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TRADE UNION RIGHTS IN THE EU MEMBER STATES

- SUMMARY -

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INTRODUCTION

The pattern of density of trade union membership in the Member States reveals a very wide range of variation (see Table 1). Three groups of Member States can be distinguished: countries with a high,[1] medium,[2] and low[3] level of unionization. It has been asserted that "[t]he range of variation in unionization levels among advanced industrial societies is larger than in any other social-economic or political indicator".[4]

Analysis of patterns of development in unionization in ten Western European countries, eight of them EU Member States',[5] demonstrates certain similarities:

- a general surge in unionization around and in the First World War;
- membership losses following the peak in 1919-1920 and even more in the course of the economic depression after 1929;
- another increase during and after the Second World War which this time, for most countries, is not followed by massive decline, with density rates remaining fairly level for the **1950s** and **1960s;**
- another upward trend at the end of the **1960s** lasting until the latter 1970s;
- a decline beginning in the early **1980s.**

The reasons for the decline in recent years are said to relate to many factors: changes in the demography of the labour force, sectoral profiles, technology and production processes, unemployment, changes in the public sector, internationalisation of the economy, labour market segmentation, and so on. What is clear is that after **1979,** the gap between highly and weakly unionized countries widened: already high levels of unionization suffered the smallest losses or continued to grow; weaker movements became more feeble.

Different Member State traditions prescribe a variety of roles for trade unions in regulating the labour market and the organisation of work. Countries with relatively low levels of trade union membership may allow trade unions a powerful voice in legislative regulation of the labour market and working conditions (e.g. France, Spain). In these cases, legislation may be simply the form assumed by agreements reached through collective bargaining at national level. In others, trade unions exercise their influence through processes of collective bargaining or social dialogue at national (e.g. the Nordic countries, Ireland), regional (e.g. Germany) or enterprise (the UK) levels. Trade union influence can be exercised through both legislative and collective bargaining processes

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1 Fifty per cent or more of the eligible labour force: Sweden, Denmark, Austria, Britain (in the 1970s), Belgium, Luxembourg, Finland and Ireland (1970s); 8 Member States of the EU have maintained this level for a consistent period.

2 Between 31-50%: Germany, Italy, Britain (most of the time) and the Netherlands (until recently); *3* Member States.

3 Thirty per cent and less: France, the Netherlands (recently), Portugal, Spain and Greece; **4** Member States.

4 Jelle Visser, In Search of Inclusive Unionism, Bulletin of Comparative Labour Relations, no. **18,** 1990, Kluwer, Deventer, Table 5 on p. 34 **and** pp. 35-36.

5 Visser studied Austria, Denmark, France, Gennany, Italy, the Netherlands, Sweden, the United Kingdom, and also Norway and Switzerland.

(e.g. Italy). Legal rights are frequently crucial supports for the trade union role in such regulatory processes.

The Study is divided into two parts. **Part I** outlines the law **on** trade union rights in the Member States, indicates common ground among them and identifies deficiencies on the part of individual Member States. **Part II** explains how Member State laws on trade union rights are affected by EC law harmonization and the European social dialogue.

The combination of

(i) wide differences in trade union membership among the Member States and

(ii) the pressures of harmonization of EC law and the European social dialogue on Member State laws on trade union rights

makes it imperative to undertake a systematic review of the rights of trade unions in the Member States of the EU.

Trade union rights in the Member States are one way of reducing the wide discrepancy between levels of trade union membership in the Member States, which acts as a barrier to the success both of harmonization of law in the EU and of the European social dialogue. If these are to go forward, trade union rights in the Member States should be the subject of initiatives by the legislative institutions and the social partners in the EU.

The **Final Conclusions** of the Study summarise the position of trade union rights in the Member States and the impact of European integration in the form of harmonization of EC law and the European social dialogue. The Study concludes that trade union rights in the Member States are undergoing changes due to the evolution of EC law, and the only question is whether this change will be achieved through initiatives of the legislative institutions, the social partners, or decisions of the European Court of Justice. **A** coherent framework of trade union rights is more likely if systematic initiatives are **taken**.[6]

[6] Part II, **Chapter 3**

PART I:

TRADE UNION RIGHTS IN THE MEMBER STATES

Trade union rights is a subject of enormous scope and complexity in even one country. **A** workable overview requires a degree of simplification which omits the many refinements elaborated by the labour laws of the Member States. Three techniques of simplification have been adopted for this Study.

First, simplification of content. The Study divides trade union rights into three categories: rights of association, rights of autonomy, and rights of action:

- rights of ***association*** include the right to legal definition and legal personality, to associate, to join a union, not to join, and the closed shop;

- rights of ***autonomy*** include the right to autonomous organisation, to financial autonomy, and to autonomy in elections and decision-making;

- rights of ***action*** include the right to recognition, information and consultation, collective bargaining, trade union activity at the workplace, legal status of collective agreements, extension of agreements, and to strike.

Secondly simplification of legal form. This highlights the absence of any legislative provision in some Member States for trade union rights which, in others, are guaranteed constitutional status. The search for a group of formal provisions on trade union rights common to the Member States is hitless. However, this formal diversity does not mean that there is no common recognition of trade union rights. In substantive terms, other Member States do guarantee trade union rights through a variety of formal provisions and effective practices, as in the form of collective agreements. The Study indicates:

- where specific trade union rights are primarily legislative (including judicial interpretations of legislation), and

- where there is no legislation, or it is secondary to collective practice which embodies the trade union right concerned.

Thirdly, simplification of presence or absence in law of trade union rights. **A** judgment as to whether a particular right is legally provided for in a Member State is very difficult. The study adopts an admittedly rough and ready, yes or no approach to the question whether there is a specific trade union right in the law/practice of a Member State.[7]

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[7] Sometimes the ambiguity, complexity **and** subtlety of national laws make this impossible. In a number of countries where there are "dual channel" worker representation systems (trade union and enterprise/workplace representatives), this approach breaks down **as** legal rules on the rights of workplace representatives overlap with those on trade union rights.

The following sections outline the position in the 15 Member States with regard to the three categories of trade union rights: **association,' autonomy,' action."** The Study explains the different meanings of these trade union rights in different national contexts. There follows a **Summary** indicating where there is a consensus or majority of Member States in favour of certain trade union rights in legislation and/or collective practice." Part I ends with six **Conclusions** on the position of trade union rights in the Member States."

1. RIGHTS OF ASSOCIATION

Ratification by all Member States of L O Conventions No. **87** of 1948[13] and No. 98 of 1949[14] has produced a common foundation of trade union rights of association in all Member States of the EU. These include, under ILO Convention No. **87:**

- the right to establish and join organisations without prior authorisation (Article 2);
- the right to draw up constitutions, elect representatives, organise activities and formulate programmes without interference by public authorities (Article *3);*
- the right of organisations not to be dissolved or suspended by administrative authority (Article 4).
- the right to form and join federations and confederations, which may affiliate to international organisations (Article 5) which also enjoy the guarantees of Articles **2,** 3 and 4 (Articles **5-6);**
- the right to acquire legal personality free of restrictive conditions (Article *7).*

Member States' laws must not impair, or be applied so as to impair these guarantees (Article 8(2)). The only permissible exceptions relate to the armed forces and the police (Article 9).

Ratifying States must take "all necessary and appropriate measures" to ensure that workers may freely exercise the right to organise (Article 11). This includes the right to protection against acts of anti-union discrimination and against interference with trade unions by other organisations and by employers **(ILO** Convention No. 98: Articles **1-2).**

There must be machinery to ensure respect for these rights (ILO Convention No. 98: Article **3).** Again, exceptions are allowed for the armed forces and the police (Article 5). ILO Convention No. 98 does not deal with the position of public servants engaged in the administration of the State, but provides that this is not to prejudice their position (Article 6).

Table 2 sets out the overall position of the 15 Member States regarding rights of association. The following sections elaborate the law on specific trade union rights.

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8 **Part I, Chapter 1.**

9 **Part I, Chapter 2.**

10 **Part I, Chapter** 3.

11 **Part I, Chapter 4.**

12 **Part I, Chapter** 5.

13 **Freedom of Association and Protection of the Right to Organise.**

14 **Application of the Principles of the Right to Organise and to Bargain Collectively**

1.1 Right to Legal Definition

A large majority (11) of Member States have a legal definition of a trade union, and this is accomplished mainly through legislation. At one end of the spectrum, such definitions are not always specifically crafted for trade unions; for example, legal definitions of "associations" in general, which may include trade unions.[15] At the other extreme, the legal definition of the trade union may aim specifically to identify trade unions which are "most representative" organisations.[16] In between there may be a straightforward specific legislative definition of a trade union.[17]

1.2 Right to Legal Personality

Again, a large majority (10) of Member States attributes legal personality to trade unions: a trade union is to be a legal person separate fiom its members; again, mainly through legislative provisions.[18] In other Member States, trade unions achieve legal personality as *de facto* organisations.[19]

1.3 Right of Association/Right to Join

The ratification by all Member States of ILO Conventions 87 and 98 makes this right unanimous across the European Union. Sometimes, the guarantee of a right of association is granted by ordinary legislation.[20] But this trade union right has acquired constitutional status in some Member States. This may be part of the constitutional guarantee of a general right of association,[21] or may be specific to trade unions.[22]

1.4 Right not to Join

This right is almost unanimously treated as the analogue to the right to join.[23]

1.5 Right to a Closed Shop[24]/Union Security

The closed shop is often seen in legal terms as the negation of the right not to join. Consequently, it is often expressly prohibited, but with some qualification in practice.[25]

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15 As in Austria.

