social Charter to give it binding effect), the "right to strike" would revert to the "freedom" adduced from the Rome Treaty.

The same is true in principle of the "right to lock out", also cited in Maastricht. In that case, however, incorporation of the Social Charter would not restore the right, as the Charter does not mention it.

8.4 The Maastricht exclusion

In the above analysis, considerable attention has been paid to an element of reciprocity between strikes and lock-outs as instruments of industrial action, flowing ultimately from a right or freedom of association. That reciprocity is implicitly accepted in the Maastricht Agreement. It is specifically accepted in some member-states (for example, Denmark, Sweden and, to a large extent, Germany) and specifically rejected in others (Greece, Portugal and, to a large extent, France).

In the course of preparing this study, it was suggested to the authors that the issue of reciprocity largely accounts for the exclusion of rights of association, strikes and lock-outs from the Commission competencies in the Maastricht Agreement (though a desire by the Dutch presidency to accommodate the British government may have played a part, too).

While it is virtually impossible to determine the extent to which that is true, it is plausible. And the source was intimately involved in the Maastricht pre-preparation on the social affairs side.

Some of the more detailed arguments in support of this view of events are elaborated below. But from what has already been said, it is evident that the divergences between the treatments of strikes and lock-outs nationally stem from sharp philosophical differences, leaving aside practical ones. That fact alone explains why any attempt by the EU to act in this area would meet sharp resistance from certain member-states.

The Maastricht wording implies such an attempt was at least foreseen, if not actually made. It is not clear whether it originally concerned strikes, lock-outs or both -- but that is largely immaterial. The raising of one topic would almost automatically involve the other, because of the reciprocity perceived in some member-states. That in itself would be recipe for discord.

So, irrespective of the starting-point, an agreement to exclude one area from EU competence because of its potential for inter-government conflict would entail exclusion of the other -- as Maastricht does. Accepting this premise, and the connection between the right of association and the right or freedom to strike or lock-out traced earlier, it was logical (if not necessarily consistent in the light of the Rome Treaty) to retrace the path of rights upwards, and exclude the right of association too.

It might also be considered that the EU Social Charter played a part in the Maastricht developments. As previously noted, the Charter talks of a "right to strike" not recognised nationally as such in many of the signatory states, and not directly sourced in any earlier, binding EU text. It also omits any mention of lock-outs, despite the recognition in some member-states of the reciprocity principle.

Whereas the (then) 11 Charter signatories were prepared to accept these matters in a non-binding document (and indeed may not have analysed the possible implications fully when signing), some may have had grave reservations about the direction in which they pointed, by the time Maastricht was on the table. So a late-developing concern about the Charter's provisions could well have been the starting-point for the debate culminating in the Maastricht exclusion.

8.5 International bargaining attempts

The previous sections have concentrated on the legal aspects of the European source-texts and the member-states' broad positions on them as evidenced by national laws. The respective positions of business and labour add another, equally complex dimension.

But before examining that in detail, it is relevant to look briefly at the history of attempts at international bargaining and cross-frontier industrial action in Europe, since it is considered to have a considerable bearing on the present attitudes of the parties.

Between roughly the late 1950s and the late 1970s, international collective bargaining resulting in cross-frontier collective agreements was an actively-sought goal of many of the International Trade Secretariats and similar labour bodies, as a counter-balance to the perceived growth in power and influence of multinational companies.

During that period, many dozens of multinationals were individually targeted for labour attention in this respect. From the labour viewpoint, the main subject-matter of such agreements was intended to be global employment policies, transfers of production, plant openings and closures and various aspects of non-wage terms and conditions. Some on both sides perceived an element of international pay-bargaining as a longer-term union aim -- to follow once the principle of cross-frontier negotiation had been secured.

In the following 10 or so years, the overt emphasis on pressurising individual multinationals over such issues faded somewhat. But is was never abandoned, resurfaced occasionally over "flashpoint" topics (for example, South Africa) and may be said to have re-emerged generally, in modified form, with the approach and adoption of the European Works Council Directive.

The apparent shift by the ITSs and their ilk around 1980 can be attributed to a whole variety of factors. However, adoption of the voluntary OECD Guidelines for Multinational Enterprises (1976) and the similar ILO Declaration of Principles (1977) may be said to represent some form of watershed. The advent of the Vredeling Proposal (1980) marked another -- not least because of the huge resistance to it mounted by multinationals, particularly those base in the US.

But Vredeling was only the culmination. Even before the Proposal was effectively defeated, the union campaign for international company agreements had proved largely unsuccessful, with certain exceptions such as shipping and sections of the entertainment industry. Most of the multinationals targeted for labour attention strongly resisted they regarded as opening the door to international bargaining. Some flirted briefly with "information meetings" involving labour representatives at cross-frontier level. Even those largely petered out after one or two sessions.

At the height of the labour drive, some attempts were made at cross-frontier industrial action in support of union demands. But, discounting consumer boycotts, leafleting and the like, relatively few cases between 1956 and 1979 can be said to involved genuine labour mobilisation in more than one European country (see table 18).

In the view of professors Herbert Northrup and Richard Rowan (Northrup and Rowan) even fewer can be deemed a success from labour's standpoint. One that did succeed, in their opinion, was the liaison between the British printing union NGA and Germany's IG Drück und Papier in 1979. mass picketing of a printer in Germany thwarted plans to produce an overseas edition of The Times newspaper there, at a stage when The Times was not appearing in the UK because of lengthy dispute involving a shutdown.

Of more attempts at cross-frontier action, two that had some success in terms of mobilisation -- the ETUC day of protest against unemployment and the ITF protest against planned changes to the European rail network -- were cited in the previous study. Significantly, neither was directed at an individual multinational company.

Table 18: CROSS-FRONTIER MOBILISATION IN EUROPE 1956-79

(Strike action or similar in more than one country)

Year	Target	Comments
1954-56	Eurovision	Boycott of transmissions organised by national unions affiliated to the International Federation of Performers in dispute over supplementary payments
1958	FoC shipping	Attempted world-wide boycott of flag of convenience shipping organised by ITF. Support in Netherlands, Belgium, UK, Sweden, US. In The Netherlands, this gave rise to the landmark Panhonlibco judgement, restricting secondary action.
1972	Akzo	Factory sit-in in The Netherlands, some parallel action in Germany to protest reorganisation.
1972	Dunlop-Pirelli	Strike in UK, 2-hour demo in Italy to protest reorganisation.
1975	BSN	Joint protests by French, Belgian unions over reorganisation.
1975	Tyre companies	European rubber industry day of action called by international shop stewards' committee. Stoppages in UK, France and Italy.
1976	Singer	Short, linked strikes in France, Italy over reorganisation.
1976	FoC shipping	Culmination of Nordic boycott campaigns organised by ITF/local unions in Sweden, Denmark, Finland, Norway. Danish boycott rules unlawful. Norwegian boycott apparently abandoned in light of Danish court ruling.
1977	Solvay	Short simultaneous strikes in Belgium. Portugal, France, Italy, organised by company "co-ordinating committee" over assorted demands, including creation of Euro works council.
1978	Volvo	Proposed sympathy action by Swedish unions in support of strike in Belgium. The Swedish action was ruled legal by Swedish court, but Belgian dispute ended in meantime.
1978	Unilever	"South Africa action week". Short stoppages in Sweden, Denmark, Finland.
1979	The Times	Mass picketing by German union in support of British workers in dispute (see text).

After Northrup and Rowan

The examples chosen are those where, in the opinion of independent observes, there was genuine cross-frontier industrial action involving stoppages, blacking or the like, rather than mere expressions of solidarity. Certain ITS leaders of the period habitually exaggerated their claims of cross-frontier support. The on-going ITF flag of convenience campaign gave rise to many other instances of blacking, but only the two considered most significant in the context are listed here.

8.6 The business position

A. Assessment

As the previous section shows, most multinational companies have, for 30 years and more, displayed a deep reluctance to take any step along a path they believe may lead to European-level collective bargaining.

So have the organisations that speak for them. The limited output of the Val Duchesse social dialogue ("joint opinion" on relatively non-conflictual topics) and the long resistance maintained against the European Works Council directive are two illustrations.

Therefore, the exclusion of rights of association, strike and lockout (and, for that matter, pay) from EU competence under the Maastricht Agreement is hardly a matter of regret for most employers. A large majority of those consulted in the course of this report were vehemently against any EU initiative in the field of strikes and lockouts, although there were some exceptions (see sections B and C below).

There are numerous reasons. But so far as multinational companies (as opposed to national employers' organisations) are concerned, they boil down to two that are closely related :

* Any EU intervention resulting in closer approximation of national laws and practices in this area would facilitate cross-border industrial action and, by extension, cross-frontier collective bargaining.

* Any supra-national EU regulation of cross-frontier industrial action would clearly legitimise and facilitate it, with similar implications for bargaining.

The long and, in their terms successful, resistance by MNCs to cross-frontier collective bargaining has been greatly assisted by divergences in national laws and practices, as well as by the unions' overall lack of success in mobilising labour across frontiers. Various examples can be cited from the ITF's flag-of-convenience campaigns, where national differences in the rules on industrial action have undermined ITF efforts at international solidarity.

It may be argued that the advent of the European Works Council directive changes matters, by creating what is in a sense a new supra-national environment and a new goal for collective bargaining, and that therefore some EU regulation of cross-frontier action becomes necessary. However, that is not a point conceded by many of the employers consulted for this survey.

B. International employers' organisations

UNICE have no formally prepared view on the matter, as things have yet to develop but, it is thought, its members would firmly reject any attempt to include such matters in the EU competence. The law relating to strikes is a subject which is eminently best dealt with at purely national level - for reasons of subsidiarity. Raising such matters at EU-level might upset a sometimes delicate legal balance at national level between the employers' and the trade unions' interests. The main concern of UNICE for the inter-governmental conference is likely to be the question of whether the UK is to be brought back into the whole field of social affairs. Also, the extent of co-decision making powers of the Parliament, and whether the Social Charter

should go into the treaty

C. National employers' organisations

The idea of any EU intervention in the areas of strikes and lock-outs was rejected outright by employer interviewees in : Austria, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands and the UK. The consensus view in those countries was that it would be unnecessary and unhelpful. The UK employers would oppose any EU action relating to strikes and lockouts, which it sees is an attempt to remedy gaps or shortcomings in other EU measures (e.g. the European Works Council directive), on the grounds that legislation then becomes endless.

In Belgium, it was stated that employers' organisations currently have no formal views in the matter. However, they would wish to participate in the preparation of any EU draft on the topic.

In Italy, the two employers' representatives interviewed considered an EU initiative could be helpful, but without elaboration. (It should be noted that Italy has very little legislation on strikes and lock-outs, and something of a tradition of looking to the EU to plug gaps in its national laws).

Similarly in Portugal, employers see such a move as a possible way to restrict the rights of employees and unions, currently seen as a negative factor for business in general.

Spanish employers said that the national differences are so great that it would be almost impossible to design a single directive covering all cases.

In Sweden, an employers' representative said an EU initiative could be helpful if it seeks to limit secondary industrial action, which is currently largely unrestricted at national level. "But much depends on the content".

8.7 The labour position

A. Assessment

Given the time and effort put in by International Trade Secretariats and similar groups in trying to secure international collective agreements over the years, it might be expected that an EU initiative in the field of strikes and lockouts would be universally welcomed by the trade unions, on precisely the grounds most employers oppose it.

That is not entirely the case, as the interviews accompanying this survey reveal (see B and C below). A significant proportion of national unions have objections or reservations, particularly if the initiative were to seek changes to established national laws and/or practices.

On an international level, the idea finds greater favour, but there are certain problem areas :

* If the reciprocity principle is accepted (as it is in the Maastricht exclusion), any EU initiative on cross-frontier strikes could well be countered by employer demands for equivalent status

for cross-frontier lock-outs, thereby legitimising them. This runs counter to the thrust of many European unions' policies of seeking to restrict the potential use of lock-outs as much as possible, if not to ban them. Furthermore, at a time when many unions' funds are depleted, the use of selective cross-frontier action is attractive -- but the opportunity for selectivity is undermined if it produces a general cross-frontier lock-out as a defensive response.

* The wide divergences between national laws and practices offer unions, as well as employers, opportunities to exploit in a cross-frontier dispute, notably as a result of the unclear status of secondary action in certain member-states. Not all labour leaders are convinced that clarifying these grey areas would be to their advantage.

B. International labour organisations

The European regional organisation of the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET) adopted in 1994 a resolution calling among other matters for

a) the establishment of a genuine European social legislation;
b) the right for trade unions and workers to organise collectively;
c) the right of trade unions to be recognised by employers;
*d) **the right to show solidarity with other trade unionists both at home and in other countries*** (our emphasis); and
e) the right - in the final analysis - to take strike action without fear of dismissal.

These rights are, according to FIET, to be constitutionally guaranteed in all European countries and set out in a binding EC Social Charter.

The International Transport Workers' Federation (ITF) says a case can be made for some EU-level regulation of industrial action. However, it points out the difficulties arising from the wide discrepancies between national laws and practices, and adds that it would view an initiative in this area with a certain amount of concern "because the EU tends to go for the lowest common denominator". "We would not want to, lose the situation (with regard to legal secondary action) we now have in Finland, Denmark, Sweden, Italy and, outside the EU, Norway".

The ITF firmly believes in the right of workers to take international solidarity action. Other European countries where it feels the law is broadly sympathetic are Belgium, Portugal, Spain and the Netherlands. The last is surprising in view of the Panhonlibco case, in which an ITF boycott was ruled illegal in 1960 and which is generally held to set a precedent banning secondary action in the Netherlands. But the ITF says its own local legal advisers do not think that it is always necessarily the case.

It also cites other countries where, in contrast to the UK, the financial penalties for illegal action are so low that they do not act as a deterrent. Again, EU-level intervention might alter that situation.

The ETUC view is that the Social Charter should be incorporated into the EU treaties, giving a legal right to strike (*inter alia*). The ILO Convention gives a right to strike at national level,

but that leaves a gap where international action is concerned. Just as completion of the internal market has brought about EU-level regulation in other fields, so in industrial relations there is a need for national; laws to be completed by EU measures. To quote from the paper adopted at the May 1995 ETUC congress :

> "... the completion of the Internal Market and the internationalisation of companies also demands that the European Union should recognise the transnational rights to organise, bargain collectively, ***engage in trade union action and strike action, including sympathy strikes"*** (our emphasis).

C. National labour organisations

The idea of EU intervention in the field of strikes and lock-outs was rejected outright by labour officials in : Belgium, Denmark, Finland, Greece and the Netherlands.

