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Impact of the work of the European Parliament and its Committee on Employment and Social Affairs on the Communities' social legislation

(September 1994 - December 1998)

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SUMMARY

Introduction

This Study analyses the impact of the European Parliament on the social policy aspects of the Treaty of Amsterdam, on the Luxembourg European Council on Employment and on each of the twenty-three legislative acts concerning social policy adopted by the Council between September 1994 and December 1998. It also considers the impact of Parliament's five own-initiative reports on social policy.

During this period legislation could be adopted under four procedures: consultation, co-operation, co-decision and pursuant to the Agreement on Social Policy. In general terms, Parliament has only limited opportunity to exercise influence under the consultation procedure but considerably greater potential impact under the co-operation and co-decision procedures. When legislation is adopted under Article 4(2) of the Agreement on Social Policy, Parliament is excluded from formal participation in the legislative procedure.

Having passed through periods of neo-liberalism (1957-1972), activism (1972-1980), stagnation (1980-1986) and optimism (1986-1993), European Community social policy is currently passing through a period of uncertainty, as the Commission and Parliament grapple with the complex question of what reforms are necessary to meet contemporary challenges. Debate has revolved around three themes: how best to fight persistently high unemployment; how to respond to radical social, economic and technological change; and how to place economic and social rights at the heart of the Union's activities. These themes have been placed at the centre of the Commission's Social Action Programme for 1998-2000.

The Treaty of Amsterdam

Parliament's representatives participated in the Reflection Group and regular exchanges of views were held between the European Council and ministerial meetings of the Intergovernmental Conference and Parliament. During the discussions which led to the signature of the Treaty of Amsterdam, Parliament was thus more closely involved in the negotiations for the Treaty of Amsterdam than in any previous Intergovernmental Conference. It first defined its position for the Conference on 17 May 1995, well before any other Institution or Member State. During the Intergovernmental Conference, Parliament adopted six more Resolutions setting out *inter alia* its proposals on social policy.

The social policy provisions of the Treaty of Amsterdam reflect many of the recommendations contained in these Resolutions. Perhaps the foremost achievement is the incorporation of the Agreement on Social Policy, which was one of Parliament's principal objectives. Article 118 provides a basis for Community action on social exclusion, as Parliament had requested. Article 119 has been amended, as Parliament asked, to permit discrimination in favour of women.

Parliament's calls for the adoption of a Chapter on Employment and for promotion of a high level of employment to become an objective of the Community were heeded. A new Employment Committee was established and provision was made for the European Council to adopt guidelines for employment policy, as Parliament had requested. However, while Parliament had called for the Chapter on Employment to commit the Member States and Community to certain common

procedures and basic principles of employment policy, the Chapter was, in the main, limited to provisions for improved co-operation and co-ordination of national policies and does not provide the basis for major new initiatives by the Community.

Parliament had called for the rights contained in the 1989 Community Charter of the Fundamental Social Rights of Workers to be mentioned in the Treaty and extended to all citizens of the Union. Although the Treaty does refer to the Charter, and also to the 1961 European Social Charter, the references do not affect the legal position of individual citizens but may be seen as a gesture to Parliament's concern on this point.

Parliament's proposal that third-country nationals legally resident in the Community be given guarantees of non-discrimination with regard to social and economic rights was not adopted.

The Luxembourg European Council on Employment

Parliament set out its proposals for the Luxembourg European Council on Employment on 21 October 1997. The conclusions of the Council, and the 1998 employment guidelines, reflect many of Parliament's recommendations. Both Council and Parliament agreed that:
completion of the Single Market was essential to stimulate economic growth;
the regulatory burden on business should be lightened;
venture capital should be made more readily available;
the Structural Funds should be used more actively to promote employment;
the establishment of trans-European networks is essential to strengthen competitiveness; and
the European Investment Bank (EIB) should provide loans to Small and Medium Sized Enterprises (SME's).

Moreover, the Employment Guidelines reflected Parliament's recommendations that the Member States should use active rather than passive measures in the fight against unemployment, that expenditure on training for the unemployed should be increased, that the social partners should conclude agreements on training and that the Member States should promote flexibility in working hours combined with adequate security for workers.

All these points had also been raised, sometimes with different emphasis, by the European Commission. However, one important measure adopted by the Luxembourg European Council, was attributable entirely to Parliament's initiative, namely the creation of the growth and employment initiative which will finance employment in SME's.

Parliament'sproposals rejected by the Council fall into three groups. First, the Council declined to set criteria against which the Member States' employment policies could be assessed. Second, recommendations that the retrained unemployed should be guaranteed one year's employment and that the social partners should conclude agreements on job rotation were ignored. Third, although Parliament had called for action on taxation, the Council merely called for the Member States to examine certain tax reforms.

Employment and the Labour Market

The issue of information and consultation for workers has been on the agenda for many years and following the development of the Internal Market the issue gained significance for 'European multinationals'. Parliament has taken a great interest in this area as indicated by resolutions and

amendments on a range of legislative measures. In the case of this Directive, by participating in the legislative process on the basis of the 'cooperation procedure' the Parliament effectively clarified some of the Directive's provisions. The Parliament ensured the need for objective criteria to lay out the circumstances when central management is not obliged to give information on the grounds that this might harm the functioning of an undertaking; and that the Commission will review the operation of the Directive five years after its adoption rather than after seven years, as originally proposed. The Parliament's impact on this Directive also illustrates its influence over time. As a result of a Parliament amendment in 1991 to an earlier proposal, the size of the workforce shall be based on the average number of employees during the previous two years.

Parliament had a very significant impact on Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, which establishes which national labour rules apply to workers posted by an undertaking in one Member State to carry out temporary work in another Member State. Parliament's amendments to the draft Directive provided that undertakings located outside the Community should not be placed in a more favourable position than Community undertakings, reduced the time threshold for exclusion of workers from the Directive and allowed the application of employment conditions more favourable to workers than those in the host country. Moreover, Parliament's amendments significantly broadened the scope of the employment conditions covered by the Directive and permitted workers to institute legal proceedings to enforce their rights under the Directive in the host state. Parliament also secured the inclusion of provisions for co-operation between the Member States in enforcement of the Directive and for a review of the Directive by the Commission to identify shortcomings in its operation.

Parliament had very little impact on Directive 98/50/EC amending Directive 77/187/EEC on the approximation of laws relating to the safeguarding of employees' rights in the event of transfers of undertakings. Although Parliament was firmly opposed to modifying the definition of "transfer", and the Commission accepted Parliament's amendment on this point, the Council nevertheless redefined "transfer" more narrowly than in Directive 77/187/EEC. The only significant amendment secured by Parliament was a provision preventing the fraudulent misuse of insolvency proceedings so as to deprive workers of their rights under the Directive.

Parliament proposed three amendments to Council Decision 97/16 setting up an Employment and Labour Market Committee, which sought to define more precisely the scope of the Committee's activity and to ensure that its reports would be submitted to Parliament. All Parliament's amendments were rejected by the Council.

Although Parliament proposed eight amendments to Council Decision 98/171 on Community activities concerning analysis, research and co-operation in the field of employment and the labour market, the Council accepted only three minor linguistic changes. A further amendment that third countries participating in projects under this Decision should themselves bear the costs of participation was retained but rendered nugatory by coupling it to a provision that the cost could also be charged to the Community budget.

Parliament proposed sixteen amendments to Council Decision 98/347 on measures of financial assistance for innovative and job-creating small and medium-sized enterprises - the growth and employment initiative. Parliament's impact was negligible, as the Council rejected fourteen of the amendments. Parliament did, however, secure the insertion of an Article dealing with the procedure for determining management fees, which had not been envisaged in the Commission's proposal.

Social Protection

Parliament had only a very slight impact on four Regulations adopted to amend Regulations 1408/71 and 574/72 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Although Parliament proposed seventeen amendments to Regulation 3095/95, eighteen amendments to Regulation 3096/95 and four amendments to Regulation 1223/98, all were rejected by Council, which was unwilling to accept that Regulations intended to make only technical changes to existing Regulations on social security co-ordination should become a vehicle for extensive substantive changes to social policy legislation. Parliament secured the adoption of one technical amendment to Regulation 1290/97.

Parliament proposed eighteen amendments to Directive 98/49 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community. These amendments were quite limited in scope, as Parliament was of the opinion that, while the proposed Directive was unambitious, it should be adopted as soon as possible as it would set a precedent for Community regulation of supplementary pension schemes. The Council accepted only the addition of a clearer reference to the objective of the Directive and one linguistic amendment; Parliament's amendments to the recitals calling for further action in this area were not adopted.

Living and Working Conditions

The Commission forwarded two Directives adopted under Article 4(2) of the Agreement on Social Policy to Parliament for its Opinion, namely Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and Directive 97/8/EC concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC. In both cases, Parliament criticised the content of the framework agreements and suggested alterations; as, however, Parliament cannot table amendments when this procedure is used, both Directives were adopted unchanged. Parliament protested vigorously at its effective exclusion from the legislative process under Article 4(2) of the Agreement, which, it complained, curtailed its rights and reduced it to an onlooker. Parliament also expressed alarm at the incorporation of this legislative procedure into the EC Treaty by the Treaty of Amsterdam.

Health and Safety at Work

Parliament tabled forty-five amendments to Directive 95/63/EC amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work, of which eighteen were reflected in the Directive as adopted. In particular, Parliament secured the inclusion of a reference to ergonomics, which had not been contemplated in the Commission's proposal, and added references to the provision of information about risks to workers, as well as making detailed amendments to the Annexes.

Parliament had only a very limited impact on Directive 97/42/EC amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work. Although Parliament proposed extensive changes to the recitals calling for further action on carcinogens, several important alterations to definitions, the introduction of a uniform measuring procedure for benzene and the elimination of a transitional period, only one significant amendment was reflected in the Directive as adopted. This was the introduction of an "appropriate reference period" in the definition of "limit value".

Parliament had a far more significant impact on Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work. At first reading, Parliament proposed thirty-eight amendments, of which the Council accepted all but eight. In particular, the Council adopted several important amendments to Article 3, the key provision of the Directive, concerning the relationship between the different types of exposure limit set out in the Directive, the factors to be taken into account when setting limits and the procedure for establishing limits. Parliament also secured other changes concerning the provision of protective equipment, the form of the risk assessment necessary and the need for health surveillance to be mandatory in certain circumstances. At second reading, Parliament proposed a further twelve amendments; the Council accepted five linguistic clarifications and the inclusion of a reference requiring employers to segregate incompatible chemicals.

Vocational Training

In December 1994 the Council agreed the Decision establishing the action programme 'Leonardo da Vinci'[1] implementing the European Community Vocational Training Policy. The Parliament's influence on this Decision has been threefold. Parliament ensured that the Programme's priorities should specifically mention access to training for persons disadvantaged by socio-economic, geographical or ethnic factors or by physical or mental disability. Parliament also ensured that the definition of 'vocational guidance' as the provision of advice and information on the choice of an occupation and changes of occupation has been included in the Decision and that the countries of Central and Eastern Europe, which have association agreements with the Community, and also Cyprus and Malta may participate in the programme. The value of the two readings provided for in the 'cooperation procedure' is illustrated in the case of the 'Leonardo' Decision, given that the aforementioned Parliamentary influence arose for the most part following the second reading.

Even though Regulation 1572/98 amending Regulation 1360/90 establishing a European Training Foundation was adopted under the consultation procedure, Parliament secured several notable changes to the Commission's proposal. The Council accepted six of Parliament's seventeen amendments. Parliament secured an amendment to the definition of the functions of the Foundation, deleted the Commission's proposed change to the Director's term of office, and required details concerning staff to be included in the Foundation's budget. Parliament also modified the Commission's proposal that it alone should establish the policy guidelines for the Foundation and introduced an independent element into the procedure for monitoring the work of the Foundation.

Parliament also had a considerable impact on Decision 1999/51 on the promotion of European pathways in work-linked training. In particular, a provision limiting access to European pathways to persons in Member States whose vocational training systems provided for training abroad was dropped, a clearer link between the EUROPASS Training document and the European pathways was introduced and provision was made for the Commission to evaluate the Decision after three years.

Own-Initiative Reports

The five own-initiative reports adopted by Parliament between September 1995 and December 1998 met with mixed success. The Resolution on a reduction and adaptation of working time, which calls

[1] Council Decision 94/819/EC, 6.12.1994, OJ L 340/94, p.8.

for studies of experiments in reducing working time, has been welcomed by the Commission as a valuable contribution to the ongoing debate on the future of European social policy. It has been referred to at some length in the Commission's Green Paper *Partnership for a new organisation of work*, as well as in two other Commission papers and during meetings of the Social Dialogue Committee.

Many of the proposals contained in the Resolution on the future of the European Social Fund are reflected in the Commission's Proposal for new Regulations for the Structural Funds, namely the reduction in the number of Objectives and Community initiatives, an increase in support for preventive employment policy and equal opportunities measures, the simplification and improved definition of responsibilities, the involvement of the social partners and non-governmental organisations in programming, the continued use of the principle of additionality and the creation of a mid-term reserve.

However, the Resolution on the social aspects of housing has received a rather colder reception. Parliament called for the inclusion of a right to housing in the EC Treaty, for the development of a European housing policy and for the Commission to investigate whether the Union should offer loans for housing. The Commission has decided not to respond to this Resolution.

Reacting to the Resolution on trans-national trade union rights in the European Union, the Commission noted that it would not bring forward legislation concerning the right to freedom of association and the right to strike as they were excluded from Article 137 of the Treaty of Amsterdam. Nevertheless, the Commission considered that the question of fundamental social rights required greater consideration at the European level and would encourage initiatives in this field.

The Commission supported Parliament's concerns on the situation of frontier workers in the European Union and noted that its 1997 action plan for free movement of workers had underlined the need to address the problems faced by frontier workers. However, while the Commission both took action against Member States for breaches of the non-discrimination rule and accepted in principle the need for Community action concerning tax jurisdiction, it was difficult to achieve the necessary unanimity in the Council. The Commission drew attention to the recent case law of the European Court of Justice which had improved the position of frontier workers concerning access to health care. The Commission agreed that the European Employment Service Partnerships (EURES) played an important role in informing frontier workers of their rights and drew attention to forthcoming Commission initiatives to improve the dissemination of information. While the Commissioner questioned whether a Directive requiring an assessment of national legislation for its impact on frontier workers was appropriate, he agreed that the Commission would stimulate cross-border co-operation to assess the social and economic effects of national laws on frontier workers.

INTRODUCTION

This Study assesses the impact of the European Parliament on European Community social policy between September 1994 and December 1998; it follows closely the plan and methodology of the two previous Studies on this topic for the period July 1989 to July 1994[2]. The introduction outlines Parliament'srole in the Community's legislative process, summarises the recent academic literature on the extent of its influence and sets out the methodology for analysing Parliament's impact on particular legislative acts. The Study then considers Parliament's contribution to the Intergovernmental Conference and the extent of its impact on the relevant provisions of the Treaty of Amsterdam. The Study goes on to analyse Parliament's contribution to the Luxembourg European Council on Employment. The Study then sets out Parliament's impact on each of the twenty-one legislative acts concerning social policy adopted by the Council between September 1994 and December 1998. Finally, the Study considers the impact of the five own-initiative reports adopted by Parliament during this period.

Parliament's role in the legislative process

During the period in question, legislation could be adopted under four procedures: consultation, co-operation, co-decision and pursuant to the Agreement on Social Policy.

Under the **consultation** procedure, Parliament adopts an opinion on, and can propose amendments to, the Commission's legislative proposal. The Commission modifies its proposal to incorporate any Parliamentary amendments which it accepts. In the Council a qualified majority is required to adopt the legislation and unanimity to amend it. Whenever significant changes are made to the text on which Parliament has given its opinion, Parliament will be reconsulted. Parliament's impact on legislation adopted under the consultation procedure is thus very limited. However, Parliament's role was strengthened in 1980 by the *Isoglucose* judgment, in which the European Court of Justice held that the Council could not adopt legislation under the consultation procedure unless Parliament had delivered its opinion[3]. While this ruling enables Parliament to use the threat of delay to put pressure on the Commission and Council, this threat can only be invoked effectively in respect of urgent matters.

The **co-operation** procedure was introduced by the Single European Act 1986 and the scope of its application was widened by the Treaty on European Union. Under this procedure, Parliament delivers an opinion on, and may adopt amendments to, the Commission's proposal at the first reading. The Commission modifies its proposal to incorporate those Parliamentary amendments which it accepts. The Council then adopts a Common Position; a qualified majority is required to adopt the Commission's proposal and unanimity to amend it. The proposal then passes to Parliament for the second reading. Within three months, Parliament may:

1) approve the common position, which will then be adopted by the Council.

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[2] Directorate-General for Research, European Parliament, *The Impact of the European Parliament on the Community's Social Legislation July 1989 - July 1994*, Working Paper W-5, 9/1994, Social Affairs Series; *The European Parliament's Impact on European Social Legislation agreed under the Treaty on European Union*, WIP/IV/95/03/201.

[3] Case 138/79, *Isoglucose*, (1980) ECR 3333.

2) by an absolute majority, reject the common position. The Commission may then withdraw its proposal. Alternatively, the Commission may place the proposal before the Council, which can overturn Parliament's rejection by unanimity.

3) by an absolute majority, amend the proposal. If the Commission accepts the amendments, the Council can adopt them by qualified majority or reject them by unanimity. If Parliament's amendments are not supported by the Commission, the Council may nevertheless adopt them by unanimity.

Parliament's use of the co-operation procedure has recently attracted considerable academic analysis and has given rise to a vigorous debate between Prof George Tsebelis and Prof Peter Moser. Prof Tsebelis has argued that during the co-operation procedure Parliament acts as a "conditional agenda setter" because it can, at the second reading, propose amendments which, if accepted by the Commission, are easier for the Council to accept than to modify[4]. Thus, if Parliament can propose an amendment which makes both the Commission and a qualified majority of the Member States better off than legislation which requires unanimity, it will be adopted. If, however, Parliament makes an incorrect choice, the power to set the agenda will be transferred to the Council. Thus to wield influence at the second reading, Parliament must propose amendments which make both the Commission and a qualified majority in the Council better off than the *status quo*. Prof Tsebelis illustrates his theory using the example of the Car Emission Standards Directive[5]. At the first reading of the proposal, Parliament rejected the Commission's proposed standards (known as 30/8) as inadequate and proposed a stricter standard (known as 20/5 or US-83). Parliament's amendments were rejected by the Commission and the Council adopted the original standard of 30/8 by qualified majority. At the second reading, Parliament threatened that unless the Commission agreed to accept a limit of 20/5, it would reject the Common Position. Rejection would have terminated the initiative as it was clear that the Member States could not achieve unanimity in the Council in order to revive the Common Position after Parliamentary rejection. Prof Tsebelis argues that the threat of rejection was credible, given that European public opinion is sensitive to environmental issues and that Parliamentary elections were approaching. Not wanting to lose the legislation entirely, the Commission had no choice but to accept the amendment and the Council, unable to achieve unanimity to reject it, adopted the Directive by a qualified majority.

Prof Moser starts by asking why the Commission sometimes accepts amendments proposed by Parliament at second reading which it has earlier rejected after the first reading. He argues that Parliament is only influential when the restrictions which it faces change unexpectedly *during* the decision-making process[6]. The Commission drafts its original proposal knowing that it must be

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4 Tsebelis, G., *The Power of the European Parliament as a Conditional Agenda Setter*, 88 (1994), American Political Science Review 128; *More on the European Parliament as a Conditional Agenda Setter: Response to Moser*, 90 (1996), American Political Science Review, 839.

5 Council Directive of 18.7.1989 amending with regard to European emission standards for cars below 1.4 litres, Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles, OJ L 226/89, p.1.

6 Moser, P., *The European Parliament as a Conditional Agenda Setter: What are the Conditions? A Critique of Tsebelis*, 90 (1996), American Political Science Review 834; *A Theory of the Conditional Influence of the European Parliament in the Co-operation Procedure*, 91 (1997), Public Choice 333; Hubschmid, C., and Moser, P., *The Co-operation Procedure in the EU: Why was the European Parliament Influential in the*

supported by a qualified majority in the Council after the first reading; if, after the Council has adopted the Common Position, a Member State previously opposed to certain aspects of the proposal changes its position, the Commission cannot change its proposal. However, Parliament can propose amendments, which the Commission will support so long as it feels it can still obtain a qualified majority in the Council. Thus Prof Moser argues that Parliament can only make a successful amendment at second reading if during the legislative process conditions change so that the Commission prefers the amendment to the Common Position, at least one Member State prefers the amendment to the Common Position and the amended proposal is preferred to the reversion position (the position if the legislation is not adopted) by a qualified majority of the Council. Prof Moser argues that Parliament was able to exercise influence on the Car Emissions Directive because of an unexpected change in the reversion position during the legislative process. Following the adoption of the Common Position, the European Court of Justice handed down the *Danish Bottles* judgment, in which it accepted that the protection of the environment could justify the adoption by Member States of laws which could restrict free trade[7]. This decision cleared the way for those Member States which preferred stringent emissions standards to introduce national legislation on car emissions, which would have undermined the common market in automobiles. The reversion position thus changed from the *status quo*, which had been acceptable to a qualified majority in the Council, to a fragmented internal market, which was unacceptable. In Prof Moser's view, it is simplistic to suggest that the threat of rejection alone was sufficient to persuade the Commission to accept the amendments[8], as Parliament's threat would not have been credible so long as it believed that the Common Position was preferable to the reversion position.

That Prof Tsebelis and Prof Moser use the same factual example, the Car Emissions Directive, to support their opposing arguments illustrates the difficulty of constructing a general model for analysing the influence of Parliament on Community legislation. Moreover, both authors concentrate on an atypical situation, where Parliament was threatening to veto an entire proposal. In almost all cases, however, Parliament will be proposing a variety of amendments, ranging from minor technical changes to substantial changes in certain provisions; Parliament may propose certain amendments which it knows have no hope of acceptance in order to pressure the Commission and Council to make concessions on other amendments or to include similar provisions in other legislation. Inter-institutional negotiations will thus be characterised by pragmatism, flexibility and bargaining, which cannot readily be analysed by means of a general model. David Judge and David Earnshaw have argued that Parliament's influence can best be assessed by means of detailed empirical analysis: "Statements about the 'influence' of the European Parliament should be specific rather than general and empirical rather than assertive ... significant variations across and within policy fields and across and within particular time periods are to be expected"[9]. Any attempt to assess Parliament's role in aggregate terms is unrealistic as much of Parliament's influence is exercised in the informal process of inter-institutional bargaining; as Earnshaw and Judge note, "the exertion of influence by the European Parliament is characteristically a covert and indirect

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Decision on Car Emission Standards?, 35 (1997), Journal of Common Market Studies, 225.

7 Case 302/86, *Commission v Denmark*, (1998) ECR 4607.

8 For this analysis, see Corbett, R., Jacobs, R., and Shackleton, M., *The European Parliament*, p.198, Cartermill, London 1995.

9 Judge, D., Earnshaw, D., and Cowan, N., *Ripples or Waves: The European Parliament in the European Community policy process*, 1 (1994), Journal of European Public Policy, 27-49.

process"[10]. Parliament may, for example, exert a significant influence on legislation by means of informal discussions with the Commission during the formulation of a proposal. Moreover, Parliament'spotential influence varies according to the type of policy under consideration. Certain policies, for example, such as distributive policies whereby subsidies are provided to certain sectors, are characterised by close, stable and co-operative relations between the actors involved which reduce the scope for Parliamentary influence. When regulatory policy is being developed, however, the relations between policy actors are far less stable and more open to Parliamentary pressure.

The **co-decision** procedure was introduced by the Treaty on European Union and is a development of the co-operation procedure. There are three main differences to the co-operation procedure. First, if the Council does not accept all of the amendments adopted by Parliament at the second reading, the text is referred to a Conciliation Committee composed of the members of the Council and an equal number of representatives of Parliament. The Committee, in which the Commission may participate, has six weeks to negotiate a compromise which shall be approved by both sides. Agreement is reached by a qualified majority in the Council and a simple majority among Parliament's delegation. If the Committee fails to reach agreement, the Council may adopt the proposal unilaterally, unless Parliament rejects it by an absolute majority within a further six weeks. Second, if Parliament rejects a text at second reading, the Council cannot override the rejection. Parliament must first announce its intention to reject the text; the Council may then convene the Conciliation Committee. Following conciliation, Parliament can either proceed to reject the text or propose amendments to it in the normal way. Third, amendments adopted by Parliament at second reading are not incorporated into a revised Commission proposal but are submitted individually to the Council. If the Commission accepts the amendments, the Council can adopt them by qualified majority; if the Commission rejects them, the Council can accept them only by unanimity. This represents a significant development in respect of amendments accepted by the Commission. Under the co-operation procedure, the Council could only remove such amendments either by unanimity or by threatening not to adopt the text in order to persuade the Commission to withdraw them. Under the co-decision procedure, the Council has to support each amendment by qualified majority.

Richard Corbett and Francis Jacobs have argued that the ability of the Council to adopt unilaterally a text referred to a Conciliation Committee appears to weaken Parliament's influence, as Parliament, preferring imperfect legislation to no legislation, is likely to be reluctant to reject texts outright and loath to be perceived as responsible for failures in the legislative process[11]. Moreover, the Council will be able to exploit the requirement for an absolute majority in Parliament to reject the measure. There will thus be little incentive for the Council to compromise in the Conciliation Committee. On the other hand, the advantage in the Conciliation Committee lies with the party which can force the other to choose between a weak measure or nothing at all, which may not always be the Council. Where, for example, the impetus for measures modifying existing legislation has come from the Member States, Parliament will have the upper hand.

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[10] Ibidem, p.33. See also Judge, D., and Earnshaw, D., *Weak European Parliament Influence: A Study of the Environment Committee of the European Parliament*, 29 (1994) Government and Opposition 262; *From co-operation to co-decision: The European Parliament's path to legislative power*, 96 in Richardson, J.J., (ed), *European Union: Power and Policy-making*, Routledge, London, 1996.

[11] Corbett, Jacobs and Shackleton, op. cit, p.201.

Legislation may also be adopted under the **Agreement on Social Policy** annexed to the Treaty on European Union by Protocol 14 on Social Policy[12]. Under Article 2(2) of the Agreement, the co-operation procedure shall be used for Directives concerning workers' health and safety, working conditions, the information and consultation of workers, sex equality concerning labour market opportunities and treatment at work, and the integration of persons excluded from the labour market. Article 2(3) provides that in the fields of social security and social protection of workers, protection of dismissed workers, the representation and collective defence of workers' and employers' interests, employment conditions for third-country nationals resident in the Community and financial contributions for employment promotion, the Council shall act unanimously on a proposal from the Commission after consulting the Parliament and the Economic and Social Committee.

Articles 3 and 4 provide for a further option. Article 4(2) states that agreements concluded at Community level between the social partners may be implemented in accordance with the procedures and practices specific to management and labour and the Member States; a Declaration to Article 4(2) provides that the content of the agreements will be developed by collective bargaining according to the rules of each Member State[13]. Moreover, under Article 4(2), agreements concluded between the social partners which concern matters covered in Article 2 may, at the joint request of the signatories, be implemented by a Council Decision on a proposal from the Commission. In such cases, the Council shall act by a qualified majority, unless the agreement contains at least one provision relating to an area referred to in Article 2(3), in which case the Council shall act unanimously. In its Communication on the application of the Social Agreement, the Commission noted that Article 4(2) did not provide for consultation of Parliament. Nevertheless, the Commission noted that it intended to send Parliament the texts of agreements so that Parliament could, if it wished, deliver its opinion. It appears, however, that such opinions will have no effect on the Agreement which has already been concluded. The Communication also noted that Article 4 did not provide for amendment of the agreement by the Council; should the Council decide not to adopt a Decision implementing the agreement, the Commission would withdraw its proposal.

During the period covered by this study, two Directives, which implemented agreements between the social partners on parental leave and part-time work, were adopted under Article 4(2) of the Agreement[14]. In both cases, Parliament made criticisms of the agreements, which were ignored by

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12 It is controversial whether instruments adopted under the Agreement on Social Policy constitute Community legislation. While the Commission has stated that "the Community nature of measures taken under the Agreement is beyond doubt", the British government has argued that the Agreement constitutes an inter-governmental, rather than a Community agreement, and that measures adopted thereunder fall outside the *acquis communautaire*. European Commission, *Communication concerning the application of the Agreement on Social Policy*, 14.12.1993, COM(93)0600. Statement of Eric Forth, Parliamentary Under-Secretary of State, Department of Employment to the House of Lords Select Committee on the European Communities, *Social Policy after Maastricht*, p.13, Her Majesty's Stationery Office, London.

13 For detailed analysis of this rather ambiguous provision, see Bercusson, B., and van Dijk, J.J., *The Implementation of the Protocol and Agreement on Social Policy of the Treaty on European Union*, 11 (1995), International Journal of Comparative Labour Law and Industrial Relations 3.

14 Council Directive 96/34/EC on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145/96, p.4.
Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ L 14/98, p.9.

both Commission and Council. Parliament expressed considerable frustration at its effective exclusion from the legislative process when Directives were adopted under Article 4(2); one Parliamentary Rapporteur noted that this procedure in practice reduced Parliament to an onlooker[15].