16 As in Belgium.

17 As in France, Ireland, Portugal, Spain, Sweden, the United Kingdom.

18 As in France, Ireland, the Netherlands.

19 As in Germany, Italy.

20 As in Belgium.

21 As in Austria, the Netherlands.

22 As in Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain.

23 As in Austria, Belgium, Denmark, Finland, Spain.

24 There are two types of closed shop: pre-entry closed shop, in which employees have to be members of an appropriate trade union before they can work in a company, and post-entry closed shop, in which employees must join an appropriate trade union after taking up employment.

25 As in Austria, France, the Netherlands.

2. RIGHTS OF AUTONOMY

Trade union rights of autonomy mean that trade unions should not be subject to external constraints as to their establishment, financing and internal governance and decision-making processes. While **Table 3** indicates that there are usually rules on these matters, they are often the result of collective practice, with legislation much less frequent than in the case of rights of association.

2.1 Rights to Autonomous Organisation

The principle is unanimously upheld that trade unions should be autonomous organisations free from control by the public authorities or employers. Where legislation exists, it is usually cautious in attempting to exercise any controls over this autonomy.[26] This is also the case with doctrine.[27] Trade unions have refused to accept intervention,[28] but may allow for autonomous regulation by the trade unions themselves.[29]

2.2 Right to Financial Autonomy

Finances are a key element in trade unions' ability to function. This is reflected in widespread provisions for trade union financial autonomy.[30] A notable contrast with the norm of autonomous financing is Spain.[31] This autonomy may be made conditional as regards expenditure of union funds for certain purposes.[32]

Regulation is largely confined to the check-off: automatic deduction by the employer of trade union subscriptions from the pay of employees who are members of the union and direct payment to the union of this money.[33] However, this legal right of trade unions may not reflect their practice.[34]

2.3 Right to Autonomy in Elections and Internal Decision-Making

Similarly, with internal decision-making, including elections, the principle of autonomy leaves the rule-making mostly to the trade unions themselves.[35] There are exceptions, however, where legislation includes detailed provisions on the holding of elections, the electoral system, and voting.[36]

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26 As in Belgium, France, Ireland, the Netherlands, Portugal, Sweden, the United Kmgdom.

21 As in Germany.

28 As in Italy.

29 As in Denmark.

30 As in Austria, Germany.

31 To some extent, also France.

32 For example, political purposes, as in Ireland and the United Kingdom.

33 As in Finland, France, Greece, Italy, Portugal, the United Kingdom.

34 As in Belgium, Luxembourg.

35 As in Belgium, Fmland, France, Germany, Ireland, Italy, Spain, Sweden.

36 As in Greece, the United Kingdom.

3. RIGHTS OF ACTION

It is beyond the elementary, though fundamental, rights of association and autonomy that the identification of a common basis of trade union rights becomes difficult. Member States have developed a wide variety of rights to trade union recognition, worker representation, information and consultation, and collective bargaining. Any search for categories of uniform regulation must acknowledge the reality of diversity.

One reason for this is the presence in a number of Member States of so-called "dual channel" systems of worker representation, contrasted with "single-channel" systems.

3.1 Rights of action in single- and dual-channel representation systems

Trade unions are not the only organisations which undertake representative functions with respect to workers. There are other forms of worker representation, in particular those based on the enterprise or workplace. The law on trade union rights is inevitably confronted with the law on enterprise/workplace representation.

The critical feature which distinguishes trade unions fiom enterprise/workplace representative bodies is that unions perform representative functions beyond the enterprise/workplace, often at the macro-economic level quite beyond the competence and capacity of enterprise/workplace based organisation~. But trade unions are also involved at enterprise/workplace level. **A** key question is the extent to which enterprise/workplace representation is independent of, integrated with, or dominated by trade unions.

a) Single-channel systems

Trade union rights will be influenced by whether enterprise/workplace representation bodies are directly linked with them in single-channel systems of representation. This may take various forms, depending on the extent of the autonomy of enterprise/workplace representatives from the trade union. Two groups may be distinguished.

In some single-channel systems, representatives on the enterprise/workplace body may be subject to provisions in trade union law, including union constitutions and rule-books, which grant the enterprise/workplace representative bodies varying degrees of autonomy fiom the union.

Thus, the UK, Denmark and Italy are different in their union movements and collective labour law. Yet the trade union law in all of them has in common the maintenance of a delicate autonomy of enterprise/workplace representatives from trade unions.

What characterises their systems of trade union law is direct representational democracy. Trade union law allows for relatively autonomous workplace organisation and less external control, despite very different formal mechanisms relating trade unions with workplace representatives.

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37 This is particularly evident in those unions which espouse a political connection, but is even the case in so-called autonomous unions.

In other single-channel systems, external trade unions may directly designate the representatives on the enterprisdworkplace representative body. This is the case, for example, in Sweden. The defining feature of these systems is the relative weakness of the position of the enterprise/workplace representative. Representative functions are primarily performed by the trade union.

b) Dual-channel systems

With regard to systems of representation characterised by dual or plural channels, there is a spectrum of countries, ranging fiom those, at one extreme, where trade union bodies dominate, through those where functions are generally shared with enterprise/workplace bodies, to, at the other extreme, where bodies elected at the enterprise/workplace dominate. The key is the dominance or subordination of trade unions in relation to other elected representative bodies.[38]

In this context are to be placed elected unitary bodies with representative functions. In the case of these bodies, the same criterion applies: whether or not there is effective union dominance over ostensibly unitary and independent bodies. There are distinctions to be made with respect to the degree of employer initiative and participation in elected unitary bodies,[39] as contrasted with the degree of trade union initiative and control.[40]

The law on trade union rights will be vitally affected by the degree to which enterprise/workplace representation bodies are autonomous alternatives to trade unions. To the extent that certain representative functions are reserved to them, or are shared with trade unions, or are even usurped by trade union representatives, the significance of trade union rights is altered. This does not obscure the wider representative function of trade unions on behalf of their members, going beyond the enterprise/workplace, which fundamentally distinguishes them. But the potential overlap with enterprise/workplace representative bodies makes the latter a vital factor in the laws on trade union rights.

3.2 Rights of action and levels of representation

In each Member State, a certain equilibrium has been reached regarding the scope of rights of action (representation, information and consultation, collective bargaining), and the levels at which they are exercised (national, regional, multi-sector, sector, enterprise, workplace).

A case of such an equilibrium is in Germany, with a system of enterprise-based worker representation in works councils and a sector-based trade union movement. The symbiotic relationship between works councils and trade unions can be traced through a rich and complex system of legal rules involving trade union and works councils' rights of action (information and consultation, collective bargaining, strike, and so on). But few would argue that any other system replicates the precise equilibrium of the German system, or that its particular characteristics should be the model for trade

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38 The spectrum would run from, at one end, Belgium, Germany (where the battle between the vertraunsleute and the works councillors has been won by the latter, but at the same time the works councils are dominated by union members), Austria and Spain, to the Netherlands, Portugal, Greece and France at the other end.

39 As in Belgium and France.

40 As in Germany, Spain and Greece. In this latter case, there are degrees of trade union control or domination over employee members of these bodies - ranging from Belgium and France, to Spain, the Netherlands, Germany, Portugal and Greece - in some of these countries there is de facto control by the trade unions of these bodies.

union rights at EU level.[41]

For example, the absence in Germany of a plurality of trade unions based on religious or ideological divisions means this dimension is ignored in the German legal fiamework, whereas it is a key element in the formulation and operation of trade union rights in other Member States. *An* EU system of trade union rights which accommodated this dimension would be necessary, but would also pose risks of disruption for unitary systems premised on the elimination of such divisions.

Yet the principle of equilibrium between enterprise-based and sector-based workers' representational organisations and their symbiotic collaboration is worth bearing in mind as a potential inspiration for EU regulation of trade union rights both in the Member States and at EU level. Especially as this principle is **also** to be found in Austria, Belgium, France, Greece, Luxembourg, the Netherlands, Portugal and Spain.

In contrast to the relative consensus of most of the Member States on rights of association and autonomy, **Table 4,** on rights of action, reflects much greater diversity. Nonetheless, there is evidently more consensus around rights to trade union activities, the legal status of collective agreements, and the right to strike, than with regard to the other rights of action: recognition, information and consultation, and collective bargaining.

However, the inter-relation of enterprisdworkplace representatives and trade unions in nine Member States makes it misleading to indicate in tabular format the existence of only trade union rights of action, separate fiom those of enterprisdworkplace representatives with whom the trade unions may be intimately linked. Hence, **Table 4** signals the existence of a dual channel system in setting out the trade union rights of action in the Member States.

3.3 Right to Recognition

Trade union recognition is usually a matter of collective practice, not legislation. **A** legal right to recognition has two aspects.

The first is through trade unions' overlap with enterprise/workplace representatives. Where there is a dual channel of representation (as with works councils), trade unions' participation in, or even domination of the latter, together with a legal requirement on the employer to recognise these representative bodies, combine to produce a form of de facto recognition of trade unions.[42]

The second aspect of recognition in Member State laws attributes to "most representative" trade unions specific rights of recognition, providing they satisfy enumerated criteria.[43]

The right to recognition in the Member States is now affected by the decision of the European Court of Justice in ***Commission of the EC v. UK***.[44] The Court decided that two Directives which required information and consultation of workers' representatives in the circumstances of collective

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41 **Indeed, such** formulation **at EU level might adversely** affect **the delicate equilibrium established by national rules in Germany itself.**

42 **As in the Netherlands.**

43 **As** in **Belgium, France,** Italy, Spain.