In the case of Belgium, the rejection was evidently based on a fear that the unions would lose some advantages they currently have because of the lack of regulation of strikes at national level. In Denmark, the reason was partly pragmatic ("outside EU competence") and partly based on the national tradition of regulating such matters between the social partners. In Finland and Greece, intervention was regarded as "unnecessary".

In France, the three union centrals consulted all rejected any EU intervention affecting national law and practice. However, two said they would favourably consider EU regulation of European-level industrial action.

The Austrian unions are quite happy with the current legal vacuum surrounding the matter in Austria. They recognise however the value of the role at EU level of the trade union side of the discussions among the social partners - the Austrian tradition is very much to discuss matters around a table instead of taking direct action - and expect to be adopting a formal position on the issue of further EU regulation at their October 1995 congress.

Irish unions also view possible EU intervention with some reserve, as they see Irish law as more liberal than that of many other states. There are also a range of other issues to do with harmonisation which would have to be dealt with first, for example the disparity of trade union structures.

In Germany and Italy, it was thought EU measures could be helpful -- in Germany "by strengthening the unions against the big companies". The Italians were in favour provided the measure clearly vested the right to strike in trade unions (reflecting the concern of the traditional Italian unions over the emergence of the "cobas" shopfloor committees).

Portuguese unions would welcome such a move if it brought additional benefits to them. In Spain, the union participant said : "Such a directive should not be adopted unless a whole series of directives regulating other aspects of labour relations (union rights, employee participation in decision-making) and employee rights (the Social Charter) is also approved.

In Sweden, the union interviewee welcomed any measure creating a positive right to take secondary industrial action across borders, "but detailed regulation should be determined at national level".

In the UK, there is no TUC policy on the topic of EU involvement in the field of strike law but, in general, the TUC supports EU efforts in social policy, and seeks to bring to an end the UK opt-out.

8.8 Constraints on EU action and conclusions

Even if the Maastricht Agreement exclusions were removed, there would still be various major constraints on any EU action in the area of strikes and lock-outs.

The unanimity requirement under Article 235 aside, the most obvious of these is subsidiarity, which, it is considered, would almost certainly exclude any attempt at the approximation of national laws and practices, on legal grounds. It is difficult to conceive of a convincing argument whereby over-riding principles (free movement, distortions of trade) could be held to justify approximation.

EU legalities apart, the differences in national traditions, cultures and approaches are so marked in this area that the task of approximation would seem almost impossible. Furthermore, to judge from the survey, there would be strong resistance to any EU intervention at national level, by employers in most member-states and by the trade unions in some.

However, an EU measure seeking to establish minimum regulation of disputes involving an employer or employers and workers in two or more member-states seems a more feasible proposition.

It is at least arguably timely and necessary, since the advent of the European Works Council directive may be expected to increase the possibility of such cross-frontier disputes. The posted workers' directive may also have an impact.

In legal terms, the subsidiarity case against EU involvement in this manner appears much less clear-cut. That is not to say it cannot be raised, since Greece and the UK have felt able to tackle the issue in national statutes, and courts in various other member-states have felt competent to deal with it on occasion over the years.

There are considerable practical difficulties in formulating a minimal, supra-national measure of the type described. As indicated throughout these reports, even very basic issues are treated very differently by individual member-states. To recapitulate, they include :

* The right or freedom to strike and lock out.
* The vesting of the power to strike in unions or individuals.
* the binding nature of collective agreements and the validity of the "peace obligation".
* the legal definition of the term "strike" itself.

Agreement in these and many other areas would be hard to reach, and is likely to be very limited in scope. There is likely to be resistance from certain member-governments, as the existence of the Maastricht exclusion (which cannot be entirely attributed to the UK) indicated. There would certainly be resistance from employers, although not necessarily those from every member-state. Whole-hearted union support cannot be assumed, although on balance most trade unionists seem to favour the idea. Union support would be significantly reduced if the reciprocity principle required the measure to legitimise cross-frontier lock-outs.

ANNEX 1 : COUNTRY REPORTS

Introduction

This annex summarises the basic laws and practices relating to industrial action by employees and employers in the 15 member states of the European Union. It also examines the legal position in each member state of participation by local unions and/or individuals in international industrial action where the main focus of conflict may be in a country other than their own.

In order to facilitate comparisions, the entries are presented in a standardised format. This is at times a rather inflexible approach towards 15 nations all having very different industrial relations traditions and cultures. Inevitably it has shortcomings, such as the sometimes arbitrary division of overlapping topics or occasional repetition. These are acknowledged, but it is hoped that the benefits of the presentation outweigh them.

AUSTRIA

1. Summary

There is no general right to strike recognised by law. An International Covenant of the United Nations on "Economic, Social and Cultural Rights" has been ratified by Austria, and that makes general references to the right to strike, leaving it to Austrian law to regulate matters.

Thus for any strike or other industrial action, primary or secondary, those organising it or taking part run the risk of criminal or civil proceedings against them, unless the action has no illegal features, i.e. its aims do not breach good morals, or the principles of reasonable cause and last resort (see below).

Lockouts by employers are also not precisely legally regulated, and are subject to the same general principles.

For any action, relating to Austria or abroad, the further removed the industrial action is from the employer directly involved in the dispute, the more difficult it is to show that there is reasonable cause for the action.

2. Sources of law

Due to the lack of substantial industrial action, the legal position has never been really tested in Austria. The writings of academics are thus the only source of guidance as to the law.

3. General rights

3.1 Strike action can be defined as a work stoppage carried out according to a plan by a fairly large number of employees of one trade or profession, or of a business, in the pursuit of a particular aim and with the intention of resuming work after achieving that aim, and/or after the end of the labour dispute.
Academic writers suggest that industrial action is only legal provided that its aims do not breach good morals, or the principles of reasonable cause and last resort.

- The idea of breach of good morals can be found for example in the use of industrial action to secure the dismissal of fellow workers, seen as an abuse.

- The restriction that there must be reasonable cause for the action can be seen in the principle that the action taken must be proportionate to the degree of the problem and the possibility of a favourable outcome (*Grundsatz der Verhältnismäßigkeit*).

- The idea of use of industrial action only as last resort also stems from the writings of academics, where attempts to negotiate a settlement are stressed prior to any action being taken. Thus the provisions of existing collective agreements must be honoured - stemming from notions of contract law in the civil code, and translated into a duty to maintain industrial peace, or *Friedenspflicht*.

3.2 Other forms of industrial action are no more regulated than strike action.

3.3 There are no special groups of employee excluded from or limited in their right to take strike action.

3.4 The law makes no distinction between primary and secondary industrial action, apart from the idea of proportionality (see above). Generally, the more removed you are from the centre of the dispute, the more difficult it is to demonstrate that any action you take is reasonably related to that dispute.

3.5 Lockouts are analysed in the same way as strikes, namely that they are permitted if their aims do not breach good morals, or the principles of reasonable cause and last resort. It is therefore potentially more difficult to show that an offensive lockout is lawful than is the case with a defensive one.

4. Legal conditions

4.1 The right to strike does not have to be exercised by a trade union, but that is the normal state of affairs. In practice, trade unions insist on a vote among their members who are affected, on whether to strike - a so-called *Urabstimmung*.
Normally no notice is given to the employer of an intended strike, nor is any required. However, given the principle of last resort, it might be argued that setting a deadline for an employer to concede the demands of the union is a least analogous to giving strike notice.

4.2 There is no distinction in the legal conditions or procedural rules as between primary and secondary industrial action.

4.3 Note that trade unions have legal personality as "private associations", and can sue and be sued in their own name.

5. Collective agreements

Collective agreements contain an implied obligation to preserve industrial peace during the life of the agreement (see above, *Friedenspflicht*).
There is no general distinction in the impact of collective agreements on primary or secondary action.

Note that most collective bargaining in Austria takes place at sectoral level, i.e. on behalf of all the employers in a given sector of industry or commerce. All employers must by law belong to the Chamber of Trade, Commerce and Industry (*Handelskammer* or *Kammer der gewerblichen Wirtschaft*). One of the main tasks of the Chamber via its sub-divisions specialised by industry (*Fachverbände*) is to negotiate collective agreements on behalf of its members, all of whom are legally bound by the resulting collective agreements.

The result of this pattern of predominantly sectoral bargaining is that there is almost no scope for secondary industrial action: if all employers in the sector are affected by the collective bargaining, arguably and any action taken is primary.

6. Motives

6.1 Disputes of right, that is to say disagreements about the impact of an existing collective agreement, are unlawful. Instead the parties have the right to go to the Federal Arbitration Board (*Bundeseinigungsamt*) in the case of sectoral agreements, or to court (*Arbeitsgericht*) in the case of a company-level agreement.
Disputes of interest are thus the only legitimate sphere of industrial action, whether primary or secondary.

6.2 Strikes undertaken for purely political reasons - whether regarded as primary or secondary - are assumed to be unlawful, as not complying with the three criteria specified in paragraph 3. Above.

6.3 In general, the further removed the industrial action is from the employer involved in the primary dispute, the more difficult it is to show that there is reasonable cause for the action (see paragraph 3. Above).

7. Types of action

7.1 The types of industrial action have not been explored in law or by judges. Consequently what follows results instead from the writings of lawyers, and there is almost no legal distinction between the various possible types of industrial action.

7.2 In addition to all-out stoppages, various other types of strike are known in Austria, though in comparison with many other EU countries the level of industrial action is low. A partial strike (*Teilstreik*) involves only some employees. Selective strikes focus on certain parts only of a particular industry or firm (*Schwerpunkstreik*).

7.3 Warning strikes are perhaps the closest one comes in Austria to sympathy strikes or other secondary action.

Works-to-rule, go-slows, boycotts etc. Are by no means customary or at all widespread in Austria.

8. Picketing and blockades

There is no special regulation of the conduct of picketing. Therefore, the conduct of persons taking part if judged by the extent to which it complies with or contravenes the general principles of the civil law and criminal code.

The same issues apply here as above, concerning the lack of distinction between primary and secondary action.

9. Sanctions

9.1 Participation in industrial action puts the employee at risk of dismissal, claims for damages, and criminal proceedings. The risk is regarded as a key characteristic of industrial action. However, virtually no use is made of such theoretical legal matters, and disputes are resolved by other means.

9.2 Exactly the same applies to primary as to secondary action, subject only to the general principle that the further removed the industrial action is from the employer involved in the primary dispute, the more difficult is to show that there is reasonable cause for the action (see paragraph 3. Above).

9.3 Equally, the employer whose business is adversely affected can theoretically sue employees taking action, or the trade union organising it, for damages under general principles of civil law.

9.4 Where the trade union has told its members that the embark on a certain course of action is lawful, that would normally be taken by the courts as sufficient to exclude criminal liability on the part of the employee.

10. International disputes

10.1 There is no direct legal reference to the physical or geographical extent of lawful strike action.

10.2 Therefore the general principles described above as applying to strikes in Austria also apply to action taken to influence a foreign employer or in support of other employees abroad. That is to say, the further removed the industrial action is from the employer involved in the primary dispute, the more difficult it is to show that there is reasonable cause for the action (see paragraph 3. above).

BELGIUM

1. Summary

Statute law barely touches on the issue of strikes and lockouts, apart from two Acts aimed at maintaining essential public services and protecting plant and materials during work stoppages. Most regulation is left to the social partners through collective agreements and the procedural rules of joint sectoral commissions.

Although in theory civil law claims for damages can be brought in respect of any strike, they are uncommon. Trade unions have no legal personality, and cannot be sued as entities.

Both primary and secondary strikes are permissible. There is little to stop Belgian unions from staging action in support of groups of workers outside the country.

Lockouts, like strikes, are unprotected in statute. While those staged defensively may be lawful, offensive lockouts are probably not. But both types are rare.

2. Sources of law

Belgium does not have a comprehensive legislative framework governing strikes and lockouts. The Law of May 24, 1921, expands on Constitutional principles of freedom of association. Laws of August 19, 1948, and June 10, 1963, deal with the maintenance of plant and essential services during work stoppages.

Case-law has established some further principles. Others derive from legally-binding collective agreements (notable the National Agreement of May 24, 1971), and from the procedural rules of joint sectoral committees (*commissions paritaires/paritaire Commissies*).

The rules on social benefit entitlements also have a bearing.

3. General rights

3.1 Freedom of association is guaranteed by the Constitution (Article 20) and the Law of May 24, 1921. There is freedom to strike in the sense that striking is not a criminal act, and recognition in case-law that participation in a strike of itself only suspends, but does not end, the employment contract.
However, strikes have no specific legal protection, as they do in many other EU countries. In the last resort, their legitimacy is decided by the courts.

3.2 Within that framework, both primary and secondary (solidarity or sympathy) strikes may be permissible. Strikes for purely political purposes in theory are not.

3.3 Lockouts are not prohibited, but employers initiating them are not protected against breach of contract claims. Case-law suggests defensive lockouts may be permissible as a last resort, but that offensive ones are probably not. Both types are rare in Belgium.

4. Legal conditions

4.1 As there is little statutory regulation of strikes, few statutory conditions are imposed on their conduct, either. They are not the sole prerogative of trade unions.
To some extent, a distinction is made between "regular" strikes, called by a trade union after all attempts at conciliation (see 5 below) have failed, and "wildcat" actions by self-selecting groups of workers. But it is not necessarily clear-cut, or relevant to the legal status of the action.

4.2 Nevertheless, the Law of May 24, 1921 obliges members of an association to obey the legitimate orders of that association. So trade unionists are bound to follow their union's instructions in relation to strikes, and can be penalised by it if they do not. At the least, union members engaging in "wildcat" stoppages will not get strike pay.

Similar provisions apply to employers' organisations.

4.3 The Law of August 19, 1948, imposes a duty to maintain essential public services during work stoppages, to safeguard machinery and materials and to carry out any necessary emergency tasks. Normally, the precise details -- such as skeleton staffing rosters -- are matters for agreement (see 5.3 below). But the Labour and Economic Affairs Ministries have powers to intervene.

4.4 The rules on payments of social security benefits can be relevant to the status and even the outcome of strikes. While strikers are not normally entitled to unemployment benefits, they may receive them if the employer is deemed to have provoked the stoppage, and/or has not gone through all possible forms of consultation and conciliation.
In such cases, the benefit will still be withheld if the strike is not approved by a trade union.

5. Collective agreements

5.1 Collective agreements in Belgium are legally binding on the signatories. Sector-level and national accords can be extended to non-signatories by decree, giving them universal application.