Evaluation of Parliament's impact

This Study does not attempt to evaluate the impact which Members of the European Parliament may have on social legislation through informal discussions or meetings with the Commission or Presidency, as it would be extremely difficult systematically to analyse such influence[16]. Instead, this Study analyses the number and significance of the amendments tabled by Parliament in respect of each legislative proposal and the number and significance of the amendments accepted by the Commission and Council, either wholly or in part. The significance of proposed amendments varies substantially; some amendments merely alter the recitals of a text or refine its language, while others may fundamentally alter the nature of a proposal. Calculating the number of amendments accepted without also indicating their significance would thus give a misleading picture. Thus, as in the previous Studies on this topic, Parliament's amendments will be divided into three categories:

A Amendments which concern the wording, arrangement or emphasis of a proposal without changing its sense or objective;

B Amendments which add to or modify the content of a proposal;

C Amendments which add new provisions to a proposal.

The Development of Community Social Policy

The development of European Community social policy is usually divided into five stages, of which the first was a period of neo-liberalism between 1957 and 1972[17]. The Treaty of Rome itself was concerned principally with creating a customs union and common market and contained only very limited references to social policy. Article 3, setting out the activities of the Community, referred to social policy only in the context of the free movement of persons and the establishment of a European Social Fund. The Title on Social Policy, with the exception of Article 119 on equal pay for men and women, was exhortatory. Article 117 noted that the Member States agreed upon the need to promote improved working conditions and living standards, but envisaged that the functioning of the common market and approximation of laws would bring this about without the need for further action. Article 118 provided only for the Commission to promote "close co-operation" between the Member States in the social field. In the absence of express legislative

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15 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Anne-Karin Glase), *Report on the Commission Proposal for a Council directive on the Framework Agreement concluded by UNICE, CEEP and the ETUC on parental leave,* Report A4-0064/96, 29.2.1996.

16 For a general description of the way in which MEPs may exert informal influence on the legislative procedure, see Earnshaw, D., and Judge, D., *The Life and Times of the European Union's Co-operation Procedure,* 35 (1997), Journal of Common Market Studies 543.

17 See generally Nielsen, R., and Szyszczak, E., *The Social Dimension of the European Union,* pp.15-63, Handelshojskolens Forlag, Copenhagen, 1997; Davies, P.L., *The Emergence of European Labour Law,* 313 in McCarthy, W. (ed), *Legal Intervention in Industrial Relations: Gains and Losses* Blackwell, Oxford, 1992.

powers in the Title on Social Policy, legislation affecting social affairs could only be adopted either under Article 100 concerning the approximation of laws which affect the functioning of the common market or Article 235. As the Member States assumed that social benefits for workers would be produced through the improved operation of the market rather than through legislation, the output of social legislation (outside the area of free movement) was exiguous.

Fearing a popular political reaction against the process of economic integration unless it was accompanied by a social policy giving the Community a "human face", the Member States in 1972 adopted the Paris Declaration, which noted that they "attached as much importance to vigorous action in the social field as to the achievement of economic union"[18]. In 1974, the Community adopted a Social Action Programme[19] containing thirty-six initiatives to promote full and better employment, improved living and working conditions and greater industrial democracy, which led to important Directives on equal pay, collective dismissals, acquired rights, equal treatment in social security and employees' rights upon an employer's insolvency. Moreover, a further Action Programme in the field of health and safety at work led to the adoption of numerous Directives in this field.

This period of activism ended at the start of the 1980's; high unemployment, increased competition from countries which were perceived as gaining an advantage from labour market flexibility and, most importantly, the extreme hostility of the Thatcher government to Community regulation of social issues brought about a change in the direction of Community policy. As unanimity in the Council was required under Articles 100 or 235, the United Kingdom government was able to block all social policy initiatives, with the result that the period between 1980 and 1986 was almost a "complete blank"[20] for social policy legislation, except for measures concerning health and safety.

The 1986 Single European Act promised an end to this *impasse* by introducing new bases for social policy. Article 118a SEA, the first legal base dedicated to social policy measures, enabled the Council using the co-operation procedure to adopt Directives concerning health and safety, especially in the working environment. Article 100a also facilitated the adoption of social policy measures by enabling the Council to use the co-operation procedure to adopt measures concerning the establishment and functioning of the internal market; however, Article 100a(2) excluded measures relating to the rights and interests of employed persons. Article 118b SEA authorised the Commission to develop the dialogue between the social partners at the European level; this provision has been used to formalise the Val Duchesse dialogue between the social partners in the form of a Social Dialogue Committee.

The Commission made clear that the renewed drive to complete the internal market signalled by the SEA should be accompanied by development of the Community's social dimension; as Jacques Delors noted, "our ultimate aim must be the creation of a European social area". In developing the social dimension, the Commission rejected both the idea that a "single harmonising framework" should be applied to all social matters at Community level and the option of a decentralised approach allowing competition between different social policy regimes; instead, a "middle road"

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18 Shanks, M., *The Social Policy of the European Communities*, 14 (1977), Common Market Law Review 373.

19 Bulletin Supplement 2/74.

20 Davies, op. cit., p.332.

was sought[21]. The Commission decided that the middle road lay in setting out a core of social rights for workers, which became the Community Charter of the Fundamental Social Rights of Workers adopted in 1989. The Charter included a number of innovative provisions, such as the right of workers to an equitable wage, the right of trade unions to negotiate with employers and the right to strike. As the Charter was neither a legally binding document nor a legislative base for Community action, in 1989 the Commission produced an Action Programme outlining its proposals to implement it[22]. The Action Programme was quite modest in scope; in some areas covered by the Charter, such as freedom of association, the Commission suggested no action should be taken at Community level, while in other areas, such as a minimum wage, non-binding, rather than legislative, instruments should be adopted. Progress on implementing the Action Programme has been slow. Although by the end of 1991 the Commission had presented all forty-seven initiatives set out in the Action Programme, outside the area of health and safety only five Directives had been adopted by September 1995. Between September 1995 and December 1998, by comparison, eight Directives relevant to social policy were adopted, including three concerning health and safety[23].

Although most Member States favoured inclusion of a new Chapter on Social Policy in the Treaty on European Union, the refusal of the United Kingdom government to accept this led to an Agreement on Social Policy being concluded among eleven of the Member States and annexed to the Treaty by Protocol 14. This Agreement provided for the first time a clear legal base for action in a broad range of fields, which have been summarised above. By September 1995, only Directive 94/45 on the establishment of European Works Councils had been adopted under the Agreement on Social Policy[24].

In the mid-1990's, Community social policy entered a period of uncertainty. Despite broad consensus that a high degree of social protection represented a fundamental and indispensable component of the European social model, existing social policy had failed to meet the challenges of persistently high unemployment, increasing numbers living in poverty and high public sector deficits. The publication in 1993 of a Commission White Paper *Growth, Competitiveness and Employment*[25] marked the beginning of a series of Papers, Reports and Resolutions in which the Commission and Parliament grappled with the question of how both the Member States' and

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21 See the Report of the Commission's Inter-departmental Working Party, *The Social Dimension of the Internal Market*, Social Europe, Special Edition, 1988.

22 European Commission, *Communication from the Commission concerning its Action Programme relating to the Implementation of the Community Charter of Basic Social Rights for Workers*, 29.11.1989, COM(89)0568.

23 A further three Directives, namely Directives 97/74, 97/75 and 98/23, merely extended measures adopted under the Agreement on Social Policy to the United Kingdom. A further Directive, 98/59, on collective redundancies was a codification measure.

24 Council Directive 94/45/EC of 22.9.1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 254/94, p.64.

25 Bulletin Supplement 6/93.

Community social policy should be reformed to meet contemporary conditions[26]. Discussion of the future of social policy in Europe revolved around three central themes. First, there was consensus that high unemployment was the Union's most pressing problem and that part of the solution lay in changes to social policy[27]. Financing transfers to persons not in employment had become an increasingly heavy burden on those in work; taxes on labour were holding back employment and economic growth and should be reduced. Moreover, taxation and social protection systems should be reformed to ensure that they offered incentives for job-seekers, rather than encouraging dependency on social security benefits. Unemployment schemes, designed on the assumption that most of the unemployed would soon find new jobs using their existing skills, had to be altered to encourage the unemployed to retrain and acquire new skills.

Second, social policy had to respond to radical social, economic and technological changes. Patterns of working life in Europe were changing; the service sector was becoming more important while the manufacturing sector declined, simple low-skilled jobs were being replaced with jobs requiring more complex and broader skills, part-time and temporary work was becoming common and working lives were shortening. These changes in working patterns "called into question the basic foundations upon which labour law and industrial relations are built"[28]; downsizing, outsourcing, subcontracting, teleworking, networking and joint ventures were becoming commonplace but had barely been envisaged by traditional labour law and social policy. Moreover, the ratio of older people to persons of working age was increasing in most Member States to unprecedented levels, which posed problems for the financing of public pension and health-care systems. Increasing numbers of women were participating in the workforce, so that new arrangements for reconciling work and family life were necessary. Women's traditional dependence upon social security rights derived from a working husband required reform, especially in view of the decline in marriage. Reform of social protection systems was essential, not to lower standards, but to "replace the old rigidities with more flexibility while at the same time maintaining the

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26 The most important Commission Papers were *European Social Policy - A Way Forward for the Union*, COM(94)0333; *The Future of Social Protection: A Framework for a European Debate*, 31.10.1995, COM(95)0466; *Teaching and Learning: towards a Learning Society*, COM(95)0590; *Living and working in the information society*, Bulletin Supplement 3/96; *Partnership for a new organisation of work*, Bulletin Supplement 4/97; *Modernising and Improving Social Protection in the European Union*, 12.3.1997, COM(97)0102; *Adapting and promoting the social dialogue at a Community level*, 20.5.1998, COM(98)0322; *Community policies in support of employment*, 3.6.1998, COM(98)0354; *Job opportunities in the Information Society: Exploiting the potential of the Information Revolution*, 25.11.1998, COM(98)0590; *Modernising the organisation of work - a positive approach to change*, 25.11.1998, COM(98)0592.
Important Parliamentary Resolutions include: Resolution on the White Paper on "European Social Policy: A Way Forward for the Union", 19.1.1995, OJ C 363/95, p.94; Resolution on a reduction and adaptation of working time, 18.9.1996, OJ C 320/96, p.97 (considered in Chapter 5); Resolution on "The Future of Social Protection: A Framework for a European Debate", 19.2.1997, OJ C 85/97, p.63; Resolution on the Green Paper on "Living and Working in the Information Society", 11.3.1997, OJ C 115/97, p.36; Resolution on the Commission's White Paper on "Teaching and Learning; towards a Learning Society", 12.3.1997, OJ C 115/97, p.85; Resolution on the Commission Communication on Modernising and Improving Social Protection in the European Union, 6.11.1997, OJ C 358/97, p.51; Resolution on the Commission Green Paper "Partnership for a new organisation of work", 16.12.1997, OJ C 14/98, p.34; Resolution on "Adapting and promoting the Social Dialogue at the Community level", 18.11.1998, OJ C 379/98, p.47.

27 e.g. Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 2 December 1996 on the role of social protection systems in the fight against unemployment, OJ C 386/96, p.3.

28 *Partnership for a new organisation of work*, op. cit., p.14.

objective of solidarity"[29]. The central question for Europe was "How to reconcile security for workers with the flexibility which firms need"[30]?

Third, it was suggested that the promotion of economic and social rights should be placed at the heart of the Union's activities. Social policy should no longer be seen as an attempt to soften the rigours of the free market but as a functional policy essential to ensure productivity and competitiveness; contemporary changes in "the economy of production and services are consistent with, and indeed predicated on, a move towards worker citizenship"[31]. Increasing demand for highly-skilled workers - the "re-professionalisation of work" - who, in turn, sought greater participation and responsibility at work, the need to provide lifelong learning and the replacement of hierarchical working structures with organisations allowing greater worker autonomy would provoke demands for greater social rights: the more working life becomes flexible, the more citizens will demand security from their social protection systems[32]. Moreover, the European Union's sometimes fragile legitimacy could be bolstered by a stronger commitment to social rights. The European Commission's Comité des Sages, established to consider the future role of European social policy, recommended, *inter alia*, that the Intergovernmental Conference should enshrine in the Treaty a basic set of fundamental civic and social rights with direct effect[33].

Action so far has concentrated on promoting employment. The 1994 Essen European Council called for the Member States to take action in five areas of employment policy: to promote investment in vocational training; to increase the employment-intensiveness of growth by, *inter alia*, facilitating a more flexible organisation of work; to reduce non-wage labour costs; to move from a passive to an active labour market policy and to reduce disincentives to work; and to improve measures for the groups worst-affected by unemployment[34]. The Council also called for the Member States to incorporate these recommendations into their national policies by drawing up multi-annual action programmes. The Madrid European Council, on the basis of a joint report on employment from the Commission and Council, decided on the priority spheres of action in these employment programmes. In 1996, the Commission launched the European Confidence Pact for Employment, which had four main strands: the creation of a macro-economic framework favourable to growth, especially by switching from passive to active measures against unemployment; harnessing the full potential of the single market; speeding up the reform of employment systems; and mobilising Community structural policies to promote employment[35]. The Confidence Pact was endorsed by the Dublin European Council, which also called for greater efforts to improve labour market efficiency and for reform of taxation and social protection systems to stimulate

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29 *The Future of Social Protection: A Framework for a European Debate*, op. cit., p.1.

30 *Partnership for a new organisation of work*, op. cit., p.12.

31 B Bercusson et al, *A Manifesto for a Social Europe*, 3 (1997) European Law Journal 189 at 197.

32 *Modernising and Improving Social Protection in the European Union*, op. cit., p.2.

33 European Commission, Comité des Sages, *For a Europe of Civil and Social Rights*, Luxembourg, 1996.

34 Bulletin 12/1994, para.I.3.

35 Bulletin Supplement 4/1996.

employment[36]. The introduction of a Chapter on Employment in the Treaty of Amsterdam, which largely institutionalised the procedures agreed by the Essen European Council, and the Luxembourg European Council on Employment constituted the next steps in the Community's employment strategy and are considered in detail in the next Chapter.

In April 1998, the Commission adopted its Social Action Programme for 1998 to 2000, which developed the themes outlined above[37]. The Commission argued that Community social policy must meet the challenges posed by high unemployment, the changing world of work and poverty and social exclusion, as well as keeping pace with European Monetary Union, an ageing population and the enlargement of the Union to the east. The Commission thus proposed action in three areas. In the field of jobs, skills and mobility, the Commission noted that the national employment action plans to be drawn up under the new provisions of the Treaty of Amsterdam had great potential for job creation. The Commission's contribution to job creation would consist of ensuring full implementation of the employment guidelines, improving the exchange of best practice and innovation, stimulating a debate on modernisation of public employment services, presenting proposals for new education and training programmes and presenting a Communication on increasing employment among disabled persons. Moreover, the Commission will bring forward proposals to remove the remaining obstacles to free movement of workers.

Turning to changes in working practices, the Commission argued that a balance must be struck between flexibility and security. The Commission would bring forward measures to modernise the organisation of work and to promote adaptability, to anticipate industrial change and to protect health and safety. In particular, it would consult the social partners on a framework agreement addressing all elements of work organisation, encourage more flexible contractual arrangements, consider measures to protect teleworkers, present proposals to extend the scope of the Working Time Directive and seek to encourage greater financial participation by employees in companies. To anticipate industrial change, the Commission would pursue the adoption of minimum standards for national information and consultation, present a report on the functioning of the Works Council Directive, report on the impact on employment of electronic commerce and multimedia and maximise the contribution of the information society to employment and social inclusion. On health and safety, the Commission argued that, the appropriate legislative framework having largely been put into place, attention must now turn to ensuring effective implementation and adapting standards to new working practices.

Finally, the Programme turned to the issue of promoting an inclusive society. The Commission would focus on making tax and benefit systems more "employment-friendly", reforming and simplifying Regulation 1408/71, updating the legislative framework for equal treatment of men and women in social security schemes and following up its earlier proposals on supplementary pensions. The Commission noted that while the new employment strategy would promote social inclusion by targeting those excluded from the labour market, other measures were necessary; the Commission intended to present several reports on social exclusion and integration, including reports on issues affecting older people and the integration of refugees. Finally, the Commission noted that the Treaty of Amsterdam would enable the Community to take specific measures against discrimination. The Commission would develop initiatives concerning sexual harassment in the

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[36] Bulletin 12/1996, para.I.5.

[37] European Commission *Social Action Programme 1998-2000*, 29.4.1998, COM(98)0259.

workplace, violence against women, racial discrimination and equality of opportunity for the disabled.

On 18 November 1998, Parliament approved with reservations the Social Action Programme[38]. In particular, Parliament deplored the Commission's increasing use of non-binding instruments rather than Directives in this field and regretted that the Programme covered only two years rather than the period 1998-2006. Parliament also suggested that action was required in a number of particular areas. The Resolution called for the Commission to make an explicit commitment to worker involvement in company decision-making, for a Communication on the future of the civil dialogue, for further consideration to be given to drawing up a Bill of Rights at the Community level, for an anti-discrimination action programme and for specific measures to be taken in connection with Directives on public contracts to ensure that social legislation in force was respected. Moreover, Parliament urged the Commission to take action to protect home workers, to bring forward legislation on sexual harassment, to take steps to overcome the gap in men's and women's salaries, to adopt supplementary measures concerning the position of spouses assisting in businesses and to report on the implementation of the Directive on pregnant workers.

[38] Resolution on the Commission's Social Action Programme 1998-2000, 18.11.1998, OJ C 379/98, p.54.

I. THE TREATY OF AMSTERDAM AND THE LUXEMBOURG EUROPEAN COUNCIL ON EMPLOYMENT

The Intergovernmental Conference

Preparations for the Intergovernmental Conference began in June 1994 when the Corfu European Council established a Reflection Group[39]. The Reflection Group was composed of fifteen personal representatives of the foreign ministers of the Member States, a representative of the Commission, and two Members of the European Parliament, Elisabeth Guigou and Elmar Brok; the Reflection Group was intended not as a negotiation but as an opportunity to identify the issues, and to examine the options, before the Intergovernmental Conference itself. On 17 May 1995, Parliament adopted a Resolution on the functioning of the Treaty on European Union with a view to the Intergovernmental Conference, which set out its proposals for revision of the Treaty[40]. The Resolution proposed *inter alia*:

1) That working towards full employment should be made an explicit goal of the Member States and the Union, and that an Employment Committee, endowed with the same powers as the Monetary Committee, should be established;

2) That greater substance should be provided to the concept of European Union citizenship through developing certain rights, including mentioning the fundamental rights of workers set out in the 1989 Community Charter of the Fundamental Social Rights of Workers, enlarging upon them and extending them to all citizens of the Union;

3) That the principle of economic and social cohesion in the Treaty should be reinforced;

4) That the provisions in the Treaty concerning equal rights for women should be extended beyond economic rights to encompass all aspects of equality; and

5) That social policy should be a core area of Union competence, with incorporation of the Agreement on Social Policy and an end to the United Kingdom opt-out, and should be better integrated with economic policy as a whole.

Parliament thus defined its position in the Intergovernmental Conference well before any other Institution or Member State. In the early stages of the Reflection Group, Parliament's representatives were the only delegates with firm proposals for modifying the Treaty; no Member State had produced detailed ideas and the Commission's report to the Group was restricted to analysing the Treaty on European Union without proposing reforms[41]. Thus the two MEP's were to a large extent able to set the agenda of the Reflection Group[42]. In its Report submitted to the

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39 Bulletin 6/1994, para.I.25.

40 Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union, 17.5.1995, OJ C 151/95, p.56.

41 Commission Report for the Reflection Group, May 1995, CC-89-95-357-EN-C.

42 R Corbett, *The European Parliament's Role in Closer EU Integration*, p.372, Macmillan, London, 1998.

December 1995 Madrid European Council, the Reflection Group noted that many of its members wanted the Treaty to contain a clearer commitment on the part of the Union to achieving greater economic and social integration and cohesion geared to promoting employment, as well as provisions enabling the Union to take co-ordinated action on job creation[43]. All but one member stressed the need to incorporate the Agreement on Social Policy into the body of the Treaty as an expression of common European values so that a proper social climate could accompany economic integration; one member opposed incorporation of the Agreement because it would reduce competitiveness. Some members suggested that the Treaty should include other references to economic and social rights, such as the right to employment; some members favoured the incorporation of the European Social Charter into the Treaty.

The Group stressed the need to meet the challenge of job creation and accepted that increased competitiveness is the key to generating jobs. It emphasised that the Union could not ignore the economic and social effects of national policies and that it should co-ordinate and mobilise national efforts in a common direction. A large majority of the Group felt that employment was not a sectoral policy but an objective of the Union; the legal base for the Union to act in this area should be strengthened. Some members felt that job creation should be included among the tasks mentioned in Article 3 of the EC Treaty. Some members also felt that competitiveness should be mentioned in Article B. Several members wanted a new Chapter on employment policy and favoured the creation of a Committee on Employment to monitor the effect of the Union's policies and funds on employment. Other members, however, felt that a new chapter on employment was unnecessary and would do nothing to stimulate job creation, which depended upon competitiveness, flexibility and the reduction of bureaucratic burdens. These members also stressed that employment policy was primarily a matter for the Member States.

A broad majority of members appreciated the contribution of the Economic and Social Committee as a consultative organ in economic and social matters and felt that its abilities should be better exploited at the consultative stage of legislation. One member questioned the future role of the Committee given the increased use of White and Green papers.

Thus while the Report demonstrated majority support for many of Parliament's proposals on social policy, it was also clear that there were sharp differences of opinion between certain members of the Group; the Report was studded with phrases such as "one of us is opposed to" and "a broad majority favours".

The Intergovernmental Conference opened on 29 March 1996 following the Turin European Council. Consulted pursuant to Article N of the Treaty on European Union, Parliament adopted a Resolution on 13 March in which it expressed support for the convening of the Conference[44]. Parliament reaffirmed that its previous Resolution of 17 May 1995 remained the basis of its position for the Conference and repeated the points made therein. The Resolution also called for:

1) Article 119 to be revised to make explicit reference to affirmative action;

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43 General Secretariat of the Council, *Reflection Group Report*, December 1995.

44 Resolution embodying (i) Parliament's opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and a definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference, 13.3.1996, OJ C 96/96, p.77.

2) Economic and social rights with trans-national scope to be defined clearly, especially the individual and collective rights of employees;

3) The traditional position of social groups in the Member States to be respected and not impaired by Community legislation;

4) Third-country nationals legally resident in the Union to be given guarantees concerning *inter alia* non-discrimination with regard to social and economic rights;

5) The Treaty to include an obligation on the Commission to submit a set of measures, accompanied by a schedule, needed to create a social union;

6) The Treaty to provide a clear obligation for the Union to develop a policy to overcome social injustice, exclusion, discrimination and poverty and to grant the Commission the necessary powers to implement this policy;

7) The Treaty to be supplemented by a new chapter establishing a Union for Employment, specifying common objectives and procedures, and marking the parties' commitment to basic principles of employment policy;

8) Article 2 to specify the Community's social function of promoting a high level of employment and of social protection for men and women;

9) The objective of a high level of employment to be set out in Article 3a(3) among the guiding principles for the Member States and Union with a view to economic and monetary union and for this objective to be referred to in other relevant Articles;

10) The European Council to be instructed to adopt the main guidelines for economic and employment policy in order to ensure the necessary balance between these areas of action; and

11) For Article 1 of the Agreement on Social Policy to be amended so as to include the principle of "harmonisation while ... improvement is being maintained".

In December 1995, the Madrid European Council had agreed that the Conference would meet monthly at foreign minister level; preparations would be conducted by weekly meetings of a working party composed of a representative of each Foreign Minister and of the Commission[45]. France and the United Kingdom opposed the participation of Parliament in the Conference, but other Member States accepted Parliament's argument that it should play a similar role in the negotiations to the European Commission. A compromise was reached in March 1996 at the Turin European Council. It was agreed that meetings of the European Council dealing with the Conference would begin, as usual, with an exchange of views with the President of Parliament, that the ministerial meetings of the Conference would be preceded by an exchange of views with the President of Parliament, assisted by representatives of Parliament and that at the same time as these meetings, the Presidency of the Council would organise working meetings to enable a detailed exchange of views between the foreign ministers' representatives and the representatives of

[45] Bulletin 12/1995, para.I.48.

Parliament[46]. Moreover, the Presidency would regularly provide information to Parliament; Parliament again appointed Elisabeth Guigou and Elmar Brok as its representatives. Moreover, Parliament obtained information about the progress of the negotiations from the Greek foreign minister's representative, Yannos Kranidiotis, who was also an MEP. Thus although it did not participate directly in the Conference, Parliament was more closely involved in the negotiations than in any previous Intergovernmental Conference. In its Resolution on the outcome of the Turin European Council, Parliament noted the decision concerning the participation of its representatives and warned that it would monitor the development of an adequate practice[47].

In its Opinion for the Intergovernmental Conference, the **European Commission** argued that the European social model, which was a component of European citizenship, should be strengthened and made more explicit in the revised Treaty[48]. The Commission recommended the introduction of a ban on all forms of discrimination and in particular discrimination based on sex. Specific provisions on employment should be added to the Treaty, with the object of establishing a common employment strategy, stimulating co-operation, consolidating multilateral surveillance of Member States' employment programmes and ensuring that employment was taken into account in all Community policies. In order to ensure that all European citizens enjoyed a common set of social rights, the Agreement on Social Policy should be incorporated into the Treaty. Clearer provision should be made for co-operation on social policy issues such as fighting marginalisation and poverty. Better ways must also be found of involving those sectors of civil society capable of developing initiatives and new forms of solidarity.

Austria stressed that, as the United Kingdom had secured unwarranted competitive advantages from its exclusion from the Agreement on Social Policy, the Agreement should be brought within the Treaty[49]. Austria also argued that a simplified form of the co-decision procedure should apply to all legislation concerning social policy or employment. Action against unemployment should be a major priority for the Union. A control mechanism should be introduced to co-ordinate and monitor employment policy in the Member States; consultation on employment policy between the Employment Council and ECOFIN should be improved. The Commission should examine all future proposals to determine their impact on social policy and employment. Moreover, Austria believed that the provisions of the European Social Charter should be incorporated into the Treaty and that the principle of gender equality should be strengthened, with the introduction of a reference to positive discrimination.

The **Benelux** states proposed the creation of a common social core for all the Union's citizens, starting with the integration of the Agreement on Social Policy into the Treaty. They suggested that the Treaty should contain an explicit reference to the complementary role of the Union in promoting

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46 Bulletin 3/1996, para.I.8.

47 Resolution on the outcome of the European Council meeting in Turin on 29 and 30 March 1996, 17.4.1996, OJ C 141/96, p.133.

48 European Commission, *Reinforcing political union and preparing for enlargement*, 28.10.1996, COM(96)0090.

49 The positions of the Member States are collected in Directorate-General for Research, European Parliament *White Paper on the 1996 Intergovernmental Conference (Volume II): Summary of positions of the Member States with a view to the 1996 Intergovernmental Conference*, Luxembourg, 1996.

employment. Employment policy co-ordination between the Member States should take the form of annual Commission recommendations to be adopted by the Council, with especial stress on measures to improve the operation of the labour market, to promote mobility and training, to reduce labour costs and to improve access to the labour market for the less-favoured. The Community should make a greater contribution to investment intended to create jobs and an employment committee should be established.

Denmark proposed the addition to the Treaty of a new section on employment, which would strengthen the objective of achieving a higher level of employment and emphasise that employment is a common responsibility requiring a co-ordinated approach. Denmark proposed that while the Agreement on Social Policy should be incorporated into the Treaty, it should be regarded only as a minimum and that references to certain fundamental rights of workers should be added.

Finland believed that references to competitiveness and achieving maximum employment should be incorporated in the list of objectives of the Community. The Community should be obliged to undertake horizontal examination of employment-related matters. The Treaty should provide for the Union to pursue a pan-European strategy for employment in parallel to the implementation of European Monetary Union and should provide for common monitoring of employment. The social dimension should be strengthened, the Agreement on Social Policy incorporated into the Treaty and a clause should be added concerning gender equality.

France in its *Memorandum for a European social model* argued that employment should become the European Union's main priority and a determining criterion in all initiatives and expenditure. A charter of fundamental rights should be incorporated into the Treaty to guarantee citizens' economic and social rights. The integration of the Agreement on Social Policy into the Treaty was a necessity, as it represented a decisive stage in the history of social Europe, and would enable the Community to act more effectively on working conditions, social protection, the defence of workers' interests and the reintegration of excluded people. The Memorandum also suggested that the social partners should be consulted on all texts which contain a social dimension.

Germany supported participation by all Member States in the Agreement on Social Policy. Germany noted that it would not tolerate dilution of German social standards and called for harmonisation of minimum social standards.

Greece stressed the need to rebalance the monetary and social and economic aspects of European Monetary Union so as to ensure social cohesion; to this end, it supported the introduction of a new title on employment. Greece proposed that the 1989 Charter of the Fundamental Social Rights of Workers should be incorporated into the Treaty.