44 **Cases** 382/92 **and** 383/92, [1994] **European Court Reports 2435, 2479; decided 8 June 1994.**

redundancies and transfers of undertakings made it mandatory for Member States to ensure that worker representatives were present.[45]

3.4 Right to Trade Union Activity

Trade union rights to undertake activities at the workplace normally exist in Member State laws as independent entitlements. Where there are dual channel representative structures, with trade union activity in an often complex equilibrium with the activities of other representative bodies, there is likely to be specific legislation. Constitutional provisions may provide explicitly for the right to union activity within the enterprise and be complemented by legislation.[46]

Most frequently, it is legislation[47] which sets the rules for the relationship between trade unions and enterprisdworkplace representatives, though this may combine with collective practice.[48] In systems where formal enterprisdworkplacerepresentatives are not in place, the right is more likely to emerge fiom collective practice.[49] The Member State may prescribe specific sanctions for violation of these rights.[50]

3.5 Rights to Information and Consultation

The nature of the participation of workers' representatives as defined by legislation ranges along a spectrum from information to co-determination.[51] These rights can also develop over time,[52] and operate at different levels.[53]

The law has not always been the preferred regulatory mechanism for trade unions seeking information and consultation.[54] But some Member States have been obliged to introduce legal entitlements reflecting the EC law requirements of Directives." In countries where collective practice is the norm for setting rules, there may also be legislation.[56] Member States may even prescribe the rules with constitutional protection.[57]

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45 See below, Part II, 2. Harmonization of Labour Law and Trade Union Rights, Mandatory Representation.

46 As in Portugal.

47 As in France, Germany, Greece, Italy, the United Kingdom.

48 As in Austria, Belgium, the Netherlands, Spain, Sweden.

49 As in Denmark.

50 As in Ireland, Finland.

51 E.g. in **Austria,** the ArbVG distinguishes degrees of intensity of involvement of the works council, ranging from the right to demand information, receive information automatically, be heard, be consulted, co-decision/co-determination. Also Greece.

52 As in Denmark.

53 For example, at the highest level (e.g. France, Greece, **Spain);** but an articulated structure is also possible (e.g. Germany).

54 As in Italy.

55 **As** in Ireland, the United Kingdom.

56 **As** in Sweden.

57 **As** in Portugal.

3.6 Rights to Collective Bargaining

Trade union rights to collective bargaining have various dimensions.

First, the trade union's right to conclude collective agreements, often explicitly distinguishing the trade union from other workers' representation bodies which do not have this right.[58] The right to make collective agreements may be carefully allocated to different levels of representation by the trade unions or the social partners themselves.[59] Or the allocation of bargaining rights may be made by legislation.[60]

Secondly, the law can place an obligation on the employer to negotiate.[61] This obligation to negotiate can be carefully graded in intensity and consequences.[62] In some countries, legislation does not address the issue explicitly, and when it has come before the courts, the results have been different.[63]

Thirdly, the right to collective bargaining may characterise an area of autonomy for trade union action on which the State and law may not intervene.[64]

3.7 Right to a Legal Status for Collective Agreements and their Extension

Legal rules concerning the status of collective agreements, and, in particular, the possibility of extending their coverage, are well established in most Member States, often in legislation, but sometimes in common law.[65] There are various legal rules on collective agreements, their enforcement,[66] their legal consequences for the social partners parties to them,[67] on the legal rights of members of the signatory organizations,[68] and on others (through extension).[69]

The effects of collective agreements are felt principally on the members of the trade unions party to them. Where trade union density is low, however, the effects of collective agreements may be extended to reach beyond the scope of the collective agreement to cover others, trade union members and non-members. Mechanisms for this extension of the coverage of collective agreements are found in 11 Member States.

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58 As in Austria, Belgium, Germany, Ireland, Portugal, Spain.

59 As in Denmark, Finland, Italy.

60 As in Greece.

61 As in France, Greece, Luxembourg.

62 As in Sweden.

63 Contrast Ireland (no obligation) and Italy (a right of workers).

64 As in Germany.

65 Common law: Denmark, Ireland, Italy, the United Kingdom; legislation: Portugal.

66 As in Luxembourg.

67 As in Austria, Sweden.

68 As in Austria, Belgium, Finland, France, Greece.

69 As in Belgium, Finland, France, Greece, Luxembourg, Portugal, Spain, Sweden.

3.8 Right to Strike

At one extreme, there are Member States with minimal strikes, minimal regulation and minimal protection.[70] In other Member States, by contrast, there is a general freedom, but different kinds of action are restricted by regulations;[71] for example, peace obligations in agreements,[72] procedural requirements,[73] in essential services[74] and lock-outs.[75]

4. SUMMARY: TRADE UNION RIGHTS IN THE MEMBER STATES

There is a ***general consensus*** among Member States on "rights of association"[76] and, to a slightly lesser extent, "rights of autonomy".[77] Due to ILO Conventions, which all Member States have ratified, such rights have been incorporated by Member States into their domestic law and practice.

A majority consensus extends also to some "rights of action"; in particular, the legal status of collective agreements and entitlements to take part in trade union activity, including strikes. The consensus begins to disintegrate when confronted with certain rights of action: recognition, information and consultation, and collective bargaining. Part of the explanation for this greater degree of diversity lies in the existence of "dual channel" systems of worker representation, where bodies other than trade unions in some countries have obtained rights of action.

Any attempt to represent trade union rights in tabular form is bound to be simplistic.[78] Tables **2-4** gave only a rough idea of a much more sophisticated cross-national image. Attempting to combine these Tables compounds the problem. Nonetheless, **Table 5** calculates in how many of the 15 Member States:[79]

- there is legislation and/or collective practice on different trade union rights;
- there is present or absent legal provision on a particular trade union right, though the extent of the right is variable.

Detailed tabulations of which Member States provide for which rights, in the form of legislation and/or in collective practice are summarised in the following propositions.

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70 As in Austria, Ireland, the United Kingdom.

71 As in Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden.

72 As in Denmark, France, Germany, Sweden.

73 E.g. Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom.

74 As in Belgium, France, Greece, Italy, Spain, Sweden, the United Kingdom.

75 As in Belgium, Germany, Italy, Netherlands, Portugal.

76 Including the right to legal definition and legal personality, to associate, to join a union, not to join and the closed shop.

77 Including the right to autonomous organisation, to financial autonomy, and to autonomy in elections and decision-making.

78 Characterisation of trade union rights in the Member States as manifest in either legislation (L) or collective practice (CP), and as demonstrating either the presence (+) or absence (-) of legal provision is admittedly crude, given the complexity of the law.

79 It is presented only as an approximation of a representation of the position of trade union rights in the Member States.

4.1 Trade Union Rights: Consensus and Majority of the Member States

There is a general consensus (all Member States) in favour of **four** trade union rights: the right

- of associatiodto join trade unions;
- to autonomous organisation;
- to trade union activity (including in works councils);
- to a legal status for collective agreements.

There is a general consensus (all Member States) in favour of the right not to join a trade union.

There is a substantial majority **(10-12** Member States) in favour of **six** other trade union rights: the right to

- legal definition (11);[80]
- financial autonomy (11);[81]
- elections/decision-making autonomy (11);[82]
- information and consultation (including works councils) (12);[83]
- extension of agreements (11);[84]
- strike (12).[85]

There is a substantial majority against a right to a closed shop **(1** 1 Member States).[86]

There is a clear majority in favour of a right to legal personality: (9 Member States).[87]

The legal rights to recognition as trade unions, and to collective bargaining of trade unions are not clearly established, perhaps due to the overlap with legal requirements for the establishment of workers' representative bodies (works councils) in dual channel systems.

4.2 Trade Union Rights in Legislation and Collective Practice

All the Member States have legislation on the right of associatiodto join trade unions (all favourable).
ALL but one (Sweden) of the Member States have legislation on the right not to join a trade union (all favourable).
All but one (Denmark) of the Member States have legislation on the right to trade union activity (including works councils legislation) (all favourable).

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80 Austria, Belgium, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, the United Kingdom.

81 Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Portugal, Sweden.

82 Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Portugal, Spain, Sweden.

83 **Austria,** Belgium, Denmark, Fmland, France, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain, Sweden.

84 Austria, Belgium, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain.

85 Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden.

86 Austria, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, the United Kingdom.

87 Austria, Denmark, Finland, France, Greece, Luxembourg, the Netherlands, Portugal, Spain.

There is a substantial majority (10-13 Member States) which have trade union legislation concerning:

- legal definition (11) (all favourable);[88]
- legal personality (10) (9 favourable);[89]
- closed shop (12) (11 against);[90]
- information and consultation (including works councils) (11) (all favourable);[91]
- legal status for collective agreements (13) (all favourable);[92]
- extension of agreements (12) (all favourable);[93]
- strike (12) (10 favorable);[94]
- recognition involving trade unions (mainly through works councils) (10) (all favourable).[95]

There is a majority of 8 Member States which have legislation concerning trade unions as regards autonomous organisation (all favourable).%

In a substantial minority of Member States, there is legislation concerning a right to collective bargaining (sometimes through works councils) (6) (all favourable).[97]

There is a majority of 8 Member States which have collective practice rather than legislation concerning trade unions as regards elections/decision-making autonomy (all favourable).[98]

There are similar numbers of Member States with a preference for collective practice (CP) or for legislation (L) concerning trade unions as regards:

- autonomous organisation: CP (7);[99] L (8) (all favourable);[100]
- financial autonomy: CP (7) (5 favourable);[101] L (7) (6 favourable);[102]
- collective bargaining: CP (4) (2 favourable);[103] L (6) (all favourable).[104]

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88 Austria, Belgium, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, the United Kmgdom.