5.2 The National Agreement of May 24, 1971, envisages that specific measures should be devised in each sector to avoid the premature declaration of strikes and lockouts. Most sectors have established rules for consultation and conciliation, but they vary widely. Some, for example, do not stipulate periods of advance notice.
In some cases, the procedures are set out in collective agreements, while others form part of the internal regulations of the joint sectoral commission.
Few have universal application across their sectors, and most are clearly binding only on the signatory organisations -- and not necessarily on workers individually.

5.3 A special set of sectoral agreements relates to the maintenance of essential public services during work stoppages, required by statute (see 4.1 above). These accords have been given universal application for their sectors, and do provide for advance notice -- in some cases of up to 15 days.

5.4 Many collective agreements contain industrial peace clauses, pledging the signatories to abstain from any new claims in areas covered by the agreement while it is in force. Historically, many employers have linked these to annual bonuses, which can be withheld for breaches.
One school of thought holds that the peace obligation applies to all collective agreements in force, even if it is not specifically stated.As with conciliation agreements (see 5.2 above), there is some doubt as to whether peace clauses are binding on workers individually.

6. Motives (definitions and restrictions)

6.1 Primary strikes for motives related to the strikers' terms and conditions of employment are basically always lawful, although they may be subject to the provisions of applicable collective agreements (see 5 above). Some distinction is made between offensive strikes (for example, to secure pay increases)and defensive strikes (for example, to oppose job reductions).

6.2 Secondary (solidarity or sympathy) strikes in support of other groups of workers, within the same company or sector and elsewhere, are permissible in principle.

6.3 Strikes for purely political motives are in general unlawful. However, some commentators argue they are permissible if they are directed against the state in its capacity as lawmaker in the social and economic fields, over measures that have a direct bearing on workplace conditions.

6.4 Defensive lockouts, for example to protect property during a strike, may be lawful weapons of last resort, case-law suggests. Offensive lockouts to gain unwarranted concessions from employees are probably unlawful and would give rise to damages, especially if they breach a current collective agreement. No examples of solidarity lockouts can be traced for Belgium.

7. Types of action (definitions and restrictions)

7.1 Belgian law holds that the essential characteristics of strikes include a collective or concerted absence from the workplace, or a complete cessation of work for a defined period.
On that basis, full-scale stoppages, whether they are prolonged or merely brief warning actions, are a permissible exercise of the freedom to strike.

7.2 Other types of action, such as go-slows, works-to-rule and selective or sporadic strikes, are regarded as not being strikes or as abuses of the freedom to strike. Either way, they are therefore not normally permissible, whether directed at the affected employer or at third parties. The legality of such activities as blacking or refusal to handle certain goods is not clear-cut. But they can be penalised to the extent that they harm the legitimate freedoms or interests of others, or cause physical damage.

8. Picketing and blockades

Peaceful primary and secondary picketing is generally accepted as a concomitant to the freedom to strike. But activities such as violence against other employees can render it illegal, as well as engendering criminal penalties.

Blockading of premises to prevent people or goods from entering or leaving may be tolerated for brief periods. It is illegal to the extent that it harms the interests of others, and may involve specific civil and/or criminal offences.

Occupations are generally unlawful, but not invariably so.

9. Sanctions

9.1 Participation in any form of strike is not of itself reason for dismissal, and the employment contract is merely suspended.

However, plant occupations can constitute serious fault justifying immediate termination. So can various other activities, such as timing a strike to cause unreasonable and disproportionate loss to the employer, or using it as a pretext to bring outsiders on to the premises.

Go-slows and works-to-rule, which are not recognised as legitimate forms of industrial action (see 7.2 above), can be grounds for disciplinary action by the employer for non-performance.

9.2 Similarly, individuals who participate in or organise strikes are not automatically liable for civil damages (Belgian unions do not have legal personality, and cannot be sued as entities). Any awards are based on the legality of the particular action, the harm actually done and the losses resulting.

Suits can be brought by the employer and/or by affected third parties. They are uncommon -- partly because of the problems of assigning individual responsibility, and partly because the individuals are unlikely to be in a position to pay the sums awarded.

Penal sanctions can be applied to strikers who damage property, threaten or physically harm individuals or commit other public order offences.

10. International disputes

Since secondary (sympathy or solidarity) actions are generally permitted in Belgium (see 6.2 above), there are few constraints to prevent Belgian unions from staging them in support of workers outside the country.

DENMARK

1. Summary

Denmark's rules on industrial disputes are almost entirely established by binding collective agreement.

All forms of industrial action are basically unlawful breaches of contract where they are directed against the provisions of a collective agreement in force.

However, strikes and lockouts may be legitimate final options, subject to tight procedural restrictions, in disputes over new collective agreements and certain other issues.

Secondary (sympathy) actions are specifically acknowledged, and lawful in limited circumstances. It is not thought they would be in relation to disputes outside Denmark.

2. Sources of law

There is little statute law, apart from the Act of 1973 on the Labour Court (revised 1981) and the Act of 1970 on Mediation Procedures. The main sources of regulation are the General Agreement (revised 1992) and the Standard Rules on the Handling of Labour Disputes, originally drawn up in 1908 by the labour market parties and now partly incorporated in the General Agreement.

3. General rights

3.1 Freedoms of association and peaceful assembly are guaranteed by the Constitution (Articles 78-79).

3.2 The right to stage primary and secondary (sympathy) strikes is recognised by law and agreement, but not specifically guaranteed by statute.

3.3 The right to stage primary and secondary lockouts is similarly recognised.

4. Legal conditions

4.1 Most of the constraints on industrial action in Denmark are established by binding collective agreement (see 5 below).
Therefore, the legality or otherwise of any industrial action is generally determined by reference to the relevant agreements, and is basically a matter of contract law rather than of statute. However, there is special statutory machinery for handling disputes.

4.2 The Labour Court is the ultimate arbiter of disputes where breach of contract may be an issue. It can impose settlements and fines. Disputes arising from the expiry of an agreement -- for example, general wage claims -- are subject to conciliation. The Public Conciliator has power to defer industrial action, and the government can intervene to ban it. It did so in 1985.

5. Collective agreements

5.1 The "peace clause" in the Main Agreement between the labour market parties at national level generally prohibits all forms of work stoppage in sectors for which a collective agreement has been concluded, during the agreement's validity (usually two years).

There are some exceptions -- for example, for disputes over non-payment of due wages or for compelling reasons of "life, welfare or honour". Lower agreements may allow further variations.

5.2 The Main Agreement also stipulates that work stoppages can normally only be lawfully initiated when

approved by 75% of those voting at a competent assembly of the organisation calling the action, and that 14 days' advance notice must be given. Again, there are some exceptions.

5.3 The Main Agreement requires the signatories (employers' associations and unions) to prevent or end work stoppages by their members that are in breach of its terms.

6. Motives (definitions and restrictions)

6.1 The Danish bargaining system makes a clear distinction between conflicts of right (arising over the interpretation or alleged violation of contracts in force) and conflicts of interest (arising mainly from efforts to secure new collective agreements).

6.2 Industrial action by either party arising from a conflict of right is basically unlawful, according to the Main Agreement. The restriction applies to both primary and secondary strikes and lockouts.

There are some exceptions if the action is in protest against non-payment of wages or for similarly pressing reasons (see 5.1 above). Secondary actions are unlikely to fall into that category.

6.3 Industrial action by either party arising from a conflict of interest is a lawful weapon of last resort once all provisions for conciliation have been exhausted.

Secondary actions (sympathy strikes and lockouts) are specifically permitted by the Main Agreement in this context. However, the primary action they are supporting must be lawful in terms of the Main Agreement. And they themselves must be lawful within the general legal frame.

They will not be so if they are judged irrelevant or useless in relation to the primary dispute, or if they hit other parties unreasonably hard. In those circumstances they amount to breach of contract.

7. Types of action (definitions and restrictions)

7.1 The Main Agreement (Section 2) lists various forms of action by employees that fall short of an all-out strike, but are regarded as equivalent to one -- boycotts, works-to-rule, slowdowns, worktime meetings and intermittent stoppages.

Whether they are lawful or unlawful basically depends on whether they arise from a conflict of interest or a conflict of right (see 6 above). In the former case, they may be lawful as primary or secondary action.

7.2 No distinction as such is made in the Main Agreement between defensive and offensive lockouts. Any lockout is unlawful if it seeks to change the terms of a collective agreement in force.

8. Picketing and blockades

There are no generally-agreed restrictions on picketing, subject to the provisions of civil and criminal law. Orderly picketing is normally permissible.

Blockades are acknowledged in the Main Agreement as a form of industrial action, but any physical obstruction of premises is normally an offence against local bye-laws and/or the Criminal Code.

9. Sanctions

Both individuals and industrial organisations are liable to fines and sometimes damages for participation in unlawful work stoppages. The amounts are proportionate to the length of the stoppage and the gravity of the breach of contract. There is a tendency for the Labour Court not to levy them for the first two days unless the action is deemed to be completely unreasonable, or is part of a wider, illegal one.

10. International disputes

Although secondary (sympathy) strikes, lockouts and other forms of industrial action are expressly acknowledged in the Main Agreement, and permitted within limits, it is considered such measures in support of a dispute outside Denmark would be prima facie unlawful.

To be otherwise, it would have to be established that the Danish action was not in breach of the peace clause in Denmark's Main Agreement, and that the primary action overseas was legal under the relevant national law.

No apposite cases have been found, and the matter is not specifically covered in the Main Agreement itself.

FINLAND

1. Summary

Finnish legislation and agreements permit both primary and secondary action by workers, for a wide range of reasons and in a wide variety of forms, so long as -- in most cases -- it does not challenge provisions of an applicable collective agreement that is in force.

Employers' lockouts are also permissible, subject to the same constraint.

2. Sources of law

Strikes and lockouts are mainly regulated by the Collective Agreements Act 1946 and the Mediation in Labour Disputes Act 1962, both as amended.

3. General rights

The freedom to stage both primary and secondary (sympathy) strikes or lockouts is acknowledged in the Collective Agreements Act and elsewhere, such as the 1993 central agreement. Politically-motivated actions are tolerated.

4. Legal conditions

4.1 Under the Collective Agreements Act, signatories to a collective agreement may not lawfully undertake any form of industrial action directed against the agreement as a whole, or any of its provisions, while it is in force.

However, this peace obligation does not directly bind individual employees, so wildcat actions outside union control are not unknown. Nor does it apply in respect of non-signatory employers to whom an agreement has been extended automatically, so even union-backed actions against them may be legal.

In the last resort, disputes arising from the interpretation or implementation of agreements in force are matters for the Labour Court or the ordinary courts.

4.2 The Mediation Act stipulates a minimum notice period of 14 days in advance of strikes and lockouts arising from the negotiation of new agreements. The Social Affairs Ministry can impose a further 14-day waiting-period, but cannot halt the action.

5. Collective agreements

5.1 A national Shop Stewards' Agreement establishes procedures for attempting to resolve disputes arising from accords in force, without recourse to the courts. Sectoral agreements may make additional provisions in that area, and/or on the resolution of other forms of dispute.

5.2 The central agreement for 1993 introduced a four-day advance notice period for political and sympathy strikes (see 6.2 below).

6. Motives (definitions and restrictions)

6.1 There are relatively few constraints on the permissible motives for industrial action in Finland. The main one (as noted in 4.1 above) renders action illegal in most cases where it is directed at any provision of a collective agreement in force that covers the participants. But this peace obligation does not apply to actions that have other motives.

6.2 Therefore, secondary (sympathy) actions or those with a political dimension may be exempt from the peace requirement, subject to four days' notice. However, the dividing line is frequently blurred, and may need the courts to determine.

6.3 Lockouts are not permissible as a means of evading the rules on collective dismissals.

7. Types of action (definitions and restrictions)

Works-to-rule, go-slows, overtime bans and all other forms of industrial action are considered as equivalent to strikes and lockouts in the peace obligation imposed by the Collective Agreements Act. Therefore, even the threat to initiate them as a protest against an applicable agreement in force can be illegal.

In other circumstances, they are not prohibited -- for example, as part of lawful secondary action.

8. Picketing and blockades

Primary and secondary picketing is tolerated within the confines of civil, criminal and labour law. Blockades are rare, and are subject to the same constraints.

9. Sanctions

Individual participants in unlawful industrial action may be dismissed and, theoretically, sued for damages. Trade unions supporting illegal action, or failing to stop it, may also be fined and made to pay compensation, as may employers engaging in illegal lockouts.

But in practice, unlawful action by employees frequently goes unpunished if it is brief, and procedural lapses over strike notices do not necessarily mean the strike itself will be treated as illegal.

In December 1994, large numbers of workers staged stoppages without notice in support of new pay claims, but no legal action was taken against them or their unions. Similarly, short, unnotified secondary strikes took place in several areas in spring 1995, in support of a wage demand by nurses. Again, employers did nothing beyond docking pay for the time lost.

10. International disputes

The legal provisions on secondary industrial action do not preclude its being taken in support of groups of workers abroad -- though no examples of such action have been found.

To be lawful, the Finnish secondary action could not be related to provisions of a collective agreement in force and covering the Finnish participants. However, practice suggests that might not come into consideration if the secondary action lasted only an hour or two.

FRANCE

1. Summary

The Constitutional right to strike is vested in individual workers and only by extension in trade unions (which anyway have a combined organisation rate of less than 10%). There are few statutory controls except in public services. Most of the rules have been developed through case-law.

Primary strikes are permissible for occupational and professional objectives, so long as those are reasonable and capable of being fulfilled by the employer. There are some limitations for safety reasons and to prevent unwarranted disruption of the company's affairs as a whole.
Secondary strikes without the same company or group are generally lawful, and are thought to be so even when the primary dispute occurs abroad. However, secondary action in support of people with an entirely different employer is usually unlawful.

Political strikes are generally unlawful, except where there is a clear connection with employment issues.

Lockouts are not regulated at all in statute, but are not regarded as having any correspondence with strikes. They are unlawful breaches of contract except in very limited circumstances.

2. Source of law

The principal statutory source is the Labour Code (laws and regulations codified in Articles 122-45, 122-34; 521, 523 etc.). Case-law also pays an important part.

3. General rights

3.1 The right to strike is implicitly guaranteed by the preamble to the 1958 Constitution. It is subject to general statutory restrictions only for civil servants and employees of state-owned and private-sector suppliers of public services.
The Labour Code stipulates that the "normal" exercise of the right to strike is not grounds for discipline or dismissal (Article L122-45), and does not break the employment contract unless there is accompanying serious fault by the employee (Article L521-1).

3.2 Secondary (solidarity or sympathy) strikes are generally lawful when they occur within the same enterprise or group as the primary dispute. They are less likely to be so in other circumstances.
Strikes for purely political motives are generally unlawful, but the courts have refused to make them criminal offences (Supreme Court, 1969). They can be legitimate where there is some connection with workplace conditions.