Italy believed that the revised Treaty should include a chapter on employment committing the Member States to closer co-ordination of their employment policies based on the guidelines adopted at the Essen and Cannes European Councils. It argued that inclusion of the Agreement on Social Policy should be a major objective of the Conference and suggested that the Treaty should include far-reaching social rights to develop the concept of European citizenship.

Ireland noted that while it would play an active part in considering constructive amendments to the Treaty on employment, it declined to advance any specific proposals. Ireland would consider proposals on social policy, taking into account their impact on competitiveness and employment.

Ireland noted that if new proposals on social policy were not applied to all Member States, they could exacerbate existing disparities in competitive conditions between Member States.

Portugal favoured giving a higher profile to economic and social rights by the inclusion of a European Citizenship Charter in the Treaty. Action to fight joblessness should be referred to in the Treaty and the Conference should find means of promoting sustainable and job-creating growth. Portugal noted an imbalance between the Single Market and its flanking policies, which should be corrected by a strengthening of the social dimension.

Spain favoured incorporation into the Treaty of the Agreement on Social Policy, as an expression of common European values aimed at ensuring that economic integration is accompanied by a suitable social climate. Spain also supported the incorporation of the 1989 Charter of the Fundamental Social Rights of Workers in the form of a declaration annexed to the Treaty. Spain favoured the strengthening and extension to all fields of the principle of full equality of men and women, which should be expressed in the Treaty in positive terms rather than as a reference to anti-discrimination; gender equality should be integrated into all Union policies. Moreover, job creation should be made a legal basis of Community activity and should become an objective of all Union policies; provision should be made for more co-ordinated action on employment.

Sweden stressed that, as unemployment was the Union's leading internal problem, the Treaty should contain a new chapter on employment so that the Union could become a Union for Employment. This chapter should establish objectives and common procedures and bind the Member States to respect certain tenets of employment policy. To promote co-ordination between finance and employment ministries, a Special Employment Committee consisting of representatives of both ministries from each Member State should be established. The Treaty should strengthen procedures for monitoring job creation measures by the Member States and the Community. The Agreement on Social Policy should be incorporated into the Treaty and collective bargaining and legislation should be placed on a uniform basis in the Member States where possible. Provisions on gender equality should be reinforced so as to ensure that equality is taken into account in all Community activities.

The position of the **United Kingdom** was prepared before the fall from power of the Conservative government and thus on many issues does not represent the position adopted at the Intergovernmental Conference by the new Labour government. The United Kingdom stated that it would oppose any extension of the Community's powers in the field of employment and would not accept incorporation of the Agreement on Social Policy into the Treaty. The United Kingdom feared that if the Agreement was incorporated, its views on working conditions would be ignored in many Directives, with enormous costs for employment.

Before the June 1996 Florence European Council, Parliament adopted a Resolution expressing its concern at the visible difficulty encountered in embarking upon genuine negotiations[50]. Parliament noted that inclusion of a Chapter on employment was a central political priority for many Member States but reiterated its belief that it was necessary to go beyond co-ordination between Member States and to equip the Union with sufficient institutional and financial resources for it to implement common policies in this field. Following the informal Dublin European Council in October 1996,

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[50] Resolution on the Florence European Council and the Intergovernmental Conference, 19.6.1996, OJ C 198/96, p.78.

Parliament expressed its concern that the Conference seemed paralysed by competing options but welcomed the fact that unemployment had become a major priority of the Conference and reiterated its conviction that it was necessary to go beyond mere co-ordination between Member States and to give the Union the necessary means to implement common policies in this field[51]. Before the Dublin European Council in December 1996, Parliament expressed its opinion on the draft Treaty prepared by the Irish Presidency. Parliament welcomed the introduction of a new Title on employment but reiterated its request for inclusion of the Agreement on Social Policy in the Treaty as well as co-ordinated measures to combat social exclusion and the elaboration of fundamental social rights[52]. Parliament also deplored the absence of any reference to full employment or the means to be used to implement common job creation policies.

In a detailed Resolution on the draft Treaty on 16 January 1997, Parliament regretted the lack of provisions concerning the rights of third country nationals and called again for the Treaty to guarantee non-discrimination concerning their social, economic and cultural rights[53]. The Resolution alerted the Conference to the danger of adopting a Chapter on employment without substance and called on the Conference to examine in more detail Parliament's proposals for the co-ordination of macro-economic policies in this field. While endorsing the Irish Presidency's proposals on employment, Parliament called for these provisions to be strengthened in the following ways: the Treaty should guarantee that the broad lines of employment policy and economic policy are consistent; the objective of promoting employment should be made binding by including it in Article 3 of the EC Treaty and by making action in this field a common policy; the principles likely to underpin the formulation of employment policy should be set out; the Treaty should specify that the common economic institutions and broad lines of economic policy should be conceived so as to give appropriate priority to the achievement of a high level of unemployment; Parliament and the social partners should be more involved in the drafting of the annual report on employment to be submitted to the European Council; and the Treaty should clearly require the Council, in the event of rising or persistent unemployment, to react and make use of the instruments in the Treaty. Moreover, Parliament called for the incorporation of the Agreement on Social Policy and for a debate on improvements to the Agreement. It endorsed proposals for a provision enabling the Community to take steps to combat social exclusion and called for a reference to public services as an element of citizens' rights, with a view to strengthening economic and social cohesion and the protection of users.

In a Resolution of 11 June 1997, adopted after the submission of a draft Treaty by the Dutch Presidency in May, Parliament noted that the political, economic and social dimension to European Union was still outweighed by the monetary dimension[54]. Parliament noted that policies conducive to increased competitiveness should be promoted at the Community level, especially through greater flexibility on the labour market, in order to enable Member States to increase employment. Fundamental social rights should be enshrined in the Treaty, the Agreement on Social Policy should be included in the Treaty and strengthened and the title on employment should be strengthened so

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51 Resolution on the Dublin European Council, 23.10.1996, OJ C 347/96, p.86.

52 Resolution on the preparations for the meeting of the European Council on 13/14 December 1996 in Dublin, 11.12.1996, OJ C 20/97, p.50.

53 Resolution on the general outline for a draft revision of the Treaties, 16 January 1997, OJ C 33/97, p.66.

54 Resolution on the draft treaty drawn up by the Dutch Presidency, 11.6.1997, OJ C 200/97, p.70.

that it had a genuine impact on overall policy, going beyond a mere co-ordination of economic policies and providing the basis for an active employment policy at the European level.

The Treaty of Amsterdam

The changes concerning social policy in the Treaty of Amsterdam were as follows:

1. Social and Economic Rights

A new recital was added to the Preamble to the Treaty on European Union, by which the Member States confirmed their attachment to fundamental social rights as defined in the 1961 European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers.

Article 2 of the EC Treaty was amended to make promotion of equality between men and women an objective of the Community. A new paragraph was added to Article 3 providing that in all the activities referred to therein, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 6 of the EC Treaty was substantially broadened by the introduction of a new Article 6A, which provides that within the limits of the powers conferred by it upon the Community, the Council, acting unanimously and after consultation with Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. Employment

Promotion of a "high level of employment and of social protection" was already established as an objective of the Community under Article 2 of the EC Treaty. The Treaty of Amsterdam strengthened this reference by adding the following provisions:

a) amendment of the first indent of Article B of the Treaty on European Union so as to make the promotion of a high level of employment an objective of the Union;

b) amendment of Article 2 of the EC Treaty so as to make promotion of a high degree of competitiveness an objective of the Community;

c) introduction of a new first sub-paragraph to Article 3 of the EC Treaty providing that the activities of the Community shall include the promotion of co-ordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a co-ordinated strategy for employment;

d) introduction of a new Title VIa on Employment.

Under Article 109N, the Member States and Community shall work towards developing a co-ordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Articles B and 2.

Under Article 109P, the Community shall contribute to a high level of employment by encouraging co-operation between Member States and by supporting and, if necessary, complementing their action. In doing so, the Community shall respect the competences of the Member States. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities.

Under Article 109Q, the European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and Commission. On the basis of the conclusions of the European Council, the Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 103(2). Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of these guidelines. On the basis of these reports and having received the views of the Employment Committee, the Council shall each year examine the implementation of the employment policies of the Member States in the light of the employment guidelines. The Council, acting by a qualified majority on a recommendation from the Commission, may make recommendations to the Member States. On the basis of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.

Under Article 109R, the Council, acting under the co-decision procedure, may adopt incentive measures designed to encourage co-operation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practice, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. These measures shall not include harmonisation of the laws and regulations of the Member States.

Article 109R is supplemented by two Declarations. The first notes that the Conference agreed that the incentive measures should always specify the grounds for taking them based on an objective assessment of their need and the existence of an added value at Community level, their duration (which should not exceed five years) and the maximum amount for their financing, which should reflect their incentive nature. The second Declaration provides that any expenditure under article 109R will fall within Heading 3 of the financial perspectives.

Under Article 109S, the Council, after consulting Parliament, shall establish an Employment Committee with advisory status to promote co-ordination between Member States on employment and labour market policies. The tasks of the Committee shall be to monitor the employment situation and employment policies in the Member States and the Community and, without prejudice to Article 151, to formulate opinions at the request of the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 109Q.

3. Agreement on Social Policy

During the Inter-Governmental Conference, Parliament, the Commission and fourteen Member States had sought the incorporation of the Agreement on Social Policy into the Treaty but the United Kingdom had been adamantly opposed. However, following the election of the Labour Party on 1 May 1997, the British Government agreed to the incorporation of the Agreement. Articles 117-120 incorporate the Agreement with some amendments.

Article 117 (an amalgamation of Article 117 of the EC Treaty and Article 1 of the Agreement) is amended to note that the Community and Member States have "in mind fundamental social rights such as those" set out in the 1961 European Social Charter and the 1989 Community Charter of Fundamental Social Rights.

Article 118 (formerly Article 2 of the Agreement) is amended to extend the co-decision procedure to measures adopted under Article 118(1).

A new paragraph is added to Article 118(2) concerning social exclusion: the Council, using the co-decision procedure, may adopt measures designed to encourage co-operation between the Member States aimed at improving knowledge, developing exchanges of information and best practice, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

Article 119 (an amalgamation of Article 119 of the EC Treaty and Article 6 of the Agreement) is amended to provide that the principle of equal pay for men and women applies not only to equal work but also to "work of equal value". Article 119(3) provides that the Council, applying the co-decision procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for work of equal value. Article 119(4) is amended to add the words that "with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment" shall not prevent Member States from maintaining or adopting measures providing for specific advantages to redress discrimination against the under-represented sex. Although the previous reference to "women" is replaced by a reference to "the under-represented sex", a Declaration to Article 119(4) provides that when adopting measures under Article 119(4), Member States should, in the first instance, aim at improving the situation of women in working life.

4. Legislative procedure

The Treaty extends the co-decision procedure to certain Articles concerning social policy; several of these extensions have been noted above. In addition, co-decision, coupled with unanimous voting in the Council, is extended to Article 51 (rules on social security for migrant workers), which had previously required consultation. The more normal co-decision procedure, with qualified majority voting in the Council, is extended to Article 125 (implementation of decisions concerning the European Social Fund) and Article 127(4) (vocational training), both of which had previously required the co-operation procedure.

Analysis

The Treaty of Amsterdam reflects many of Parliament's proposals concerning social policy. Perhaps the most notable achievement is the incorporation of the Agreement on Social Policy into

the Treaty, which was one of Parliament's principal objectives. The words "so as to make possible their harmonisation while their improvement is being maintained" are included in the modified Article 117, as Parliament had suggested. Article 118 provides a basis for Community action concerning social exclusion, as Parliament had requested; however, the Treaty does not impose an obligation on the Community to adopt measures in this area, as Parliament had wished. In an effort to reverse the *Kalanke* judgment, Parliament had proposed that Article 119 should be amended to permit discrimination in favour of women[55]. Although Article 119(4) in amended form has now been incorporated into the Treaty, it is not clear whether it is broad enough to cover all forms of affirmative action, such as, for example, numerical quotas; moreover, it appears that Article 119(4) does not have direct effect[56]. Although substantial new obligations are laid on the Commission by Article 118C, this Article does not in terms meet Parliament's request that the Commission should submit a list of measures necessary to create a social Union.

Parliament'srepeated calls for the promotion of a high level of employment to become an objective of the Union and of the Community and for a new Chapter on employment were also heeded. However, the introduction of a chapter on employment raised fundamental questions about the future of the European social model; what balance was to be struck between job security and labour market flexibility? The Member States were deeply divided on this issue and it was unsurprising that the Conference was unable to reach a consensus on fundamental issues; although Parliament had called attention to the danger of adopting a Chapter on employment without real substance and had put forward detailed suggestions in its Resolution of 16 January 1997, these proposals were largely omitted from the Treaty. The British, Dutch and German governments insisted that the new references to employment must be coupled with a reference to competitiveness and that the objective was to be "high", and not "full", employment[57]; Parliament itself had vacillated on this point, with its Resolution of 17 May 1995 on the Intergovernmental Conference calling for a reference to "full" employment, while its Resolution of 13 March 1996 called for a reference to "high" employment. A new Employment Committee was established, as Parliament had requested, but although it was intended to act as a counter-balance to the Economic and Financial Committee, its powers remain limited to monitoring policies and formulating opinions. Parliament's proposal that the European Council should adopt guidelines for employment policy was also adopted. However, while Parliament had called for the Employment Chapter to commit the Member States and Community to certain common procedures and basic principles of employment policy, the Chapter remained limited (except for Article 109R) to provisions for improved co-operation and co-ordination of national policies, and does not provide the basis for new initiatives by the Community.

Parliament had called for the rights contained in the 1989 Community Charter to be mentioned in the Treaty and extended to all citizens of the Union, as in its present form the Charter does not provide rights which individuals can enforce[58]. The references in the Preamble and Article 117 to

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55 Case C-450/93, *Kalanke v Freie Hansestadt Bremen,* (1995) ECR I-3051.

56 For discussion of what forms of affirmative action are permitted under Article 119(4), see Betten, L., and Shrubsall, V., *The Concept of Positive Sex Discrimination in Community Law - Before and After the Treaty of Amsterdam*, 14 (1998), International Journal of Comparative Labour Law and Industrial Relations, 65.

57 Ibidem, p.63.

58 See Hepple, B., *The Implementation of the Community Charter of Fundamental Social Rights*, 53 (1990), Modern Law Review, 643.

the 1989 Charter and to the 1961 European Social Charter do not affect the legal position of individuals but may be seen as a gesture by the Member States to Parliament's concerns on this issue. Although the Member States were unwilling to grant direct effect to extensive social and economic rights likely to lead to expensive new obligations for national governments, the Member States conceded that Community social policy would be framed with these rights in mind. Parliament's proposal that third country nationals legally resident in the Community be given guarantees concerning their economic and social rights was not adopted in the Treaty.

The extension of the co-decision procedure to several new areas represented a notable achievement for Parliament and significantly strengthens its influence on Community legislation. However, the incorporation of Article 4(2) of the Agreement on Social Policy into the Treaty as Article 118B(2) is a substantial disappointment for Parliament because, as noted above, this procedure wholly excludes Parliament from the legislative process. Parliament has expressed alarm at the incorporation of this procedure, which it regards as curtailing its rights, and has urged that it should enjoy the same power under Article 118B as the Council, namely the right to assent to, or to reject, an agreement between the social partners[59]. A leading academic commentator on Community social policy has argued that the adoption of this procedure "confirms the consistent marginalisation of the European Parliament which fails to obtain the tools it needs to achieve its *raison d'etre*: to represent the peoples of Europe"[60].

On 19 November 1997, Parliament adopted a Resolution on the Treaty of Amsterdam which recommended the Member States to ratify the Treaty[61]. The Resolution noted that the Treaty had improved instruments for shaping policy in the fields of employment and social policy and welcomed the extension of the co-decision procedure to new areas. The Resolution went on to note that there was a need for further improvements and called in particular on the Commission, Council and Member States to use the new Community political instruments to achieve clear and lasting improvements in the employment situation in the Union. Moreover, the Resolution called for certain further reforms, namely:

1) For a specific charter of fundamental rights of the Union to be drawn up;

2) In the area of social policy, for Parliament to be kept informed of negotiations between management and labour and where agreements between the two are to be implemented by means of a Council decision for Parliament's assent to be required;

3) For progress in the field of equality between men and women at all levels to be implemented resolutely, and for women's interests to be promoted until full equality of opportunity is achieved; and

4) For the mechanisms for solidarity and economic, social and territorial cohesion to be perfected with a view to an enlarged Europe.

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59 Resolution on the Commission proposal for a Council Directive concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC, 19.11.1997, OJ C 371/97, p.60.

60 Betten, L., *The Amsterdam Treaty: Some General Comments on the New Social Dimension*, 13 (1997), International Journal of Comparative Labour Law and Industrial Relations, 188.

61 Resolution on the Amsterdam Treaty, 19.11.1997, OJ C 371/97, p.99.

The Amsterdam European Council

The Amsterdam European Council resolved that employment must be kept at the top of the Union's political agenda, with the development of a skilled, trained and adaptable workforce and labour markets responsive to economic change being priorities for the Union[62]. The European Council called for more attention to be paid to competitiveness, efficiency, technological innovation and the potential for SME's to create jobs. Moreover, the Council stressed the importance of creating a tax environment which would stimulate enterprise and called for all Community policies to be examined to ensure that they were geared towards job creation and economic growth. The Council noted the need to remove the remaining distortions in the Single Market and to prevent tax competition. It called on the European Investment Bank to promote investment projects which would create jobs. The Council agreed that, in order to maintain momentum in fostering economic growth and fighting unemployment, an extraordinary meeting of the European Council devoted to employment would be held under the Luxembourg Presidency[63]. This meeting would review progress in the implementation of, among other things, initiatives concerning job-creating potential for SME's, the study of good practices in employment policies of the Member States and the initiatives of the European Investment Bank in creating employment opportunities. The European Council also invited the Council of Ministers to anticipate the application of the new Chapter on Employment in the Treaty of Amsterdam.

Preparations for the Luxembourg European Council

The Commission presented two Communications before the Luxembourg European Council on employment. In its proposal for guidelines for the Member States' employment policies for 1998, which was a response to the agreement at Amsterdam to put into immediate effect the new Chapter on Employment, the Commission argued that the Member States should strengthen their focus on four areas of employment policy: entrepreneurship; employability; adaptability; and equal opportunities[64]. The Commission suggested that the overall objective should be to increase the employment rate in the European Union to 65% and to reduce the unemployment rate to 7% within five years. To this end, it was essential to create a new culture of entrepreneurship by making it easier to establish and run businesses, by developing the markets for venture capital and by reducing the tax burden on labour. Second, a new culture of employability should be created by improving workers' skills and increasing the incentives and opportunities offered to persons seeking employment. The Member States should undertake to provide training for the unemployed after a certain period without work, to ease the transition from school to work, to utilise active rather than passive measures against unemployment and to encourage the social partners to conclude agreements on training. Third, the Member States should ensure that business was able to adapt to technological, economic and social change; the social partners should negotiate more flexible employment contracts, for which the Member States should provide an appropriate legislative framework. Finally, as the unemployment rate for women was higher than for men, the Member States should make efforts to enable women to reconcile work and family life and offer assistance to women wanting to return to the workforce.

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62 Bulletin 6/1997, para.I.28.

63 Bulletin 6/1997, para.I.6.

64 European Commission, *Proposal for Guidelines for Member States' Employment Policies 1998*, 1.10.1998, COM(97)0497.

The Commission's second Communication made a number of more general recommendations for the Luxembourg European Council on employment[65]. It suggested that, in the light of the introduction of the Euro, the European Council could restate the importance it attached to economic co-ordination and underline the importance of the joint declaration by the European social partners in support of the medium-term macro-economic convergence and growth strategy. The Commission noted that the closer integration of national markets between 1987 and 1993 had led to additional growth of between 1% and 1.5%; it hoped that the European Council would focus attention on the need for strict and effective implementation of the Single Market rules. The Commission noted that tax reform was one of the areas where structural action could have a far-reaching impact on employment and suggested that the European Council could call on the Council of Ministers to reach agreement on the Commission's proposed package for combatting tax competition, to take a positive line on taxation of energy and to reduce VAT rates for labour-intensive services. Turning to direct action by the Union, the Commission noted that, in response to the invitation of the Amsterdam European Council, it had tabled a proposal for using the interest on ECSC assets to continue financing research in the coal and steel industries after 2002. The Communication noted that the launching of the EIB's action programme in support of employment would be a highlight of the European Council. Finally, the Communication drew attention to the role of trans-European networks in creating jobs and welcomed the proposed launch of the EIB action plan for adapting the financing instruments for long-term TEN projects.

On 17 July 1997, the President of the Council asked Parliament to contribute to the Luxembourg European Council on employment; the Committee on Employment and Social Affairs adopted a Report on 7 October 1997[66]. The Rapporteur noted that the 1994 Essen European Council had laid down the foundations for a European employment strategy and that the subsequent European Councils at Cannes, Madrid and Florence had supported the Essen programme. However, despite the adoption of numerous declarations, little of practical use had been achieved, partly because of a lack of specific, quantifiable objectives and penalties for Member States which failed to comply. Accordingly the Rapporteur suggested that the Luxembourg Summit should not merely adopt yet another ministerial declaration but should conclude enforceable agreements to improve the position of the groups most affected by unemployment which should be pursued with the same determination as the criteria for European Monetary Union. On 21 October, Parliament adopted a Resolution embodying its proposal to the Employment Summit, which was broadly similar to the proposals put forward by the Commission[67]. The Resolution made four general recommendations and several more specific points concerning training, the organisation of working time, financial measures and the co-ordination of economic policy. The main points were as follows:

1) Job creation agreements should be concluded at the Summit in the form of verifiable convergence criteria with quantitative objectives based on benchmarking and best practice; the Member States should aim to increase the employment rate from 60.4% to 65% within

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65 European Commission, *Community Policies in support of Employment*, 12.11.1997, COM(97)0611.

66 Committee on Social Affairs and Employment, European Parliament, (Rapporteur: W.J. van Velzen), *Report on the Proposal of the European Parliament to the Extraordinary European Council Summit on Employment*, 9.10.1997, A4-0307/97.

67 Resolution embodying Parliament's proposal to the extraordinary European Council meeting on Employment, 21.10.1997, OJ C 339/97, p.30.

five years, to reduce the unemployment rate to 7% and to reduce youth unemployment to 50% of its current level.

2) Much remained to be done to create a genuine Single Market, as too much national legislation still gave rise to distortions of competition and too many Directives were poorly transposed into national law; the Monti reforms concerning the internal market should be supported.

3) A norm for the inactive/active ratio reflecting the ratio between the active population and the total population aged between fifteen and sixty-five in the three best performing Member States should be adopted and the Employment Committee should develop further the indicators in the various fields and ensure that the Member States apply them. Moreover, this norm should include criteria for under-represented groups and be linked to criteria such as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

4) European economic, financial, income and monetary policies should be co-ordinated, and consolidated by means of an economic, investment and tax pact, in order to achieve growth, investment and employment.

Training

5) All parties should agree to link programmes of training and education for the unemployed to a guarantee that the retrained persons would be employed for at least one year.

6) The Member States should adjust their national expenditure on training to the average of that of the three best-performing States and undertake to increase average spending on education, training and research; the Member States should use resources currently earmarked for unemployment benefits for education and training measures.

7) The two sides of industry should develop a system of continuing training.

8) The two sides of industry should conclude agreements on creating jobs for the young and the long-term unemployed and agree to the creation of (temporary) jobs by means of job rotation, parental leave and lifelong learning.

Organisation of working time

9) The Member States should, by means of non-compulsory informal arrangements, promote flexibility concerning working hours and patterns.

10) The Commission and the two sides of industry should make proposals to ensure that persons undertaking atypical employment involving irregular working hours received social security and full employees' rights.

Financial measures

11) A minimum VAT rate should be introduced for labour-intensive services.

12) The overall tax burden, and taxation of labour in particular, should be reduced. A European tax pact should be concluded to end tax competition between the Member States and to reform ecological taxes.

13) The Member States should improve the relationship between taxation and welfare systems in order to reduce the disincentives to accepting poorly-paid jobs.

14) The Member States should switch from passive to active employment measures and take action against the informal economy.

15) The Commission and Member States should ensure that state aid was used to create stable jobs rather than to facilitate business restructuring.

16) Research and development should be stimulated by tax concessions, improved availability of venture capital, better international co-operation between businesses and research institutes and the reduction of administrative burdens, especially on SME's.

17) The Commission and Council should assess the impact on employment of all future policies and the structural funds in particular should be used more actively to prevent long-term unemployment and to support training and entrepreneurship.

18) The European Council should make it possible for under-used budget headings to be used for actions to enhance employment, especially in connection with local employment initiatives and to create a guarantee fund for loans from the EIB to SME's.

19) The European Council should bring forward appropriations under the ECSC budget designed to fund operating budgets after 2002 to fund job-creation measures beginning in 1998 and special funds should be allocated to the EIB for this purpose.

Co-ordination of economic policy

20) The European Council should determine procedures for co-ordinating economic policy, drawing up employment guidelines, carrying out monitoring and drawing up annual reports so that the Amsterdam conclusions on employment could be put into practice immediately.

21) The European Council should, in the light of increased economic inter-dependence between the Member States, ensure greater complementarity between national economic policies.

22) The European Council should conclude a binding "European Pact for Employment, Sustainability and Solidarity" as a complement to the Stability Pact concluded at Amsterdam.

23) The European Council should note that the development of trans-European networks would stimulate employment.

The Luxembourg European Council on Employment

The special Luxembourg European Council on Employment agreed on an overall strategy with three main aspects: the continuation and development of a co-ordinated macro-economic policy

underpinned by an efficient internal market; the harnessing of all Community policies in support of employment; and to put into effect immediately the provisions of the Employment Chapter in the Treaty of Amsterdam concerning the co-ordination of Member States' employment policies by the use of employment guidelines[68].

The European Council noted that the co-ordinated employment strategy, based on Article 128 of the revised Treaty, would be implemented by establishing Union-wide guidelines for employment policy. After adoption by the Council of Ministers, the guidelines would be incorporated into national employment action plans and would be given practical effect in the form of national objectives, transposed where necessary into national regulatory, administrative or other measures. Differing conditions in the Member States would necessitate differing solutions and emphases; the Member States would set themselves deadlines in the light of their own administrative and financial resources.

On 15 December 1997, the Council of Ministers, acting on a proposal from the Commission, adopted the 1998 employment guidelines[69]. In brief, these Guidelines provide for action under four headings: improving employability; developing entrepreneurship; encouraging adaptability in businesses and employees; and strengthening equal opportunities policies. Under the first heading, the Member States will ensure that every unemployed young person is offered training or a job before reaching six months of unemployment and that adults are offered the same or vocational guidance before reaching twelve months of unemployment. The Member States will endeavour to increase the numbers benefiting from training and other measures to improve employability. To this end, the Member States will fix a target of providing training for as many persons as benefit from training in the three most successful Member States, with a minimum target of 20%. The social partners are urged to conclude agreements to increase the possibilities for training, work experience and other measures to promote employability. The Member States will improve the quality of their school systems to reduce the numbers dropping out and make efforts to equip young people with the ability to adapt to technological and economic change and with skills relevant to the labour market.

Under the heading "developing entrepreneurship", the Member States will make it easier to establish and run small businesses by providing clear and stable rules, improving the conditions for the development of risk capital markets and reducing the administrative and tax burdens on SME's. The Member States will seek to exploit the opportunities for job creation by exploring new sources of jobs and new technologies and innovations. Moreover, they will, where appropriate, set targets for the gradual reduction of the overall tax burden and for the reduction of fiscal pressure on labour and non-labour wage costs. The Member States will examine, where appropriate, the desirability of taxes on energy and pollutants and whether to reduce VAT on labour-intensive services not exposed to cross-border competition.

Under the heading of "encouraging adaptability in businesses and employees", the social partners are invited to negotiate agreements to modernise the organisation of work while the Member States will examine whether to authorise more flexible forms of employment contract. The Member States

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68 Bulletin 11/1997, paras.I.1-I.10.

69 Council Resolution of 15.12.1997 on the 1998 Employment Guidelines, OJ C 30/98, p.1.

will also re-examine the obstacles to investment in human resources and may provide for tax or other incentives for in-house training.

Under the final heading of "strengthening equal opportunities policies", the Member States will support the increased employment of women, strive to raise levels of access to care services to enable parents to work, eliminate obstacles in the path of persons seeking to return to the workforce and give special attention to the problems disabled persons encounter in working life.

Turning to Community policies, the Luxembourg European Council on employment noted that the increasing integration of national markets had already generated significant growth and that the elimination of the remaining barriers to the Single Market was essential. To this end, the Council approved the Commission's suggestion of publishing regular reports on progress in completing the Single Market in the form of a "Single Market log book". The Council noted that the Commission would ensure that State aid was used to promote economic efficiency and employment without causing distortions of competition. The Council called upon the Commission to establish a high-level working group to analyse likely industrial changes in the Community with a view to anticipating their economic and social effects. The Council called for the regulatory and administrative burden on business, and especially SME's, to be simplified. The Council acknowledged the importance of pan-European risk capital markets in job creation and asked the Commission to report to the June 1999 European Council on the development of these markets.