89 Austria, Denmark, Fmland, France, Greece, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom.

90 Austria, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kmgdom.

91 Austria, Belgium, France, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kmgdom.

92 Austria, Belgium, Finland, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom.

93 Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain.

94 Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kmgdom.

95 Austria, Belgium, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Spain.

96 Austria, France, Greece, Ireland, Luxembourg, Portugal, Spain, the United Kingdom.

97 France, Greece, Italy, Luxembourg, Spain, Sweden.

98 Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Sweden.

99 Belgium, Denmark, Finland, Germany, Italy, the Netherlands, Sweden.

100 Austria, France, Greece, Ireland, Luxembourg, Portugal, Spain, the United Kingdom.

101 Belgium, Denmark, Finland, Germany, Ireland, Sweden, the United Kingdom.

102 Austria, France, Greece, Italy, Luxembourg, Portugal, Spain.

103 Denmark, Finland, Ireland, the United Kingdom.

104 France, Greece, Italy, Luxembourg, Spain, Sweden.

5. CONCLUSIONS: TRADE UNION RIGHTS IN LEGISLATION AND COLLECTIVE PRACTICE IN THE 15 MEMBER STATES

Trade union rights in the legislation and/or collective practice of the Member States can be expressed in the following **six** conclusions.

Conclusion 1:

There is a unanimous consensus in the EU in favour of five trade union rights:
- of associatiodto join trade unions;[105]
- not to join trade unions;[106]
- to autonomous organisation;[107]
- to trade union activity (including in works councils);[108]
- to a legal status for collective agreements.[109]

For three of them, all or all but one of the Member States have legislation in place. In the other two, a majority have legislation in place.

Conclusion 2:

There is a substantial majority (10-11 Member States) in favour of trade union rights already in legislative form regarding:

- legal definition (11);[110]
- information and consultation (including works councils) (10);[111]
- extension of agreements (11).[112]

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105 All the Member States have legislation on the right of associatiodto join trade unions.

106 All but one (Sweden) of the Member States have legislation on the right not to join a trade union. Sweden has collective practice.

107 There are 8 Member States which have legislation concerning trade unions as regards autonomous organisation (Austria, France, Greece, Ireland, Luxembourg, Portugal, Spain, the United Kingdom). The other Member States achieve this result through collective practice (Belgium, Denmark, Finland, Germany, Italy, the Netherlands, Sweden).

108 All but one *(Denmark)* of the Member States have legislation on the right to trade union activity (including works councils legislation). Denmark has collective practice.

109 There are 13 Member States which have legislation as regards legal status for collective agreements. The other Member States (Denmark, Italy) achieve this result through collective practice.

110 Austria, Belgium, France, Germany, Greece, Ireland, Luxembourg, Portugal, Spain, Sweden, the United Kingdom. However, the other Member States do not appear to have produced legal definitions.

111 Austria, Belgium, France, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain, Sweden. Denmark and Finland have collective practice.

112 Austria, Belgium, Finland, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Portugal, Spain. However, the other Member States do not appear to have formalised collective practice or preclude this possibility (Italy).

Conclusion 3:

There is a substantial majority (1 1 Member States) in favour of trade union rights, in either legislative form or through collective practice, regarding:

- financial autonomy (11;)[113]
- elections/decision-making autonomy (1 **l**).[114]

Conclusion 4:

There is a substantial majority (1 1 Member States) against the closed shop, in either legislative **form** (10)[115] or through collective **practice**.[116] But collective practice is ambivalent in Belgium, Denmark and Sweden, and the Netherlands appears to authorise it in certain cases.

Conclusion 5:

There is a clear majority **(9** Member States) in favour of trade union rights in legislative form regarding the right:

- to **strike**;[117]
- to legal personality.[118]

Conclusion 6:

Regarding the two remaining trade union rights: the legal rights to recognition as trade unions, and to collective bargaining of trade unions are not clearly established, either in legislation or collective practice, perhaps due to the overlap with legal requirements for the establishment of workers' representative bodies (works councils) in dual channel systems.

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113 **CP:** Belgium, Denmark, Finland, Germany, Sweden; **L:** Austria, France, Greece, Italy, Luxembourg, Portugal. In other Member States, there are some externally determined rules on finances (Ireland, Spain, the UK).

114 **CP**: Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Sweden; **L:** Austria, Portugal, Spain. In other Member States, there are some external constraints (Greece, the UK).

115 Austria, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, Spain, the United Kingdom.

116 Fmland.

117 Finland, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden. Belgium has collective practice. However, the law or collective practice in the other Member States is either ambiguous or negative.

118 Austria, **Denmark,** Fmland, France, Greece, Luxembourg, the Netherlands, Portugal, Spain. But the other Member States appear to either resist **this** or are ambivalent.

PART II:

TRADE UNION RIGHTS IN THE EUROPEAN UNION

1. INTRODUCTION

The national labour law systems of the Member States have been subjected to mutual influences.[119] EC labour law has also been influenced by the law of the Member States. And, as EC law developed, it began to influence national labour laws. The two processes are thus linked in a specific symbiosis.[120]

Part II of the Study shows how trade union rights in the Member States are being affected by the development of EC law. There are two catalysts of change: harmonization of EC law and the European social dialogue.

First, the attempts to harmonize conditions throughout the Single European Market have influenced trade union rights in the Member States. Council Directives and decisions of the European Court of Justice have led to EC law concerned with collective labour rights. This is the result of a "spill-over" effect[121] manifest in two ways.

(i) EC Directives require interpretation by the European Court of Justice. This led these Directives to "spill-over" into areas beyond what was expected, affecting trade union rights in the Member States.

(ii) Some Member State principles of trade union law in EC Directives have been transposed into other Member States, where these principles are less familiar. In this way, trade union rights from one system spill-over into others. In addition, EC Directives have modified these principles and then transposed them back into the Member States. Decisions of the European Court of Justice have emphasised the need for national systems to adapt to the principles as embodied in these Directives.

Secondly, the emergence of the European social dialogue and its formal institutionalization in the Agreement on Social Policy attached to the Protocol on Social Policy of the Treaty on European Union (hereafter the "Agreement")[122] has a potentially enormous impact on trade union rights in the

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119 One can cite the influences of Germany on Denmark (O. Hasselbach, "Denmark", in S. Edlund (ed.), Labour Law Research in Twelve Countries, Stockholm, 1986, p. 12); France on Belgium (R. Blanpain, "Belgium", in Edlund, p. 139); various foreign influences on French labour law (G. Lyon-Caen, "Les apports du droit compare au droit du travail", Livre du centenaire de la societe de legislation comparee, 1969, pp. 315-328), the revolution wrought by the German **trained** Otto Kahn-Freund on British labour law (Lord Wedderburn, R. Lewis and J. Clark (eds.), Labour Law and Industrial Relations: Building on Kahn-Freund, Oxford, Clarendon Press, 1983); and, more recently, that of the Italian Workers' Statute of 1970 on Spanish labour law.

120 B. Bercusson, European Labour Law, Buttenvorths, London, 1996.

121 The "spill-over effect" is an element in neo-functionalist theories of European integration: "Neofunctional integration *sees* integration as a process based on spill-over from one initially non-controversial, technical sector to other sectors of possibly greater political salience, involving a gradual reduction in the power of national government and a commensurate increase in the ability of the centre to deal with sensitive, politically charged issues". J. Lodge, The European Community and the Challenge of the Future, 1993, "Introduction", p. xix.

122 The social dialogue provisions of the Maastricht Agreement are now reformulated by the Treaty of Amsterdam 1997 as new Articles 11Sa and 118b of the Treaty of Rome.

Member States:

- the linkage of national trade unions with transnational organisations of labour, in particular the ETUC and its Industry Committees, has implications for rights of association in the Member States and will affect Member State trade unions' rights of autonomy;

- the articulation of the European social dialogue with national systems of collective bargaining will engage the rights of action of trade unions in the Member States.

Part II of the Study describes the impact on the development of trade union rights in the Member States of harmonization of EC law[123] and of the European social dialogue.[124]

2. HARMONISATION OF LABOUR LAW AND TRADE UNION RIGHTS: THE "SPILLOVER" EFFECT

Principles of collective labour law in some Member State laws have "spilled-over" into EC law through their incorporation into EU legal measures and decisions of the European Court. These principles, now in the collective labour law of the EU, will eventually have to be absorbed into all the Member States' laws on trade union rights.

This collective labour law of the EU includes a number of principles specifically relevant to trade union rights in the Member States:

- workers' collective representation,
- workers' participation,
- collectively bargained labour standards, and
- protection of strikers against dismissal.

The following sections outline this EU collective labour law and its effects on trade union rights in the Member States.

2.1 Workers' Collective Representation

The collective representation of workers has been a principle in numerous policy initiatives of the Commission.[125] These are inspired by national labour law provisions for representation of workers in enterprises, in the workplace and in corporate structures.

EU legislation has already provided for workers' collective representation in two areas: regarding health and safety, and in the form of European works councils. Further, in the context of two other Directives, the European Court has declared that workers' collective representation is mandatory.