3.3 There are no constitutional or statutory provisions on lockouts, and they are not regarded in French law as an equivalent opposite to strikes. Case-law suggests they are unlawful except as last-ditch defensive measures in "compelling circumstances".

4. Legal Conditions

4.1 The main constraint on stoppages stems from a Constitutional Council decision of July 22, 1980, which held that the protection of persons and goods can take precedence over the right to strike. Therefore, any action posing significant dangers to people or property may be unlawful.
This principle has been partially elaborated by other court decisions and by the Law of December 31, 1991 (consolidated into the Labour Code as Article 122-34). To the extent that a strike involves a threat to the safety of other employees, an employer can require strikers to maintain basic protection services under company internal rules.

4.2 The right to strike is vested in individuals, not in trade unions. So any group of workers may stage a strike, and the concept of "wildcat" action does not exist in French law.

4.3 In general, there is no statutory obligation to give advance notice of a strike, or to follow conciliation procedures set out in the Labour Code (but see 5.2 below). However, five days' strike notice is obligatory in public services.

5. Collective agreements

5.1 No-strike "peace clauses" are extremely rare in French Collective agreements (the latest example traced is from 1976). It can be argued on several separate legal grounds that they are unenforceable.

5.2 By contrast, many agreements contain provisions requiring unions to give advance notice of work stoppages and to submit disputes to conciliation procedures. In certain types of national agreement, conciliation clauses are obligatory under the Labour Code (Article L133-15-13).
Case-law accepts that collectively-agreed strike-notice periods and conciliation arrangements can sometimes be binding on the signatories and their local representatives. So violations may constitute breach of contract by the union and serious fault by individual strike-leaders (though not normally by ordinary strikers).
But ultimately, the courts determine the validity of such provisions according to their nature and the precise circumstances of the case. For example, if the prescribed conciliation period is judged unreasonably long or has been left open-ended, it might be treated as an unacceptable restraint on the right to strike.

5.3 Collective agreements may contain clauses establishing basic health, safety and protective maintenance arrangements during strikes (see also 4.1 above). They have been held to be enforceable against employee representatives who fail to observe them.

6. Motives (definitions and restrictions)

6.1 Strikes must always have legitimate occupational and professional objectives. If they do not, they constitute an abuse of the right to strike.
Furthermore, the affected employer must be in a position to satisfy the strikers' demands, which may not be "unreasonable" or "excessive". He must also be made aware of what the demands are.

6.2 It follows that secondary strikes within a given company or group are legitimate, provided the primary strike is legitimate, too. A common example is a sympathy strike throughout a group's plants in support of a primary strike at one of them -- for instance, over dismissals there.

6.3 Secondary strikes in support of primary action against a different employer are, by similar reasoning, unlawful in principle. However, they can be lawful if the two sets of strikers have sufficient community of interest in the outcome of the primary dispute.

6.4 Political strikes (other than those directed against the state as employer) have historically been regarded as unlawful.
However, the courts have increasingly come to accept that some strikes can have a mixture of political and occupational motives -- for example, where they are directed against government policies related to wages or working conditions. The recent tendency is to regard those as justified, provided the occupational aspect is not merely a pretext.
A Supreme Court decision of 1963 held that purely-political strikes can be a lawful demonstration of civic responsibility when they are staged in support of the government and its policy! The strike in question was directed against insurrectionists in Algeria.

6.5 As noted (see 3.3 above), French law does not regard lockouts as having any equivalence to strikes, and they are directly regulated only by case-law. Basically, they constitute breach of contract by the employer, whatever their motives and form.
But the courts have occasionally found them to be justified for compelling safety reasons, or in response to illegal

activities by strikers.

7. Types of action (definitions and restrictions)

7.1 There is no statutory definition of strikes, although they are generally held to involve a complete and concerted cessation of work by some or all of an organisation's workers. The stoppage may be brief or prolonged, but in any case it must be intended as temporary.
On that basis, rotating, selective or intermittent stoppages are of themselves legitimate forms of actions protected by the right to strike, while slowdowns are not. Neither, in most cases, are works-to-rule, blackings and boycotts, whether as primary or secondary action.

7.2 However, the legitimacy of any form of industrial action depends on other intrinsic factors besides conformity with the accepted definition of strikes.
While the disruption of production is a legally-accepted side-effect, manifest and abnormal disruption of the company itself is not -- especially if it is out of proportion to the participants' aims or judged to be vindictive.
So, for example, the cumulative effect of selective or intermittent stoppages may be regarded as so disruptive to the running of the company as a whole that they become illicit.

8. Picketing and blockades

8.1 Peaceful primary or secondary picketing outside an employer's premises is not unlawful, and not of itself grounds for disciplinary action.
However, abusive behaviour, physical attempts to prevent people or goods entering or leaving, blockades, barricades and the like are both disciplinary and penal offences.

8.2 Plant occupations or sit-ins have been common occurrences in France. In principle, they are unlawful, even if unaccompanied by any civil or criminal offence an even if the participants attempt to carry on with their usual work.
But peaceful occupations limited to normal working hours have been treated in some cases as lawful manifestations of the right to strike. While employers can usually obtain injunctions requiring the occupiers to leave, those are no longer granted automatically.

9. Sanctions

As note (see 3.1 above), the Labour Code says that participation in a strike is never of itself grounds for disciplinary action or dismissal. The contracts of strikers are suspended.
But strikers committing unlawful acts (such as preventing other employees from working) or crimes, or engaging in actions not classified as strikes (such as go-slows), may be dismissed without redress, for serious fault.

Unions organising abusive or illicit strikes, or actions not protected by the right to strike, may be fined and liable for damages. So may shopfloor ring-leaders and those committing other legal offences. But in general, ordinary, otherwise law-abiding participants in unlawful industrial action are not penalised by the courts.

10. International action

10.1 The legal provisions on secondary strikes (see 6.2 and 6.3 above) do not impose any geographical limits. Therefore, a sympathy stoppage by French workers in support of others abroad employed by the same company or group would be lawful in the view of most commentators.
The only provisos are that the primary action abroad must be lawful (although whether the French or by local law is not clear-cut), and that the action must relate to professional or occupational matters.

10.2 Secondary action in support of an unconnected group of workers abroad is more likely to be unlawful. But if the grounds are occupational or professional and there is sufficient community of interest between the primary and secondary strikers, it may not be.

GERMANY

1. Summary

German rules on strikes and lockouts are almost entirely based on case-law, derived from Federal Constitution provisions on freedom of association and from contract law.

To be legal, strikes and similar actions may normally be conducted only under the auspices of trade unions, and only over matters that can be resolved in collective agreements. Concepts of proportionality and fairness apply. Peace clauses in collective agreements forbid industrial conflicts over disputes of right.

Secondary action is generally unlawful. However, there is theoretical scope for it when primary and secondary employers have close economic links.

Lockouts are not prohibited, but their use is strictly limited.

2. Sources of law

Strikes and lockouts are not regulated in any detail by statute. The rules governing them have almost entirely evolved through case-law.

The Federal Constitution guarantees freedom of association and, by extension, autonomous collective bargaining, which is further regulated by the Collective Agreements Act 1969 and the Civil Code. Some individual state constitutions also have a bearing.

Procedural ground-rules for the conduct of disputes have been agreed at various levels, and are often written into the articles of industrial organisations -- for example, the 17 trade unions affiliated to the DGB labour federation.

3. General rights

3.1 Freedom to engage in primary strikes is derived from the Federal Constitution's provisions on freedom of association, as interpreted by Federal Labour Court decisions of 1955 and 1971. It is also specifically guaranteed in the constitutions of some individual states. Higher-grade civil servants (*Beamte*) are excluded.

3.2 Secondary (solidarity or sympathy) strikes are in principle unlawful, but with some possible exceptions.

3.3 Lockouts are permissible under the Federal Constitution. However, the use of offensive lockouts is so severely circumscribed as to make them virtually unknown. Defensive lockouts are rather less restricted.

4. Legal conditions

4.1 Strikes and other forms of industrial action by workers are effectively lawful only when they are conducted by a trade union. Wild cat actions without union approval are illegal.

4.2 Case-law holds that strikes are a weapon of last resort, to be used only whether all other means of resolving a dispute, including mediation and conciliation, have been exhausted.
However, brief and selective warning actions intended to influence the outcome of negotiations still in progress are not necessarily illegal.
Rulings by the Federal Labour Court since 1971 also establish that industrial action must be proportionate in length and force to the interests at stake and, having regard to its nature and the circumstances, fair.

4.3 Detailed and lengthy procedures have been laid down by the unions for the calling of full-scale strikes. They

normally require several resolutions by the union executive, a full-scale ballot of affected members and a 75% majority in favour. Ballots to end a strike consequently require only 26% in favour.

4.4 The principles of last-resort, proportionality and fairness applying to industrial action by workers (see 4.2 above) also apply to employers' lockouts.

5. Collective agreements

German collective agreements incorporate an explicit or implicit obligation on the parties to maintain labour peace, and to ensure their respective members do likewise. However, the obligation applies only to those clauses of the agreement that are currently in force -- and not to those that have expired, or to issues that are not covered.

6. Motives (definitions and restrictions)

6.1 To be lawful, industrial action by workers must have as its objective the improvement of working conditions through a negotiated collective agreement, and the participants must intend eventually to return to normal work. Strikes are not lawful if their purpose is not fit to be regulated by collective bargaining. On that basis, actions for purely political purposes are illegal.

6.2 Furthermore, the peace obligation (see 5 above) excludes actions related to issues covered by collectively-agreed provisions in force, where those apply to the participants.
So actions in relation to disputes of right are illegal.

6.3 The position in relation to secondary (solidarity or sympathy) action by workers is more complex. It is normally illegal when it is staged purely in support of demands by a trade union other than the one to which the participants in secondary action belong, the Federal Labour Court determined in judgements of 1985 and 1988. However, the court also held that it can be lawful if the secondary action is directed against an employer who has "not been neutral" in regard to the primary action, or if that employer has economic connections with the employer in the primary dispute.

6.4 Offensive lockouts initiated by employers to implement mass dismissals are unlawful. An offensive lockout intended to secure other changes in terms and conditions is legal only if the employer can prove it was temporary, and that he intended from the start to reinstate all those locked out on achieving his goals.
Defensive lockouts to counter strikes in progress are legal, provided they are temporary measures intended to hasten a settlement and all those locked out are rehired. They must also represent a fair and proportionate response (see 4.2 above).

7. Types of action (definitions and restrictions)

Primary action by employees that falls short of a strike is nevertheless mostly treated in law as if it were one, since it involves partial failure to fulfil the labour contract in good faith.

Thus, works-to-rule, go-slows, non-cooperation measures and the like may be legal or illegal, depending on the motives and circumstances.

As secondary action, these manoeuvres and others such as blacking would also be subject to the same criteria of associated interest as secondary strikes (see 6.3 above). In the absence of any relevant connection between the primary and the secondary employer, they are illegal. With some connection and in certain circumstances, they possibly might not be. But no actual examples of such secondary action have been found.

8. Picketing and blockades

Picketing, whether primary or secondary, is not of itself illegal. But pickets are obliged not to interfere with workers wishing to enter the picketed premises.

Threats or other maltreatment render the picketing unlawful. If the organising union fails to stop the pickets' behaviour, any associated strike may become illegal in its entirety.

Physical blockades are not prohibited in labour law. But they may give rise to civil and criminal offences. According to a Federal Labour Court decision of 1988, the affected employer can also obtain damages from the blockaders' union for losses incurred as a result.

9. Sanctions

Participation in a regularly-conducted strike suspends the employment contract, and is not of itself grounds for dismissal. But the commission of unlawful acts in the course of a strike can justify immediate termination.

Unions involved in any form of illegal industrial action are liable to administrative fines and open to damages. So are employers. Individuals persisting in industrial actions that has been declared illegal can face similar liabilities.

10. International disputes

Secondary action by German workers in support of workers outside Germany would appear to be illegal on the same grounds that it normally is inside Germany (see 6.3 above).

However, the Federal Labour Court's recognition that secondary action may be permissible when there are economic links between secondary and primary employers leaves the door ajar.

The area where such action looks most immediately possible is the international-scale reorganisation of production. The IG Metall union is already expressing concern about such developments at Volkswagen (which has a European works council), in relation to the redistribution of upstream manufacturing processes between European plants and the use of sub-contractors.

GREECE

1. Summary

The right to strike is protected by the Greek Constitution, subject to statutory limitations.

No real legal distinction is made between primary and secondary industrial action by employees, and many forms of both are permissible.

Legislation specifically permits Greek employees of multinational companies to stage sympathy actions in support of their fellow-workers abroad, subject to certain conditions.

All forms of lockouts by employers are prohibited.

2. Sources of law

Both primary and secondary industrial action in Greece is regulated by the Constitution, the Civil Code, Law 1264 of 1982 and case-law.

3. General rights

3.1 The right to strike is guaranteed by the Constitution (Article 23.2). It is restricted for civil servants, staff of public corporations and employees of certain key services, and excluded entirely for members of the judiciary and security services.

3.2 The law makes no real distinction between primary and secondary actions by employees. Secondary actions are acknowledged in Law 1264 (Article 19). They may be conducted in support of other workers within Greece and, in some circumstances, abroad (see 10 below).

3.3 Employers' lockouts, whether primary or secondary, are entirely prohibited by Law 1264 (Article 22.2).

4. Legal conditions

4.1 The right to strike is exercised by trade unions or employee associations. Decisions to strike must be taken by their relevant organs -- general assembly or executive council.
Strike decisions must be notified at least 24 hours in advance to the employer(s) affected, who must be given an immediate opportunity to negotiate.
During a strike, the union that has called it is required to provide the minimum staff necessary to ensure: the safety of installations; the prevention of damage or accidents; the protection of long-term viability; and the basic functioning of public corporations and key public services.
A peculiar feature of Greek labour law (based on a Supreme Court decision of 1987) requires the unions to notify employers and the Labour Ministry in the first two weeks of January each year of the names of employees who will remain on duty in the event of a strike.
Staff rostered for minimum duties during a strike are under the sole direction of the employer. Provided they fulfil their obligations, the employer may not hire replacement labour during the dispute.

4.2 Both primary and secondary actions are subject to the procedural rules outlined in 4.1.
There is some dispute over the legality of secondary action if a connected primary action is not actually taking place at the same time. However, where both do coincide, the legal status of the primary action can affect that of the secondary one.

5. Collective agreements

Collective agreements are binding on the parties. Because arbitration was compulsory until 1992, Greek agreements have not in the past played a large part in the regulation of primary or secondary action.