Furthermore, the European Council confirmed the need to decrease the tax burden and called for an end to unfair tax competition. It noted the importance of research in fostering competitiveness and job creation and emphasised the importance of the Community's new framework research programme. The Council noted that the establishment of a trans-European transport network would strengthen competitiveness. Turning to the use of the Structural Funds, the Council hoped that their forthcoming reform would make best use of them to serve employment needs. In the light of the impact on employment of information technology, the Council requested a report from the Commission on the prospects for electronic commerce, the development of open networks and the use of multimedia tools in education.

Turning to new initiatives specifically geared to developing employment, the European Council noted that the EIB had established an Amsterdam Special Action Programme to translate the guidelines adopted by the Amsterdam European Council into investment opportunities which will create jobs. This programme involves the creation of a "special window" to support new instruments to finance high-technology and high-growth SME's, the reinforcement of the Bank's activities in the areas of education, health, urban development and environmental protection and the giving of new impetus to the financing of trans-European networks other large infrastructure networks. Moreover, the European Council welcomed Parliament's suggestion that a larger part of the Community budget should be devoted to funding employment projects. It invited the Council and Parliament to formalise an agreement on this initiative and called on the Commission to make proposals for new financial instruments to support innovatory and job-creating small businesses.

Analysis

The proposals of the Commission and Parliament to the Luxembourg European Council demonstrated considerable consensus on the future direction of employment policy in the Community, which was reflected in the conclusions of the Council and the Employment Guidelines for 1998. The European Council agreed with Parliament that completion of the Single Market was

essential to stimulate economic growth and employment, that it was necessary to simplify the regulatory and administrative burdens on business, and especially on SME's, and that venture capital should be made more readily available to business. The Council further agreed that the Structural Funds should be used more actively to promote employment, that the establishment of trans-European networks was essential to strengthen competitiveness and employment and that the EIB should provide loans to SME's.

The Employment Guidelines also reflected several of Parliament's proposals. The Guidelines accepted both Parliament's general recommendation that the Member States should use active rather than passive measures in the fight against unemployment and the detailed recommendation that national expenditure on training for the unemployed should be increased to the level of the average in the three most successful Member States. The Guidelines urged the social partners to conclude agreements on training, as Parliament had recommended. The Guidelines accepted that the Member States should promote flexibility concerning working hours and patterns and agreed that persons employed under flexible employment contracts should enjoy adequate security and higher occupational status, which was more modest than Parliament's proposal that such workers should enjoy rights equivalent to persons employed under full-time contracts.

All of these points had been raised, sometimes with a slightly different emphasis, by the Commission as well as by Parliament. However, one important measure adopted by the Luxembourg European Council was attributable wholly to Parliament's initiative; this was the creation of a new budget heading, the growth and employment initiative, to which funds will be allocated to finance employment in SME's. This agreement was implemented in May 1998 by the adoption of a Decision on measures of financial assistance for innovative and job-creating SMEs, which is considered in detail in Chapter 2[70].

Parliament's proposals which were not accepted by the Council can be grouped into three areas. First, the Council declined to set criteria against which the Member States' employment policies could be assessed. Parliament's proposals for job creation agreements with quantitative objectives and for a norm for the active/inactive ratio to be adopted and implemented were not taken up. Second, proposals which would have committed the Member States to significant expenditure were not adopted. Parliament's suggestion that the retrained unemployed should be guaranteed one year's employment and the suggestion that the two sides of industry conclude agreements on job rotation and parental leave were ignored. Third, while Parliament had called for action on taxation, the Member States were more circumspect. The Employment Guidelines accepted that, in general, taxation of labour should be reduced, but hedged this objective with the qualification that reductions would be made in so far as they were compatible with sound public finance and the maintenance of equilibrium in social security systems. Although Parliament called for a pact to end unfair tax competition, the Council merely expressed concern about this issue. While Parliament had called for the introduction of a minimum VAT rate for labour-intensive services, the Employment Guidelines recommended that the Member States examine, without obligation, this option. Where Parliament called for a reform of ecological taxes, the Guidelines merely called for the Member States to examine, if appropriate, this topic. Moreover, Parliament's call for a binding European Pact for Employment, covering economic and fiscal policy, was not accepted.

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[70] Council Decision of 19.5.1998 on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) - the growth and employment initiative (98/347/EC), OJ L 155/98, p.43.

II. EMPLOYMENT AND THE LABOUR MARKET

1. EUROPEAN WORKS COUNCIL

Council Directive 94/45/EC of 22 September 1994[71] on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

Background to the Directive

Achieving agreement in the Council of Ministers on proposed Community measures, relating to the representation of the interests of workers and information and consultation for workers at a European level, has been very difficult[72]. The history of the various proposals regarding worker participation is not very clear and for the purpose of simplification, Cresset divides the debates into two periods.

Firstly, the discussion which started in the 1970s, addressed workers rights to representation, the clear provision of information and consultation, and the regulation of multinational business in areas including worker participation and industrial democracy[73]. The Commission's proposals over this first period included, the 'Vredeling proposal' (1980 and 1983)[74]; the European Company Statute (1970, 1975 and 1989)[75]; and the draft fifth Directive (1972 and 1983)[76]. Secondly, the above issues were further addressed by the Commission's Action Programme to implement the Community Charter of Fundamental Social Rights of Workers (the Social Charter) and the initial proposal for the Directive on European Works Councils (1990) which replaced the 'Vredeling' proposal[77]. Over the years, reaching agreement on these various proposals has been hampered by the requirement for unanimity in the Council of Ministers, the different industrial relations traditions among the Member States and particularly the United Kingdom's opposition[78].

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71 Council Directive 94/45/EC of 22.9.1994, OJ L 254/94, p.64.

72 Nielsen, R., and Szyszczak, E., *The Social Dimension of the European Community*, 1993, Handelshojskolens Forlag, Copenhagen, p.215.

73 Cressey, P., "Employee Participation" in Michael Gold (ed), *The Social Dimension - Employment Policy in the European Community*, MacMillan, London, 1993, p.87.

74 Commission's original proposal for the "Vredeling" Directive, OJ C 297/80, p.3. European Parliament amendments adopted 14.12.1982, OJ C 13/83, p.25. Commission's modified proposal, OJ C 217/83, p.3.

75 Commission's proposals OJ C 124/70 and COM(75)0150 final and a new proposal OJ C 263/89.

76 Commission's proposal OJ C 240/83, p.2.

77 The Commission notes in the Medium Term Social Action Programme 1995-1997 that the "Vredeling" proposals are being withdrawn.

78 Cressey, P., in Gold 1993, p.86. Nielsen and Szyszczak 1993, p.216 also see the European Industrial Relations Review, no. 207, April 1991, p.24-25 for an overview of these proposals, this is reproduced in Gold 1993, p.90-91, 96-97.

Despite these difficulties the Council of Ministers adopted a resolution in 1986[79] in which it "emphasized the importance of a social area in the context of the Internal Market" and "greater convergence between the rights of employees in the Member States to be informed and consulted regarding major decisions" in the relevant undertakings[80]. In addition the European Councils in Hanover, Rhodes and Madrid indicated that equivalent importance should be given to the social and economic aspects of the Single Market[81]. The Social Charter states that procedures for informing and consulting workers must be developed, notably in companies or groups of companies in two or more Member States.

A draft Directive on the establishment of European Works Councils was submitted by the Commission in December in 1990[82]. The proposal was based on Article 100 of the Treaty, given that inconsistencies between information and consultation procedures and transnational structure of undertakings have a "direct effect on the operation of the Common Market[83]. In accordance with Article 100 the proposal was subject to unanimity in the Council.

Nielsen and Szyszczak point out that the Commission's 1990 proposal took account of various European Parliament Resolutions. Notably, firstly, in its Resolution of 16 March 1989[84] on the EC Commission's Memorandum on the European Company Statute, the Parliament sought a provision requiring the establishment of European Works Councils and secondly, in its Resolution of 15 February 1990[85] on the Commission's work programme for 1990, the Parliament recommended "the setting up of European consultative committees in multinational undertakings"[86].

However, after the European Parliament and the Economic and Social Committee were consulted on the proposal, the Council of Ministers was unable to achieve a unanimous position. The agreement by the Members States, with the exception of the United Kingdom, to the principle of legislation in April 1993 led to a draft compromise being put forward by the Belgian presidency. This was discussed in October 1993. Furthermore, the ratification of the Maastricht Treaty provided the opportunity for the Commission to relaunch the proposal under the social policy Protocol and Agreement procedure, from which the United Kingdom has an opt out.

The initial round of consultations with management and labour at Community level, as provided for in the Agreement, began on 18 November 1993. However, following more detailed consultations the social partners were unable to agree to negotiate. At this point the Commission

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79 OJ C 203/86.

80 Nielsen and Szyszczak, 1993, p.216.

81 Preamble to the Commission's proposal, COM(90)0581, p.3.

82 Commission proposal COM(90)0581, OJ C 39/91, p.10.

83 COM(90)0581, Preamble, p.13.

84 European Parliament Resolution agreed on 16.3.1989, OJ C 96/89.

85 European Parliament Resolution agreed on 15.2.1990, OJ C 68/90.

86 Nielsen and Szyszczak, 1993, p.218.

issued a new draft Directive on the 13 April 1994 based on Article 2(2) of the Agreement, which involves the cooperation procedure. The new draft Directive was largely based on the Belgian text noted above[87].

After two readings, by the European Parliament, the Council of Ministers agreed on 22 September 1994 to the "Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees"[88]. It is expected that about one thousand enterprises will be affected by the Directive including 450 German, 250 American and 220 French firms and additionally 100 British firms will be required to comply with the Directive for employees based in other Member States[89].

The Directive[90]

The purpose of Directive 94/45/EC is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings. To achieve this a European Works Council or a procedure for informing and consulting employees must be established. A Community-scale undertaking is defined as having at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States.

Central management shall initiate negotiations to establish the European Works Council, or the information and consultation procedures, on its own initiative or at the written request of at least 100 employees. For the purpose of negotiations a special negotiation body will be established in accordance with the guidelines laid down in the Directive. Any Agreement reached must at least provide for the procedural requirements specified in the Directive, the details of which may be negotiated. However, the 'subsidiary requirements' laid out in the Annex to the Directive will only apply where;

- central management and the special negotiating body so decide;
- central management refuses to commence negotiations within six months of the employees request; or
- where after three years from the date of this request they are unable to conclude an agreement.

Member States are responsible for ensuring that the Directive is complied with. The Directive requires that the Commission shall, in consultation with the Member States and the social partners at a European level, review the operation of the Directive not later than 22 September 1999.

The agreement of this Directive followed the cooperation procedure which involved qualified majority voting in the Council and two readings by the European Parliament. The legal base in

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87 European Industrial Relations Review, 245, June 1994, p.18.

88 Council Directive 94/45/EC of 22.9.1994, OJ L 254, p.64.

89 European Social Policy, 45, October 1994, p.4.

90 See also the European Trade Union Information Bulletin of 1994 for a summary of the Directive.

Article 2(2) Agreement on Social Policy annexed to Protocol 14 and the cooperation procedure laid out in Article 189C of the Treaty.

Parliament's Amendments

Given the long history associated with reaching agreement for a Community measure on information and consultation in Community-scale undertakings the European Parliament has considered aspects of this issue on a number of occasions[91]. Particularly, as noted above, it debated in 1991 the Commission's first draft proposal[92]. Speaking at the second reading for the relaunched proposal under the Agreement on social policy in 1994 the Commissioner acknowledged that "significant amendments proposed by the European Parliament since 1991 were introduced in the text of the common position and most of them concern major points of the proposal"[93].

The following study of the Parliament's impact has examined the amendments put forward by the Parliament in 1991 and the degree to which they have been incorporated into the Directive as finally agreed in 1994[94]. These will be noted in the qualitative discussion but have not been directly included in the quantitative analysis.

The Parliament proposed twenty nine amendments following the first reading[95] and eleven following the second reading[96]. In the first place the Parliament sought to reduce the threshold requirement to 500 employees, and also following the common position[97], 100 employees in each of at least two Member States, for the establishments which must comply with the Directive[98]. There was a series of amendments relating to representation and voting procedures for the negotiating body these included those seeking;

- to ensure, where there are no employee representatives, that the election of members will be by secret ballot[99];

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91 For example the European Parliament Resolution on the Council failure to reach agreement, 9.3.1993.

92 Commission's first proposal, COM(90)0581, OJ C 39/91, p.10.

93 Commissioner Flynn, European Parliament debate 15.9.1994, Verbatim report, p.61.

94 Texts examined - First Commission proposal for a Council Directive COM(90)0581 final, OJ C 39/91, p.10; European Parliament amendments agreed 10.7.1991, OJ C 240/91, p.118. Debates of the European Parliament, OJ Annex 3-407, 8.7.1991, p.9-15. Commission amended proposal COM(91)0345, OJ C 336/91, p.11.

95 European Parliament amendments agreed 4.5.1994, OJ C 205/94, p.173.

96 European Parliament amendments agreed 15.9.1994, OJ C 276/94, p.14.

97 Council's common position (EC) No 32/94 adopted 18.7.1994, OJ C 244/94, p.37.

98 First reading, amendments 39 and 48. Second reading, amendments 1 and 2.

99 First reading, amendments 51, 35 and 52.

- that the special negotiating body may decide by at least three quarters of the votes, rather than two thirds, not to open negotiations[100]; and
- to ensure that a majority of the votes of the central management shall be required when the negotiating committees concludes agreements[101].

Additionally, the European Parliament sought, first, to ensure that representatives reflect different groups of workers[102], and second, that employee representatives from an establishment's undertakings outside the territory of the Member States should become members of the special negotiating body[103].

A number of amendments following the first reading wanted the agreements negotiated on information and consultation procedures to at least satisfy the minimum provisions laid out in the Annex. However, the Commissioner stated 'that there was no valid reason to impose minimum requirements which would "violate" the freedom of management and workers to find solutions which are suited to their needs and interests'[104].

Other amendments included those proposing first, the need for objective criteria to be associated with the circumstances under which central management is not obliged to give information, when it would be harmful to the undertaking. Second, the review of the Directive's operation should be brought forward by two years and take place five years after the Directive enters into force[105]. Third, although accepting that the Member States may have provisions which give guidance to management with respect to information and the expression of opinions the Parliament sought to ensure that such guiding rules were in place prior to the Council's agreement on the Directive[106]. Fourth, the Parliament wanted to reduce from 3 years to 18 months the period before the application of the subsidiary requirements outlined in the Annex would come into force, if there is no agreement from the negotiating committee[107].

The quantitative analysis of the uptake of the Parliament's amendments by the Commission and the Council is given in the tables below.

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100 First reading, amendment 9.

101 First reading, amendment 44.

102 First reading, amendments 35 and 21. Second reading, amendments 4 and 11.

103 First reading, amendment 8 and second reading, amendment 5.

104 Commissioner Flynn, Debates of the European Parliament, OJ Annex 3-448, 3.5.1994, p.112.

105 First reading, amendment 45 and second reading, amendment 10.

106 Second reading, amendment 8.

107 Second reading, amendment 7.

First Reading

Amendment category	EP submitted[108]	Commission accepted[109]		Council accepted[110]	
		Partly	Fully	Partly	Fully
A	4	0	3	0	0
B	22	3	2	4	0
C	3	0	0	0	0

Total amendments: 29[111]

Second Reading

Amendment category	EPsubmitted[112]	Commission accepted[113]		Council accepted[114]	
		Partly	Fully	Partly	Fully
A	0	0	0	0	0
B	10	5	3	3	1
C	1	0	0	0	0

Total amendments: 11[115]

Noting first the Parliament's influence on this Directive which dates back to amendments proposed during consultations in 1991 on the Commission's first proposal. The Directive's provision requiring that thresholds for the size of the workforce shall be based on the average number of employees during the previous two years, appears to stem directly from a Parliament amendment[116].

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108 Legislative Resolution, European Parliament amendments adopted 4.5.1994, OJ C 205/94, p.173.

109 Commission amended proposal, COM(94)0228.

110 Council's common position (EC) No 32/94 adopted 18.7.1994, OJ C 244/94, p.37.

111 Amendment 1 does not apply to the English text.

112 Decision, European Parliament amendments agreed 15.9.1994, OJ C 276/94, p.14.

113 Commission's reexamined proposal, COM(94)0406 final.

114 Council Directive 94/45/EC of 22.9.1994, OJ L 254/94, p.64.

115 Of these amendments eight repeated amendments submitted at the first reading and three were new.

116 Amendment 10, European Parliament amendments agreed 10.7.1991, OJ C 240/91, p.120.

Turning now to the amendments proposed during the two readings in 1994. The following discussion will focus attention on the category B and C amendments accepted by the Council and included in the Directive. These amendments clarified some of the Directive's provisions on the subsidiary requirements in relation to the consultation of workers and provision of information by Members of the Works Council to the workforce[117].

More specifically, the Parliament was successful in ensuring, first, the need for objective criteria to lay out the circumstances when central management is not obliged to give information on the grounds that it might harm the functioning of an undertaking[118]. Second, that the Commission will review the operation of the Directive five years after its adoption rather than after seven, as originally proposed. Third, the Directive specifies that any Member State provisions providing guidance to management on information and the expression of opinions by employees, must have been in place when this Directive was adopted. This provision results from a Parliament amendment proposed following the second reading[119]. Although, the Parliament's amendment seeking the representation of different groups of workers on the special negotiating body was not accepted in full, the Directive does allow for Member States to provide for a balanced representation of different employee categories[120].

The Parliament's Impact

The above discussion illustrates that the Parliament may be influential over time, with consideration being given to its resolutions and recommendations on information and consultation over the years of the debate. Most significantly the Parliament was responsible for ensuring, firstly, that there are objective criteria laying out the circumstances when central management is not obliged to give information. Secondly, that the Commission will review the operation of the Directive five years after its adoption rather than after seven, as originally proposed. Thirdly, that as a result of a Parliament amendment in 1991, the size of the workforce shall be based on the average number of employees during the previous two years.

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117 First reading, amendment 47, category B partly accepted, Directive Annex 5.

118 First reading, amendment 12 category B partly accepted, Directive Article 8.2. Also amendment 37, 10.7.1991.

119 Second reading, amendment 8 category B fully accepted, Directive Article 8.3.

120 First reading, amendments 35 and 21, and second reading, amendments 4 and 11, all category B partly accepted, Directive Recital 16.

2. Posting of Workers

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services[121]

The Directive

Directive 96/71 establishes which national labour rules apply to workers posted by an undertaking in one Member State to carry out temporary work in another Member State. It applies to undertakings established in a Member State which post workers to the territory of another Member State (the host State) under one of three arrangements:

a) the undertaking posts workers to the host State on its account and under its direction under a contract between the undertaking and the party for whom the services are provided in the host State, and an employment relationship exists between the undertaking and the worker during the posting;

b) the undertaking posts workers to an establishment or to another company owned by the undertaking in the host State, and an employment relationship exists between the undertaking and the worker during the posting;

c) a temporary employment undertaking or placement agency hires a worker to a user undertaking established or operating in the territory of a host State, and an employment relationship exists between the temporary employment undertaking or placement agency and the worker during the posting.

Where these conditions are satisfied, the Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings guarantee posted workers the employment conditions which, in the host State, are laid down by law or collective agreement concerning the following: maximum work periods and minimum rest periods; minimum paid holidays; minimum rates of pay, including overtime pay; conditions of hiring-out of workers; health, safety and hygiene at work; protective measures concerning pregnant women and new mothers, children and young people; and equal treatment for men and women and other non-discrimination provisions.

Certain exemptions are provided. In particular, Member States may decide, after consultation of employers and workers, not to apply minimum pay provisions to workers posted abroad under arrangements (a) or (b) above for less than one month. Moreover, Member States may decide not to apply either minimum pay or holiday provisions to workers posted abroad under arrangements (a) or (b) above where the amount of work to be performed is not significant.

It is provided that the Directive shall not prevent the application to workers posted abroad of employment conditions which are more favourable than those in the host country. Each Member State shall designate a liaison office or national body to implement the Directive and public authorities responsible for monitoring employment conditions shall co-operate and exchange information on the transnational hiring-out of workers. A worker seeking to enforce his right to the employment conditions guaranteed by the Directive may institute proceedings in the host State

[121] OJ L 18/97, p.1.

without prejudice to any rights to institute proceedings elsewhere. The Commission shall review the operation of the Directive by 16 December 2001.

The legal basis is Articles 57(2) and 66 of the EC Treaty, which require the co-decision procedure.

Parliament's amendments

In its proposal, the European Commission noted that, as a result of the freedom to provide services, it was becoming increasingly common for companies established in one Member State to secure a contract in another Member State and to relocate their employees to that State to perform the contract[122]. The question of which labour law should apply to undertakings posting workers abroad had been determined by national rules on the conflict of laws, which gave rise to legal uncertainty as conflict of laws rules varied between the Member States. Moreover, the Commission noted that a particular problem arose when a Member State placed minimum wage obligations on firms established in its territory which were faced with competition from firms established elsewhere which were not subject to the same minimum wage rules; the foreign firm could undercut its competitors by using cheaper labour. The Directive was intended to reconcile two principles: free competition between firms in different Member States so that the full benefits of the Single Market could be realised and the wish of Member States to maintain minimum pay levels to ensure a standard of living appropriate to the country concerned.

While welcoming the general thrust of the proposal, Parliament adopted thirty-three amendments. The most significant amendments were:

Amendment 10 extended the scope of the Directive to undertakings established in third countries;

Amendment 16 brought national rules concerning compulsory collective leave and lay-offs due to bad weather, shift work, Saturday work and statutory holidays within the scope of the Directive;

Amendment 17 brought rules concerning public holidays within the scope of the Directive;

Amendment 20 brought rules concerning sexual orientation within the scope of the Directive;

Amendments 21 to 23 brought rules concerning freedom of association, minimum working hours and equal pay for part-time workers and social security in so far as not covered by Regulation 1408/71 within the scope of the Directive;

Amendment 24 provided that where the rules in the posting country provided for better terms and conditions for workers than in the host country, the Member States should ensure that the conditions in the posting country were observed for workers posted abroad;

Amendment 27 provided that in the event of the insolvency of an undertaking posting workers abroad, those workers would be covered by Directive 80/297 and the establishment to which the worker was posted should share liability for all employer's obligations arising from the contract during the posting;

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122 European Commission, *Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services,* 1.8.1991, COM(91)0230.

Amendment 28 provided that Member States should ensure that affected undertakings notify the relevant authorities in the host country of the employment conditions applied to the workers posted there;

Amendment 30 provided that the Member States should designate authorities to supervise the application of the Directive. These authorities should have the power to inspect workplaces, to receive evidence of breaches of the Directive from workers and their representatives and to impose penalties for breaches. Public authorities should collaborate when supervising undertakings;

Amendment 31 provided that the Member States should provide the Commission with information to enable it to report on the implementation of the Directive by 1995;

Amendment 32 altered the original proposal whereby national rules on minimum pay and holidays would not apply to certain workers posted abroad for less than three months (the "threshold period") to confer discretion on the Member States whether to apply a threshold period and to reduce it to one month;

and Amendment 33 made applicable to posted workers not only the rules contained in collective agreements concluded for certain occupations but also those contained in collective agreements concluded for specific regions or places.

Amendment category	Parliament submitted[123]	Commission accepted[124]		Council accepted[125]	
		Partly	Completely	Partly	Completely
A	9	5	1	5	0
B	11	4	3	4	0
C	11	4	0	4	0

The Commission accepted Amendments 10 (in part), 16, 17, 20, 24, 30, 31, 32 (in part) and 33. Of these, the Council rejected 10, 16, 17 and 20.

At the second reading of the proposal, the Parliamentary Rapporteur pointed out that in some important respects the common position represented an improvement on Parliament's first reading

123 Legislative Resolution embodying the opinion of the European Parliament on the Commission Proposal for a Council Directive concerning the posting of workers in the framework of the provision of services, 10.2.1993, OJ C 72/93, p.78.

124 Amended proposal for a Council Directive concerning the posting of workers in the framework of the provision of services, 16.6.1993, OJ C 187/93, p.5.

125 Common Position (EC) No 32/96 adopted by the Council on 3.6.1996 with a view to adopting Directive 96/.../EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services, OJ C 220/96, p.1.

amendments[126]. The Rapporteur noted that the Council had accepted that undertakings located in third-countries must not be placed in a more favourable position than undertakings established within the European Union, that the threshold for exclusion of workers from the Directive had been lowered from three months to one month and been made optional, that provision had been made for workers to institute legal proceedings in the host state, that provision had been made for co-operation between the Member States in enforcing the Directive and that the Commission would review the Directive within five years to identify shortcomings in its operation. Accordingly, in view of the highly sensitive political nature of the Directive (which had been tabled before the Social Affairs Council five times), the need to secure its adoption as soon as possible and the generally positive response from trade unions, the Rapporteur recommended that Parliament should table no amendments. Parliament accepted this recommendation[127].

Parliament's Impact

Parliament had a very significant impact on this measure: as the Parliamentary Rapporteur noted, "During the deliberations on the amended Commission proposal and the common position, Parliament's will largely prevailed". Parliament secured the inclusion of several provisions not included in the Commission's proposal. Although the Council rejected the wording used in Amendment 10, it did accept that undertakings established in a member state must not be given more favourable treatment than undertakings established in a third country. Amendment 24 was accepted in part: the Directive provides that it shall not prevent application of employment conditions which are more favourable to workers than those in the host country. Amendment 30 was in general accepted. This provision will be of particular importance in ensuring effective application of the Directive. Amendment 31, providing for a review of the Directive by the Commission, was also accepted.

Parliament also secured significant alterations to certain provisions contained in the Commission's proposal. Amendments 16, 17 and 20 were reflected in the introduction of more general wording, largely wide enough to cover Parliament's suggestions. Amendment 32 resulted in reduction of the "threshold period" from three months to one month and in Member States gaining the option whether to apply such a period. Amendment 33 was reflected in the extension of the definition of applicable collective agreements to include those observed by all undertakings in the geographical area concerned.

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126 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Helwin Peter), *Recommendation for a Second Reading on the proposal of the Council on the amended proposal of the European Parliament and Council Directive on the posting of workers carried out in the framework of the provision of services*, 4.9.1996, A4-0265/96.

127 Decision on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive on the posting of workers carried out in the framework of the provision of services, 18.9.1996, OJ C 320/96, p.73.

3. Transfer of Undertakings

Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses[128]

The Directive

Article 1 of Directive 98/50/EC amends Directive 77/187/EEC by introducing new Articles 1 to 7[129]. The fresh Article 1 introduces a definition of "transfer", so that a transfer occurs where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary. Article 1(c) provides that the Directive applies both to public and private undertakings engaged in economic activities whether or not they are operating for gain. However, an administrative reorganisation of public administrative functions or the transfer of administrative functions between public authorities does not constitute a transfer.

Article 2 alters the definition of "representatives of employees" and introduces a definition of "employee" as any person who, in the Member State concerned, is protected as an employee under national employment law. Article 2 further provides that while the Directive shall be without prejudice to national law concerning the definition of contract of employment, the Member States shall not exclude from the scope of the Directive contracts of employment on certain specified grounds.

Article 3(1) is amended to emphasise that the Member States may make the transferor and transferee jointly and severally liable in respect of obligations arising from employment contracts before the transfer. A fresh Article 3(2) provides that the Member States may adopt measures to ensure that the transferor notifies the transferee of all the rights and obligations which will be transferred of which the transferor is or ought to be aware.

An Article 4a is inserted which deals with transfers in the event of insolvency. Unless the Member States provide otherwise, Articles 3 and 4 of the Directive shall not apply to any transfer of an undertaking where the transferor is the subject of bankruptcy or insolvency proceedings which have been instituted with a view to liquidating his assets and which are supervised by the competent public authority. Article 4a(2) provides that where Articles 3 and 4 do apply to a transfer during insolvency, regardless of whether the insolvency proceedings have been instituted with a view to liquidation, a Member State may provide either that the transferor's unpaid debts arising under employment contracts shall not be transferred to the transferee provided that employees are assured of at least the protection available under Directive 80/987/EEC or that the transferee, transferor and employees' representatives agree alterations to employees' terms and conditions of employment

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128 OJ L 201/98, p.88.

129 Council Directive 77/187/EEC of 14.2.1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, OJ L 61/77, p.26.

designed to safeguard jobs by ensuring the survival of the undertaking[130]. Under Article 4a(4), the Member States shall take appropriate measures to prevent misuse of insolvency proceedings so as to deprive employees of their rights under the Directive.

Article 5 is amended to provide that in the event of a transfer during insolvency, the Member States may take the necessary measures to ensure that the transferred employees are properly represented until the selection of new employees' representatives. A new paragraph also provides that where a transferred undertaking does not preserve its autonomy, the Member States shall take measures to ensure that the transferred employees continue to be properly represented during the period necessary for the reappointment or reconstitution of employees' representatives.

Article 6 on information is amended to add that the employees must be informed of the date of the transfer. Article 6(4) provides that Article 6 shall apply irrespective of whether the decision on the transfer is taken by the employer or by an undertaking controlling the employer.

Article 7a provides that the Member States shall introduce into their national legal systems the measures necessary to enable employees and their representatives to pursue claims for breaches of the Directive by judicial process after possible recourse to other competent authorities. Under Article 7b, the Commission shall report to the Council on the effect of the Directive by 17 July 2006.