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123 See Part II, Chapter 2. Harmonization of Labour Law and Trade Union Rights.

124 See Part II, Chapter 3. The European Social Dialogue and Trade Union Rights in the Member States.

125 See Communication from the Commission on Worker Information and Consultation, COM(95) 547 final, Brussels, 14 November 1995.

a) Mandatory representation

Mandatory worker representation was declared in Cases **382192** and **383/92, *Commission of the EC v. UK***, decided by the Court on **8** June 1994.[126] The cases concerned complaints by the Commission against the UK regarding designation of worker representatives in accordance with the EC Directives on "acquired rights"[127] and "collective redundancies".[128]

Both Directives require workers' representatives to be informed and consulted. The Commission complained that the UK had not provided rules for the recognition of workers' representatives where this did not take place on a voluntary basis. The complaint was upheld by the Court. Designation of worker representatives was made mandatory by the Court due to the consequences for the rights of workers under the Directive:[129]

> "which require(s) Member States to take all measures necessary to ensure that workers are informed, consulted and in a position to intervene through their representatives in the event of collective redundancies (or the transfer of an undertaking)".

The "spill-over" effect on trade union rights in the Member States is illustrated by the aftermath of the Court's decision. The UK government enacted in October **1995** the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations **1995.**[130] These Regulations allow the employer to choose whether to consult representatives of a trade union or other representatives elected by employees (without specifying any procedure of election, or qualifications of such representatives), even where the employer already recognises a trade union for collective bargaining purposes.[131]

A challenge to the validity of the Regulations was launched by three trade unions seeking judicial review in the English courts in February **1996** and is currently proceeding on appeal.[132] On **26** June **1996,** the Commission addressed to the UK Government a letter of formal notice under Article **171** of the Treaty that the Commission considered that the UK legislation does not implement the provisions of the Directives as interpreted by the Court.

These challenges will raise questions of interpretation of the EU law on worker representation which may require the European Court to decide issues of fundamental importance to trade union rights in the Member States.

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126 [1994] European Court Reports I-2435,2479.

127 Directive 77/187, OJ L6 1/26.

128 Directive 75/129, OJ L 48/29.

129 Case C-383/92, paragraph 23; Case C-382192, paragraph 26.

130 S.I. No. 2587.

131 Reg. 3(2) substituting new subsection 1B of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992; and Reg. 9(4) inserting a new paragraph **(2A)** into Reg. 10 of the Transfer of Undertakings (Protection of Employment) Regulations 1981.

132 *R. v. Secretary of State for Trade & Industry, ex parte UNISON, GMB, NASWT* [1996] Industrial Relations Law Reports 438-450 (August).

b) Health and safety representatives

The "Framework" Directive 89/391/EEC of 12 June 1989 requires that safety be the concern of workers and their representatives,[133] including general representatives, who fulfil certain functions in health and safety, and specialist representatives[134] in health and safety. For example, general workers' representatives have rights to be consulted over the planning and introduction of new technologies;[135] to submit observations during inspection visits,[136] and generally to be consulted and take part in discussions on all questions relating to safety and health at work.[137]

Member States, to comply with EU law, must ensure the adequacy of their law on workers' safety representatives to fulfill the functions prescribed for them by the EU Directive. Any failings could be challenged through the Courts.

c) Representation on European works councils

Directive 94/45/EC of 22 September 1994 requires the establishment of a Special Negotiating Body (SNB).[138] The function of the SNB is to establish the European Works Council (EWC) by agreement with the central management. The Annex to the Directive envisages an EWC composed of, or elected or appointed by, the employees' representatives. A specific relationship between nationally based workers' representatives in the enterprise and the EWC is thus envisaged by the Directive. The members of the SNB, arguably, therefore, must be employees' representatives, whose method of election or appointment appears to be by delegation to Member State rules.[139]

The EWC Directive could have an impact on trade union rights in Member States where the equilibrium between trade unions and enterprise/workplace representatives is delicate. For example, workers' representatives in EWCs could be determined by works councils in each country, and/or the relevant trade unions in the sector, and/or EU (sector) trade union organisations.

The creation of European works councils promotes a transnational system of worker representation based on the enterprise. It raises the question, for the first time, of the equilibrium at EU level between enterprise representatives and EU level trade union organisations. In so doing, it will affect the equilibrium in the Member States as well.

2.2 Workers' Participation

The Directives on Acquired Rights and Collective Redundancies have long provided for obligatory information and consultation of workers' representatives. These have now been overtaken by further rights of workers' collective participation in Directives on health and safety and on European works

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

134 Articles 3(c), 11(2), 11(3).

135 Article 6(3)(c).

136 Article 11(6).

137 Article 11(1).

138 OJ L 254/64 of 30.9.94.

139 Article 5(2).

councils.

a) Participation in health and safety: Beyond consultation?

The 1989 Framework Directive requires that workers' representatives be consulted and/or engaged in "balanced participation" or "take part in a balanced way".[140] It seems clear that "balanced participation" is not the same as consultation. Arguably, it must include some different and additional element of involvement of workers' representatives, which may raise questions before the Court about the adequacy of national laws on trade union participation.

b) European works councils: Consultation and dialogue

The consultation prescribed by the Directive is defined as: "...the exchange of views and establishment of dialogue".[141] The establishment of dialogue required by the Directive implies an active and continuous process of communication and interaction between the European works council and management, which may go beyond what is currently allowed for in national laws on trade union participation. These laws may be challenged in litigation before the Court.

2.3 Collectively Bargained Labour Standards

EU law has been inspired by the principle in the labour laws of a number of Member States of recourse to collective agreements as mandatory labour standards.

a) Collective agreements as "essential" standards

An EC Directive[142] provides that among the "essential aspects of the contract or employment relationship" to be included in a written document provided by the employer are "the collective agreements governing the employee's conditions of work". Disputes can arise where employers fail to refer to agreements which arguably govern conditions of work, or include information contradicting collectively agreed provisions. Violations of the EU law require an adequate and effective remedy. Complaints to national tribunals could lead to references to the European Court to clarify these and other ambiguities. The results could affect trade union rights in the Member States with regard to collective agreements.

b) Collective agreements as universal standards

On 1 August 1991, the Commission published a Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services.[143] This was concerned with "the

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140 Article 11(1) and 11(2).

141 Article 2(1)(f).

142 Council Directive 91/533 of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. OJ 1991 L288/32.

143 COM(91) 230 final-SYN 346, Brussels, 1 August 1991.

working conditions applicable to workers from another State performing work in the host country". ' 'The Commission proposed "a hard core of mandatory rules laid down by statutes or by erga omnes collective agreements".[145] After five years of debate, in much amended form, this was approved by the Council of Ministers in September 1996.[146]

Differences in the nature and legal effects of collective agreements in different Member States will raise many issues of interpretation for the European Court of Justice if Community law requires employers to adhere to collectively agreed standards. These decisions will be of potential significance for trade union rights in the Member States.

c) Collective agreements as EU standards: Working time

The Working Time Directive gives collective bargaining a central role in the setting of some EC standards on working time.[147] It allows for collective agreements to fix or define relevant standards in relation to night work, daily rest breaks, maximum weekly working hours, including overtime and annual holidays.[148] Member States are to consult the social partners before legislating standards on night work, and it is arguable that Article 13 requires employers to consult workers and their representatives when s/he "intends to organize work according to a certain pattern". Derogations at enterprise level are subject to framework agreements negotiated at national or regional levels.

It is evident that the Directive is likely to engage national courts, and eventually the European Court, in questions of collective labour law not previously encountered. The Directive will bring before these courts issues of proper consultation of trade unions, by Member States or employers; the relations between collective agreements and legislation, between different levels of collective agreements, and between individual contracts and collective agreements. The Working Time Directive breaks new ground in the development of a European collective labour law, with probable consequences for trade union rights in the Member States.

2.4 Strikes

The laws of many of the Member States provide for the right to strike to varying degrees (see Part I; Chapter **3.8).** Although EU law provides no right to strike, a right to strike is largely a right of **strikers** to protection against dismissal, and EU law does have rules on collective dismissals. **Council**

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144 Action Programme relating to the Community Charter of Fundamental Social Rights of Workers, Part II, Section 4B.

145 Explanatory Memorandum, op. cit., paragraph 18. "Erga omnes" agreements are collective agreements made generally applicable by extending their effects beyond the parties signatory to them; for example, to a sector, a region or the whole of the national temtory.

146 Council Directive 96/7 1 Concerning the posting of workers. OJ L18/1 of 21.1.1997.

147 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of worlung time. OJ L307/18 of 13.12.93.

148 In one exceptional case, collective agreements are even given priority over Member State legislation. As regards rest breaks during worlung hours (Article **4),** the Directive gives priority to collective agreements over legislation in determining the EC standard.

Directive 75/129 of 17 February 1975[149] applies to "collective redundancies", defined as: [150] "dismissals effected by an employer for one or more reasons not related to the individual workers concerned". Dismissals related to a strike could arguably be "for one or more reasons not related to the individual workers concerned". Hence, the Directive applies and the employer "shall begin consultations with workers' representatives in good time with a view to reaching an agreement".

The Collective Redundancies Directive embodies the principle that striking workers may be defending collective interests. As such they are covered by EU law against dismissals effected for such collective "reasons not related to the individual workers concerned". Courts, in applying these EU law standards, may require changes in Member State trade union laws on strikes.