6. Motives (definitions and restrictions)

6.1 The basic motive for industrial action recognised by the Constitution (Article 23.2) is "the protection and promotion of the financial and general labour interests of employees".
Law 1264 of 1982 (Article 19) specifically identifies rights of association and social insurance matters as being among such "labour interests".
The same law (Article 4.1) also recognises the promotion of the "social interests" of employees as a lawful trade union demand. But that has been limited by later court interpretations (see 6.2 below).
These motives apply equally in respect of both primary and secondary actions.

6.2 Industrial action undertaken for purely political reasons -- whether regarded as primary or secondary -- is illegal. However, where a political objective is also at least partly connected to
the occupational interests of employees, the action is considered to fall within the protection of the Constitution, according to a court decision of 1950.
The most common and controversial form of these "mixed" disputes arises where only the state can satisfy the demands of the strikers. Until recently, most courts (but not at all) held such strikes to be illegal. However, an emerging body of judicial opinion now regards them as protest stoppages that can be tolerated if they are brief.
Although Law 1264 of 1982 recognises the legitimacy of action in support of "social interests" (see 6.1 above), the courts have interpreted that to mean demands for the "socialisation" of the enterprise -- for example, through hiring programmes to combat unemployment. They have taken the view that such claims infringe management prerogatives, and are therefore illegal.

6.3 One of the most common motives behind secondary actions in Greece is to secure the reinstatement of employees who have been dismissed. According to an Appeal Court ruling of 1988, such action is illegal if the dismissals were for reasons of incompetence or breach of contract.

6.4 As noted (see 4.1 above), the right to strike is exercised through trade unions or employee associations. Strikes or other actions by individuals who come together at random or by unorganised groups are illegal.

7. Types of action (definitions and restrictions)

7.1 The notion of industrial action by employees has not been expanded in statute and only sketchily in case-law. Consequently, there is almost no legal distinction between the various types of strikes or between strikes and other forms of industrial action, and few statutory restrictions on them.

7.2 However, actions infringing the civil or criminal codes or otherwise involving an abuse of the right to strike are illegal.

7.3 Partial or sporadic stoppages, go-slows, works-to-rule and the like are all permissible forms of primary and secondary action. Blacking and boycotts are accepted forms of secondary action.

8. Picketing and blockades

8.1 Peaceful picketing is permissible in primary disputes within the confines of civil law and public order legislation. But the skeleton staffing obligation (see 4.1 above) renders it less of an inevitable accompaniment than in many other countries. Physical blockades in a primary dispute would almost certainly be in breach of the maintenance requirement, as well as creating both civil and possibly criminal offences.

8.2 Secondary picketing and blockades are not specifically prohibited, but may give rise to civil and criminal offences and constitute an illegal abuse of the right to strike.

9. Sanctions

9.1 Participation in a lawful strike or other industrial action by employees is grounds for withholding pay, but not normally for termination, whether the action is primary or secondary.

9.2 Participation in primary or secondary industrial action that is declared by the courts to be illegal in form or motive severs the employment contract and is grounds for dismissal without compensation. If officials of a trade union voted for the illegal action, they are liable for all losses suffered by the employer and lose their special protection against termination.

9.3 While court cases to have strikes declared illegal are usually initiated by the affected employer, an Athens court held in 1988 they can also be brought by third parties whose interests are damaged. However, the unions challenged the ruling and the issue has not yet been fully resolved.

9.4 The government retains powers to conscript civilians to counter public-service strikes, although measures have been taken to reduce the need for them.

10. International disputes

10.1 Law 1264 of 1982 (Article 19.1b) permits solidarity or sympathy action by unionised Greek workers in support of others abroad, on the following conditions:-

- That the two groups of workers are both employed by enterprises controlled by the same multinational organisation.

- That the outcome of the dispute abroad will have direct consequences for the interests of the Greek workers involved.

- That the solidarity action in Greece is approved in advance by the national labour confederation to which the Greek workers are affiliated through their union.

This last condition has been criticised by some commentators as unconstitutional.

10.2 The legality of the action abroad may affect that of the Greek solidarity action, but the principle has not been fully tested.

IRELAND

1. Summary

There is no right to strike spelled out in the Constitution, or in any statutory text.

Instead, the law has developed by a system of immunities from what would otherwise be unlawful acts and which would have exposed the organisers and participants to criminal prosecution and to claims for compensation. These immunities are only available when the action complained of has been taken "in contemplation or furtherance of a trade dispute".

Lockouts by employers are recognised by law as a legitimate step by employers in an industrial dispute.

Secondary industrial action is broadly subject to the same legal tests as primary action, although a form of secondary picketing is specially regulated.

2. Sources of law

A "trade dispute" is defined by the Industrial Relations Act 1990 as "a dispute between employers and workers which is connected with the employment or non-employment or the terms or conditions of or affecting the employment of any person".

That Act also defines industrial action as "any action which affects, or is likely to affect, the terms or conditions, whether express or implied, of a contract and which is taken by any number or body of workers acting in combination or under a common understanding as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment".

The Unfair Dismissals Act 1977 (as amended) recognises lockouts as a legitimate response by employers to a trade dispute, but deems a lockout to be a dismissal. The main burden of the section dealing with the issue (section 5) is the potential for unfair dismissal when there is selective re-engagement of employees after a lockout or other dismissal.

Certain other matters are still affected by UK statutes and case-law, dating from the time prior to the creation of Ireland as an independent state. Thus the Conspiracy and Protection of Property Act 1875 is relevant, as amended by Irish legislation, namely the Industrial Relations Acts 1946-1990.

3. General rights

3.1 The fundamental nature of the potentially illegal nature of any industrial action is that it might be a criminal conspiracy by a group of people, whether or not they are employees of the business affected by the action and whether or not they are members of a trade union.
Irish law aims firstly to remove from the scope of legal claims certain types of action, namely inducing a breach of contract of employment (e.g. by calling for industrial action) and interference with the trade, business or employment of another person (e.g. taking industrial action). It also expressly provides that peaceful picketing is lawful. Note that the pre-condition in any event is that such action should take place "in contemplation or furtherance of a trade dispute".

3.2 Other forms of industrial action, apart from strikes, are therefore equally well - or poorly - protected, in that they are also a breach of a contract of employment or an interference with another person's trade, business or employment, provided that it occurs "in contemplation or furtherance of a trade dispute".

3.3 Generally there is no distinction between public and private sectors. However, certain groups of employee are limited in their right to take strike action. These include the army and the police, who

are excluded from the definition of "worker" under the 1990 Act.

3.4 The immunities conferred by the Industrial Relations Act 1990 do not extend to industrial action taken in defiance of a strike ballot, nor to cases involving an individual employee - unless the grievance procedures have been exhausted.

3.5 The law makes no distinction between primary and secondary industrial action, provided that it occurs "in contemplation or furtherance of a trade dispute".

3.6 Employers' lockouts, whether primary or secondary, are a legal response to an industrial dispute. Accompanying general dismissals are not "unfair" provided there is no selective re-hiring once the dispute is over, and even then the employer can bring forward arguments to justify the selection e.g. redundancy.

4. Legal conditions

4.1 The immunity from prosecution etc. for striking extends to the trade union or association of unions or to the employees themselves who act as organisers.

4.2 The 1990 Act, section 14, requires all unions to write into their rules an obligation not to organise, participate in or support industrial action without having obtained prior approval via a secret ballot. Those balloted must include all union members whom it is reasonable to assume would be called upon to participate in the industrial action.

4.3 The employer must also be given notice of at least one week, otherwise the employer can bring legal proceedings for an injunction to ban temporarily the industrial action without even notifying the trade union.
Strike notice which is at least as long as the notice required to terminate individual contracts of employment also has the effect that the notice, and any industrial action taken as a result, is not a breach of the contract of employment.

4.4 There is no distinction in the legal conditions or procedural rules as between primary and secondary industrial action.

4.5 The main legal weapon used in dealing with any form of industrial action is not criminal proceedings, nor a claim for damages that is pursued to the point where money is actually passed over, but instead an order of the court or "injunction", requiring the party named to stop doing something until the full court hearing. Normally such a full hearing never takes place, as the industrial dispute has been resolved by that stage.

5. Collective agreements

There is no general distinction in the impact of collective agreements on primary or secondary action. Collective agreements are not normally legally enforceable in any event, so that the presence or absence of a peace clause in the agreement does not normally affect the situation.

6. Motives

6.1 To get the benefit of the immunities contained in the 1990 Act, any industrial action must be "in contemplation or furtherance of a trade dispute". There is no distinction made between disputes of right or of interest.

6.2 Strikes or other action undertaken for purely political reasons - whether regarded as primary or secondary - are almost certainly unlawful, as falling outside the definition of a "trade dispute" (see above, paragraph 2).

7. Types of action

7.1 The traditional legal analysis of industrial action starts from the supposition that the matter to be regulated by law is the criminal conspiracy to interfere with another person's business or employment. It is therefore largely irrelevant to consider whether the particular action chosen is a strike, or a go-slow, or a boycott: the types of action chosen are all potentially unlawful.

7.2 Strike is defined in the 1990 Act as "a cessation of work by any number or body of workers acting in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer done as a means of compelling their employer, or to aid other workers in compelling their employer, to accept or not to accept terms or conditions of or affecting employment".

There is perhaps scope to argue that a work-to-rule is not a breach of the contract of employment, in that it consists purely in scrupulous observance of the employer's own rules. However, the definition of "industrial action" under the 1990 Act also probably covers this.

7.3 Secondary industrial action was specifically found lawful by a 1994 decision of the High Court. In the case of Nolan Transport (Oaklands) Ltd v Halligan, the court confirmed that the 1990 Act permits industrial action to be taken by workers against their employers in support of other workers involved in a trade dispute. This was due, according to the court, to the definitions of "strike" and "industrial action" in the 1990 Act (see above, paragraphs 2. and 7.2).

7.4 Lockouts are defined by the 1977 Act as: "action which, in contemplation or furtherance of a trade dispute (within the meaning of the Industrial Relations Acts 1946-1990), is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of one or more employees from one or more factories, offices or other places of work or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees."

Note that the section expressly contemplates that a lockout might be primary or secondary ("... whether parties to the dispute or not ..."), and makes no distinction between offensive and defensive lockouts.

8. Picketing and blockades

8.1 Picketing is specifically permitted under Irish law, and section 11 of the 1990 Act also distinguishes between picketing a place where the pickets'' employer works or carries on business and other places. There is no requirement that the employees must themselves be employed at a particular place so as to make picketing of that place lawful.

8.2 Primary picketing is dealt with in section 11 (1), as follows: "It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union in contemplation or furtherance of a trade dispute, to attend at, or where that is not practicable, at the approaches to, a place where their employer works or carries on business, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working."

The key elements are thus: that the action must be in contemplation or furtherance of a trade dispute; that it occur at or near a place of business of their own employer; and that it is for the purposes of peaceful persuasion or communication.

8.3 Secondary picketing is dealt with in section 11(2), as follows: "It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union in contemplation or furtherance of a trade dispute, to attend at, or where that is not practicable, at the approaches to, a place where an employer who is not a party to the trade dispute works or carries on business if, but only if, it is reasonable for those who are so attending to believe at the commencement of their attendance and throughout the continuance of their attendance that that employer has directly assisted their employer

who is a party to the trade dispute for the purpose of frustrating the strike or other industrial action, provided that such attendance is merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working."

Many of the key elements are thus the same as for primary picketing, but with the addition that they may lawfully picket another employer only if they reasonably believe that employer has been helping their own to counteract the results of their direct industrial action.

9. Sanctions

9.1 Any industrial action is at first sight a breach of the contract of employment, potentially exposing the employee to the penalty of dismissal at common law. Section 5 of the Unfair Dismissals Act 1977 (as amended) governs the employee's right to claim by statute that such a dismissal is unfair. In essence, dismissal for taking part in any form of industrial action is unfair if the employer did not dismiss all the strikers, or if the employer selectively reengages strikers after the dispute is over, or takes some of them back on worse terms than others.
It is very rare for employers to dismiss their employees merely for taking part in a strike.

9.2 Employers have the right to claim damages caused by the contractual non-compliance involved in industrial action which does not qualify for immunity. Employees taking part may be individually liable, but more frequently found are attempts to hold the unions or other strike organisers legally responsible, under the general principles of law, as long as the damage suffered is connected with the strike and they are responsible for it..

9.3 The penalties open to the courts for a refusal to comply with an injunction to refrain from industrial action cover fines and even imprisonment.

9.4 Just the same issues apply to secondary industrial action as to primary action.

10. International disputes

10.1 Given the system of immunities rather than an explicit right to strike, it is not surprising that there is no direct legal reference to the physical or geographical extent of lawful strike action.

10.2 Therefore the same general constraints apply to international disputes as to purely Irish ones.

ITALY

1. Summary

The right to strike is protected by the Italian Constitution, but barely developed in statute. Case-law provides some further guidance, although it cannot be relied on too heavily for precedent. Provisions in collective agreements mainly attempt to avoid disputes of interest; in the last resort, they depend on goodwill.

A landmark Supreme Court decision of 1979 recognised the right of Italian workers to take secondary action where there is some community of interest with those involved in the primary dispute. It is presumed to apply when the primary dispute is abroad.

That decision apart, little distinction is made between primary and secondary action.

Employers' lockouts are not categorically prohibited. But they are usually treated as unlawful "anti-union conduct", except when deployed purely to safeguard plants from damage or theft.

2. Sources of law

2.1 Both primary and secondary industrial action in Italy is to some extent regulated by the Constitution, the Workers' Statute of 1970, Law 146 of 1990 (concerning essential public services), the Civil Code and the Penal Code. But the statutory framework is very far from being comprehensive.

2.2 Case-law partially fills some of the gaps in statute. However, the force of precedent is not necessarily strong. Both the application of laws and their interpretation by the courts tend to vary according to the specific circumstances.

3. General rights

3.1 The right to strike is protected by the Constitution (Article 40) and somewhat amplified by the Workers' Statute (Articles 15 and 28). Law 146 of 1990 imposes some limitations in essential public services.

3.2 The issue of secondary strikes was addressed by the Supreme Court in 1979. It ruled that strikes "in defence of the interests of other workers" may be legitimate. However, there must be a sufficient community of interest between the groups of workers involved.

3.3 A ban on lockouts (and strikes) imposed under the Mussolini regime was rescinded by the Constitutional Court in 1960, leaving their legal status hazy. They are not totally prohibited, but they lack the Constitutional backing granted to strikes. In many cases, they are considered to be "anti-union conduct", forbidden by the Workers' Statute.