The legal basis for the Directive was Article 100 of the EC Treaty, which requires consultation of Parliament.

Parliament's Amendments

The two main changes to Directive 77/187/EEC proposed by the Commission were to amend the definition of "transfer" in Article 1(1) so that the transfer of an activity of an undertaking unaccompanied by the transfer of an economic entity which retains its identity would fall outside the scope of the Directive and to modify the application of the Directive in the event of a transfer during the insolvency of the transferor[131]. Parliament was firmly opposed to the proposed alteration to the definition of "transfer". The Parliamentary Rapporteur noted that far from bringing legal clarity to the Directive, this alteration would unleash litigation on the question of how to distinguish the transfer of a mere activity from the transfer of an activity accompanied by the transfer of an economic entity[132]. Moreover, the exclusion of the "contracting-out" of services would represent an unjustified reduction in employees' rights. Parliament raised these points in a resolution on 18 January 1996 and on 13 February the Commission indicated that it would accept Parliamentary

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130 Council Directive 90/987/EEC of 20.10.1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ L 283/80, p.23.

131 European Commission, *Proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses*, 8.9.1994, COM(94)0300.

132 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Hugh Kerr), *Report on the proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses*, 13.11.1996, A4-0367/96.

amendments leaving the existing text of Article 1(1) unchanged[133]; the Parliamentary Rapporteur noted that this concession represented "a major breakthrough". Accordingly, Amendment 4 deleted the proposed alteration to Article 1(1).

The Parliamentary Rapporteur also criticised the Commission's proposed exemption from the Directive of transfers during an insolvency leading to liquidation but not transfers during an insolvency not leading to liquidation; the Rapporteur suggested that it would be preferable to bring all insolvency proceedings within the scope of the Directive but to provide that in certain cases pre-existing debts should not be transferred. However, this suggestion was not reflected in the amendments adopted by Parliament.

Parliament tabled eighteen amendments to the Commission's proposal. Apart from Amendment 4, the most important amendments were:

Amendment 9 deleting a provision allowing the Member States to authorise competent judicial authorities to alter or terminate employment contracts during a transfer during insolvency to ensure the survival of an undertaking;

Amendment 10 amended the Commission's alterations to Article 4 of the Directive to ensure that the employees' representatives empowered to make agreements with the employer to alter the terms and conditions of employment and to determine necessary dismissals are independent of the employer;

Amendment 11 tightened the information and consultation provisions;

Amendment 12 provided that where a person other than the transferor or transferee took the decision leading to the transfer, that person should provide the transferor and transferee with any information in his possession allowing them to comply with their obligations under the Directive;

Amendment 15 provided that when implementing the Directive, the Member States should prohibit any discrimination based on race, sex, age, disability, sexual orientation, colour, religion or nationality; and

Amendment 19 provided that the Member States shall take the necessary steps to prohibit the fraudulent use of insolvency proceedings.

[133] Resolution on the proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, 18.1.1996, OJ C 32/96, p.80.

Amendment category	Parliament submitted[134]	Commission accepted[135]		Council accepted	
		Partly	Completely	Partly	Completely
A	7	1	5	1	4
B	7	2	1	0	1
C	4	1	3	1	0

The Council made substantial amendments to the Commission's amended proposal and deleted most of Parliament's amendments. In particular, despite the agreement reached between the Commission and Parliament, the Council adopted a new definition of "transfer" so that a transfer occurs where there is a transfer of an economic entity which retains its identity; mere transfers of economic activity are thus excluded. The Council also rejected Amendments 10, 11, 12 and 15.

The amendments accepted by the Council were mostly confined to minor linguistic changes, such as an amendment to Article 3(1) which emphasised that the transferee and transferor were jointly and severally liable in respect of obligations arising from employment contracts. The Council accepted the deletion of a provision (Amendment 9) permitting the Member States to confer on a competent judicial authority the power to alter or terminate contracts of employment in the event of a transfer effected upon insolvency which, as the Commission had pointed out, would have caused problems for certain national legal systems which do not provide for courts to exercise this type of power. Moreover, the Council also accepted Amendment 19 prohibiting the misuse of insolvency proceedings so as to deprive employees of their rights under the Directive.

Parliament's Impact

Parliament had almost no impact on this Directive. Even though the Commission and Parliament were able to reach agreement on the central issue of whether the concept of "transfer" should be redefined, the Council overrode their wishes. The only significant change secured by Parliament was the provision prohibiting fraudulent misuse of insolvency proceedings so as to deprive employees of their rights.

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134 Legislative Resolution embodying Parliament's opinion on the proposal for a Council Directive on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, 16.1.1997, OJ C 33/97, p.81.

135 Amended proposal for a Council Directive amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, 24.2.1997, OJ C 124/97, p.48.

4. Collective Redundancies

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies[136]

The Directive

This Directive consolidates Council Directive 75/129 on the approximation of the laws of the Member States relating to collective redundancies and all instruments which subsequently amended it[137]. No alterations, other than formal amendments made necessary by the process of codification itself, were made to Directive 75/129.

The legal basis is Article 100 of the EC Treaty, which requires consultation of Parliament. Under an inter-institutional agreement of 20 December 1994, Parliament, the Council and the Commission agreed that an accelerated procedure should be used for codification measures[138]. This procedure, whereby the Commission, Council and Parliament undertake not to introduce any substantive changes to the acts to be codified, was applied to Directive 98/59.

Accordingly, Parliament approved the proposal without debate under Rule 99 of its Rules of Procedure[139].

5. The Labour Market

Council Decision of 20 December 1996 setting up an Employment and Labour Market Committee (97/16/EC)[140]

The Decision

The Decision establishes an Employment and Labour Market Committee to assist the Social Affairs Council in carrying out its responsibilities in these fields. The Committee shall be responsible for monitoring both employment trends in the Community and the Member States' employment and labour market policies. It shall also facilitate the exchange of information and experience between the Member States and with the Commission in these fields.

The Committee shall prepare reports and proposals for the Council concerning employment and labour policy issues. It shall co-operate with other relevant bodies, especially the Economic Policy

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136 OJ L 225/98, p.16.

137 17.2.1975, OJ L 48/75, p.29.

138 Inter-institutional Agreement of 20.12.1994 - Accelerated working method for official codification of legislative texts, OJ C 293/95, p.2.

139 16.6.1998, OJ C 210/98, p.30.

140 OJ L 6/97, p.32.

Committee, and shall liaise with the Standing Committee on Employment. The Committee shall consist of two representatives from each Member State and two representatives of the Commission.

The legal basis for the Decision was Article 145 of the EC Treaty, which requires consultation of Parliament.

Parliament's Amendments

The Essen European Council agreed that the Member States should adopt multi-annual national employment programmes reflecting common priorities and that the Council and Commission should keep close track of employment trends, monitor national employment measures and promote the mutual exchange of information and experience. To put these decisions into effect, the Social Affairs Council established in March 1995 an *ad hoc* group of Directors-General representing Ministries of Employment which met in order to exchange information on employment policies and which presented reports on employment to the Cannes and Madrid European councils. Most Member States felt that, in view of the importance of the Group's task, it should be established on a permanent basis. Accordingly, the Commission proposed the creation of a permanent Committee to assist the Social Affairs Council in the implementation and development of the European Employment Strategy[141].

Parliament proposed three amendments to the Commission's proposal, which sought to define more precisely the scope of the Committee's activity and to ensure that the Committee's reports and recommendations would be submitted to Parliament. All Parliament's amendments were rejected by the Council.

Amendment category	Parliament submitted[142]	Council accepted	
		Partly	Completely
A	1	0	0
B	2	0	0
C	0	0	0

[141] European Commission, *Proposal for a Council Decision setting up an Employment and Labour Market Policy Committee*, COM(96)0134, 27.3.1996.

[142] Legislative Resolution embodying Parliament's opinion on the proposal for a Council Decision setting up an employment and labour market policy committee, 24.10.1996, OJ C 347/96, p.149.

Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/95/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[143]

The Directive

With the incorporation of the Agreement on Social Policy into the Treaty of Amsterdam, the United Kingdom indicated that it wished to accept the application of the Directives already adopted under the Agreement. Accordingly, this Directive extends the provisions of Directive 94/45/EC on European Works Councils[144] to the United Kingdom. The Directive provides for necessary amendments to Directive 94/45, by increasing the members of the special negotiating body established under that Directive by one and by giving the United Kingdom two years to bring into force the necessary national laws to implement the Directive.

The Directive was based on Article 100 of the EC Treaty, which requires consultation of Parliament.

Parliament approved the proposal without comment[145].

Council Decision of 23 February 1998 on Community activities concerning analysis, research and co-operation in the field of employment and the labour market (98/171/EC)[146]

The Decision

Decision 98/171/EC establishes Community activities concerning analysis, research and co-operation between the Member States in the field of employment and the labour market from 1 January 1998 to 31 December 2000. In accordance with the guidelines agreed by the European Council, these activities shall contribute to the development of a co-ordinated strategy for employment by means of monitoring and support for actions carried out in the Member States, with due regard for the Member States' responsibilities in this field. These activities shall aim at fostering co-operation, identifying best practices, promoting exchanges of information and experience and developing an active information policy.

To this end, these activities shall develop an integrated approach, in co-operation with the agents concerned, including the social partners, at the appropriate level in the Member States through certain implementing measures, namely: developing the survey, analysis, research and monitoring of employment policies; promoting exchanges of information and best practice; and disseminating

143 OJ L 10/98, p.22.

144 OJ L 254/94, p.64.

145 19.11.1997, OJ C 371/97, p.74.

146 OJ L 63/98, p.26.

the results of initiatives undertaken and other relevant information. The Commission shall promote in particular the identification and dissemination of measures which assist groups especially affected by unemployment, such as the young, women, the old and the long-term unemployed.

Article 4 provides that the Commission and Member States shall ensure that measures implemented under this Decision and other relevant Community programmes are consistent and complementary. Article 5 provides that activities open to participation by the states of the European Economic Area, the associated countries of central and eastern Europe, Cyprus, Malta and the Union's Mediterranean partners shall be defined in the context of the Union's relations with those countries.

Implementation is placed in the hands of the Commission, which shall be assisted by a Committee composed of representatives of the Member States. The Committee shall deliver opinions on general guidelines for the Community activities covered by the Decision and on the annual work programme and financial breakdown relating to these activities, as well as on detailed rules for selecting activities to be supported, monitoring criteria and the dissemination of results. The Commission shall establish the necessary links with the Employment and Labour Market Committee and with the social partners. The Commission shall submit an interim report on the results of activities to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions by 31 December 1999 and a final report by 31 December 2001.

The legal basis for the Decision was Article 235 of the EC Treaty, which requires consultation of Parliament.

Parliament's Amendments

In its Proposal, the Commission noted that the draft Decision formed part of the follow-up to the employment strategy agreed at the Essen European Council[147]. Although the Commission had been undertaking initiatives concerning employment since the early 1980s, they were fragmented and required greater financial support. This Decision was intended to foster closer co-operation between the Member States and the Commission concerning analysis, research and action with regard to employment and the labour market, and to provide the Commission with the necessary legal basis to pursue its activities in this field.

The Parliamentary Rapporteur, while welcoming the Commission's proposal, suggested that it was too closely linked to the conclusions of the Essen European Council and required amendment to take account of subsequent developments[148]. Parliament's eight amendments thus sought to bring the draft Decision up to date by adding references to recent developments, such as the employment strategies developed by the European Union. The amendments also sought to add greater detail to certain provisions, by, for example, specifying the groups especially affected by unemployment who required assistance. Moreover, the Rapporteur criticised the Commission for resorting to piecemeal

147 European Commission, *Proposal for a Council Decision on the Commission's activities of analysis, research, co-operation and action in the field of employment,* 13.6.1995, COM(95)0250.

148 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Nikolaos Papakyriazis), *Report on the proposal for a Council Decision on the Commission's activities of analysis, co-operation and action in the field of employment,* 16.4.1996, A4-0127/96.

solutions concerning the involvement of third countries in Community programmes and called for clarification of the financial and budgetary aspects of this issue. Amendment 8 thus provided that the cost of participation in employment activities by third countries should be covered by those countries themselves, although the Community budgetary authority would be empowered to pay a supplement to their contributions.

Amendment category	Parliament submitted[149]	Commission accepted[150]		Council accepted	
		Partly	Completely	Partly	Completely
A	2	0	2	2	0
B	4	1	2	1	0
C	2	0	1	1	0

The Commission accepted five amendments in full and one in part. It rejected an amendment deleting a reference in the recitals to Article 235 as the legal basis and an amendment which would have required the Commission to consult the budgetary authority before providing financial support for the activities envisaged.

The Council substantially revised the Commission's amended proposal so as to delete most of the details; the Decision was thus framed in very general terms. Most of Parliament's amendments, which had added further detail to the original proposal, were lost. The reference to particular groups especially affected by unemployment survived, although in an amended form. Parliament's amendment that third countries should bear the costs of participating in employment activities was retained, but coupled with a provision that the cost could also be borne under the Community budget headings covering implementation of the co-operation, association or partnership agreements with the countries concerned.

Parliament's Impact

Parliament had very little impact on this Decision. Of its eight amendments, only three minor changes to the wording were retained in the Decision. Parliament's amendment that third countries should bear the cost of participation, while retained, was rendered nugatory by coupling it with the provision that the cost could also be charged to the Community budget.

149 Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision on the Commission's activities of analysis, co-operation and action in the field of employment (Essen), 23.5.1996, OJ C 166/96, p.179.

150 Amended proposal for a Council Decision on Commission activities of analysis, research, co-operation and action in the field of employment, 19.9.1996, OJ C 342/96, p.6.

Council Decision of 19 May 1998 on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) - the growth and employment initiative (98/347/EC)[151]

The Decision

Decision 8/347/EC establishes a programme of financial assistance for innovatory and job-creating small and medium-sized enterprises (SMEs). This programme aims to make finance more readily available to SMEs with a view to facilitating and strengthening the establishment and growth of innovative SMEs.

The programme consists of three complementary facilities. The first is the European Technology Facility start-up facility, under which the Community shall provide risk-capital participation in SMEs. This capital will be made available both to SMEs during their establishment and early stages and to innovative SMEs by means of investments in specialised venture-capital funds. The European Investment Fund (EIF) shall select, make and manage the investments in venture-capital funds, working where appropriate with national schemes. The terms and conditions for implementing the facility shall be laid down in a co-operation agreement with the Commission, set out in outline in Annex I. The Fund shall avoid duplicating existing initiatives and shall endeavour to reduce the risk on venture-capital instruments.

The second facility is the Joint European Venture, under which the Community shall provide financial contributions towards the essential expenses of establishing trans-national joint ventures within the European Union. Applications for contributions shall be channelled to the Commission through a network of financial intermediaries; an outline for implementation is set out in Annex II.

The third facility is the SME guarantee facility, by which the Community shall provide finance to cover the cost of guarantees and counter-guarantees issued by the EIF in order to encourage increased lending to SMEs which employ up to one hundred workers. The detailed terms and conditions for implementing this facility shall be laid down in a co-operation agreement between the Commission and the EIF, set out in outline in Annex III.

The Commission shall report annually to Parliament and the Council on the implementation of the Decision and its effects. Moreover, within two years of adoption of the Decision, the Commission shall evaluate the programme, assessing its overall utilisation and its effect on employment.

The legal basis for the Decision was Article 130(3) of the EC Treaty, which requires consultation of Parliament.

Parliament's Amendments

As noted above, the Luxembourg Extraordinary Council on Employment had welcomed Parliament'scall to strengthen the budgetary resources available to support job-creating SMEs and had called for new instruments to reinforce the EIF by opening a risk-capital window, supporting

[151] OJ L 155/98, p.43.

the creation of trans-national joint ventures and establishing a guarantee fund to facilitate risk-taking by institutions providing finance for SMEs. The Commission's proposal was intended to provide a legal basis for these activities.

Parliament tabled sixteen amendments to the Commission's proposal. The most notable amendments were:

Amendment 18 which provided for part of the programme to be devoted to financing SMEs in the areas of public health, education and culture;

Amendment 8 which stipulated that the co-operation agreements between the Commission and the ETF should take account of the need to ensure a wide dissemination of information about the schemes, especially to women entrepreneurs;

Amendment 11 provided for a final assessment of the effect of the programme on employment to be made by an independent body;

Amendment 12 provided for the recycling of balances arising from the operation of the programme;

Amendment 13 provided that the Commission should ensure that management fees and other eligible expenditure incurred by the EIF are determined in accordance with market practice and can be debited to the appropriations devoted to the programme; and

Amendment 20 provided that the intermediary financial institutions should be selected in an open and transparent manner, and where necessary by competitive tender.

Amendment category	Parliament submitted[152]	Council accepted	
		Partly	Completely
A	7	1	0
B	3	0	0
C	6	1	0

The Council rejected all Parliament's amendments, save for a minor alteration to the second recital and Amendment 13 concerning management fees, which it adopted with the deletion of the reference to "other eligible expenditure".

[152] Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs) - the Growth and Employment Initiative, 1.4.1998, OJ C 138/98, p.93.

Parliament’s Impact

Parliament had a negligible impact on this Decision; the Council rejected fourteen out of sixteen amendments. However, Parliament did secure the insertion of an Article concerning management fees, which had not been envisaged in the Commission's proposal.

III. SOCIAL PROTECTION

1. Social Security

Council Regulation (EC) No 3095/95 of 22 December 1995 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) No 1247/92[153]

The Regulation

Regulation 3095/95 makes a number of detailed amendments to Regulations 1408/71 and 574/72 and their amending Regulations to take account of changes in the laws of the Member States, of bilateral agreements concluded between the Member States and to improve co-ordination between the Member States. In particular:

a new Article 25(a) is added to Regulation 1408/71 and three other Articles are amended to provide that the Member State paying unemployment benefits to a person resident in that State shall also be entitled to make deductions from unemployment benefits to cover contributions in respect of other social security benefits in accordance with its national legislation;

Article 86 is amended to provide that where a person entitled has submitted a claim for family benefits to a Member State which is not competent, the date on which that application was submitted shall be considered as the date of submission to the competent authority, provided that a new application is in fact submitted to the competent State by the person entitled to do so within one year of rejection of the application or cessation of payment of benefits; and

a new Article 95(b) is inserted which incorporates all transitional provisions concerning special non-contributory benefits into Regulation 1408/71.

Parliament's Amendments

The Parliamentary Rapporteur noted that existing Community legislation on social security co-ordination was inadequate in several respects[154]. In general, there was a need to prevent the Member

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153 OJ L 335/95, p.1.

154 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Ria Oomen-Ruitjen), *Report on the proposal for a Council Regulation (EC) amending Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) No 1247/92*, 31.5.1995, A4-0107/95.

States from manipulating national social security provisions to obtain an unfair competitive advantage. Moreover, in view of the increasing number of skilled workers migrating to work in other Member States, there was a particular need to co-ordinate supplementary social security schemes. The scope of Regulation 1408/71 should also be extended to cover social security schemes for civil servants. It was also necessary to amend Regulation 1408/71 to take account of the special needs of frontier workers.

Parliament tabled seventeen amendments to the Commission's proposal. The amendments:

altered the title of Regulation 1408/71 to take account of the fact that the other amendments would extend the scope of the Regulation 1408/71 to all insured persons;

sought to bring early retirement schemes within the scope of Regulation 1408/71;

made citizens of third countries and their families legally resident in a Member State eligible for health care benefits in other Member States;

extended the scope of Regulation 1408/71 to civil servants;

provided that if a pensioner resident in a Member State other than the competent one travels temporarily to the competent Member State, that State will assume the costs of any medical benefits provided to the pensioner;

provided that retired frontier workers and their families entitled to draw a pension from the state of employment should also be entitled to receive health care from that state;

encouraged co-operation between the Member States with a view to resolving the social security problems of frontier workers; and

required the Commission to submit proposals for introducing a European health care card.

The legal basis was Article 235 of the EC Treaty, which requires consultation of Parliament.

Amendment category	Parliament submitted[155]	Commission accepted[156]		Council accepted	
		Partly	Completely	Partly	Completely
A	1	0	0	0	0
B	1	0	0	0	0
C	15	3	0	0	0

The Commission accepted three amendments in part, namely:

that members of a frontier worker's family should be able to choose between receiving medical treatment in the State of employment or the State of residence;

that persons who are insured under the legislation of a Member State and members of their families who reside with them should be entitled to receive medical treatment in another Member State, regardless of their nationality; and

that retired frontier workers and their families should be able to receive medical treatment both in their State of residence and in the State where the worker had been employed.

The Council rejected all of Parliament's amendments. Given that the Regulation was intended only to make a number of technical amendments to Regulations 1408/71 and 574/72, it is perhaps unsurprising that Parliament's attempt to make fundamental changes to Regulation 1408/71 was rejected.

155 Legislative resolution embodying Parliament's opinion on the proposal for a Council Regulation (EC) amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) No 1247/92, 13.6.1995, OJ C 166/95, p.24.

156 Amended proposal for a Council Regulation amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, Regulation (EEC) No 1247/92 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 1945/93 amending Regulation (EEC) 1247/92, 28.6.1995, OJ C 242/95, p.7.

Council Regulation (EC) No 3096/95 of 22 December 1995 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71[157]

The Regulation

Regulation 3096/95 makes a number of detailed amendments to Regulations 1408/71 and 574/72 to take into account administrative, procedural and substantive amendments to national legislation on social security, to take account of certain bilateral agreements on social security concluded between the Member States and to improve co-ordination. In particular, the Regulation amends Article 1(u)(i) of Regulation 1408/71 to provide that "adoption allowances" are excluded from the term "family benefits". A new Article 22(a) is inserted allowing seconded workers and members of their families access to necessary health care during a stay for occupational purposes. The Regulation goes on to make detailed changes to the definitions of certain benefits in particular Member States.

The legal basis was Article 235 of the EC Treaty which requires consultation of Parliament.

Parliament's amendments

Although the Commission's proposal was largely limited to a series of technical amendments[158], the Parliamentary Rapporteur argued that, in the light of the urgent need to improve co-ordination of national social security schemes so as not to impede the functioning of the internal market, the proposal should be substantially amended so as to bring within the scope of Regulation 1408/71 early retirement arrangements, safeguards for the rights of frontier workers, improved co-ordination of medical assistance and the introduction of a European health care card[159].

Parliament proposed eighteen amendments to the Commission's proposal; all but one constituted substantive changes (category C) to the proposed Regulation[160]. The amendments included:

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157 OJ L 335/95, p.10.

158 European Commission *Proposal for a Council Regulation (EC) amending Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71,* 14.7.1995, COM(95)0352.

159 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Josu Jon Imaz San Miguel), *Report on the Commission proposal for a Council Regulation amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71,* 15.11.1995, A4-0286/95.

160 Legislative Resolution of 29.11.1995, OJ C 339/95, p.20.

widening the coverage of certain parts of Regulation 1408/71 to include the nationals of third countries and their families legally resident in a Member State;

improving the entitlement of family members of frontier workers to benefits in kind and of frontier workers to sickness benefits, pensions and early retirement allowances;

improving the position of pensioners entitled to benefits in more then one Member State;

a requirement that the Commission should submit a proposal aimed at introducing a European health care card from 1 January 1997;

and a requirement that the Commission submit a proposal amending Regulation 574/72 before 30 June 1996 so as to overcome the problems of cross-border movement and to create a genuine internal market for workers.

The Commission and Council refused to adopt any of Parliament's amendments.

Council Regulation (EC) No 1290/97 of 27 June 1997 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71[161]

The Regulation

Regulation 1290/97 amends Regulations 1408/71 and 574/72 in order to take account of changes in national legislation and to improve co-ordination of national social security systems. In particular, the definition of "member of the family" is developed, civil servants, their family members and survivors are brought within the scope of Regulation 1408/71, and persons staying in a Member State other than the competent state in order to study or undergo vocational training are permitted to claim sickness and maternity benefits. The Regulation introduces new provisions concerning the simplification and expedition of administrative procedure in the framework of the Telematics in Social Security programme (TESS), which facilitates the electronic exchange of social security data. In particular, the Regulation provides that documents exchanged electronically will be as acceptable as paper documents. The Regulation also amends Regulation 574/72 to provide for the Member States to further the use of telematic services for the exchange between institutions of social security information and provides for the establishment of a Technical Commission on data processing.

The legal basis was Article 235 of the EC Treaty, which requires consultation of Parliament.

[161] OJ L 176/97, p.1.

Parliament's amendments

Parliament adopted three amendments to the Commission's proposal. Two amendments removed a derogation which would have allowed the Netherlands to apply to persons studying or undergoing vocational training its social insurance scheme which requires such persons to be registered and reimburses them on the basis of average cost paid in the form of a lump sum. Parliament also amended the proposal so that nationals of third countries legally resident and insured in a Member State would become entitled to urgently-required health care while in other Member States.

Amendment category	Parliament submitted[162]	Commission accepted[163]		Council accepted	
		Partly	Completely	Partly	Completely
A	1	0	1	0	1
B	0	0	0	0	0
C	2	1	1	0	1

Parliament's Impact

Although the Commission accepted Parliament's amendments, the Council rejected the amendment concerning entitlement to health care of nationals from third countries. The Council accepted the deletion of the derogation concerning the Netherlands but added a reference in the recitals that provision should be made for a transitional period for dealings with the Netherlands to take account of administrative difficulties which it might encounter.

[162] Legislative Resolution embodying Parliament's opinion on the proposal for a Council Regulation amending Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) 574/72 laying down the procedure for implementing Regulation (EEC) 1408/71, 28.5.1997, OJ C 182/97, p.59.

[163] Amended proposal for a Council Regulation (EC) amending Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation 574/72 laying down the procedure for implementing Regulation (EEC) 1408/71, 5.6.1997, OJ C 245/97, p.13.

Council Regulation (EC) No 1223/98 of 4 June 1998 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71[164]

The Regulation

Regulation 1223/98 makes a number of detailed amendments to Regulations 1408/71 and 574/72 to take account of changes to national legislation concerning social security and the conclusion of several bilateral conventions between the Member States. In particular, Section D of Annex VI of Regulation 1408/71 concerning Spain is amended to bring the calculation of basic pension amounts into line with the judgment of the European Court of Justice in *Nieto*[165]. Moreover, necessary amendments are made in the light of previous amendments made to Regulation 574/92 by Regulation 3095/95 concerning the reimbursement of benefits in kind provided under sickness and maternity insurance to pensioners in a State in which they are not resident.

The legal basis is Article 235 of the EC Treaty, which requires consultation of Parliament.

Parliament's amendments

While welcoming the technical amendments proposed by the Commission, the Parliamentary Rapporteur noted that Regulation 1408/71 contained two serious flaws[166]. First, the Regulation did not apply to nationals of the Member States who were not working nor to third-country nationals resident in the Community unless they were members of the family of a national of a Member State. Second, the access of employed frontier workers to benefits was usually conditional upon agreements between the countries of employment and of residence, while retired frontier workers were in general excluded from claiming benefits in their country of employment.

Parliament adopted four amendments to the Commission's proposal, of which three constituted substantive changes (category C) to the proposed Regulation[167]. Amendment 2 extended the application of Regulation 1408/71 to students, stateless persons and refugees, to their families and survivors resident within the Community and to persons not in employment. Amendment 3

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164 OJ L 168/98, p.1.

165 Case C-251/94, *Nieto*, (1996) ECR I-4187.

166 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Ria Oomen-Ruitjen), *Report on the proposal for a Council Regulation (EC) amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families working within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation No 1408/71*, 9.2.1998, A4-0052/98.

167 Legislative resolution embodying Parliament's opinion onthe proposal for a Council Regulation amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families working within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, 30.4.1998, OJ C 152/98, p.45.

removed the requirement that access by frontier workers to social security benefits in the competent state should be conditional upon bilateral agreements and provided that unemployed frontier workers should be entitled to sickness benefits in the country of employment, while Amendment 4 provided that retired frontier workers and their families and survivors should be entitled to receive benefits from the state in which they had worked.

The Commission and the Council refused to adopt any of Parliament's amendments. As with Regulations 3095/95 and 3096/95 above, since the Regulation was intended only to effect a number of technical amendments to Regulations 1408/71 and 574/72, it was almost inevitable that Parliament's efforts to make fundamental alterations to Regulation 1408/71 would fail.

2. Pensions

Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community[168]

The Directive

Directive 98/49 is intended to protect the rights of members of supplementary pension schemes and their dependants who move from one Member State to another. Under Article 4, the Member States shall take the measures necessary to ensure that the vested pension rights of members of supplementary pension schemes who are no longer paying contributions because they have moved to another Member State are preserved to the same extent as the rights of members who are no longer paying contributions but who remain within the same Member State. Thus a worker who ceases to make contributions to a supplementary pension scheme as a result of moving to work in another Member State shall not lose the rights already acquired which he would have preserved had he merely changed employer within the same Member State. Article 5 provides that the Member States shall ensure that supplementary pension schemes make payment in other Member States, net of tax and applicable transaction charges, of all benefits due under such schemes.

Article 6 deals with the position of posted workers. The Member States shall adopt measures to enable posted workers to continue to make contributions to supplementary pensions schemes during the period of their posting in another Member State. Where a posted worker is contributing to a supplementary pension scheme in his home state, he, and his employer, shall be exempted from any obligation to make contributions to a supplementary pension scheme in another state.