3. THE EUROPEAN SOCIAL DIALOGUE AND TRADE UNION RIGHTS IN THE MEMBER STATES

The emergence of the European social dialogue and its institutionalisation in the Protocol and Agreement on Social Policy of the Maastricht Treaty on European Union raises questions of the transnational trade union rights of the participants in the social dialogue process.

A transnational industrial relations/social dialogue system has implications also for trade union rights at national level. How far are national trade union rights consistent with the emerging EU-level system? Which forms of association, what degree of autonomy, and which rights of action are consistent with the establishment of trade union organisations and social dialogue at European level?

3.1 The European Social Dialogue and Rights of Association

The rights of association identified at national level included legal definition of a trade union, legal personality, right of association/right to join, right not to join, and the closed shop/union security.

The legal definition and status of transnational organisations of labour at European level (e.g. the ETUC) are not specifically reflected in either national or EC law. It should be possible to devise a legal definition and a legal status at European level which could be inserted into EC law to formally qualify organisations as transnational trade unions.

The specificity of a right of association at the EU level lies in that it is not workers, but national or sectoral organisations which associate/join together. But a right of association at EU level assumes that Member States guarantee rights of association to **affiliating** organisations.

In this way, the right of association at EU level must ensure that Member State trade unions, affiliated to EU trade union confederations, are guaranteed an effective right of association, necessary to substantiate the EC right. An EC right of associatiodto join will affect the trade union rights of association in the Member States.

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149 As amended; Council Directive 92/56/EEC of 24 June 1992 amending Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies. OJ L 245/3 of 26.8.92.

150 Article 1(1)(a).

151 1992 amending Directive, inserting new Article 2(1).

The issue has already been raised indirectly. Under the Agreement on Social Policy, the Commission is obliged to consult "management and labour".[152] This raises the question of the "representativeness" of the EU-level organisations concerned, and, hence, of their constituent Member State trade union organisations.

The legitimacy of Member State trade unions as representative organisations, and, consequently, of the ETUC as a legitimate interlocutor at EU level, depends, at least in part, on whether workers have joined trade unions in sufficient numbers. The extent of Member States' provision for a right to join, for trade union rights of association, becomes, therefore, critical at EU level.

The level of membership of the national trade union confederations affiliated to the ETUC is very different[153]. This reinforces the need for rights of association at EU level which can increase their representativeness, which is crucial to the legitimacy and legal status of trade union organisations at EU level.

The formulation of the right of association enshrined in the ILO Conventions of 1948 and 1949, reflected in Member States' existing legislation on trade union rights, predates the radical changes in the labour force, the organisation of work, the structure of enterprises and the internationalisation of the economy which characterise the environment in which trade union rights must now operate. These formulations of almost half a century ago are inadequate to enable workers to form associations, and for unions to organise among those segments of the workforce or sectors of the economy in which the number of workers has increased. If falling trade union density threatens the European social dialogue, then new trade union rights are needed - rights relating to the active recruitment of new trade union members, and the incentivising of trade union membership for workers in general, and certain categories in particular.

The question becomes how to formulate rights which will encourage trade union membership. A right to recruit could provide for the trade union to enter premises, distribute materials and address workers, subject to conditions. These rights would cater for the vulnerability of workers in small and medium enterprises, and of "atypical" workers and those employed in occupations and industries with low union density. These rights become an inevitable and necessary part of freedom of association.

Any proposal for a right of association at EU level confronts two existing provisions.

a) The Charter of Fundamental Social Rights of Workers 1989: Article 11

The first paragraph of Article 11 provides for a "right of association in order to constitute professional organisations or trade unions". Earlier drafts were amended to include in the final draft the phrase that the right of association is "in order to constitute" trade unions - i.e. to bring them into being.

There is considerable debate over whether, and how far, the traditional "freedom of association" protects the activities of the trade union established by workers. Article 11 upgrades this "freedom" into a "right of association" and adds the additional phrase "in order to constitute" trade unions. This

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152 Article 3(2) and 3(3); now Article 118a(2) and 118a(3) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

153 See Table 1.

may enhance the substance of Article 11's "right of association" by implying a right to engage in activities necessary to constitute such organisations.

The EC Treaty, as amended by the Treaty of Amsterdam, now includes a new Article 117 (formerly Article 1 of the Maastricht Agreement). That Agreement included a reference to the 1989 Social Charter only in its Preamble. The Charter is now elevated to a new status in the revised Article 117 of the EC Treaty, which sets out the social policy objectives of the Community and the Member States agreed at Maastricht, and adds:

> "having in mind fundamental social rights such as those set out in the European Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers".

These instruments, therefore, become reference points for both the Community and the Member States.[154]

The new Article 117 seems to take the legal status of the two Charters further even than the Amsterdam Treaty's addition of a new fourth paragraph in the Preamble to the Treaty on European Union:

> "Confirming their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers".

This reinstates the reference in the Preamble of the Single European Act 1986 to the 1961 Social Charter, dropped by the Maastricht Treaty.

b) Article 2(6) of the Agreement on Social Policy[155]

Article 2(6) excludes "the right of association" from the scope of Article 2, which lays down a procedure by which the Community institutions can adopt Directives. However, in contrast to the legislative procedure for enacting Directives on the new competences outlined in Article 2 of the Agreement, Article 4 agreements may be reached without the direct involvement of EC institutions, and are not subject to any explicit restriction either as to content or majority or unanimous voting.[156] It is unclear whether this provision limits the scope of "agreements concluded at Community level" under Article 4 of the Agreement.

Accordingly, under Article 3,[157] the Commission may make a proposal in a social policy field specified in Article 2(6) which, under Article 3(4), is then taken up by management and labour, with the possible result of an agreement on the subject at Community level (Article 4(1)), which "shall be implemented" in one of the ways specified in Article 4(2). This allocation of exclusive competence

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154 The Turin Social Charter of the Council of Europe includes in Part I, "the right to freedom of association"; see also Article 5 ("The Right to Organise").

155 Now Article 118(6) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

156 Articles 2 and 4 of the Agreement are now respectively Articles 118 and 118b of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

157 Now Article 118a of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

to the social partners may be understood because of the particular delicacy of the right of association, and reflects the principle of "horizontal" subsidiarity.

The Maastricht Agreement's apparent exclusion of competence regarding "the right of association, the right to strike or the right to impose lock-outs" has been replicated in the revised Article 118(6) of the EC Treaty inserted by the Treaty of Amsterdam 1997. Its ambit may have been tempered, however, by the Amsterdam Treaty's revision of Article 118c.

The revised Article 118c is an amalgam of Article 5 of the Maastricht Agreement and the old Article 118 of the EC Treaty. Both set out the tasks of the Commission. However, the old Article 118, unlike Article 5 of the Agreement, included a specific reference to the "right of association and collective bargaining between employers and workers".

The new revised Article 118c specifically provides for the Commission to:

> "encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to... the right of association and collective bargaining between employers and workers".

This explicit reference to the right of association and collective bargaining raises the question of whether the scope of the exclusion of competence in Article 2(6) has been narrowed, specifically regarding rights of association and collective bargaining; in particular, as regards the Commission's ability to take initiatives which may culminate in social dialogue agreements at EU level.

3.2 The European Social Dialogue and Rights of Autonomy

The rights of autonomy identified at national level included establishment of an autonomous organisation, financial autonomy and autonomy in internal elections and decision-making.

The role of the European social dialogue in the Agreement on Social Policy made it necessary to identify organisations falling within the meaning of the "management and labour" given entitlements under the Agreement. Accordingly, the Commission proposed criteria for selection.[158] Rights of autonomy guaranteed at national level have not been established at transnational level. In their absence, the Commission has been forced to devise criteria and adopt procedures which, not surprisingly, have given rise to controversy.

The Economic and Social Committee (ECOSOC) observed that criteria of selection should be linked to the functions of the organisations concerned as envisaged by the Agreement. These organisations should be potentially capable of negotiating agreements which can bind national structures. Only European organisations which meet the criterion of capacity to negotiate for and bind national structures can satisfy the requirements for participation in the consultation phase of the social dialogue process.[159] Identification of organisations of labour at transnational level requires the elaboration of criteria for selection, including their composition, structure and internal decision-

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[158] Commission Communication concerning the application of the Agreement on social policy. COM(93) 600 final, Brussels, 14 December 1993; paragraph 24.

[159] ECOSOC Opinion on the Commission's Communication, Opinion 94/C 397117, OJ 397140 of 31.12.1994; paragraphs 2.1.9.b and 2.1.12-2.1.14.

making machinery. It will inevitably be necessary to elaborate transnational rights of trade union autonomy.

The identification of transnational labour organisations under the Agreement (such as the ETUC) raises important issues regarding their relationships with their national affiliates. If, as ECOSOC argued, the criteria for transnational trade unions include their capacity to bind national affiliates, this obviously affects the autonomy of those national affiliates.

For example, the autonomy of national confederations can be subjected to decision-making in the organs of the ETUC. ***An*** illustration is the new Article 11b of the Constitution of the ETUC, adopted at its 8th Statutory Congress in May 1995, and the Rules of Procedure for implementing Article 11b adopted by the ETUC Executive Committee at the end of June 1995. According to these, the requisite majority in the Executive Committee of the ETUC, approving the outcome of negotiations in the European social dialogue, may require national trade unions to implement EU agreements reached as the outcome of the social dialogue.