4. Legal provisions

4.1 Traditionally, Italian law has regarded the right to strike as vested in the individual. Therefore, both primary and secondary strikes can be called by any group of workers, as well as by trade unions or company works councils. Furthermore, no real distinction exists between official and unofficial (wildcat) strikes.

4.2 In the last resort, the legitimacy of a given strike is determined by the courts with reference to its motives (see 6 below) and the way in which it is conducted. One broadly-accepted tenet is that strikes must not violate the rights and interests of others, such as private property rights or the right to work. As a corollary, it is generally held that, while strikes can lawfully disrupt production, they must not damage or destroy productive capacity.

4.3 Applying the same principles, the Supreme Court decided in 1979 that secondary strikes as defined (see 3.2 above) must not violate public order or the values of the Constitution.

4.4 In essential public services, Law 146 of 1990 requires minimum advance notice of 10 days and maintenance of basic facilities during strikes.

4.5 Despite the strictures of the Workers' Statute, the legitimacy of employers' lockouts is usually also determined case by case with references to motives (see 6 below) and conduct. But in any event, lockouts are relatively uncommon, not least because employers may be obliged to maintain wages.

5. Collective agreements

5.1 Many attempts to fill the gaps on industrial disputes left by statute have been made in collective agreements at national and local levels.
Industrial peace clauses can, and do, appear as "obligatory" provisions. But in the last resort, because of the law's view of individual rights (see 4.1 above), they can prove unenforceable in practice against groups of workers that choose to flout them.
For that reason, many agreements establish advice and conciliation machinery to try to avert disputes arising over their interpretation.

5.2 The national pact signed in 1990 for the private sector includes provisions for a general 20-day "cooling-off period" in disputes arising from attempts to modify an accord in force.

6. Motives (definitions and restrictions)

6.1 Basically, to be lawful, a strike must aim to protect or promote the direct and legitimate common interests of the participants. As noted (see 3.2 above), the Supreme Court considers that formula can extend to "defence of the interests of other workers" -- legitimising secondary as well as primary strikes.

6.2 A theoretical distinction is often made in Italy between disputes of right (arising from the interpretation of legal or contractual provisions) and disputes of interest (over fresh demands, usually relating to pay or conditions). But by comparison with some other countries, the difference is so blurred as to be largely irrelevant. For practical purposes, it mainly arises from the fact that the conciliation machinery is predominantly geared to disputes of right.

6.3 Strikes for purely political ends -- called "against the general direction of the government", to subvert the Constitution or to abolish a democratic form of government -- are illegal. In practice, though, national strikes in Italy frequently have a political dimension.

6.4 Defensive lockouts may be legitimate where they are staged to protect a plant from theft, physical damage or similar threats in the course of a strike. Offensive lockouts, undertaken by an employer in an attempt to impose terms, are rare, and are usually classed as unlawful "anti-union conduct".
So-called retaliatory lockouts -- staged as a kind of punishment for workers after a high pay settlement or a bitter dispute -- are relatively more common. They can be classed as "anti-union conduct", but may be accepted as a response to an illegally-conducted strike.

7. Types of actions (definitions and restrictions)

7.1 Italy is one of the few countries that has attempted to arrive at a clear-cut legal distinction between strikes and other forms of industrial action by employees -- whether they are primary or secondary.
According to a Supreme Court ruling of 1986, the wording of Constitution Article 40 (which refers to "the right to strike") only protects all-out stoppages of indefinite or predetermined length.
In the court's view, other actions, legitimate classified as "article strikes", are not protected. Thus,

intermittent or rotating stoppages (hiccup or chessboard strikes) are unlawful. So are go-slows and works-to-rule, blackings and boycotts.
The court further rationalised its opinion by adding that workers have no discretion over the extent to which they perform lawful tasks assigned to them. They must work fully, or not at all.

7.2 In practice, all these forms of action occur in both primary and secondary disputes, and are generally tolerated if they do not involve specific and serious infringements of the civil or penal codes. If their legality is challenged, the courts determine it case by case.

7.3 Refusals to work overtime are generally regarded as lawful.

8. Picketing and blockades

Primary and secondary picketing is unrestricted by labour statutes. Case-law accepts it so long as it is peaceful, and limited to verbal persuasion or reproach. But "active" picketing or blockades involving any use of force are intrinsically unlawful, the Supreme Court has held.

In addition, the penal code and other regulations provide a long list of charges that can be invoked against pickets and participants in blockades, protest marches and occupations. They range from impeding traffic and disturbance of the peaceful possession of property to resisting the forces of law and order and riot. The exercise of violence against property or persons "to secure an alleged right" is a specific penal code offence.

9. Sanctions

9.1 Participation in a legitimate primary or secondary strike has the effect of suspending the participants' contracts of employment, but not of breaking or cancelling them. People dismissed for their involvement in a lawful strike will automatically obtain reinstatement and a compensation award if they take the matter to court.

9.2 Participation in unlawful industrial action, including non-peaceful picketing, justifies dismissal for cause. Furthermore, the individuals involved can be sued for damages. But the courts have consistently refused to make awards for damages against trade unions in such circumstances.

10. International disputes

There are no statutory provisions on solidarity strikes by Italian workers in support of others abroad.

The Supreme Court judgement of October 3, 1979 (see 3.2 above) suggests they are legitimate provided there is some community of interest between the Italian workers and the others involved, and that the Italian action is in other respects lawful.

It is not clear how the legitimacy of the overseas action would affect the domestic legal status of the Italian one.

A community of interest would presumably be more likely to exist if both groups of workers are employed by the same multinational company. But that is not necessarily a condition.

LUXEMBOURG

1. Summary

The right to strike is not specifically protected by the Constitution, which just talks of a right of free association and trade union freedom. In the absence also of any special laws, deduced from the Constitution is the right to strike.

To be lawful, a strike has to be preceded by compulsory conciliation.

Secondary industrial action is deemed to be illegal.

Lockouts by employers are deemed to be lawful on the same basis as strikes.

2. Sources of law

The law on collective agreements of June 12, 1965 talks of the principle of labour peace: "The contracting parties are obliged to maintain a collective labour agreement during its life; they must do nothing to jeopardise its fair performance - and must abstain from the threat of a strike or lockout."

Apart from the above, there is also reference to strike action in the general laws dealing with the employment contract for manual workers (Law of April 20, 1962) and of white-collar employees (Law of June 24, 1970). "The absence of worker/employee from rendering his services because of a strike called lawfully and for legitimate reasons does not break the contract, nor constitute a serious fault such as to justify the employer in dismissing him."

The law of July 26 1975 on the right to vacation and other time off also says that: "Time spent participating in lawful strike does not constitute unjustified absence in terms of the law on vacation entitlement."

3. General rights

3.1 The right to strike means that a striker's contract is merely suspended pending resolution, not ended. The employer does not have the right to dismiss based solely on participation in the industrial action.

3.2 Secondary action is not universally accepted as falling within the concept of a collective dispute over the conclusion of, or the terms contained in, a collective agreement.

3.3 Employers' lockouts are very rare, but are generally assumed to be covered by just the same rights and procedural limitations as for strikes.

4. Legal conditions

4.1 The right to strike is conditional on there having been an attempt at conciliation. All collective conflicts involving working conditions within one or more businesses must be referred to the National Conciliation Office (*Office National de Conciliation*) before any stoppage of work. Further, the labour inspectorate has a duty to intervene and attempt a settlement of disputes before the courts (for disputes over an individual) or the National Conciliation Office (for collective disputes) are brought in.

The parties are not obliged to accept the views of the conciliators, and the panel working on a particular dispute may have to draw up a report of non-conciliation, setting out the points still at issue. The parties may then, if they wish, opt for arbitration, but such a demand must be made within 48 hours of the non-conciliation report.

4.2 The procedural rules outlined in 4.1 probably apply equally well to secondary action as to primary, although secondary action is generally deemed to be illegal in any event.

4.3 Trade unions often have, as part of their own statutes, a duty to ballot their members before calling a strike and to receive an affirmative vote of, say, 75% of those members affected by the dispute.

5. Collective agreements

Collective agreements can only be made by trade unions acting on behalf of the employees, not by simple groups of employees, with no internal structure. Note however that in Luxembourg trade unions do not have separate legal capacity from their members and officers.

Agreements are binding on the parties.

6. Motives (definitions and restrictions)

6.1 There is no regulation of the motives for industrial action, although purely political disputes are accepted as being unlawful.

6.2 An example is the time when, in 1984, the Government decided to restrict the extent of indexation of pay to inflation. The unions called a one-day national "strike". The employers objected that this was not a lawful strike, and each employee who participated had entered into his working record that he was absent without excuse - which would not have been the case for a lawful strike.

6.3 Disputes of right under an existing collective agreement are firmly covered by the legal duty not to strike during the life of an agreement (see above, paragraph 2.).

7. Types of action (definitions and restrictions)

7.1 The notion of industrial action by employees has not been expanded in statute and only sketchily in case-law. Consequently, there is almost no legal distinction between the various types of strikes or between strikes and other forms of industrial action, and few legal restrictions on them.

7.2 However, actions infringing the civil or criminal codes or otherwise involving an abuse of the right to strike are illegal.

7.3 Partial or sporadic stoppages, go-slows, works-to-rule and the like are not specially regulated, although in a lawful collective dispute all such forms of action are thought to be permitted.

8. Picketing and blockades

8.1 Peaceful picketing is lawful.

8.2 Secondary picketing and blockades are not specifically prohibited, but may give rise to civil and criminal offences and constitute an illegal abuse of the right to strike.

9. Sanctions

9.1 Participation in a lawful strike or other industrial action by employees is grounds for withholding pay, but not normally for termination.

9.2 Secondary action, being unlawful, would be grounds for termination of employment.

9.3 Given the trade unions' lack of legal personality, there is no great incentive for an employer to seek damages from individual employees or union officers.

10. International disputes

10.1 There is no legal regulation of international disputes, although given the unlawful nature of secondary action, at first sight most international action is likely to be seen as unlawful.

10.2 The legality of the action abroad may affect that of the Luxembourg solidarity action, but the principle has not been tested.

NETHERLANDS

1. Summary

Dutch law on industrial action is almost entirely judge-made. But it is generally accepted that strikes must be a weapon of last resort, and then only to be used if the damage they inflict is in proportion to the legitimate gains to be achieved. On that basis, their legality is determined case by case, and effectively presumed until a court decides otherwise.

Secondary action has been held to be generally unlawful -- in probably the first court case to arise from an attempt at a worldwide boycott by trade unions. However, the premise remains to be fully tested.

Lockouts are not prohibited, but their precise legal status is unclear. Employers have not used them in earnest in decades.

2. Sources of law

The Netherlands has no specific statutes on strikes and lockouts. Such matters have traditionally been regulated by the laws of contract and tort, under which a significant body of case-law has built up.

Since 1972, the courts have also drawn on provisions in the Council of Europe's Social Charter of 1961 (Article 6), which the Netherlands formally ratified in 1980. The Supreme Court confirmed the Charter's applicability in 1986.

Attempts have been made to codify Dutch rules on industrial action, most notably a prolonged effort between 1969 and 1980. The draft text was eventually abandoned because business and labour could not reach consensus over it. A second attempt, in 1985, also failed.

Statutes on collective bargaining and employee representation are relevant to some aspects of disputes.

3. General rights

3.1 The right of employees to take collective action, including strikes, is established in case-law. However, in most instances that does not extend to secondary (solidarity or sympathy) actions.
A criminal law ban on strikes by civil servants and railway staff was repealed in 1979.

3.2 The precise legal status of employers' lockouts is unclear. They are not prohibited by Dutch law, and are theoretically permissible under the Council of Europe's Social Charter. But they have not occurred in any significant form in the Netherlands since 1945, and are regarded by most employers as an "inappropriate" instrument.

4. Legal conditions

4.1 Case-law establishes that strikes are in general legitimate only as a weapon of last resort, after all other methods of resolving a dispute have failed. Their legality can be determined only by the courts. Pending a court decision, legality is in effect presumed, and "back-to-work" injunctions cannot be obtained.
Case-law also holds that strikes must be "proportional" -- their length and force must not be unreasonable in relation to the interests at stake, particularly where third parties are affected. For that reason, strikes of indefinite duration are not regarded favourably, and the courts may impose time-limits.

4.2 A distinction is commonly made between "official" strikes that are endorsed by a trade union and "wildcat" stoppages, which do not have union backing. Purely in terms of their initial legality, there is little difference between them. The courts are free to decide, depending on the circumstances, whether either kind is legitimate or not.
However, in practice, the presence or absence of union support may have a bearing on the court's decision. Once a strike is declared illegal, persistence with it amounts to wildcatting. And wildcat strikers are open to sanction by their employers (see 9 below).

4.3 There are no general provisions concerning procedures for calling strikes. But rules covering such matters as advance notice to the employer and the maintenance of plant safety may be included in collective agreements, or acknowledged unofficially.
Strikes instigated by a union normally require a vote by affected members. The requisite majority can be as high as 75%.

4.4 Employees who wish to continue working during a dispute must be allowed to do so without interference from their striking colleagues. Theoretically, their employers may lock them out, and withhold their pay if they have any vested interest in the outcome of the dispute. In practice, that rarely happens.

5. Collective agreements

Industrial peace clauses are included in some collective agreements, pledging the signatories not to take industrial action while the agreement is in force. Many more provide for mediation and arbitration of disputes.

However, mediation and arbitration clauses relate only to the signatories to the agreement and their members. Unlike many other collectively-agreed provisions, the results of mediation or arbitration cannot be given general application across an entire industry or geographical area.

6. Motives (definitions and restrictions)

6.1 Strikes directly related to workplace issues such as the pay and conditions of the participants are in general legitimate.
But they will not normally be so if they: seek to change a collective agreement in force; take place before all other opportunities for settlement have been exhausted; or are disproportionate to the goals of the strikers.

6.2 All strikes for political motives were considered illegal until 1986. In that year, the Supreme Court upheld the legitimacy of stoppages in protest against the-then government's incomes policy, on the grounds that it directly affected the working conditions of the strikers and their freedom of negotiation.
In the absence of such factors, the presumption of illegality still applies.

6.3 Since a Supreme Court judgement of 1960, secondary (sympathy or solidarity) strikes have been held to be generally unlawful (see also 10 below).

7. Types of action (definitions and restrictions)

Most types of primary and secondary industrial action falling short of strikes can occur in the Netherlands, in both official and wildcat varieties. They include works-to-rule and go-slows, demonstrations and protest meetings, blacking and boycotts. For the CNV national labour federation, they are currently preferred to strikes as a matter of policy.

If tested by the courts, their legality is determined by the same criteria applied to strikes -- such as whether all opportunities for peaceful settlement have been fully explored and whether the action is in proportion to the claim.