Under Article 7, the Member States shall take measures to ensure that employers, trustees and managers of supplementary pension schemes provide adequate information concerning pension rights to scheme members when they move to another Member State.

Moreover, Article 8 provides that Article 6 may be made applicable only to postings commencing after 25 July 2001. Article 9 provides that the Member States shall introduce measures into their national legal systems to enable persons who consider themselves wronged by failure to implement

[168] OJ L 209/98, p.46.

the Directive to pursue their claim by judicial process after possible recourse to other competent authorities. Article 10 provides for the Member States to bring into force the necessary national laws and regulations, or to ensure that the social partners have concluded the necessary agreements, within thirty-six months' of the Directive entering into force and for the Member States to inform the Commission by 25 January 2002 of the text of these provisions; on the basis of this information, the Commission shall submit a report to Parliament, the Council and the Economic and Social Committee within six years of the Directive's entry into force.

The legal basis for the Directive was Articles 51 and 235 of the EC Treaty, which require consultation of Parliament.

Parliament's Amendments

In its proposal, the Commission noted that it was essential that any worker exercising his right to free movement should be able to take up work in another Member State without losing his right to benefits under a supplementary pension scheme[169]. However, given the diversity of supplementary pension schemes and the fact that employers in many Member States were not legally required to establish these schemes, it was necessary for any Community measure aimed at improving security for migrant workers to allow the Member States as much flexibility as possible.

The Parliamentary Rapporteur noted that the proposed Directive was unambitious and that many problems associated with supplementary pensions, such as differing national approaches to taxation of pensions, had not been addressed[170]. There was nevertheless a consensus that the Directive should be adopted as soon as possible, as it would set a precedent for Community regulation of supplementary pension schemes; if the Member States failed to remove the remaining obstacles to free movement connected with supplementary pension schemes, further Community legislative measures would be necessary.

Parliament tabled eighteen amendments to the draft Directive. These amendments were in general intended to clarify certain points in the Commission's proposal rather than to modify it. However, Amendments 4 and 5 drew attention to the need for further Community action in this field, Amendment 16 provided that the Member States should avoid double taxation of pensions and Amendment 17 shortened the period for submission of the Commission's report on implementation from six to four years.

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169 European Commission, *Proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union*, 8.10.1997, COM(97)0486.

170 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Harald Ettl), *Report on the proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union*, 20.4.1998, A4-0134/98.

Amendment category	Parliament submitted[171]	Commission accepted[172]		Council accepted	
		Partly	Completely	Partly	Completely
A	16	2	8	4	0
B	2	0	1	0	0
C	0	0	0	0	0

The Commission noted that it could accept the majority of the amendments proposed by Parliament as they would clarify the Directive[173]. For example, the Commission accepted that a reference to invalidity, retirement or survivors'benefits should be included in the definition of pension rights and that the definition of supplementary pensions should refer to benefits intended to supplement or replace those provided by schemes covered by Regulation 1408/71 rather than those provided by statutory social security schemes. Moreover, the Commission accepted the amendments concerning the need for further action on supplementary pensions and the reduction in the time limit for submission of the report on implementation but rejected the amendment referring to double taxation.

The Council, however, rejected all but four of Parliament's amendments. It accepted only that a reference to the promotion of freedom of movement of the employed and self-employed should be included in Article 1 and that references to members of the families of pensioners and their survivors should be replaced with references to "others holding entitlement under such [pension] schemes" or similar phrases.

Parliament's Impact

Parliament had almost no impact whatever upon this Directive. Although Parliament's objectives were modest, the Council was willing only to accept the addition of a clearer reference to the objective of the Directive and one linguistic amendment. Parliament's attempts to add recitals calling for further action on supplementary pensions and to require quicker preparation of the report on implementation were rebuffed.

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171 Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union, 30.4.1998, OJ C 152/98, p.65.

172 Amended proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union, 27.5.1998, OJ C 205/98, p.11.

173 European Commission, *Amended proposal for a Council Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union*, 27.5.1998, COM(98)0325.

IV. LIVING AND WORKING CONDITIONS

1. Parental leave

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC[174]

The Directive

Directive 96/34 puts into effect the annexed Framework Agreement between UNICE (Union of Industries of the European Community, representing private sector employers), CEEP (European Centre of Public Enterprises, representing public sector employers) and the ETUC (European Trade Union Confederation) on parental leave. The Member States shall ensure either that they bring into force laws necessary to comply with the Framework Agreement or that management and labour have introduced the necessary measures by agreement by 3 June 1998; the Member States are allowed an additional period of one year in the event of special difficulties or implementation by means of collective agreement.

The Framework Agreement gives men and women an individual right to at least three months' parental leave on the birth or adoption of a child. The leave is non-transferable and shall be taken before the child is eight years old. The Member States are permitted, when implementing the Agreement, to authorise special arrangements to meet the operational and organisational requirements of small undertakings. Moreover, the Agreement provides for the introduction of measures to allow workers to take time off work for urgent family reasons in cases of sickness or accident which make the immediate presence of the worker essential. The Member States may introduce more favourable provisions than those contained in the Agreement.

Parliament's Impact

In its proposal, the Commission noted that it had previously submitted a proposal for a Directive on parental leave on the basis of Article 100 but it had become clear that such a proposal would be unable to obtain the necessary unanimity in the Council[175]. Accordingly, the Commission had initiated consultations under Article 3 of the Agreement on Social Policy with UNICE, CEEP and the ETUC, who had concluded the Framework Agreement and asked for it to be implemented by means of a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on Social Policy. Article 4(2) does not provide for consultation of the Parliament. The Commission noted, however, that it had kept Parliament informed about the various phases of consultation of the social partners and would forward the proposal to Parliament so that it could deliver its opinion to the Commission and Council if it so wished.

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174 Council Directive 96/34/EC of 3.6.1996, OJ L 145/96, p.4.

175 European Commission, *Proposal for a Council Directive on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC,* 31.1.1996, COM(96)0026.

The Parliamentary Rapporteur protested that the procedure under Article 4(2) of the Agreement on Social Policy, whereby Parliament had been unable to give any assessment of the Framework Agreement until after its conclusion, reduced Parliament to an onlooker[176]. Parliament's Resolution on the proposal supported the Framework Agreement as a fundamental breakthrough in an important aspect of equal opportunities policy[177]. However, the Resolution drew attention to certain issues not adequately covered by the Framework Agreement as it stood: guaranteed sufficient financial support during parental leave; extension of rights at work to the period in which parental leave was taken; the temporary replacement of workers on leave; and the right to social security benefits during parental leave. Moreover, the Resolution noted that Parliament should play an active role in the adoption of the decision implementing the Framework Agreement, as with any other legislative procedure laid down in the Treaties, and called for an inter-institutional agreement on the joint arrangements for the application of the Agreement on Social Policy.

The Framework Agreement was adopted by the Council without amendment.

Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC[178]

The Directive

With the incorporation of the Agreement on Social Policy into the Treaty of Amsterdam, the United Kingdom indicated that it wished to accept the Directives already adopted under the Agreement. Accordingly, this Directive extended the provisions of the Framework Agreement on parental leave to the United Kingdom. It also provides that the United Kingdom shall take the necessary implementing measures by 15 December 1999.

The Directive was based on Article 100 of the EC Treaty, which requires consultation of Parliament.

Parliament approved the proposal without comment[179].

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176 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Anne-Karin Glase), *Report on the Commission proposal for a Council Directive on the Framework Agreement concluded by UNICE, CEEP and the ETUC on parental leave*, 29.2.1996, A4-0064/96.

177 Resolution on the Commission proposal for a Council Directive on the Framework Agreement concluded by UNICE, CEEP and the ETUC on parental leave, 14.3.1996, OJ C 96/96, p.284.

178 OJ L 10/98, p.24.

179 19 November 1997, OJ C 371/97, p.74.

2. Part-time Work

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC[180]

The Directive

In 1990, the Commission had presented three proposals for Directives on various forms of atypical work as part of its action programme to implement the 1989 Community Charter of the Fundamental Social Rights of Workers. The Council had adopted only the Directive concerning the health and safety of temporary workers[181] and declared in October 1994 that there was no possibility of achieving unanimity on the other proposals. Accordingly in September 1995 the Commission had initiated the procedure under Article 3 of the Agreement on Social Policy which led to the conclusion of an agreement on part-time work between the social partners.

The Directive puts into effect the annexed Framework Agreement concluded between UNICE, CEEP and the ETUC on part-time work. It provides that either the Member States shall bring into force the laws necessary to comply with the Directive or that the social partners shall introduce the necessary measures by agreement by 20 January 2000.

The Framework Agreement is intended to reduce discrimination against part-time workers and to improve the quality of part-time work as well as to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a way which takes into account the needs of both employers and workers. The central provision of the Agreement is that part-time workers shall not be treated less favourably than comparable full-time workers concerning employment conditions solely because they work part-time unless different treatment is justified on objective grounds. Where objective reasons for discrimination exist, national arrangements can be put in place to make eligibility for certain conditions of employment subject to a qualification based on period of service, time worked or earnings; such discriminatory arrangements should be periodically reviewed. The Agreement also provides that the Member States and/or the social partners may, for objective reasons, exclude wholly or partly from the Agreement part-time workers who work on a casual basis; such exclusions should be reviewed periodically.

The Agreement further provides that the Member States should identify, review and, where appropriate, eliminate legal or administrative obstacles to part-time work. The Agreement urges employers to give consideration to requests by workers to transfer between full-time and part-time employment and generally to facilitate access to part-time work and appropriate training. The Agreement also provides that refusal by a worker to transfer between full-time and part-time work should not in itself constitute a valid reason for termination of employment.

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[180] OJ L 14/98, p.9.

[181] Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, OJ L 206/91, p.19.

Parliament's Impact

Parliament's Resolution on the proposal for a Directive approved the principle of non-discrimination against part-time workers but expressed serious reservations about the scope of the Agreement and the exceptions provided to the general principle of non-discrimination[182]. Parliament argued that the Agreement should not be confined to part-time work but should cover all forms of atypical employment. Moreover, Parliament noted that the Agreement excluded social security issues and thus fell short of the requirements of International Labour Organisation Convention No. 175 concerning Part-Time Work. Parliament criticised the exceptions in the Agreement concerning casual workers and discrimination based on "objective reasons" which would allow the creation of thresholds on the basis of length of service, working time or salary and regretted that the Agreement did not follow the example of ILO Convention 175 in explicitly prescribing the gradual reduction of exceptions. In general, Parliament noted that the Agreement fell short of its purpose as it "does not eliminate discrimination against part-time workers and does not make part-time work more attractive".

The Resolution called on the Commission to adopt a modification to the Directive which would require the Member States and social partners to forward to the Commission the reviews conducted periodically to determine whether casual workers should continue to be excluded from the Agreement. These reports should in particular identify which workers were excluded from the principle of non-discrimination and the objective reasons for the exclusion. On the basis of these reports, the Commission should submit an annual report to Parliament, the Economic and Social Committee and the social partners enabling comparisons to be drawn at the Community level. This modification was not accepted by the Council.

Parliament again deplored its effective exclusion from the legislative process when measures are adopted under Article 4 of the Agreement on Social Policy. The Resolution noted that Parliament regarded "its rights as being curtailed" by this procedure and expressed alarm at the incorporation of this procedure into the Treaty of Amsterdam. Parliament urged that it should have the right of co-decision under Articles 138 and 139 of the Treaty (formerly Articles 3 and 4 of the Agreement) in a way analogous to that enjoyed by the Council in the form of overall rejection or assent.

It has been suggested that Parliament's exclusion from the legislative process in this case contributed to the adoption of a poorly-drafted and vague measure; one commentator has noted "the content of the Agreement has not been subject to the effective scrutiny of the Commission, Parliament or Council. Each has to consider the Agreement purely on a take-it-or-leave-it basis. It might also be added that, had the Agreement been subject to the scrutiny of those who usually draft European legislation then it might not have been so complicated or so vague. To a large extent, legal effect has been given to non-binding requests to think about doing things according to vague principles, just as long as there is no reason for preferring not to do so"[183].

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[182] Resolution on the Commission proposal for a Council Directive concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, 19.11.1997, OJ C 371/97, p.60.

[183] Jeffery, M., *Not Really Going to Work? Of the Directive on Part-Time Work, "Atypical Work" and Attempts to Regulate it*, 27 (1998), Industrial Law Journal, 193.

Council Directive 98/23/EC of 7 April 1998 extending Directive 97/81/EC on the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC to the United Kingdom of Great Britain and Northern Ireland[184]

The Directive

With the incorporation of the Agreement on Social Policy into the Treaty of Amsterdam, the United Kingdom indicated that it wished to accept the application of the Directives already adopted under the Agreement. Accordingly, this Directive extends the provisions of Directive 97/81 on part-time work to the United Kingdom. The Directive provides for the United Kingdom to enjoy the same period for implementation as the other Member States by providing that the Directive shall be implemented in the United Kingdom by 7 April 2000.

The Directive was based on Article 100 of the EC Treaty, which requires consultation of Parliament.

Parliament approved the proposal without comment[185].

184 OJ L 131/98, p.10.

185 1.4.1998, OJ C 138/98, p.84.

V. HEALTH AND SAFETY AT WORK

1. Use of work equipment

Council Directive 95/63/EC of 5 December 1995 amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[186]

The Directive

Directive 89/655[187] had laid down general minimum health and safety requirements for the use of work equipment. Article 9(1) of the Directive provided that supplementary minimum requirements applicable to specific types of work equipment should be adopted by the Council in accordance with Article 118a. Moreover, Directive 92/57[188] on the implementation of minimum health and safety requirements at temporary or mobile construction sites provided that certain minimum requirements concerning on-site outdoor work stations would be specified in the Directive amending Directive 89/655. Directive 95/63 is thus intended to meet the requirements for further action provided for in Directives 89/655 and 92/57.

Under Directive 89/655, all work equipment, defined as any machine, apparatus, tool or installation used at work, provided to workers for the first time after 31 December 1992 had to comply with any applicable Community Directives and the detailed safety requirements set out in the Annex to the Directive. Work equipment provided before 31 December 1992 had to comply with the minimum safety requirements set out in the Annex by 31 December 1996.

The main amendments of Directive 95/63 are to introduce new Articles 4(1)(c), 4(3), 4(a) and 5(a), to modify the existing Annex and to add a fresh Annex II. Under Article 4(1)(c), certain work equipment specified in point 3 of Annex I shall, if provided to workers before 5 December 1998, comply with the minimum safety requirements set out in Annex I by no later than 5 December 2002. The Directive inserts a new point 3 in Annex I which sets out minimum safety requirements for mobile work equipment, whether or not self-propelled, and for work equipment for lifting loads.

Under Article 4(3), the Member States shall, after consultation with both sides of industry and with due allowance for national legislation and/or practice, establish procedures whereby a level of safety may be attained corresponding to the objectives set out in Annex II. Annex II establishes certain

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186 OJ L 335/95, p.28.

187 Council Directive 89/655 of 30.11.1989 concerning the minimum health and safety requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 393/89, p.13.

188 Council Directive 92/57/EEC of 24.6.1992 on the implementation of minimum health and safety requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 245/92, p.6.

broad provisions relating to all work equipment; work equipment must be installed, located and used so as to reduce risks to users and other workers, erected and dismantled under safe conditions and, where appropriate, protected against the effects of lightning. More detailed safety requirements set out the use of mobile equipment, whether or not self-propelled and for equipment for lifting loads.

Article 4(a) provides for the inspection of work equipment. Where the safety of work equipment depends on the installation conditions, it shall be subject to inspection after installation before entering service. Moreover, work equipment exposed to conditions which may cause dangerous deterioration shall be subject to periodic inspection or special inspection each time an exceptional incident has occurred which may jeopardise its safety.

Under Article 5(a), when applying minimum health and safety requirements, employers shall take into account the posture and position of workers during work and ergonomic principles.

Article 6(2) broadens the existing requirement to inform workers by requiring that they be made aware of dangers concerning work equipment in the work area even if they do not use such equipment directly.

This Directive is based on Article 118a of the EC Treaty, which requires co-operation with Parliament.

Parliament's amendments

In its Proposal, the Commission noted that the Directive had three aspects: to add additional minimum requirements to the existing Annex to Directive 89/655 in order to improve the inadequate level of safety in respect of certain specific work equipment; to improve employers' and workers' practices relating to the use of work equipment by introducing both general rules and specific rules for special cases; and to introduce a system of inspection for work equipment in order to enable timely detection of dangerous deterioration[189]. Parliament welcomed the Proposal because it would guarantee workers in all Member States a minimum level of protection against the risks of using work equipment, ensure that production costs would not be distorted by excessive differences in health and safety regulations and facilitate the movement of industrial equipment within the Community. Thirty-five of the amendments consisted of detailed changes to the Annexes to the Directive. The most important amendments were as follows:

Amendment 5 required all work equipment covered by Annex I(3) provided to workers before 31 December 1992 to be phased out by 31 December 2005;

Amendment 6 required consultation between employers and workers and provided that the minimum requirements in all the Annexes, rather than only Annex II, should be respected;

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[189] European Commission, *Proposal for a Council Directive amending Directive 89/655/EEC on the minimum safety and health requirements for the use of work equipment by workers at work*, 14.3.1994, COM(94)0056.

Amendment 9 provided that work equipment exposed to conditions causing deterioration should be subject not only to periodic inspection but also to testing where appropriate, to take account of the effects of unexpected events;

Amendment 10 provided that working posture and position must be taken into account by employers when applying minimum health and safety requirements and be improved in accordance with ergonomic principles;

Amendments 11, 12 and 13 imposed more stringent requirements on employers to train and inform their workers of hazards;

Amendment 36 required the keeping of detailed equipment inspection records; and

Amendments 41 and 43 enlarged the coverage of the Directive to cover all persons in the vicinity of work equipment, and not only workers.

Amendment category	Parliament submitted[190]	Commission accepted[191]		Council accepted[192]	
		Partly	Completely	Partly	Completely
A	19	5	6	8	1
B	13	2	5	5	1
C	13	3	5	3	0

The Commission noted that it had accepted those amendments concerning the provision of information to workers and the purpose of certain prohibitions which had made the proposal more precise. It also accepted the need to take into account ergonomic principles. The Commission rejected the proposal that certain work equipment covered by Annex I(3) should be scrapped by 2005. The Commission also rejected detailed amendments which would have imposed more stringent requirements concerning the kickback of workpieces, the use of cartridge-operated fixing tools and protection against agricultural vehicles rolling over as they would, in the Commission's view, have entailed excessive cost.

The Council noted that its Common Position reflected a compromise between the Commission and a number of delegations which wanted the Directive to be made much tougher and other delegations which were opposed to this. Of the amendments noted above, 5, 6, 11, 36, 41 and 43 were rejected

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190 Legislative Resolution embodying Parliament's opinion on the Proposal for a Council Directive amending Directive 89/655 (EEC) on the minimum safety and health requirements for the use of work equipment by workers at work, 17.2.1995, OJ C 56/95, p.165.

191 Amended proposal for a Council Directive amending Directive 89/655 (EEC) on the minimum safety and health requirements for the use of work equipment by workers at work, 27.6.1995, OJ C 246/95, p.3.

192 Common Position (EC) 18/95 adopted by the Council with a view to adopting Council Directive 95/../EC amending Directive 89/655 (EEC) on the minimum safety and health requirements for the use of work equipment by workers at work, 24.7.1995, OJ C 281/95, p.41.

by both Commission and Council. Both Commission and Council accepted amendments 9 and 10. However, amendment 10 was modified to remove the requirement for employers to "improve" workers' posture. While the Commission accepted amendments 12 and 13, the Council conflated them into a single provision and removed the reference to training. The Council also rejected entirely parts of the proposed Annex I dealing with certain types of work equipment, such as wood-working and allied machinery presses and bolt firing tools, so that Annex I was limited to mobile work equipment and work equipment for lifting loads. Moreover, to accommodate certain delegations which were opposed to the adoption of Annex II which contained provisions concerning the use of certain work equipment, the Council deleted much of the proposed Annex and made its provisions more general.

Amendment category	Parliament submitted[193]	Commission accepted[194]		Council accepted	
		Partly	Completely	Partly	Completely
A	5	3	0	0	0
B	5	3	0	0	0
C	0	0	0	0	0

At second reading, Parliament sought to introduce a number of linguistic refinements and to make certain detailed alterations to the Annexes. In particular, Parliament sought to restore points 2.6 to 2.9 of Annex II, concerning minimum requirements for mobile equipment, and point 3.2.7 concerning monitoring of equipment for lifting non-guided loads, which had been deleted by the Council. These amendments were among the four amendments rejected by the Commission, which argued that these points were already adequately covered elsewhere in the Annexes. The Commission accepted that the remaining amendments, with some redrafting, clarified the proposal. The Council rejected all the proposed amendments.

Parliament's impact

Eighteen amendments proposed by Parliament were reflected in the Directive. The most important changes were: the introduction of the reference to ergonomics, which had not been contemplated in the original proposal; the introduction of a requirement to test, as well as to inspect, work equipment liable to deterioration; and the requirement that workers must be made aware of dangers relevant to them and of changes affecting work equipment in their work area. Moreover, Parliament also succeeded in making some of the detailed provisions in the Annexes more stringent; for example, while the Commission had proposed that point 3.2.5 in Annex I should require work equipment for use at night to be equipped with lighting appropriate for the work to be carried out, Parliament's amendment provided that the lighting "must ensure sufficient safety for workers".

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193 Decision on the Common Position adopted by the Council with a view to the adoption of a Council Directive amending Directive 89/655 (EEC) on the minimum safety and health requirements for the use of work equipment by workers at work, 15.11.1995, OJ C 323/95, p.38.

194 European Commission, *Re-examined proposal for a Council Directive amending Directive 89/655/EEC on the minimum safety and health requirements for the use of work equipment by workers at work*, 4.12.1995, COM(95)0642.

2. Exposure to carcinogens

Council Directive 97/42/EC of 27 June 1997 amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)[195]

The Directive

Directive 90/394[196] had stipulated that employers must ensure that the level of exposure of workers to carcinogens was reduced to as low a level as technically possible and envisaged that limit values would subsequently be established for specific carcinogens. Directive 97/42 amends Directive 90/394 so as to set a limit value for exposure to benzene of 1 ppm during an eight hour period. Moreover, the coverage of Directive 90/394 is extended by the removal of a wide range of exclusions concerning medicines, cosmetics, waste, pesticides, munitions and explosives and foodstuffs. Directive 97/42 introduces the concept of "limit value" for occupational exposure to carcinogens, which is defined as the limit on concentration of a carcinogen in the air within the breathing zone of a worker during a specified period. Directive 97/42 also provides that Directive 90/394 shall apply to asbestos and vinyl chloride monomer, which are dealt with by specific Directives, when the provisions of Directive 90/394 are more favourable to health and safety at work. Directive 97/42 provides that when assessing risk account shall be taken of all forms of exposure to carcinogens, including absorption through the skin. Finally, the Directive corrects certain textual mistakes which had caused difficulties when translating the Directive into certain languages so as to provide protection against exposure to polycyclic aromatic hydrocarbons (PAHs).

The Directive is based on Article 118a of the EC Treaty, which requires co-operation with Parliament.

Parliament's Amendments

The Commission's proposal noted that the purpose of the draft Directive was to introduce a limit value for occupational exposure to benzene, to remove a number of exclusions in Directive 90/394 and to improve wording which had caused difficulty in translation[197].

Parliament tabled sixteen amendments to the proposal, of which eleven were amendments to the recitals. The amendments to the recitals called for, *inter alia*, the Commission to draw up a plan for setting limit values as soon as possible for the other substances listed as carcinogens in Directive 67/548, for the Commission to set limit values for arsenic as soon as possible and for companies where carcinogens were present in the workplace to prove that they regularly informed their workers of the risk of exposure. The amendments to the operative clauses of the Directive:

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195 Council Directive 97/42/EC of 27.6.1997, OJ L 179/97, p.4.

196 Council Directive 90/394/EEC of 28.6.1990, OJ L 196/90, p.1.

197 European Commission, *Proposal for a Council Directive amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work*, 13.9.1995, COM(95)0425.

amended the definition of "limit value" by providing that the concentration of carcinogen must be measured in relation to an "appropriate reference period", and defined "breathing space" to make clear whether, in the case of workers wearing respirators, it referred to air inside or outside the respirator;

added a definition of biological limit value;

provided for the introduction of a uniform procedure for measuring benzene in the air;

and deleted provisions allowing for a transitional period for certain types of undertaking.

Amendment category	Parliament submitted[198]	Commission accepted[199]		Council accepted[200]	
		Partly	Completely	Partly	Completely
A	8	0	5	1	3
B	4	0	2	0	0
C	4	0	1	1	0

Parliament's attempt to add recitals calling for further action in this area was largely rejected; the proposed recitals calling for the Commission to set limit values for other carcinogens and for companies regularly to inform workers of risks were rejected by both Commission and Council. The Council also rejected the proposed definition of "breathing zone", which had been accepted by the Commission, but accepted the introduction of an "appropriate reference period" in the definition of "limit value". The introduction of the concept of "biological limit value" was accepted by the Commission but rejected by the Council on the ground of complexity. The amendments deleting provision for a transitional period were also rejected.

At second reading, Parliament retabled ten of the amendments proposed at first reading, including the amendments to the recitals concerning the need to set limit values for other carcinogens and arsenic, the definitions of "breathing zone" and "biological limit value", the introduction of a uniform measuring procedure and the deletion of transitional measures.

198 Legislative Resolution embodying Parliament's opinion on the proposal for a Council Directive amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work, 20.6.1996, OJ C 198/96, p.185.

199 European Commission, *Opinion on the amendments proposed by the European Parliament to the proposal for a Council Directive on the protection of workers from the risks related to exposure to carcinogens at work*, 24.7.1996, COM(96)0414.

200 Common Position No 3/97 adopted on 2.12.1996 with a view to adopting Council Directive 97/../EC of...1997 amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work, OJ C 6/97, p.15.

Amendment category	Parliament submitted[201]	Commission accepted[202]		Council accepted	
		Partly	Completely	Partly	Completely
A	4	0	0	0	0
B	5	0	1	0	0
C	2	0	0	0	0

The Commission accepted only one amendment proposed at second reading, which brought forward the date by which Member States must bring into force the provisions necessary to comply with the Directive; this amendment was rejected by the Council. The Commission noted that those amendments seeking to broaden the recitals to other matters such as arsenic gave rise to no legal follow-up in the text. The Commission pointed out that the proposed definition of breathing zone would conflict with terminology already internationally accepted. Turning to the proposed deletion of transitional measures, the Commission noted that as some Member States currently applied higher limits than those in the Directive it was reasonable to allow time for adaptation. As for the introduction of a uniform measuring procedure for benzene, the Commission noted that no method was currently accepted in all Member States; while the Commission was willing to investigate the possibility of a single method of analysis, it could not present proposals immediately.

Parliament's Impact

Parliament's impact was very limited. Of sixteen amendments, only five were adopted. Two were minor linguistic changes to the recitals. Two more were deletions of provisions concerning the transitional measures, which Parliament proposed because it hoped to delete the transitional measures entirely; the impact of these amendments was nullified when the transitional measures were left in place. However, Parliament did secure the addition of an "appropriate reference period" in the definition of "limit value".

[201] Decision on the common position adopted by the Council with a view to adopting a Council Directive amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work, 9.4.1997, OJ C 132/97, p.79.

[202] European Commission, *Re-examined proposal for a Council Directive amending for the first time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work*, 28.4.1997, COM(97)0191.

3. Exposure to chemical agents at work

Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)[203]

The Directive

[203] OJ L 131/98, p.11.

Directive 98/24 lays down minimum requirements for the protection of workers from risks to their health and safety arising from exposure to hazardous chemical agents during work. The Directive defines "hazardous chemical agent" broadly to encompass any chemical agent meeting the criteria for classification as a dangerous substance set out in Annex VI to Directive 67/548/EEC[204], any chemical agent meeting the criteria for classification as a dangerous preparation set out in Directive 88/379/EEC[205] and any chemical agent which because of its physico-chemical, chemical or toxicological properties and the way it is used or is present in the workplace may present a risk to the health and safety of workers.

Article 3 sets out the procedure for establishing appropriate levels of exposure to hazardous chemicals. The Commission shall evaluate the relationship between the health effects of hazardous chemicals and the level of occupational exposure. On the basis of this evaluation, the Commission shall propose an indicative occupational exposure limit value, which is defined as the limit of the time-weighted average of the concentration of the chemical in the air within the breathing zone of a worker during a specified period. This limit value shall be established in accordance with the procedure set out in Article 17 of Directive 89/391/EEC, namely by the Commission acting together with a committee of representatives of the Member States with reference to the Council in the case of disagreement[206]. For chemical agents for which an indicative occupational exposure limit value has been set, the Member States shall establish a national occupational exposure limit value taking into account the Community limit value.

In accordance with the procedure set out in Article 118a of the EC Treaty, the Community may also establish binding occupational exposure limit values which shall form Annex I to the Directive. When setting these limit values, account shall be taken of feasibility factors while maintaining the aim of protecting workers'health. In these cases, the Member States shall establish national binding occupational limit values which do not exceed the Community limit value. Using the same procedure, the Community and Member States may also adopt binding biological limit values, that is the concentration in the human body of the relevant agent. These limit values shall form Annex II to the Directive.