Similar developments towards social dialogue in specific sectors will engage national sectoral federations in the decision-making processes of the Industry Committees of the ETUC. For example:

- the 1991 Constitution of the European Federation of Building and Woodworkers (EFBWW) states that affiliated organizations "have autonomy in all matters concerning their national and international activities", but it also obliges the same national organizations "to jointly support and develop European and national decisions and positions adopted", and to "undertake to strengthen the co-ordinating role of the EFBWW and to further develop European co-operation through the EFBWW" (Article *3);*

  the Statutes of the European Metalworkers' Federation (EMF) in the Community, Chapter I, provide that organizations affiliated to the EMF retain their autonomy "as far as their own trade union activities are concerned". However, the EMF endeavours "to achieve common action by all metalworkers' unions in the Community". Members "pledge themselves to respect and support, as far as possible, the decisions and principles of the competent EMF organs. At their ordinary union conventions, they shall report on EMF policy and activities and submit these reports for discussion". The Statutes oblige national affiliates "in addition... to examine more advanced forms of trade union co-operation within the framework of the EMF".

Trade union rights of autonomy at transnational level have not been given the careful consideration they require in light of the development of the European social dialogue. The institutionalisation of the European social dialogue in the Agreement on Social Policy will affect trade union rights of autonomy in two ways:

- at EU level, entitlements of transnational labour organisations under the Agreement may require scrutiny of their organizational capacity, with criteria emerging which affect their autonomy;

- at Member State level, the composition and constitutional structure of transnational European organisations of labour will engage the autonomy of their affiliates. Majority voting procedures in the internal constitutions of the ETUC and of its Industry Committees may have the consequence of overriding national law's guarantee of trade union autonomy.

3.3 The European Social Dialogue and Rights of Action

The rights of action of trade unions include recognition, information and consultation, collective bargaining and collective agreements (including extension), trade union activities at the workplace, and strikes. At transnational level, these rights would operate in the context of the European social dialogue.

The Agreement on Social Policy envisages a role for the European social partners in the formulation (and implementation) of EC labour law, with the main emphasis on rights to information and consultation, collective bargaining (or social dialogue) and collective agreements (including extension). However, the process envisaged is not the bilateral engagement of labour and management familiar in national models of collective bargaining.

At EU level, the process of social dialogue implies a tripartite process - involving the social partners and the Commission/Community in a dynamic of "bargaining in the shadow of the law".[160] The social partners have to assess whether the result of their bilateral bargaining will be more advantageous than the content of the EC action. There will be pressures on the social partners to negotiate and agree to avoid an imposed standard which pre-empts their autonomy, and which may be also a less desirable result. The rights of action of the trade unions at EU level have to be considered in this light.

For example, the consultation of the social partners by the Commission, according to Articles 3(2) and 3(3) of the Agreement,[161] will engage national bargaining processes. The social partners at EC level are complex organisations comprising a multitude of very different national organisations, often confederations of national trade unions or employers' organisations. Proper consultation of these national organisations, which in turn have complex internal procedures requiring consultation of their affiliates, can be time-consuming. Such internal consultation processes are necessary, however, if the EC level social partners are to undertake to bind themselves and their affiliates to support a social policy initiative at European level.

Again, Article 4(2) of the Agreement provides that "Agreements concluded at Community level shall be implemented... in accordance with the procedures and practices specific to management and labour and the Member States...".[162] Member States are obliged to recognise the normative effect of agreements concluded through the social dialogue: articulating EC level agreements with national standards through existing or new mechanisms, or, at least, ensuring such articulation is not blocked by national laws on collective bargaining and the normative effect of domestic collective agreements.[163]

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160 B. Bercusson, "Maastricht: a fundamental change in European labour law", (1992) 23 Industrial Relations Journal 177.

161 Now Article 118a(2) and (3) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

162 This is now Article 118b(2) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

163 The Member States' Declaration on Article 4(2), attached to the Maastricht Treaty Agreement, is of dubious legal status and doubtful meaning, insofar as it appears to contradict the obligations undertaken in Article 4(2). The Amsterdam Treaty attaches the identical Declaration, in italics, to the new Article 118b, but the front page of the Treaty states clearly that: "Declarations to the Final Act are in italics, in order to distinguish them from legally-binding Treaty texts". This confirms the Opinion of the Economic and Social Committee, which contested the legal status of the Declaration, which appears to strip the Article of much of its potential. Opinion 94/C 397/17, OJ 397/40 of 31.12.1994.

Processes and outcomes of domestic collective bargaining in Member States will have to be articulated with the European social dialogue and the framework agreements it produces. Trade union rights in the Member States are, therefore, vitally affected.

For example, the criteria for the application of the subsidiarity principle are critical for trade union rights in the Member States.[164] These criteria will determine the extent to which the competence to act in various areas of social and labour policy is allocated to EU or national levels:

- if to EU level, is the competence to be exercised by the EC institutions or the European social partners through the social dialogue? If by the European social partners, trade union rights in the Member States will depend on the precise forms of articulation between the European social dialogue and national systems of collective bargaining;

- if to national level, is the competence to be exercised by the Member States through legislative procedures or through collective bargaining. Trade union rights in the Member States will depend on how much competence is attributed to the collective bargaining system in which they have a primary role.

Again, articulation of EU level collective agreements with national collective bargaining systems may engage national procedures for the extension of collective agreements beyond the social partners who negotiated them. Features of national labour law systems which are obstacles to such articulation (e.g. conditions as to representativeness, ratification, legal enforceability, regionalisation, extreme decentralisation of bargaining, and so on) would have to be made to conform. Member States with no provision for formal extension procedures might have to introduce them.[165]

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164 The Commission has highlighted: "recognition of a dual form of subsidiarity in the social field: on the one hand, subsidiarity regarding regulation at national and Community level (vertical); on the other, subsidiarity as regards the choice, at Community level, between the legislative approach and the agreement-based approach" (horizontal). Communication of the Commission, op. cit. paragraph 6(c).

165 This is a *step* further down the road taken by the European Court of Justice., when the Court upheld the principle of implementation of EC law through collective agreements, with two qualifications: "That possibility does not, however, discharge them from the obligation of ensuring, by appropriate legislative and administrative provisions, that all workers in the Community are afforded the full protection provided for in the directive. That State guarantee must cover all cases where effective protection is not ensured by other means, for whatever reason, and in particular cases where the workers in question are not union members, where the sector in question is not covered by a collective agreement or where such an agreement does not fully guarantee the principle of equal pay". ***Commission of the European Communities v. the Kingdom of Denmark,*** Case 165182, (1983) European Court Reports 427, at pp. 434-435, paragraph 8. This is now embodied in Article 2(4) of the Agreement annexed to the Protocol on Social Policy of the Treaty on European Union. Now Article 118(4) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.

4. FINAL CONCLUSIONS: TRADE UNION RIGHTS IN THE MEMBER STATES AND IN THE EUROPEAN UNION

National labour laws on trade union rights were not developed with **transnational** industrial relations or collective bargaining in mind. Trade union rights in the Member States need to accommodate the European dimension.

At Member State level there is wide variation in formal legislative provisions, further highlighted by the absence of any legislative provision in some Member States for trade union rights which, in others, are guaranteed constitutional status.

However, as all Member States have ratified ILO Conventions Nos. 87 and 98, in substantive terms, Member States do guarantee trade union rights through a variety of legislative provisions and collective practices. These are summarised in the six Conclusions at the end of Part I of this Study, and include most of the trade union rights of association, autonomy and action established in the Member States:

Even with this foundation of shared norms, the congruence of different national systems with an emerging EU system of industrial relations and social dialogue is variable. National systems require modification to accommodate the EU dimension. This is a delicate task. It entails respect for the principles of national systems, while undertaking their adaptation to a transnational system, without disturbing national equilibria.

But the two catalysts of change described in Part II of this Study make this development inevitable.

First, the ***harmonization*** of EU law has seen trade union rights established in EU legislation[166] and decisions of the European Court of Justice[167], reflecting principles in the laws of the Member States. A framework of principles already embodied in the collective labour law of the EU includes:

- recognition of collectively negotiated labour standards;
- workers' collective representation;
- workers' information, consultation, participation;
- protection of strikers against dismissal.

This collective labour law of the EU will continue to expand through decisions of the European Court of Justice and will inevitably and increasingly encroach on the area of trade union rights in the Member States.

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166 For example, the rights of union representatives and with regard to collective agreements in Council Directive 77/187/EEC (the "Acquired Rights" Directive; OJ L 61/26), the right to information and consultation of worker representatives in Council Directive 75/129 (the "Collective Dismissals" Directive; OJ L 48/29/EEC, as amended by Council Directive 92/56/EEC, OJ L 245/3), and in the European Works Council Directive 1994 (Council Directive 94/45/EC, OJ L 254/64).

167 For example, the principle of adherence to collective agreements in ***Rush Portuguesa Lda v. Office national d'immigration***, Case 113/89, 27 March 1990, (1990) European Court Reports 1417; the principle of mandatory employee representation in ***Commission of the EC v. UK***, Cases 382192 and 383/92, 8 June 1994, (1994) European Court Reports 2435,2479.

Secondly, the ***European social dialogue*** has catalytic potential for the development of trade union rights in the EU. It puts on the agenda the trade union rights of the participants in the EU-level social dialogue process. It has implications also for trade union rights at national level: how far are national trade union rights of association, autonomy and action consistent with the emerging EU level system?