8. Picketing and blockades

Peaceful primary or secondary picketing is tolerated. But all forms of intimidation, denial of access, obstruction and blockading are unlawful.

Workplace occupations are the subject of conflicting decisions in case-law. In many instances, they are unlawful if the participants have any other form of recourse. In most Dutch plant occupations, work tends to go on more or less as normal.

9. Sanctions

Employment contracts of strikers are suspended automatically when the strike begins, and there is no obligation to maintain pay. But those involved cannot normally be lawfully dismissed on the sole grounds of their participation in the strike during the period before a court has pronounced on its legitimacy, nor afterwards if that is confirmed.

If a court declares a strike illegal or imposes a time-limit, it may also exact daily fines from unions or individuals ignoring the back-to-work requirement. At least in theory, wildcats may be dismissed for serious cause.

Normally, damages cannot be claimed by employers from individuals participating in a strike nor from a union calling one.

10. International disputes

10.1 The Supreme Court judgement of 1960 that holds sympathy or solidarity actions are generally unlawful (see 6.3 above) arose from the (very limited) participation by Dutch unions in an attempted worldwide boycott of certain flag-of-convenience shipping in 1958.
The affair is regarded as the first attempt by an international trade secretariat (the International Transport Workers' Federation, or ITF) to coordinate industrial action by its affiliates on a global scale. Shipowners sought injunctions from the Dutch courts to prevent Dutch unions from implementing the boycott. After various rounds of litigation, the matter reached the Supreme Court. It ruled that the unions had acted illegally in exhorting members not to load or unload the ships in question.
In the process, the court also issued lengthy guidelines (known in the Netherlands as the "Panhonlibco Doctrine") on the responsibilities of trade unions in strikes. Those in turn led to the first of the two abandoned attempts to codify Dutch strike law (see 2 above).
While the Panhonlibco Doctrine has for most purposes been superseded, the basic judgement that accompanied it is still cited as establishing the law on sympathy action.

10.2 Notwithstanding the 1960 Supreme Court ruling, it remains to be established whether sympathy action by Dutch workers in support of a strike overseas in whose outcome they have a direct and material interest -- for example, when both groups of workers are employed by the same multinational -- would necessarily be illegal.
It might also be noted that the effective presumption a strike is legal until a court decides it is not provides a low-risk opportunity for brief protest actions by the internationally-minded Dutch unions.

PORTUGAL

1. Summary

The right to strike is recognised by the Portuguese Constitution, with statutory implementation.

Strike action is the only right to industrial action which is mentioned, but that right covers a wide range of behaviour.

The Constitution specifically bars legislation from restricting the scope of interests which might form the subject of strike action, leaving that matter to the employees themselves. There is thus no legal distinction between primary and secondary industrial action.

All lockouts by employers are illegal.

2. Sources of law

The Portuguese Constitution formally recognises the right to strike (Article 57). This right is regulated by law no. 65/77 of 26.8.1977, as amended by law no. 30/92 of 20.10.1992. The Civil Code also has relevant provisions, while court decisions and the writings of legal authors also have an influence.

3. General rights

3.1 The constitutionally protected right to strike covers the whole of the area relevant to the collective autonomy of organisations of employees (trade unions) where their interests are capable of being defended by such action. "Strike" action is defined in the standard way as being an abstention from the obligation to work by a group of employees, as an instrument of pressure to obtain satisfaction of collective interests.

3.2 Other forms of industrial action are also lawful if they can be described as the meticulous application of regulations, but a slow down of activity without reference to compliance with regulations can be an unlawful breach of the employment contract, susceptible to disciplinary action.

3.3 Certain groups of employee are limited in their right to take strike action. These include public sector employees (article 12 of law 65/77), whose right to strike is still subject to the guidance of law 65/77 pending specific legislation governing their function. Military or para-military employees cannot go on strike (Article 13 of law 65/77), and employees of other bodies which provide public services of a nature which may not be postponed have a continuing duty to provide such services during strike action, even though the contract of employment is suspended. The government has the right to bring any of a wide range of activities into temporary, obligatory public service.

3.4 The right of all employees to take strike action is potentially limited by the standard provision in collective agreements of a peace clause ("clausula de paz social").

3.5 The law makes no distinction between primary and secondary industrial action, leaving the matter generally to the employees themselves. Article 57 (2) of the Constitution says "Employees are competent to define the ambit of the interests to prosecute via the strike, and the law cannot limit that ambit".

3.6 The Office of the General Attorney has issued a legal opinion that employees' competence to define the interests they wish to prosecute by strike action must respect the superior interests of public order. It goes on to say that political motives do not make strike action illegal provided that, at the same time, the strike pursues the employees' economic or social interests, although strikes with the intention of making changes in the state political structure are illegal and cannot be protected by law. Other legal writers suggest that the right to strike is also subject to the general principle of good morals/behaviour, based on the idea that corporate bodies have the rights that are needed to

prosecute their own objectives, but not those of others (principio da especialidade).

3.7 The Civil Code does contain some text dealing with "malicious abuse of regular proceedings" (Article 334), which has been said to restrict certain types of strike action, in particular intermittent strikes. Otherwise, industrial action may be conducted in support of other employees in Portugal or abroad, where employees' interests are capable of being defended by such action.

3.8 Employers' lockouts, whether primary or secondary, are entirely prohibited by law 65/77, Article 14.

4. Legal conditions

4.1 The right to strike is exercised by a trade union or association of unions or by the employees themselves if there is not a unionised majority. Strikers may be represented by their union or association of unions, or by an elected strike committee.
If a strike committee is in charge, the decision to strike must be made by secret ballot in a meeting called by at least 20% of the employees involved, or by at least 200 employees. The decision is only valid if the meeting has been attended by a quorum of 51% of those affected, and approved by a majority of those present.
The employer must be given notice by proper means (such as a letter or by announcement in the media) of an intended strike 5 days in advance or, in the case of a public utility, 10 days in advance. Provisions in individual contracts of employment that purport to limit the right to go on strike are ineffective.

4.2 There is no distinction in the legal conditions or procedural rules as between primary and secondary industrial action.

4.3 A recent example of strike action which was affected by balloting the employees is the Portugal Telecom dispute in 1994. Three competing companies were merged under decree-law 122/94. Under that decree, employees' rights were guaranteed during the merger, and there was supposed to be a collective agreement drawn up for the future. When negotiations with the multiple unions broke down, largely over pay but with one union in particular refusing agreement, strike action was called but met with a poor response from employees. The company introduced a novel feature to Portuguese labour relations, in organising a referendum of employees' views irrespective of union membership. It then began paying the proposed new rates to the 85% of employees voting in favour, which brought the dispute to an end.

5. Collective agreements

Although individual employment contracts cannot limit the right to strike, collective agreements contain an implied, or sometimes explicit, obligation to preserve industrial peace during the life of the agreement (clausula de paz social). This obligation has legal force only when it is temporary in character, and it is an expression of the agreement between the parties. Strikes of interest, as opposed to strikes of right, are thus limited to the period of negotiation of a new collective agreement.

There is no general distinction in the impact of collective agreements on primary or secondary strikes.

6. Motives

6.1 "Strike" action is defined in the standard way as being an abstention from the obligation to work by a group of employees, as an instrument of pressure to obtain satisfaction of collective interests. The Constitution leaves it to the employees themselves to define those interests (see above).

The motives for strike action are thus the underlying changes which strikers wish to introduce, and which naturally have the character of professional, political or economic interests. The motives therefore in general coincide with the claims that are the object of the strike.

The legality of any secondary strike action depends on the legitimacy of the workers' interests and on the degree of the connection between the interests of the strikers and those of the solidarity strikers with whom they link themselves. The legal opinion of the Office of the General Attorney (se above, 3.6) goes on to say that solidarity strikes are lawful when the interests of the employees with whom the strikers are showing solidarity are also lawful and legitimate.

6.2 Strikes undertaken for purely political reasons - whether regarded as primary or secondary - are unlawful (see above, 3.6). However, where a political objective co-exists with the employees' economic or social interests, the action is protected by law.

6.3 In the agitated period after the Revolution in 1974 there were many cases of strike action with a more or less overt political. Since then such action has become less frequent.

6.4 Malice or bad faith can convert lawful strike action into unlawful abuse of that right.

7. Types of action

7.1 The types of industrial action have not been explored in law or by judges. Consequently what follows results instead from the writings of lawyers, and there is almost no legal distinction between the various possible types of industrial action.

Apart from collective withdrawal of labour, there are also go-slows (strikes on income), non-cooperation, and paralysis strikes motive, and also "inside-out" strikes or factory occupation so as to continue work against the will of the employer. A go-slow can mean an unlawful breach of the contract of employment, in which case it is conduct which is susceptible to lawful disciplinary action. However, if the slowing down of work is the result of officious compliance with proper working rules, it cannot be categorised as industrial action.
A typical example of a non-cooperation strike is a refusal to work overtime which, where it is permitted, is otherwise compulsory under Portuguese law. Factory occupation is unlawful, and any damage must be paid for by the employees. Sabotage can be punished criminally.

7.2 Paralysis strikes are normally carried out by rotation or by intermittent action which leads to complete disorganisation of the target employer. Such action can be classed as an abuse of the right to strike.

7.3 However, action which is a response to the employer's non-compliance with collective agreements is not classed as a strike, under the "exceptio non adimpleti contractus". Disputes of right under an agreement, even if the employees are in the wrong, are still protected strikes except if the employees show bad faith i.e. a malicious motive.

7.4 Boycotts or blacking of the products or personnel of the company being boycotted is lawful, provided that employees' interests are capable of being pursued by such action. Threats, kidnapping etc. of business leaders in order to make them submit to employees' wishes is however punishable.

8. Picketing and blockades

Picketing and blockades are neither specifically permitted nor banned, and are thus covered by the right to strike provided the action is non-violent and there is no interference with the rights of non-strikers. The same issues apply here as above, concerning the lack of distinction between primary and secondary action.

9. Sanctions

9.1 Participation in a lawful strike is grounds for withholding pay, but not for termination or other disciplinary action, regardless of whether the strike is primary or secondary.

9.2 In some situations, the employees may think they are taking part in a lawful strike, which turns out to be unlawful. Absence from work in such circumstances can still be justified so as to avoid disciplinary action, if their error is reasonable.

9.3 Employers have the right to claim damages caused by the contractual non-compliance involved in unlawful strike action. The unions or other strike organisers can be responsible, under the general principles of civil law, as long as the damage suffered is connected with the strike and they are responsible for it. Their responsibility extends to the behaviour which does the damage (Article 500 of the Civil Code), such as blockading access to the business.

9.4 Paralysis strikes can also lead to the employer's failure to carry out contractual commitments to third parties. Where the strike is lawful, the supplier's liability is excluded, except perhaps where the employer is guilty of provoking the dispute.

9.5 Where the effects of strike action ricochet from the company directly affected to its clients, and its client's clients, the right to damages depends on the general principles of contract law.

9.6 Where the government has brought into temporary, obligatory public service the business affected by strike action, the armed forces can be called upon to intervene, employees become subject to military discipline and, if they then fail to return to work, can be charged with military desertion.

10. International disputes

10.1 There is no direct legal reference to the physical or geographical extent of lawful strike action.

10.2 Therefore the general principles described above as applying to strikes in Portugal also apply to action taken to influence a foreign employer or in support of other employees abroad. That is to say, such action is lawful where Portuguese employees' interests are capable of being defended by it.

SPAIN

1. Summary

The right to strike is guaranteed by the Constitution, but closely regulated in statute. Secondary strikes are permissible.

"Essentially political" strikes are prohibited, as are virtually all forms of industrial action apart from normal strikes.

Lockouts are also prohibited, except when they serve to protect health, safety and property, or when normal production is gravely hampered.

2. Sources of law

The principle sources of law are the Constitution (Article 28), the Royal Decree-Law on Labour Relations 1977, the Workers' Statute 1980 (Article 4) and the Trade Union Freedom Act 1985 (Article 2).

Case-law has an important bearing. Notably, Constitutional Court rulings of 1982-83 modified sections of the 1997 Decree-Law.

3. General rights

3.1 The right to strike is guaranteed to individuals by the Constitution, and attributed to trade unions in both statute and case-law.

3.2 The 1977 Decree-Law sought to circumscribe secondary action, but the relevant provision was struck down by the Constitutional Court, leaving a legislative void.

3.3 Lockouts are permitted by the 1977 Decree-Law and a Constitutional Court ruling, but only for protective purposes.

4. Legal conditions

4.1 Both primary and secondary strikes may be called by the workers themselves, by employee representatives or by the trade unions. Voting requirements are laid down in the 1977 Decree-Law, and written notification must be given at least five days in advance (10 days in public services) to the employer and the labour authorities.
A strike committee must be appointed to take part in negotiations to end the conflict. It is also responsible for assuring the safety of people and property, and for guaranteeing that the strikers will resume work once the strike is over.

4.2 Lockouts must be notified to the labour authorities within 12 hours and strictly limited in length to the time necessary to remove their cause.

5. Collective agreements

Sector-level agreements generally do not seek to regulate strikes as such, but usually establish procedures to settle disputes arising from their interpretation.

Some regional, inter-professional agreements (Basque Country, Galicia, Catalonia) contain detailed provisions for voluntary arbitration of disputes.

6. Motives (definition and restrictions)

6.1 The 1977 Decree-Law (Article 11) states that a lawful primary strike may be called only over matters related to the occupational interest of the employees involved.
The same article prohibits strikes seeking to alter the terms of a collective agreement in force or in violation of agreed settlement procedures.

6.2 Article 11 of the Decree-Law also originally prohibited solidarity or support strikes except in those cases where they "directly affect the occupational interests of the employees involved".
It was subsequently ruled that the expression "directly affects" was unconstitutional. However, legal commentators consider there must still be some connection between the secondary strikers and the primary dispute, a community of interest in the cause or potential outcome. In any case, no secondary strike is lawful unless the associated primary strike is lawful.

6.3 The 1977 Decree-Law expressly prohibits strikes called or maintained for political reasons. According to the Constitutional Court, however, they cannot be deemed illegal unless they are "essentially" political. Action taken by public employees against the state as their employer would therefore be lawful.

6.4 The only lawful grounds for a lockout are : to protect people or property from serious threat; to clear premises that have been illegally occupied or to prevent them from being occupied; or because normal production is being gravely hampered.

7. Types of action (definitions and restrictions)

The 1977 Decree-Law expressly forbids all forms of collective disruptions of work other than strikes- so go-slows, works-to-rule, blacking and the like are prohibited as both primary and secondary actions. The ban applies to rotating stoppages and selective strikes affecting key company operations.