Articles 4 to 8 impose a number of obligations upon employers. Article 4 deals with the procedures for assessing the risk of exposure to hazardous chemicals. An employer must determine whether any hazardous chemical agents are present in the workplace and, if so, assess any risk to the health and safety of workers from these chemicals, taking into account their hazardous properties, information on health and safety provided by the supplier, the level, type and duration of exposure, the circumstances of work, any occupational exposure limit values or biological limit values established by the Member State in question, the effect of preventive measures taken or to be taken and the results of any health surveillance undertaken. The employer must hold a risk assessment meeting the requirements of Article 9 of Directive 89/391/EEC and shall identify which measures

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204 Council Directive 67/548/EEC of 27.6.1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ L 196/67, p.1.

205 Council Directive 88/379/EEC of 7.6.1988 on the approximation of the laws, regulations and administrative procedures of the Member States relating to the classification, packaging and labelling of dangerous preparations, OJ L 187/88, p.14.

206 Council Directive 89/391/EEC of 12.6.1989 on the introduction of measures concerning the safety and health of workers, OJ L 183/89, p.1.

have been taken in accordance with Articles 5 and 6 of Directive 98/24/EC. The risk assessment shall be kept up-to-date and new activities involving hazardous chemicals shall not commence until a risk assessment has been completed.

Article 5 sets out the general principles for preventing risks and applying the Directive. Article 5 provides that in carrying out his obligation to ensure the health and safety of workers, the employer shall take the necessary preventive measures set out in Article 6(1) and 6(2) of Directive 89/391/EEC. Moreover, Article 5(2) sets out further specific measures which employers shall take concerning hazardous chemicals. Risks to health and safety shall be eliminated or reduced in several ways: the design and organisation of systems of work; the provision of suitable equipment and maintenance procedures; the reduction to a minimum level of the number of workers exposed; the reduction to a minimum level of the duration and intensity of exposure; appropriate hygiene measures; the reduction to a minimum level of the quantity of chemical agents present; and the establishment of suitable working procedures. Article 5(4) provides that where a risk assessment demonstrates that a hazardous chemical poses only a slight risk to health and safety in the quantity in which it is used in the workplace and the measures set out in Article 5 are sufficient to reduce that risk, the employer need not take further action. Where, however, this is not the case, Articles 6, 7 and 10 apply.

Article 6 sets out specific protection and prevention measures. It places a general duty on the employer to ensure that the risk from hazardous chemical agents is eliminated or reduced to a minimum. If possible, the employer shall replace hazardous chemical agents with agents which are not hazardous or less hazardous. Where the nature of the activity renders substitution of the hazardous chemical impossible, the employer shall reduce the risk to workers to a minimum by employing work processes, equipment and materials which minimise the release of hazardous chemicals, by implementing collective protection measures, such as adequate ventilation, at the source of the risk and by implementing individual protection measures, such as personal protective equipment. Unless he can clearly demonstrate that he has achieved adequate safety levels, the employer shall measure regularly the levels of hazardous chemical agents in the workplace. The employer shall take these results into account when fulfilling his obligations under Article 4. When a national occupational exposure limit value is exceeded, the employer shall take immediate steps to remedy the situation. Moreover, the employer shall take appropriate precautions against hazards arising from the physico-chemical properties of chemicals and, in particular, shall prevent the concentration of inflammable or unstable substances, guard against factors which may cause fires or explosions and take steps to mitigate the effects on workers of fires or explosions.

Under Article 7, the employer shall establish procedures to respond to accidents, incidents and emergencies involving hazardous chemicals. In particular, only workers who are essential for performing repairs shall be permitted to work in an affected area; these workers must be provided with appropriate protective equipment. Moreover, the employer shall provide the communication systems necessary to facilitate an appropriate response to accidents and emergencies. The employer shall ensure that information on emergency arrangements concerning hazardous chemicals is available.

Article 8 deals with information and training for workers. The employer shall provide workers with the data obtained under Article 4, information on hazardous chemicals in the workplace, training and information on appropriate precautions and access to safety data sheets provided by the suppliers of chemicals. Where containers are not marked in accordance with other Community

legislation on the labelling of chemical agents, the employer shall ensure that the nature of the contents and the associated hazards are clearly identifiable.

Article 9 provides that the use of certain chemical agents listed in Annex III to the Directive shall be prohibited. Provision is made for the Member States to permit derogations from this prohibition in certain circumstances.

Article 10 provides that the Member States shall introduce arrangements for carrying out health surveillance of workers whom the assessments carried out under Article 4 reveal to be at risk. Article 10 further provides that health surveillance shall be appropriate where exposure to a hazardous chemical is such that a disease or ill health may be related to exposure, where there is a likelihood that the disease may occur due to certain working conditions and where the investigative technique involves little risk. Health surveillance shall be compulsory for persons working with a chemical for which a binding biological limit value has been established. Where health surveillance reveals that a worker is suffering ill health as a result of exposure to a hazardous chemical, or a binding biological limit value has been exceeded, the worker shall be informed and the employer shall review the risk assessment made under Article 4, review the measures adopted under Articles 5 and 6, take account of advice from professional persons and bodies on the reduction of risks in accordance with Article 6 and arrange for both continued health surveillance and for a review of the health of other workers who have been similarly exposed.

Article 11 provides for consultation of workers in accordance with Article 11 of Directive 89/391.

Article 12 provides that technical adjustments to the Annexes shall be adopted in accordance with the procedure set out in Article 17 of Directive 89/391. Moreover, the Commission shall draw up non-binding practical guidelines for the implementation of Articles 3,4,5,and 6. The Member States shall take account of these guidelines in drawing up their national policies for the protection of the health and safety of workers.

Article 14 provides for the Member States to implement the Directive by 5 May 2001. Under Article 15, the Member States shall report on the practical implementation of the Directive every five years; the Commission shall inform Parliament, the Council and the Economic and Social Committee of these reports.

The Directive is based on Article 118a of the EC Treaty, which requires co-operation with Parliament.

Parliament's Amendments

In its proposal, the Commission noted that a significant proportion of work-related illness within the Community was attributable to exposure to chemical agents[207]. Moreover, regulation of exposure to chemicals at work differed considerably between the Member States. A Directive on this subject would thus not only help to promote the social dimension of the Community but would also remove potential distortions of competition and encourage cross-border employment as workers could be sure of a minimum level of protection. The Directive would ensure that all precautionary

[207] European Commission, *Proposal for a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work,* 14.5.1993, COM(93)0155.

measures at work were based on a proper assessment of risk which took account of the features of the workplace and the activity involved.

Parliament proposed thirty-eight amendments to the draft Directive. The most notable amendments were as follows:

Amendments 3 and 22 altered the terminology from "occupational exposure levels" to "occupational exposure limits";

Amendment 7 imposed a general obligation on an employer to provide appropriately trained personnel, as well as appropriate first aid facilities;

Amendment 8 provided that where assessment revealed the risk from chemical agents to be insignificant, no further action would be required;

Amendment 10 required the "safety and health" document to record measures which have been taken to attain the aims of the Directive, rather than measures which will be taken;

Amendment 12 imposed a duty on employers to consult workers, as well as informing them, before an alteration at the workplace which would lead to a change in the nature of risk;

Amendments 15 and 16 introduced two fresh specific protection measures, namely that the employer provide training and safe working procedures and suitable protective equipment and facilities for workers;

Amendment 23 made several substantial alterations to the key provision of the Directive, Article 8, namely that technical and feasibility factors should be taken into account when setting occupational exposure limit values, that limit values should be established using the co-operation procedure rather than in accordance with the procedure in Article 17 of Directive 89/391/EEC, that the Member States in co-operation with the social partners should establish time scales within which to bring national occupational exposure limit values into line with occupational guidance values and that the Commission should review each occupational guidance limit value within five years of adoption;

Amendment 26 required consultation of the social partners before adoption of detailed rules on technical guidance for the implementation of the Directive;

Amendment 32 required staff who use safety equipment to be trained in its use;

Amendment 33 provided that, where an assessment under Article 3(2) had indicated that a serious health risk existed, health surveillance for the workers affected should be mandatory;

Amendment 37 allowed Member States to set lower biological limits for women of childbearing age; and

Amendment 38 established very detailed requirements concerning measuring procedures.

Amendment category	Parliament submitted[208]	Commission accepted[209]		Council accepted[210]	
		Partly	Completely	Partly	Completely
A	15	1	14	9	4
B	11	0	10	8	2
C	12	1	8	7	0

The Commission accepted all but four of Parliament's amendments. In particular, the Commission rejected Amendment 8 as too vague and noted that Amendment 37 was unnecessary as this point was already covered by Directive 92/85/EEC[211]. However, as a result of substantial divergences between the delegations' positions in the Council, work on the proposal was suspended in 1994 and only resumed on the basis of a compromise text put forward by the Irish Presidency in October 1996. There were four principal differences between the Commission's amended proposal and the common position, namely: the concept of "hazardous chemical agent" was defined; clear distinctions were introduced between the factors to be taken into account in the risk assessment, the documentation of the results of the risk assessment and the various preventive and protective measures to be implemented to reduce the risk; duplication of certain provisions of Directive 89/391/EEC was eliminated; and the level of detail, which the Council found "excessive", was reduced.

The Council accepted, subject to a further slight modification, Amendments 3 and 22 changing "occupational exposure levels" to"occupational exposure limit values". The Council accepted those amendments to Article 8, which became Article 3, which required feasibility factors (but not technical factors) to be taken into account when setting occupational exposure limit values, which required use of the co-operation procedure when setting limit values and those which clarified the relationship between indicative occupational exposure limit values, national occupational exposure limit values, binding occupational exposure limit values and binding biological limit values. However, the Council rejected that part of Amendment 8 requiring the Member States in consultation with the social partners to establish a time scale for bringing national occupational exposure limits into line with occupational guidance values, as this would in practice over time transform indicative limits into binding limits. Moreover, the Council rejected that part of

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208 Legislative resolution embodying the opinion of the European Parliament on the proposal for a Council Directive (EC) on the protection of the health and safety of workers from risks related to chemical agents at work, 20.4.1994, OJ C 128/94, p.167.

209 Amended proposal for a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work, 9.6.1994, OJ C 191/94, p.7.

210 Common position (EC) No 41/97 adopted by the Council on 7.10.1997 with a view to adopting Council Directive 97/.../EC of ... on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ C 375/97, p.1.

211 Council Directive 92/85/EEC of 19.10.1992 concerning the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348/92, p.1.

Amendment 8 requiring the Commission to review each occupational guidance value within five years on the ground that the likely timescale for the adoption of indicative exposure limit values rendered such a review premature. The common position introduced a new Article 3(9) which provided for standardised measurement methods to be developed in accordance with Article 12(2); the detailed requirements for measuring procedures in Amendment 38 were not adopted as the Council considered them too detailed to be included in the text of the Directive.

Amendment 10 was in part reflected in an alteration to Article 4(1) which required the employer when assessing the risk to health from chemicals to take into consideration the effect of preventive measures taken or to be taken. Amendment 8 was reflected in Article 4(2) which provided that the risk assessment may include a justification by the employer that the nature and extent of the risks make a further detailed risk assessment unnecessary. Article 5(2) (formerly Article 4) reflected Amendment 15 by referring to suitable working procedures (but omitted a reference to training). Article 6(2) reflected Amendment 16 by providing that where substitution of a hazardous chemical was not possible, the employer should provide personal protective equipment. Article 6(3) reflected Amendment 33; however, the important stipulation that workers must be informed of the requirement for health surveillance before being assigned to tasks involving serious health risks was deleted. Article 8 reflected Amendment 12 to the extent that a reference to workers' representatives was added but the requirement of consultation was omitted and the wording "before an alteration at the workplace which leads to changes" was changed to "whenever a major alteration at the workplace leads to a change".

The Council noted that Amendments 7 and 32 were unnecessary as these points were already covered by Articles 8(1) and 8(2) of Directive 89/391/EEC.

At second reading, the Parliamentary Rapporteur noted that the Common Position represented an improvement on the Commission's original proposal[212]. Nevertheless, Parliament tabled twelve amendments, of which the most notable were:

Amendment 4 required the Commission to assess the way in which the Member States have taken account of indicative limit values when establishing national occupational exposure limit values so that, if the assessment reveals wide differences in standards, the Commission shall take action to ensure closer harmonisation;

Amendment 8 altered Article 6(5) to make clear that an employer implementing preventive and protective measures once an occupational exposure limit value has been exceeded shall ensure that the limit is adhered to; and

Amendment 11 provided that health surveillance procedures shall be agreed with the workers concerned.

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[212] Committee on Employment and Social Affairs, European Parliament (Rapporteur: Freddy Blak), *Recommendation for Second Reading on the common position established by the Council with a view to the adoption of a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)*, 6.2.1998, A4-0051/98.

Amendment category	Parliament submitted[213]	Commission accepted[214]		Council accepted	
		Partly	Completely	Partly	Completely
A	5	0	4	3	2
B	5	1	3	0	1
C	2	0	2	0	0

The Commission accepted ten of Parliament's amendments. It rejected Amendment 8 on the ground that as it would require employers always to adhere to the occupational exposure limit value regardless of the national provision, it would undermine the distinction between indicative and binding limit values. The Council accepted five linguistic clarifications of the Directive and the inclusion of a reference in Article 6(6) to the need for an employer to segregate incompatible chemical agents.

Parliament's Impact

Parliament had a significant impact on this Directive. The Council accepted thirty of the thirty-eight amendments tabled at first reading, an unusually high figure. In particular, Parliament secured several important amendments to Article 3 concerning the procedure for establishing occupational exposure limit values, the factors to be taken into account when setting these values and the relationship between the different types of limit values. Parliament also secured other changes relating to the provision of protective equipment, the form of the risk assessment and the need for health assessment to be mandatory in ceratin circumstances. Parliament's impact at second reading was more limited, but the Council did adopt one-half of Parliament's amendments.

213 Decision on the common position adopted by the Council with a view to the adoption of a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), 17.2.1998, OJ C 80/98, p.25.

214 European Commission *Re-examined proposal for a Council Directive on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC),* 10.3.1998, COM(98)0162.

VI. VOCATIONAL TRAINING

1. LEONARDO DA VINCI

Council Decision 94/819/EC of 6 December 1994[215] establishing an action programme for the implementation of a European Community vocational training policy

Background to the Decision

Originally the general principles for Community action in the field of vocational training, based on the Treaty of Rome, were laid down by the Council Decision of 2 April 1963[216]. These principles stress that the essential aim of Community action concerning education and training is to enhance the citizens' ability to show initiative and creativity and allow them "to take a fully active part in society"[217]. The Treaty on European Union enhanced the Union's role in contributing to the general objective of the development of quality education and training based on Articles 126 and 127.

Under Article 127 "the Community shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organization of training" (Article 127). Additionally, the Article sets out five specific objectives for vocational training and specifies the areas of responsibility for the Community, including:

- facilitating adaptation to industrial changes, in particular through vocational training and retraining;
- improving initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
- facilitate access to vocational training and encourage mobility of instructions and trainees, particularly young people; and
- develop exchanges of information and experience on issues common to the training systems of the Member States[218].

Following the entry into force of the Treaty on European Union, the decision making system, with regard to Article 127, has been changed so that the Council can decide on the basis of a qualified majority vote and after the cooperation procedure with the European Parliament[219].

In practice, until the Council Decision on the 'Leonardo da Vinci' programme was agreed on 6 December 1994, the Community's principles for vocational training were laid down through the four

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215 Council Decision 94/819/EC, 6.12.1994, OJ L 340/94, p.8.

216 Council Decision 63/266/EEC of 2.4.1963, OJ English Special Edition 1963-1964, p.25).

217 COM(93)0686 final, 21.12.1993.

218 Article 127, Treaty on European Union and COM(93)0686 final, p.6.

219 Article 189c, Treaty on European Union.

action programmes PETRA, FORCE, EUROTECNET and COMETT. Under PETRA[220], which dealt with initial training for young people, over 700 projects, 14,000 teachers and trainees and 85,000 young people have taken part in the programmes activities since 1988[221]. The FORCE[222] programme dealt with continuing vocational training for persons in employment in order to adapt to industrial change, prevent unemployment and as a means of development[223]. EUROTECNET[224] was designed to fund the development of innovative means of training and COMETT II[225] supported the organisation of 7,000 training courses and initiated cooperation between European universities and industry in the field of education and training for technology[226]. In the light of the development of the Union's competence in the field of vocational training in the Treaty on European Union the above programmes have been replaced by the 'Leonardo da Vinci' programme, the Decision for which is outlined below along with the European Parliament's impact.

The Decision

Date of implementation: 1 January 1995 to 31 December 1999.

This Decision establishes an action programme 'Leonardo da Vinci' which allows for the implementation of a Community vocational training policy which supports and supplements the action of the Union's Member States. The legal basis is Article 127, Treaty on European Union. The programme is for five years from 1 January 1995 to 31 December 1999. Funding for the programme amounts to ECU 620 million. A series of objectives are laid out in the Decision and these include:

- improving the quality and innovative capacity of Member States vocational training systems;
- developing the European dimension in vocational training and guidance;
  promoting lifelong training as a means of reducing unemployment;
- giving all young people in the Community, the possibility of one year or more, if possible, of initial vocational training after their full time vocational education; and
- supporting activities aimed at developing linguistic skills as part of vocational training measures.

The Decision requires that the Commission, firstly, work in partnership with the Member States to implement the associated measures and it shall be assisted by the European Centre for the

220 PETRA 91/387/EEC, OJ L 214/91, p.69.

221 COM(93)0686 final, p.6.

222 FORCE 90/267/EEC, OJ L 156/90, p.1.

223 COM(93)0686 final, p.8.

224 EUROTECNET 89/657/EEC, OJ L 393/89, p.29.

225 COMETT II 89/27/EEC, OJ L 13/89, p.28.

226 COM(93)0686 final, p.78.

Development of Vocational Training (Cedefop), and secondly, it shall ensure an overall consistency between this programme and the action programme on education and other Community measures.

A committee composed of two representatives from each Member State and chaired by the Commission will assist with regard to guidelines on financial support, procedures for selection, evaluation and the distribution of information concerning the results of the programme. Provision is made for the social partners to participate in the work of the Committee as observers.

The associated countries of Central and Eastern Europe (CCEE) along with Cyprus and Malta may also participate in the programme under specified conditions. An interim report, a communication on the continuation of the programme and a final report must be submitted to the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Vocational Training. The Annex to the Decision lays out in greater detail the measures to be taken to support the improvement of vocational training in Member States, the related cooperation between universities and industry, the development of language skills and innovative training.

The Parliament's Amendments

The Parliament examined this Decision in detail putting forward seventy amendments[227] to the Commission's original proposal[228] at the first reading[229]. Furthermore, the Parliament proposed thirty two amendments to the Council's common position[230] following the second reading[231].

During the debate on the first reading the Rapporteur emphasised the concerns of the Committee on Social Affairs, Employment and the Working Environment[232] which included first, the need to ensure equal opportunities for women[233]; second, the participation of the social partners in decisions relating to the Programme[234]; and third, the emphasis on the use of networks and improving vocational guidance while building on the work that has already been done in this field[235]. In the interest of maintaining consistency between this programme and other Community measures the Parliament sought to

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227 First reading amendments 71, 18 and 79; and 72, 50 form just two amendments.

228 Commission's original proposal COM(93)0686 final, OJ C 67/94, p.12.

229 Legislative Resolution, European Parliament amendments adopted 3.5.1994, OJ C 205/94, p.60.

230 Council's Common Position (EC) No 31/94 adopted 18.7.1994, OJ C 244/94, p.17.

231 Decision, European Parliament amendments adopted 26.10.94, OJ C 323/94, p.58.

232 Debates of the European Parliament, OJ Annex No. 3-448, 2.5.1994, p.31.

233 First reading, amendments 1, 25, 30, 33, 34, 36, 80, 53, 57, and 62.

234 First reading, amendments 71, 18, 79, 28 and 29.

235 First reading, amendments 63, 8, 38, 64, 68, 53, 60, and 62.

- build on the existing networks, notably through the University Enterprise Training Partnership[236];
- involve the European Centre for the Development of Vocational Training (Cedefop) in assisting the Commission[237];
- specify that there should be consistency with the Youth for Europe Programme, the Programme Against Social Exclusion and other initiatives in favour of young people or disadvantaged groups[238]; and
- have those responsible for the Structural Funds, especially the Community Initiative Programmes, both at national and Community level, involved in the selection of projects financed by the 'Leonardo da Vinci' programme[239].

There were also amendments seeking to emphasis the importance of foreign language training as part of vocational training courses[240] and bring forward the date for the interim report by one year to 30 June 1997[241].

Notably, the Parliament sought, following the first and second readings to have, firstly, a definition of 'vocational guidance' included in the Decision and that it be defined as "the provision of advice and information on the choice of an occupation, vocational advancement and changes in occupation. It also includes vocational information"[242]. Secondly, concern that a clear reference should be made to those people disadvantaged by a range of factors including geographical and ethnic factors resulted in a series of amendments[243]. Thirdly, the Parliament, noting the conclusions of the European Council meeting in Copenhagen (June 1993), wanted to allow the associated countries of central and eastern Europe participate in the 'Leonardo' programme[244] and, following the second reading and the conclusions of the Council's Corfu meeting (June 1994), the Parliament also sought to allow Cyprus and Malta to participate[245].

The quantitative analysis of the uptake of the Parliament's amendments by the Commission and the Council following the first and second readings is given in the tables below.

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236 First reading, amendment 68.

237 First reading, amendment 22.

238 First reading, amendment 23.

239 First reading, amendment 26, see also amendment 46.

240 First reading, amendments 7, 40, 44, and 61.

241 First reading, amendment 31.

242 First reading, amendment 64; second reading, amendment 7.

243 First reading, amendment 43; second reading, amendments 9, 26, 28, and 3.

244 First reading, amendment 10.

245 Second reading, amendments 6 and 37.

First Reading

Amendment category	EP submitted[246]	Commission accepted[247]		Council accepted[248]	
		Partly	Fully	Partly	Fully
A	11	0	9	2	0
B	54	5	24	10	1
C	5	1	0	2	0

Total amendments: 70

Second Reading

Amendment category	EP submitted[249]	Commission accepted[250]		Council accepted[251]	
		Partly	Fully	Partly	Fully
A	7	0	4	1	1
B	23	4	14	5	4
C	2	2	0	2	0

Total amendments: 32[252]

The above tables illustrate that following both readings the Parliament's amendments had an impact on the Decision, as finally agreed by the Council. The following discussion highlights the most notable category B and C amendments which were included in the Decision, highlighting examples of where there were differences between the views of the Commission and the Council.

A number of the Parliament's areas of concern referred to above have been addressed to varying degrees in the Decision. Firstly, concerning equality of access for women to and benefits arising from vocational training, the Decision states more clearly the need for the promotion of equal

246 Legislative Resolution, European Parliament amendments adopted 3.5.1994, OJ C 205/94, p.60.

247 Commission's amended proposal COM(94)0215 final.

248 Council's common position (EC) 31/94 adopted by the Council on 18.7.1994, OJ C 244/94, p.17.

249 Decision, European Parliament amendments adopted 26.10.1994, OJ C 323/94, p.58.

250 Commission's reexamined proposal COM(94)0497 final, 15.11.1994.

251 Council Decision 94/819/EC, 6.12.1994, OJ L 340/94, p.8.

252 Six of these amendments are repeats of those submitted at the first reading while fourteen are partial repeats and eleven are new.

opportunities for men and women in vocational training and the implementation of projects related to developing women's prospects[253].

Secondly, the Parliament wanted to see the social partners in partnership with the Commission and Member States for the monitoring and evaluation of the Programme. It also proposed that there should be an equal number of social partners to the representation from the Member States on the advisory committee. The Commission stated that it shared the Parliament's objective regarding the representation and participation of the social partners at Community and national level[254]. It is also noted that the Council's wording in its common position "falls short" of the Commission's wishes[255]. However, although the social partners do not have partnership status with the Commission and the Member States in the Decision, as observers they do have representation on the committee equal to that of the Member States and the right to have their position recorded in the minutes. These provisions appear to stem from the Parliament's amendments[256].

Thirdly, with regard to the Parliament's wish to ensure that the new programme should build on the successful work already done and that this programme complement other Community measures the Decision reflects the relevant amendments, although the individual programmes are not specified[257].

Notably, the Council incorporated into the Decision, to varying degrees, four amendments which had been rejected by the Commission[258]. Therefore, the Parliament prompted the following requirements;

- that the Commission inform the Advisory Committee on Vocational Training of the programme's progress and also that this Committee should receive the interim report, the communication on the continuation of this programme and the final report[259];
- that Member States shall coordinate and organize the implementation of the programme by providing the appropriate structures[260];

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253 First reading, amendment 1 category B partly accepted, Decision eleventh recital; amendment 25, category A partly accepted, Decision Article 8.2(c); second reading, amendment 30 category B partly accepted, Decision Annex Part A Strand II 1.1.(d).

254 Commission's amended proposal COM(94)0215 final explanatory memorandum, p.1, point 5.

255 SEC(94)1174 final, 13.7.1994, p.3.

256 First reading, amendment 28 category B partly accepted; second reading, amendment 14 category B partly accepted, Decision Articles 7 and 8(4).

257 First reading, amendments 8 category B partly accepted, Decision recital 23 and Article 4(2); first reading, amendment 9 category B partly accepted, Decision recital 23; first reading, amendment 68 category B partly accepted, Decision Article 3; and first reading, amendments 23 category B partly accepted, Decision Article 8(1).

258 Council's common position (EC) No 31/94, adopted 18.7.1994, OJ C 244/94, p.36.

259 First reading, amendment 21 category C partly accepted, Decision Articles 8(6) and 10(4).

260 First reading, amendment 22 category C partly accepted, Decision Article 4(3).

- the interim report on the implementation of the programme is 30 June 1997 one year earlier than originally proposed[261]; and
- this programme shall be consistent with other Community measures[262].

As noted above, the second reading was also important with respect to the Parliament's influence on the Decision. Firstly, it was accepted that the associated countries of central and eastern Europe along with Cyprus and Malta should be able to participate in the 'Leonardo' programme[263]. Secondly, the definition of 'vocational guidance' was included with only a slight change of wording[264], and finally, the priorities for the programme specifically mention access to training for persons disadvantaged by socio-economic, geographical or ethnic factors or by physical or mental disability[265].

The Parliament's Impact

The Parliament's impact on this Decision illustrates the value of the first and second readings in the cooperation procedure. Notably, three of the Parliament's more significant amendments were accepted following the second reading. The Parliament ensured that

- the Programme's priorities should specifically mention access to training for persons disadvantaged by socio-economic, geographical or ethnic factors or by physical or mental disability;
- the definition of 'vocational guidance' as the provision of advice and information on the choice of an occupation and changes of occupation has been included in the Directive;
- the countries of Central and Eastern Europe, which have association agreements with the Community along with Cyprus and Malta may participate in the Programme.

There are also examples in this case of where the Council accepted amendments that had not been incorporated by the Commission. Examples include the provision of information and reports on the Programme to the Advisory Committee on Vocational Training and bringing forward by one year the date for the interim report.

In keeping with the Parliament's general concern for the equality of women and the role of the social partners it was instrumental in enhancing the attention paid to both groups in the Programme.

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261 First reading, amendment 31 category B partly accepted, Decision Article 9.

262 First reading, amendment 23 category B partly accepted, Decision Article 8(1).

263 First reading, amendment 10 category C partly accepted; second reading, amendments 6 and 37 category C partly accepted, Decision Recital 26 and Article 9 (1 and 2).

264 Second reading, amendment 7 category B partly accepted, Decision Article 2(d).

265 First reading, amendment 43 category B fully accepted; second reading, amendment 9 category B fully accepted, Decision Article 3(i); second reading, amendment 26 category B fully accepted, Decision Annex Part A Strand I I.1.1.(e); Second reading, amendment 28 category B fully accepted, Decision Annex Part A Strand I 1.2. sixth indent; and second reading, amendment 31 category B fully accepted, Annex Strand II II.2 sixth indent.

Council Regulation (EC) No 1572/98 of 17 July 1998 amending Regulation (EEC) No 1360/90 establishing a European Training Foundation[266]

The Regulation

Article 1 of Regulation 1572/98 amends for the second time Regulation 1360/90 establishing a European Training Foundation[267]. Article 1 of Regulation 1360/90 is amended so as to widen the Foundation's remit to the Mediterranean countries and territories receiving financial and technical assistance under Regulation 1488/96 establishing the Euro-Mediterranean partnership (MEDA)[268].

Articles 2 and 3 are amended to provide that the Foundation shall work within general guidelines established at the Community level. Article 3(c) is amended to provide that the Foundation may implement vocational training programmes as part of the Community's policy of assistance to the eligible countries, using multi-disciplinary teams and drawing actively on the experience of Community vocational training programmes.

Article 5(4) is amended so that the Commission shall have an extra representative without voting rights on the governing board of the Foundation. Provision is made for greater Commission involvement in the adoption of the Foundation's work programmes and in the Foundation's Advisory Forum. An amendment to Article 7(1) modifies the duties of the Director of the Foundation by adding that he shall be responsible for implementing the governing board's decisions and the guidelines set down for the Foundation's activities.