Trade union ***rights of association*** imply for transnational trade unions the right to legal definition and legal personality under EC law. Even more important, the representativeness of the EU level trade union organisations (e.g. the ETUC), and their efficacy in the social dialogue, requires that their national trade union affiliates are sufficiently able to recruit and maintain membership. Trade union rights in many Member States have faded to secure such levels of membership, or are defeated by labour market or other conditions. These trade union rights of association in the Member States must be improved to secure the result essential to maintaining the European social dialogue.

Two existing provisions indicate the path to follow:

i. the **1989** Charter of Fundamental Social Rights of Workers, Article 11: Freedom of Association, includes a commitment of the Member States to this objective;

ii. Article 2(6) of the Agreement on Social Policy[168] does not exclude rights of association from Community competence; rather, on close analysis, it reserves the right to formulate EU law on this issue to the social partners in the form of agreements.

Trade union ***rights of autonomy*** at EU level are at risk in the process of selecting the "labour" actor to be consulted by the Commission under the Agreement on Social Policy. Further, the role of the ETUC under the Agreement requires that affiliated trade unions participate actively in its internal processes, and are engaged by them. This affects the autonomy of Member State trade unions. Reflections of this are already evident in changes in the constitutions of the ETUC's Industry Committees; for example, in the construction and metal-working sectors.

Trade union ***rights of action*** regarding information and consultation, collective bargaining and collective agreements are affected by the Agreement on Social Policy. At EU level, the social partners are engaged in negotiations over EU level framework agreements, shadowed by Commission proposals for possible EC legislation.

At Member State level, the obligation to implement agreements reached through the social dialogue process under Article 4(2) of the Agreement[169] means securing to Member State trade unions the rights to co-ordinate action with EU-level developments, and to articulate EU-level framework agreements with collective agreements in the Member States. Member States will have to review their laws on trade union rights to ensure that these do not pose obstacles.

The formulation of trade union rights could be undertaken by the social partners, most directly affected, and EU legislative institutions. However, there are risks of intervention by other EU

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168 **Now Article 118(6) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997.**

169 **Now Article 118b(2) of the EC Treaty, as amended by the Treaty of Amsterdam, 1997**

institutions: the Commission[170], or the European Court of Justice.[171] The process of formulation of trade union rights at EU level may not be left to the exclusive decisions of the social partners, or even of the EU legislative institutions.

Trade union rights at EU level are already being formulated. EU legal measures in areas of social and labour market policy and labour law lead inevitably to EU rules being established regarding trade union rights - the %pill-over" effect.

The only question, therefore, is what will be the relative contribution of the different actors involved: social partners, EU legislative institutions or the European Court to the process of formulation of trade union rights. Much depends on the initiatives taken.

A framework of trade union rights will be more coherent if the social partners and the EU legislative institutions actively take systematic initiatives.

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170 An illustration is the issue of who are "labour and management" to be consulted under the Social Protocol.

171 This can be illustrated by the prospects of litigants challenging workers' representatives (as in *Commission of the* EC **v.** *UK*; Cases 382192 and 383192, [1994] European Court Reports 2435,2479; decided 8 June 1994), the adequacy of agreements reached under Article 13 of the EWCs Directive, or the validity of EU-level collective agreements under Article 173 of the Treaty.

ANNEXE

TABLE 1

GROSS TRADE UNION DENSITY RATES

(INCLUDING RETIRED WORKERS)

Year	AU	DE	FR	GE	IT	NE	SW	UK
1913	...	23.1	...	21.5	...	16.9	9.4	23.1
1920	51.0	48.2	7.2	52.5	...	35.8	27.7	45.2
1930	37.6	36.9	7.2	32.7	...	30.1	36.1	25.4
1939	...	46.6	23.6 a	...	...	32.5	53.7	31.6
1950	62.3	58.1	20.5 b	34.7	50.3	43.0	67.7	44.1
1960	63.4	63.1	19.3 c	38.3	35.2	41.8	73.0	44.2
1970	62.1	64.4	21.3	37.6	38.3	39.7	73.2	48.5
1980	58.4	79.8	17.2	41.0	54.4	35.3	88.0	52.9
1985	57.9	82.2 d	14.5	39.3	51.0	28.6	91.5	44.2

a = 1936 b = 1954 c = 1962 d = 1984

Source: Jelle Visser, In Search of Inclusive Unionism, Bulletin of Comparative Labour Relations, no. 18, 1990, Kluwer, Deventer, Table 5 on page 34.

TABLE 2

RIGHTS OF ASSOCIATION

MEMBER STATES	Legal definition	Legal personality	Right of association/to join	Right not to join	Closed shop
Austria	L +	L +	L +	L +	L -
Belgium	L +	? -	L +	L +	CP ?
Denmark	CP -	L +	L/CP +	L +	CP ?
Finland	CP -	L +	L +	L +	CP -
France	L +	L +	L +	L +	L -
Germany	L +	L -?	L +	L +	L -
Greece	L +	L +	L +	L +	L -
Ireland	L +	CP +?	L +	L +	L -
Italy	CP -	CP -?	L +	L +	L -
Luxembourg	L +	L +	L +	L +	L -
Netherlands	CP ?	L +	L +	L +	L +
Portugal	L +	L +	L +	L +	L -
Spain	L +	L +	L +	L +	L -
Sweden	L +	CP -	L/CP +	CP +	L/CP ?
United Kingdom	L +	L -?	L +	L +	L -

KEY:

L = legislation
CP = collective practice
+ = there exists a right or provision
- = there exists no right or provision
L/CP = combined legislation-and-collective practice
? = not possible to state clearly that there is legislation and/or collective practice, or that there exists a right or provision.

Source: Author's own calculation

TABLE 3

RIGHTS OF AUTONOMY

MEMBER STATES	Autonomous organisation	Financial autonomy	Elections/ decision-making
Austria	L +	L +	L +
Belgium	CP +	CP +	CP +
Denmark	CP +	CP +	CP +
Finland	CP +	CP +	CP +
France	L +	L +	CP +
Germany	CP +	CP +	CP +
Greece	L +	L +	L +
Ireland	L +?	CP -	CP +
Italy	CP +	L +	CP +
Luxembourg	L +	L +	?
Netherlands	CP +	?	?
Portugal	L +	L +	L +
Spain	L +	L -	L +
Sweden	CP +	CP +	CP +
United Kmgdom	L +	CP -	L -

KEY:

L = legislation
CP = collective practice
\+ = there exists a right or provision
\- = there exists no right or provision
? = not possible to state clearly that there is legislation and/or collective practice, or that there exists a right or provision.

Source: Author's own calculation

TABLE 4

RIGHTS OF ACTION

MEMBER STATES	Recognition	Inform/ consult	Collective bargaining	Trade union activity
Austria	DC	DC	DC	DC
Belgium	DC	DC	DC	DC
Denmark	CP +	CP +	CP +	CP +
Finland	CP -	CP +	CP +	L +
France	DC	DC	DC	DC
Germany	DC	DC	DC	DC
Greece	DC	DC	DC	DC
Ireland	CP +	CP -?	CP -	L +
Italy	CP -	CP -	L +	L +
Luxembourg	DC	DC	DC	DC
Netherlands	DC	DC	DC	DC
Portugal	DC	DC	DC	DC
Spain	DC	DC	DC	DC
Sweden	L +	L +	L +	L +
United Kingdom	CP -	L -?	CP -	L +

KEY:

DC = **dual channel system**
L = **legislation**
CP = **collective practice**
+ = **there exists a right or provision**
- = **there exists no right or provision**
? = **not possible to state clearly that there is legislation and/or collective practice, or that there exists a right or provision.**

Source: **Author's own calculation**

TABLE 4 (cont)

RIGHTS OF ACTION

MEMBER STATES	Collective agreements	Extension of agreements	Strikes
Austria	L +	L +	CP +?
Belgium	L +	L +	CP +
Denmark	CP +	?	CP ?
Finland	L +	L +	L +
France	L +	L +	L +
Germany	L +	L +	L/CP +
Greece	L +	L +	L +
Ireland	L/CP +	L +	L -?
Italy	CP +	L -	L +
Luxembourg	L +	L +	L +
Netherlands	L +	L +	L +
Portugal	L +	L +	L +
Spain	L +	L +	L +
Sweden	L +	CP -	L +
United Kingdom	L/CP +	CP -	L -?

KEY:

L = legslation
CP = collective practice
L/CP = combined legslation-and-collective practice
+ = there exists a right or provision
- = there exists no right or provision
? = not possible to state clearly that there is legslation and/or collective practice, or that there exists a right or provision.

Source: Author's own calculation

TABLE 5

LAW ON TRADE UNION RIGHTS IN THE 15 MEMBER STATES**

Trade union right	Legislation	Collective Practice	Presence of right	Absence of right
Legal definition	11	4	11	3
Legal personality	11	3	10	5
Right of association/to join	15	0	15	0
Right not to join	14	1	15	0
Closed shop	12	3	1	11
Autonomous organisation	8	7	15	0
Financial autonomy	7	7	11	3
Elections/decision-making autonomy	5	8	12	1
Recognition*	1 + 9 DC	5	3 + 9 DC	5
Information/consultation*	2 + 9 DC	4	3 + 9 DC	2
Collective bargaining*	2 + 9 DC	4	4 + 9 DC	2
Trade union activity*	5 + 9 DC	1	6 + 9 DC	0
Collective agreements	11	3	15	0
Extension of agreements	12	2	11	3
Strike	12	3	12	2

* = presence of dual channel system affects calculations.
** = Less than 15 means one or more Member States' position is unclear.

Source: Author's own calculation