8. Picketing and blockades

Peaceful picketing is expressly permitted by the 1977 Decree-Law and case-law derived from the Constitution. No clear distinction is made between primary and secondary picketing, but mass picketing, blockades and other actions violating the right of non-strikers to work are generally held to be illegal abuses. The Constitutional Court has reserved to itself the right to judge, in the last resort, whether any given case of picketing exceeds permitted bounds.
Workplace occupations are prohibited by the same law.

9. Sanctions

9.1 Participation in lawful strikes suspends the employment contract and is not grounds for disciplinary action.

9.2 Participation in illegal strikes may be grounds for dismissal, but only if the individuals concerned have played an active part in fomenting the stoppage, or refused to carry out safety and maintenance duties for which they have been designated.
Both individuals and trade unions are liable for damages arising from illegal strikes, and for penal offences connected with them. However, disciplinary penalties are often waived as part of the settlement, and civil and criminal penalties are rarely applied.

10. International action

It is presumed that a secondary action with a primary dispute outside Spain would be subject to the same "community of interest" test as other secondary action. But beyond that, the legal position is unclear.

SWEDEN

1. Summary

Swedish trade unions have wide scope to take primary industrial action if they cannot achieve their ends by more peaceful means, provided it is not directed at provisions of a collective agreement actually in force.

Secondary action is also largely unrestricted, but must not be in support of illegal primary action.

Employers have equivalent rights to lock out. They used them on a national scale in 1980.

2. Sources of law

Industrial action in Sweden is mainly regulated by the Codetermination at Work Act 1976, by the (collective) Basic Agreement, which dates back to 1938, and by other collective agreements.

3. General rights

3.1 The basic right to strike is guaranteed to trade unions under the Constitution.

3.2 Secondary (solidarity or sympathy) strikes are permitted in support of workers at home or abroad, subject to some statutory conditions.

3.3 The right to lock out is guaranteed under the Constitution. It includes secondary (solidarity) lockouts.

4. Legal conditions

4.1 Strikes and other forms of industrial action by employees are the prerogative of trade unions. To be lawful, a strike must be approved by a national union or labour federation.

4.2 Secondary action is not permitted by a party bound by a collective agreement if the primary action it supports is not lawful.

4.3 Advance strike notice of at least one week must be served on the employer(s) and to the state conciliation office. Failure to observe this deadline does not invalidate the strike, but may open the trade union to fines and damages.
In major disputes, the government may appoint an arbitration commission. As a last resort, parliament can legislate to ban a particular strike that threatens public welfare or order. It has used the power once, in 1971.

4.4 There are no other general rules on procedures for instigating industrial action, workforce ballots and so forth. Each union stipulates its own.

4.5 There are no general statutory restraints on lockouts, although the unions have called for them from time to time.

5. Collective agreements

Collective agreements are binding on the signatory bodies and their members. Once an agreement has been signed, there is a statutory obligation on the parties to maintain industrial peace over its contents during its life (see also 6.1 below) -- with a limited exception for matters relating to improvements in codetermination at work. That exemption has not been of any practical significance

since it was introduced in 1976.
Agreements frequently lay down procedures for conciliation, mediation and arbitration, to avert disputes.

6. Motives (definitions and restrictions)

6.1 Swedish law puts very few restraints on the motives for industrial action. The main prohibition relates to conflicts of right -- that is, alleged breaches of employment law or disputed interpretations of collective agreements in force.
It is unlawful for employees or employers to take collective action during the term of an agreement with the aim of changing its provisions or imposing an interpretation of them on the other party.

6.2 It is also unlawful to take action against a party bound by a collective agreement where the object is to nullify that agreement.

7. Types of action (definitions and restrictions)

7.1 Equally, there are very few explicit restrictions on the various types of industrial action, whether primary or secondary, that can be taken short of a strike or lockout. But most have hardly been seen in Sweden for the past 15 years or so.
The general requirement to maintain industrial peace when negotiations are in progress tends to deter them.

7.2 The only form of action specifically prohibited under the 1976 Codetermination Act is the withholding of wages by the employer for work carried out before the outbreak of a conflict.

8. Picketing and blockades

Peaceful primary and secondary picketing is not prohibited. However, if they exceed reasonable limits, they can amount to offences of obstruction, assault, illegal entry and the like. Such incidents are rare in Sweden, but a few cases were brought to court in the 1980s.

9. Sanctions

Participation in a lawful strike suspends the employment contract.

Unlawful breaches of industrial peace can give rise to damages against the union organising or failing to prevent them, and fines on individual participants. The dismissal of participants in unlawful action is only permissible if the action has lasted for an exceptionally long time.

10. International action

The lack of restrictions on secondary action seemingly gives the Swedish unions wide opportunities to support primary actions abroad. However, if those are unlawful under the rules of the countries where they occur, the Swedish supporting action would also be illegal, according to the Code Termination Act 1976.

UNITED KINGDOM

1. Summary

British law on industrial action by employees is expressed largely in terms of statutory immunities, or exemptions from Common Law offences such as breach of contract that would otherwise attract civil penalties for damages.

A progressive reduction in these immunities characterised Conservative employment legislation between 1980 and 1993. They have been removed from all action not wholly or mainly arising from disputes between workers and their own employers over specific workplace issues. Even then, they do not apply unless the action follows strict procedural rules.
Political and secondary (sympathy) actions are completely unprotected. Secondary picketing effectively is, too.

By contrast, there are no statutory provisions regulating lockouts, and only very limited possible civil remedies for employees affected by them.

The involvement of British employees in international industrial action is specifically addressed in statute. Broadly, it is regulated by the same system of immunities that applies to domestic disputes.

2. Sources of law

2.1 Industrial action in the United Kingdom is mainly regulated by the Trade Union and Labour Relations (Consolidation) Act 1992, supplemented by the Trade Union Reform and Employment Rights Act 1993. The Employment Protection (Consolidation) Act 1978, Schedule 13, contains some provisions relating to employers' lock-outs.

2.2 As discussed in the relevant sections below, industrial action is subject also to Common Law provisions on, for example, breach of contract.

2.3 Codes of conduct or practice concerning industrial action, issued or approved by the Secretary of State for Employment, do not have direct force of law, but influence legal interpretation.

3. General rights

3.1 The UK has no written constitution or formal Labour Code, and there is no positive legal right to strike. Rather, it is recognised negatively, by statutory immunities granted to officially-registered independent trade unions and their members from claims for damages that would otherwise arise in respect of certain civil wrongs associated with industrial action, such as inducement to breach of contract. Merchant seafarers, the police and the armed forces are prohibited from taking industrial action.

3.2 Secondary action by employees is not forbidden as such. But legislation passed between 1980 and 1990 removed virtually all the statutory immunities previously protecting it. So the participants and organisers can be sued, or made the subject of court orders to desist.

3.3 Employers have no specific rights to stage lockouts, but are not prohibited from doing so either. There are no statutory immunities equivalent to those for strikes.

4. Legal conditions

4.1 To be protected by the statutory immunities, primary industrial action by employees must be organised under the auspices of a recognised trade union, with the approval of a majority of those

involved expressed in a postal ballot. At least seven days' advance notice must be served on the employer.
Primary action that fails to meet any of the statutory conditions is not protected, and to that extent is unlawful.

4.2 Virtually all forms of secondary action are similarly unprotected by statutory immunities, whether organised according to the conditions in 4.1 or not.

4.3 There is no specific statutory regulation of employers' lockouts, which are rare in the UK. Technically, they may amount to breach of contract unless suitable advance notice is given.

5. Collective agreements

Collective agreements are not legally binding in the UK unless they themselves state in writing that they are. Very few do.

Therefore, no-strike or industrial peace clauses in collective agreements rarely have legal force. Nevertheless, there was a brief fashion for them in the 1980s.

6. Motives (definitions and restrictions)

6.1 British law grants immunities only to strikes and other actions by trade unions and their members that are related wholly or mainly to specific issues at the workplace, and undertaken in contemplation or furtherance of a trade dispute between employees and their employer. Industrial action undertaken for any other motive is not protected.
These "specific issues" may include: terms and conditions; recruitment, suspension or dismissal; work allocation; discipline; facilities for union officials; and the machinery of negotiation or consultation.
They may not include: actions seeking to enforce union membership or to pressurise the employer into imposing a union recognition requirement; and those staged in protest against dismissals arising from an earlier, unofficial dispute (see 7.1 below).

6.2 Actions undertaken for purely political motives are therefore not protected. Neither is any form of secondary action, whatever the motive, with one very limited exception in relation to picketing (see 8.2 below).

6.3 The Employment Protection (Consolidation) Act 1978 offers a passing definition of employers' lockouts. It says they are motivated by a desire to force workers to accept specific terms and conditions.

7. Types of action (definitions and restrictions)

7.1 A statutory distinction is made between "official" and "unofficial" industrial action by employees. To be official, an action must be authorised or endorsed by a trade union and involve some of its members. There is a legal presumption that actions instigated by any group of union members have been authorised by their union unless it specifically repudiates them. Without such repudiation, the union may be held liable for any irregularities associated with the action.
Non-union participants in official industrial action are granted the same immunities as unionised participants. All other types of action are unofficial, and not protected by the statutory immunities.

7.2 The 1992 Act defines secondary action in relation to a trade dispute as occurring when:

- A person induces another to break a contract of employment, or interferes with or induces another to interfere with its performance;

- Or threatens that a contract of employment under which he or another is employed will be broken or its performance interfered with, or that he will induce another to break a contract or

to interfere with its performance;

- AND the employer under the contract of employment is not the employer party to the dispute.

In all such cases, the statutory immunities do not apply, with a limited exception in respect of picketing (see 8.2 below).

7.3 Most types of industrial action by employees that fall short of a strike (such as works-to-rule, go-slows and blacking) have been held in law to be breaches of contract. For practical legal purposes, they are therefore equivalent to strikes.

7.4 There are no corresponding provisions relating to lockouts by employers, and there is no statutory distinction between offensive and defensive lockouts.

8. Picketing and blockades

8.1 Primary picketing by employees at or near their normal workplace, as part of a lawful dispute, is permitted by statute, provided the sole purpose is peacefully to exchange information or to persuade people not to work. A government code of practice recommends that the maximum number of pickets per workplace entrance should be six.
The statutory immunities granted to employees picketing their workplace also apply to immediate past-employees and to officials of the union involved in the dispute, but to no others.

8.2 Virtually all forms of secondary picketing are therefore excluded from the immunities. Employees of a given company are not protected when picketing one of its sites if they themselves do not regularly work there, for example.
The only exception to this general exclusion preserves the immunities for pickets at or near their own workplaces who succeed in persuading third parties such as suppliers not to enter the premises or not to deliver goods.

8.3 The statutory provisions on picketing relate only to immunities from civil law claims. They do not give protection against criminal charges such as obstruction or breach of the peace. And they do not apply to unofficial actions.
Any activity by pickets -- such as physical blockades or occupations -- that goes beyond peaceful persuasion removes any civil law protection they enjoy. It may well render them liable to criminal charges, too.

9. Sanctions

9.1 Participants in lawfully conducted and official primary industrial actions may be dismissed immediately for serious breach of contract. They have no redress for unfair dismissal while the action continues. Once it is over, their claims will succeed only if they can show either that some other participants were not dismissed, or that some were rehired within three months of being dismissed. Employers are entitled to deduct pay for time lost from participants in official primary industrial action. In certain cases, they can deduct pay even from non-participants who were unable to work because of the action.

9.2 Participation in unofficial primary action or in any form of secondary action that amounts to breach of contract can be grounds for dismissal without redress. The organisers and participants are also liable to civil claims for damages (although in practice suits against individuals are uncommon). An alternative or parallel course is for the employer to seek a court injunction against those who organise or participate in unlawful industrial action, ordering them to end or not to begin it. Failure to obey can lead to heavy penalties for contempt of court, including seizure of assets or even imprisonment.

9.3 Under the 1992 Act, any third party who claims that the supply of goods or services has been affected by an official dispute that is technically unlawful (for example, because of irregularities in the

strike ballot) can apply for a court order against the union to discontinue its authorisation or endorsement of the action. Individual union members have broadly similar rights.

10. International disputes

10.1 The Trade Union and Labour Relations (Consolidation) Act 1992 specifically addresses the issue of international disputes, accepting that, in certain circumstances, a trade dispute may exist under UK law even though it relates to matters occurring outside the United Kingdom.

However, for any British industrial action to be lawful, the British workers involved must be "likely to be affected" by the outcome of the dispute overseas. Furthermore, to acquire the statutory immunities, the British action must comply with all the other conditions and procedures set out in statute.

10.2 On that basis, the British and overseas groups would have to share the same employer, the purpose of the action would have to relate to workplace issues as defined, and they would have to have a direct bearing in the UK.

One of the issues most likely to meet those requirements, it is considered, might be the conclusion of a European Works Council agreement. (Although the UK is at present excluded from the Directive, "negotiation and consultation machinery" is a legitimate matter for industrial action -- see 6.1 above).

Another might be transfers of production affecting both the British and overseas operations.

ANNEX 2 : ORGANISATIONS CONSULTED

Representatives of many national and international business and labour organisations were consulted in the course of this study. Watson Wyatt expresses its gratitude to all of them.

In many cases, because of the nature of the study and short time available for its completion, it was possible only to secure the unofficial opinions of individuals. Therefore, none of the views quoted in the text should be taken as representing the official and formal position of the organisation concerned, unless it is clearly identified as such.

The organisations consulted included :

International bodies
Employers: UNICE.
Unions: ETUC, ITF, FIET.

Austria
Employers: VÖI.
Unions:ÖGB

Belgium
Employers: Fabrimetal; Herstal; Fédération du Verre; Febeltex.
Unions: FGTB, CST.

Denmark
Employers: DA
Unions: LO

Finland
Employers: TT
Unions: SAK

France
Employers: CNPF
Unions: CFDT, CGT, FO

Germany
Employers: Gesamtmetall
Unions: IG Metall, DGB

Greece
Employers: SEB
Unions: GSEE

Ireland
Employers: IBEC
Unions: ICTU

Italy
Employers: Confindustria, Merloni
Unions: CGIL, CISL

Luxembourg
Employers: FEDIL
Unions: OGB-L

Netherlands
Employers: VNO
Unions: CNV

Portugal
Employers: CIP
Unions: CGTP-Intersindical, UGT

Spain
Employers: FTN (Catalonia)
Unions: UGT

Sweden
Employers: SAF
Unions: LO

UK
Employers: CBI
Unions: TUC

ANNEX 3 : BIBLIOGRAPHY

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