Article 10(4) is amended to provide that the Foundation's budget shall provide details by category and grade of the number of staff employed. Article 17 provides for the Commission in consultation with the governing board to establish a monitoring and evaluation procedure to be carried out with the help of external experts. The first results of this procedure shall be presented in a report by 31 December 2000.

The legal basis for the Regulation was Article 235 of the EC Treaty, which requires consultation of Parliament.

Parliament's Amendments

The Commission's proposal was intended to widen the remit of the European Training Foundation to include the MEDA countries and to amend Regulation 1360/90 so as to enable the Commission to give policy guidance to the Foundation and to improve the efficiency of the Foundation. While Parliament welcomed the Commission's proposal to adopt general policy guidelines which would give the Foundation a clearer mandate, it introduced amendments intended to ensure that the Commission engaged in a dialogue with the Foundation rather than adopting guidelines for its operations unilaterally. Parliament felt that the Commission's proposal to reduce the term of office

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266 OJ L 206/98, p.1.

267 OJ L 131/90, p.1.

268 Council Regulation (EC) No 1488/96 of 23.7.1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ L 189/96, p.1.

of the Director of the Foundation from five years to a period between three and five years was unsatisfactory. Parliament also tabled an amendment stressing the need to involve the Foundation in the implementation of the Accession Partnerships with the central and eastern European countries. Finally, Parliament tabled five amendments which emphasised the need to strengthen the Foundation's role as a centre of expertise on vocational training and emphasised the importance of human resources development during the transition to a market economy.

Amendment category	Parliament submitted[269]	Commission accepted[270]		Council accepted	
		Partly	Completely	Partly	Completely
A	5	0	3	1	1
B	9	1	3	1	2
C	3	0	1	1	0

The Commission accepted Parliament's amendments that the general policy guidelines for the Foundation's operations should be set jointly by the Commission and the governing body of the Foundation rather than by the Commission alone. The Commission accepted Amendment 6 which altered the functions of the Foundation so that the Foundation could implement vocational training programmes, using multi-disciplinary teams of specialists and drawing actively on the experience of Community vocational training programmes. Parliament's amendment fixing the term of office of the Director of the Foundation at five years with the possibility of an extension was also accepted. The Commission agreed that the Foundation's budget should give details of the Foundation'semployees. Finally, the Commission adopted an amendment providing for monitoring and evaluation of the Foundation's operations by an external body. The Commission rejected amendments emphasising that the Foundation should help the central and eastern European countries to align their vocational training systems with the *acquis communautaire* and altering the composition of the Foundation's Advisory Council.

The Council accepted Amendment 6 concerning the functions of the Foundation and the amendments concerning the Director's term of office and the need for details of the Foundation's staff to be set out in its budget. The Council amended the provision on guidelines to provide that they will be set at the Community level, without specifying the procedure. The Council amended Article 17 to provide that the Commission and the governing board of the Foundation shall establish a monitoring procedure which will be conducted with the help of external experts; it deleted the attempt to set criteria for the monitoring procedure but accepted that the first report should be presented by December 2000.

269 Legislative resolution embodying Parliament's opinion on the proposalfor a Council Regulation amending for the second time Regulation (EEC) No 1360/90 establishing a European Training Foundation, 12.3.1998, OJ C 104/98, p.209.

270 Amended proposal for a Council Regulation (EC) amending for the second time Regulation (EEC) No 1360/90 establishing a European Training Foundation, 27.5.1998, OJ C 213/98, p.8.

Parliament’s Impact

Parliament did not attempt to introduce substantial changes to this Regulation but to alter several points of detail. Parliament was successful on several points. It secured an amendment to the definition of the functions of the Foundation, deleted the Commission's proposed change to the Director's term of office and successfully required details concerning staff in the Foundation's budget. Moreover, Parliament also modified the Commission's proposal that it alone should establish the policy guidelines for the Foundation and introduced an independent element into the procedure for monitoring the work of the Foundation.

Council Decision of 21 December 1998 on the promotion of European pathways in work-linked training, including apprenticeship (1999/51/EC)[271]

The Decision

The Decision establishes a document known as the "EUROPASS Training" which shall act as a record of periods of training which a person undergoing work-linked training, including apprenticeship, has followed in a Member State other than that in which his training is based (the state of provenance). This period of training shall be known as a "European pathway".

Article 3 of the Decision provides that three conditions shall apply to the EUROPASS Training, namely: each European pathway shall form part of the training followed in the Member State of provenance, in accordance with its own practices; the body responsible for organising training in the State of provenance and the host partner shall agree on the content, objectives, duration and practicalities of the European pathway; and the European pathway shall be monitored by a mentor.

Article 4 provides that the EUROPASS Training shall be issued by the body responsible for organising the training in the Member State of provenance. The EUROPASS Training shall specify the training followed and qualification to which the training leads, specify that the European pathway forms part of the training followed in the Member State of provenance, identify the content and duration of the European pathway and identify the host partner and the mentor's function. Details concerning the contents and presentation of the EUROPASS Training are set out in an Annex.

Article 5 provides for the Commission, in co-operation with the Member States, to ensure consistency between the implementation of the Decision and Community programmes concerning education and vocational training. Article 6 provides that the Commission shall be responsible for disseminating and monitoring the EUROPASS Training programme in close co-operation with the Member States. The Member States shall facilitate access to the EUROPASS Training by disseminating appropriate information, allowing an evaluation of the actions implemented and facilitating equal opportunities, especially by raising awareness among all relevant actors. In implementing the Decision, the Commission and the Member States shall take account of the importance of SMEs and crafts and their particular needs.

Under Article 9, the Commission shall submit a report to Parliament and the Council on the implementation and effects of the Decision.

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[271] OJ L 17/99, p.45.

The legal basis for the Decision was Article 127 of the EC Treaty, which requires the co-operation procedure.

Parliament's Amendments

The Parliamentary Rapporteur stressed his support for the Commission's initiative and drew attention to its political importance[272]. He noted that the proposal could not by itself remove all obstacles to mobility in the field of vocational training and that the Commission had undertaken to bring forward other initiatives in this area. The amendments, many of which were to the recitals, were thus not intended to effect major changes to the proposal.

Parliament adopted twenty-nine amendments to the Commission's proposal, of which fourteen were amendments to the recitals. The most notable amendments were:

Amendments 8 and 20 sought to ensure that the European pathways should apply in all Member States, rather than only in those States where a period of training abroad was explicitly provided for as an integral part of a training course;

Amendment 16 provided that participation in the European pathways should be voluntary and that the Decision should not entail any rights and obligations other than those set out therein;

Amendment 19 provided that the period of training should last for at least three months;

Amendment 21 provided that the European pathways should not be used as a means of job substitution in the Member States of provenance;

Amendment 25 provided that each Member State should take steps to facilitate the provision to trainees of guidance concerning health and safety risks and procedures in the workplace;

Amendment 27 provided that the Commission should submit a report on the implementation and effects of the Decision within three years;

Amendment 28 provided that the proportion of the Community contribution to the implementation of Articles 6(1) and 6(3) should be no less than fifty per cent; and

Amendment 29 provided that the Commission should produce an annual qualitative analysis of vocational demand so that the national vocational training plans could be adjusted to market requirements.

[272] Committee on Employment and Social Affairs, European Parliament (Rapporteur: Pierluigi Castagnetti) *Report on the proposal for a Council Decision on the promotion of European pathways for work-linked training, including apprenticeship,* 20.4.1998, A4-0135/98.

Amendment category	Parliament submitted[273]	Commission accepted[274]		Council accepted[275]	
		Partly	Completely	Partly	Completely
A	17	0	17	5	4
B	6	0	6	0	1
C	6	1	3	0	2

The Commission accepted all but three of Parliament's amendments. It rejected Amendments 19, 29 and 28 in part. In its Common Position, the Council simplified the proposal considerably. The Council adopted amendments requiring the Commission to evaluate the operation and impact of the initiative, accepted recitals referring to the importance of SMEs and equal opportunities, and accepted Amendment 16. It rejected Amendments 21 and 25. The Council rejected Amendment 28 but substituted a figure of ECU 7.3 million as the financial reference amount for implementation of Article 6.

At second reading, the Parliamentary Rapporteur welcomed the simplification of the proposal which had *inter alia* enabled the text to skirt the question of whether access to European pathways should be limited to persons in States whose vocational training systems explicitly provided for a period of training abroad[276]. By deleting this reference, the Council had accepted implicitly that pathways were applicable, on a voluntary basis, to all Member States. However, the Rapporteur argued that the proposal now concerned itself almost entirely with the EUROPASS document and neglected the European pathways themselves. Amendments 1 and 7 thus stressed the need for common principles. A further five amendments sought to improve the quality of the pathways themselves, by, for example, requiring the Member States to disseminate information on working conditions and health and safety risks in the host undertakings. Amendment 16 sought to clarify the Commission's powers to evaluate the operation of the Decision. The remaining twelve amendments were minor linguistic changes or clarifications.

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273 Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision on the promotion of European pathways for work-linked training, including apprenticeship, 30.4.1998, OJ C 152/98, p.48.

274 Amended proposal for a Council Decision on the promotion of European pathways for work-linked training, including apprenticeship, 2.6.1998, OJ C 218/98, p.7.

275 Common Position (EC) No 4/98 adopted by the Council on 29 June 1998 with a view to adopting a Council Decision of ... on the promotion of European Pathways in work-linked training, including apprenticeship, OJ C 262/98, p.41.

276 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Pierluigi Castagnetti), *Recommendation for Second Reading on the common position established by the Council with a view to the adoption of a Council Decision on the promotion of European pathways in work-linked training, including apprenticeship*, 27.10.1998, A4-0374/98.

Amendment category	Parliament submitted[277]	Commission accepted[278]		Council accepted	
		Partly	Completely	Partly	Completely
A	15	0	14	1	0
B	4	0	4	1	0
C	1	0	0	0	0

The Commission noted that Parliament's amendments "improve and sometimes strengthen the text of the common position" and adopted all but two of the amendments relating to the funding of the EUROPASS Training initiative. The Council, however, was rather less enthusiastic and accepted only two amendments. It accepted Amendment 7 inserting in Article 1 a reference making clear that the EUROPASS Training will be issued on the basis of the common principles in Article 3 and an amendment to Article 3(2) that the training bodies in both States shall agree on the duration of the European pathway.

Parliament's Impact

Several of Parliament's amendments were reflected in the Decision. In particular, Article 3(1) of the Commission's proposal, which would have limited access to European pathways to persons in Member States whose vocational training systems provided for training abroad, was dropped from the Decision. Article 1 was amended to provide that the EUROPASS Training would be issued on the basis of the common principles set out in Article 3, as Parliament had wished. Parliament also secured an amendment that the training partners should agree on the duration of the European pathways, but not that there should be a minimum duration as it had first wished. The Decision reflected Parliament's wish that the Commission submit a report on the operation and impact of the Decision after three years.

277 Decision on the common position adopted by the Council with a view to adopting a Council Decision on the promotion of European pathways in work-linked training, including apprenticeship, 5.11.1998, OJ C 359/98, p.21.

278 European Commission, *Re-examined proposal for a Council Decision for the promotion of European pathways for work-linked training, including apprenticeship*, 1.12.1998, COM (98)0675.

VII. OWN-INITIATIVE REPORTS

Under Article 138b of the EC Treaty, the European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters which it considers that a Community act is required for the purpose of implementing the Treaty. The preparation of "own-initiative reports" is regulated by Rule 148 of Parliament's Rules of Procedure, which provides that a Committee intending to draw up a report and to submit a motion for a resolution to Parliament on a subject within its competence on which neither a consultation nor a request for an opinion nor a motion for a resolution has been referred to it may do so only with the authorisation of the Conference of Presidents, which is composed of the chairmen of the political groups represented in Parliament.

Parliament has made only sparing use of this power[279]. Between September 1995 and December 1998, the Committee on Employment and Social Affairs adopted only five own-initiative reports.

Resolution on a reduction and adaptation of working time[280]

The Parliamentary Rapporteur pointed out that, while unemployment was the key problem facing the European Union, the possibility of reducing working hours in order to fight unemployment had rarely been discussed[281]. It was clear that any company wishing to reduce working hours must avoid an increase in its unitary production costs. Costs could be kept constant despite a reduction in working time for each employee either by reducing expenditure on labour or by achieving increased productivity; such measures would, however, be acceptable to employees only if they did not affect their purchasing power.

The Rapporteur suggested five possible ways of reducing working hours. First, employees could be encouraged to take gradual retirement; for example, from as early as fifty employees could work only three-quarter time and receive one-quarter of their retirement pension. The Rapporteur noted that a gradual retirement scheme would be popular with the many employees who were not enraptured with their jobs, would avoid the dangerous sudden break between full-time work and complete retirement and would cost little unless there was a significant reduction in the average age of persons taking full retirement. Second, part-time work could be encouraged; to this end, part-time workers would have to be guaranteed the same trade union rights and career prospects as full-time workers and the right to return to full-time work should they wish. Part-time work, however, tended to exacerbate discrimination between men and women in the labour market and to undermine efforts to reduce the working week for full-time workers. Third, overtime, currently equivalent to 2.5% of the workforce or three to four million jobs, should be reduced. However, as overtime was often worked by the worst-paid employees, compensation would be necessary. The most important method was the fourth option, reduction of the working week. To avoid a loss of wages which workers would find unacceptable, the state should offer compensation, which could be funded from its reduced expenditure on unemployment and associated benefits. This compensation could be paid

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279 See generally Westlake, M., *A Modern Guide to the European Parliament*, pp.152-153, Pinter, London, 1994.

280 18.9.1996, OJ C 320/96, p.97.

281 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Michel Rocard), *Report on a reduction in working hours*, 20.6.1996, A4-0207/96.

in the form of reduced social security contributions in respect of the first thirty-two hours worked each week; increased social security contributions could be charged for any further hours worked, which would clearly act as a disincentive to exceeding the thirty-two hour week. Under this plan, an undertaking which changed from a thirty-nine to a thirty-two hour working week would reduce social security contributions by one-third, allowing an increase in the workforce of 10%. Finally, the Rapporteur suggested that, in the light of the increasing demand for highly-skilled employees, workers should spend more time in education and training and less in actual work during the course of a lifetime.

In its Resolution, Parliament called on the Commission to undertake and publish within six months an examination of experiments in reducing working time carried out in the Member States. The Resolution further called on the Commission to undertake and publish detailed studies on policies concerning the reduction of working time and appropriate compensation and possible alternatives. Parliament asked the Commission to undertake consultations with all concerned on both sides of industry and to encourage the Member States and social partners to consider the reduction of working time. The Resolution also called on the Commission and social partners to study the job creation consequences of replacing overtime with leave.

Parliament asked the Commission and the Member States to undertake studies of the potential savings flowing from adoption of the fourth of the Rapporteur's recommendations (concerning reduction of the working week). Parliament urged the Commission, if these studies were conclusive, to encourage the social partners to conclude flexible agreements on reducing working time, especially in sectors excluded from the Working Hours Directive, and to draw up a draft Recommendation laying down options for encouraging a reduction of working time in a way compatible with competitiveness and trade stability. Moreover, the social partners should create the necessary preconditions in collective agreements to enable business to introduce new arrangements concerning working hours. On the assumption that these measures would increase leisure time, Parliament called for consideration of strategies for support of lifelong learning, sporting and cultural activities and community work.

The Commission's main response to this Resolution is contained in its Green Paper *Partnership for a new organisation of work*[282]. The Commission noted that innovative arrangements concerning working time were already being introduced; plant operating time and shop opening times were being separated from individual working time to allow better utilisation of equipment and improved response to consumer demand, working time was increasingly being calculated on an annual rather than on a weekly basis, part-time work was becoming more common and flexible leave arrangements were increasing. The Commission noted that Directive 96/34 on the framework agreement on parental leave was a good example of progress in this field at the Community level. However, the Green Paper did not seek to set out any proposals in this area but only to raise the question of what contribution a reduction or adaptation of working time could make to the improvement of growth, productivity and employment.

The Commission has also pointed out that the issue of new arrangements for working time have been considered by the social partners at meetings of the Social Dialogue Committee[283]. In its

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[282] European Commission, *Partnership for a new organisation of work*, Bulletin Supplement 4/97.

[283] General Report on the Activities of the European Union 1996, para.566.

White paper on activities excluded from the Working Time Directive, the Commission noted that Parliament had called on it to encourage the social partners to consult with a view to concluding flexible agreements on reducing and adapting working time, especially in sectors excluded from the Directive[284]. In its report to the Dublin European Council on the development of tax systems, the Commission noted that a reduction of taxes on labour would have a greater impact on employment if linked in a flexible way to experiments involving changes in work organisation[285]. Finally, the Commission has launched a study to identify and explain the tax and social security obstacles to reorganisation of working time in some Member States.

Resolution on the social aspects of housing[286]

The Parliamentary Rapporteur noted that while the Union acted in most areas of social policy, it had been virtually silent on housing policy, although it was a central element of national social policy and integral to policies on social security, social exclusion, employment and cross-border labour mobility[287]. The Rapporteur identified three common challenges facing the Member States in this field: accessibility, affordability and quality. Although in general access to the owner-occupied sector had increased during the last fifteen years, waiting times for social housing had increased due to demographic change, the growth in the number of households, unemployment and immigration from Eastern Europe. In particular, there had been a marked increase in the number of homeless, to around 3.5 million persons in the Union, because of family breakdown, rising unemployment, reductions in welfare benefits and the removal of psychiatric patients from medical institutions. Affordability of accommodation was a problem for three groups: persons who are poor enough to suffer from rent increases but too prosperous to qualify for housing allowances; persons without access to housing allowances or social housing; and home-owners on low incomes hit by rises in interest rates or unemployment. Finally, despite general improvements in Europe's housing stock, many Europeans, and especially the poor and the old, lived in inadequate housing.

Turning to how the Community might assist the Member States in tackling these problems, the Rapporteur noted that the European Coal and Steel Community had for over forty years provided subsidised loans for the construction, purchase and modernisation of houses for coal and steel workers and that the Structural Funds had been used to finance housing projects. The Rapporteur proposed three new initiatives. First, the Treaty should be amended to recognise a right to housing. Second, greater use should be made of the ECSC reserves or the reformed Structural Funds to provide low-cost housing loans. Third, a Community programme devoted to housing policy should be introduced. This programme would enable the exchange and analysis of information on housing policy, especially with a view to promoting good practice, the establishment of minimum objectives to ensure access to housing for all, monitoring the impact of Union policies on housing and the

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284 European Commission, *White Paper on Sectors and Activities excluded from the Working Time Directive*, 15.7.1997, COM(97)0334.

285 European Commission, *Taxation in the European Union - Report on the development of tax systems*, 22.10.1996, COM(96)0546.

286 28.5.1997, OJ C 182/97, p.70.

287 Committee on Social Affairs and Employment, European Parliament (Rapporteur: Brian Crowley), *Report on the social aspects of housing*, 18.3.1997, A4-0088/97.

establishment of a European Housing Forum consisting of representatives of housing organisations to act as a consultative body.

In its Resolution, Parliament called on the Member States to amend the Treaty at the Intergovernmental Conference to include a right to decent and affordable housing for all. Parliament, insisting that this right be realised through concrete measures, called on the Member States to develop a housing policy which would ensure a sufficient supply of high-quality and affordable housing, with security of tenure. Moreover, the Resolution called for preventive measures to guarantee a minimum level of housing security for those facing serious social exclusion and called on the Member States to prevent property owners from leaving houses unoccupied.

Noting that housing should be taken into consideration at all levels of decision-making in the Union, Parliament suggested the establishment of a European housing policy which would involve the exchange and analysis of information on housing policy in the Member States, the exchange and promotion of examples of good practice in housing, the establishment of minimum objectives to ensure access to housing for all and permanent monitoring of the impact of Union policies on housing. Moreover, Parliament proposed that the Commission investigate the launching of a pilot programme to assist the funding of integrated national housing-related projects and suggested that the Union should grant loans for housing. It urged the Commission to investigate the feasibility of using ECSC reserves and the Structural Funds for these loans.

The Resolution also noted that the development of an integrated European housing policy would have a beneficial impact on employment, would contribute to sustainable development and that properly targeted housing policy was important in sustaining the viability of rural and peripheral regions. Parliament called for an increase in the SAVE programme to promote energy-efficient housing. Parliament also noted the need to take into account the special needs of disabled and elderly people and women and children at risk and called on the Member States to prohibit discrimination in access to housing.

The Commission has decided not to respond to this Resolution.

Resolution on the future of the European Social Fund[288]

In its Resolution, Parliament called for the European Social Fund to continue to target both horizontal and regional objectives and for the number of objectives and Community initiatives to be drastically reduced with, in particular, the combination of Objectives 3 and 4. Parliament considered that a wide spectrum of measures should remain eligible for support but that in particular measures in favour of the young unemployed, women, the long-term unemployed, the disabled and the socially excluded should be retained while preventive measures against unemployment should be intensified. The Resolution called for support measures to be extended to a wide variety of new areas, ranging from support for post-graduate education to support for study for environmental protection qualifications to measures against illiteracy. In particular, Parliament called for retention of gender equality as a Community employment objective and encouragement for measures to improve opportunities for women.

[288] 21.11.1997, OJ C 371/97, p.251.

The Resolution noted that appropriations should be allocated among the Funds initially in accordance with the political priorities of the Community and called for the allocation of appropriations from the Social Fund to the Member States to take place only after Structural Fund appropriations had been allocated to individual Funds. Parliament called for the creation of a reserve of 5% of appropriations to be used as an incentive in mid-term to reward those Member States which had made best use of their appropriations until then. Moreover, the Resolution called for unused appropriations to be made available to other regions or Member States; the Commission should allocate these retrieved appropriations to exemplary measures which deserved wider dissemination.

Parliament called for a drastic simplification of the programme planning procedure, with the Commission responsible for defining the objectives to be pursued and the Member States responsible for implementation. The Resolution proposed that the social partners and non-governmental organisations should become involved in implementation and evaluation of projects and that the Commission should devise quantitative and qualitative objectives jointly with national, and regional authorities, which should then select the appropriate implementation measures. Common evaluation criteria should be devised to allow comparisons at the European level. The Commission, in the negotiations on the relevant proposals from the Member States, should be able to earmark up to 40% of available appropriations for measures for a particular target group.

Parliament called for administration of the Fund to be simplified; the administrative provisions of the Structural Funds should be harmonised, greater use made of uniform planning documents and the transfer of appropriations should be quickened to ensure arrival within three months. Parliament proposed that the principle of additionality should be more clearly defined and more strictly checked and that co-financing should be retained.

The Resolution called for Social Fund interventions to be co-ordinated with the guidelines adopted under the European employment strategy. Finally, Parliament noted that the accession of the Central and Eastern European countries called for their gradual inclusion in Community structural support.

The Commission's reaction to these proposals is contained in its Proposals for a new Regulation establishing general provisions for the Structural Funds and for a new Regulation for the European Social Fund, which reflect many, but not all, of Parliament's recommendations[289]. The Commission agreed that the European Social Fund should continue to target both horizontal and regional objectives. It proposed a reduction in the number of Objectives from seven to three and in the number of Community initiatives from thirteen to three; the three proposed Objectives are development and structural adjustment of regions whose development lags behind (Objective 1), economic and social conversion of areas facing structural difficulty (Objective 2) and the adaptation and modernisation of systems of education, training and employment (Objective 3). In view of the great diversity of policies and practices in the Member States, a wide spectrum of activities should remain eligible for support from the European Social Fund. The Commission agreed that support for preventive employment policy and the promotion of equal opportunities should be increased and a minimum level of support set for these policy fields. Moreover, the Commission accepted that

[289] European Commission, *Proposal for a Council Regulation (EC) laying down general provisions on the Structural Funds; Proposal for a Council Regulation (EC) on the European Social Fund*, 18.3.1998, COM(98)0131.

interventions should be co-ordinated with the guidelines adopted under the European employment strategy. The Commission also agreed that the programme planning procedure should be simplified and called for a clearer definition of responsibilities in a broader and deeper partnership; the Commission would be responsible for strategy, ensuring the observation of Community priorities and verification, while detailed programming would be left to the authorities in the Member States. Moreover, the social partners and non-governmental organisations should be involved in implementation and evaluation, as Parliament had proposed. The Commission accepted that the principle of additionality should be retained and that its implementation should be more closely monitored. Moreover, a mid-term performance reserve would be established, which would be used as an incentive to reward programmes which had performed well; this reserve was fixed at 10% of appropriations rather than the 5% Parliament had proposed.

The Commission did not take up Parliament's proposals concerning the allocation of appropriations, the earmarking of funds for target groups, the re-allocation of appropriations not used by a Member State and the inclusion of the Central and Eastern European countries.

Resolution on trans-national trade union rights in the European Union[290]

The Parliamentary Rapporteur argued that the Community should take steps to recognise trade union rights[291]. The Rapporteur acknowledged that Article 137(6) of the Treaty of Amsterdam (formerly Article 2(6) of the Agreement on Social Policy) provided that Article 137 should not apply to the right of association and the right to strike. Nevertheless, there was a growing need for the Community to recognise trade union rights. Parliament had repeatedly urged that the European Commission should make representations at the international trade conference, held under WTO auspices, to ensure that countries outside the Union observed international labour standards; the Union had now begun to make international agreements conditional upon observance of these standards. Moreover, as the enlargement of the Union would include countries with very different attitudes to trade union rights, it was necessary for these rights to be clearly formulated at the European level. The provisions, introduced by the Single European Act and extended by the Treaty on European Union, for collective agreements between the social partners could be used for the elaboration of pan-European trade union rights. Moreover, European integration and the associated freedom of movement of workers, the large increase in the number of workers with atypical employment contracts and globalisation made it essential to enshrine the right to freedom of association in the Treaty on European Union. Furthermore, the Rapporteur noted that recognising the right to freedom of association at the European level would implicitly establish this right at the national level.

In its Resolution, Parliament noted that ILO Conventions 87 and 98 concerning freedom of association and collective bargaining and the relevant provisions of the European Social Charter must be applied at the Community level. The Resolution called for the repeal of Article 137(6) of the Treaty of Amsterdam and for Article 137(3) to be made subject to the co-decision procedure and majority voting in the Council. Parliament called for the right of association, collective bargaining

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290 2.7.1998, OJ C 226/98, p.64.

291 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Ria Oomen-Ruitjen), *Report on trans-national trade union rights in the European Union*, 20.3.1998, A4-0095/98.

and industrial action to be enshrined in the Treaty on European Union. In Parliament's view, trade union rights at the European level must be established to ensure protection against discrimination for employees who were active in trade unions and to guarantee that workers were allowed to join trade unions.

To this end, Parliament urged management and labour to draw up proposals for negotiating suitable rules and principles and also to enter a dialogue concerning appropriate instruments to prevent collective labour disputes. The Resolution also called for the establishment of conciliation, mediation and voluntary arbitration procedures at the appropriate levels.

Turning to action by the Community, Parliament urged the Council to support agreements between the social partners under Articles 138 and 139 of the Treaty of Amsterdam and called on the Commission to devote part of its annual report under Article 136 to arrangements designed to secure trade union rights at the European level. Parliament also called on the Commission to investigate the best way for the social partners to establish agreements under Article 139 and to conduct appropriate studies and investigations by the end of 1998. Parliament also noted that in future it would devote part of its annual debate on the Social Charter to the question of extending trade union rights to the European level.

Joao de Deus Pinheiro replied to the Report for the Commission on 2 July 1998[292]. The Commissioner noted that while the right to freedom of association and collective bargaining were recognised in the Community Charter of the Fundamental Social Rights of Workers and implicit in Article 136 of the Treaty of Amsterdam, as the right to freedom of association and the right to strike were not within the scope of Article 137 of the Treaty, the Commission did not intend to bring forward legislation on these matters. Nevertheless, the Commission considered that the question of fundamental social rights required greater consideration at the European level. To this end, the European forum on social policy held in June 1996 had considered this issue and the Commission had established a group of experts to examine progress in this field and to make recommendations for future action.

Resolution on the situation of frontier workers in the European Union[293]

The Parliamentary Rapporteur noted that the impetus for her report had been provided by a petition submitted by two Belgian trade unions whose members had been adversely affected by changes in Dutch social security regulations[294]. While Dutch workers had been compensated for an increase in Dutch social security contributions by a corresponding reduction in tax, Belgian frontier workers (that is, persons who work in one state but return daily to their home in a neighbouring state) in the Netherlands had to pay the increased social security contributions without benefiting from the tax reduction. This problem was merely one example of the difficulties which confront frontier workers in the European Union; Italian frontier workers in France, for example, pay high social security contributions without obtaining full rights to French social security benefits, while frontier workers

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292 Verbatim Report of Debates of the European Parliament, 2.7.1998, point 2.

293 28.5.1998, OJ C 195/98, p.49.

294 Committee on Employment and Social Affairs, European Parliament (Rapporteur: Anne van Lancker), *Report on the situation of frontier workers in the European Union,* 6.5.1998, A4-0168/98.

in Germany pay "Pflegeversicherung' (nursing care insurance) even though they obtain no benefits thereby unless there is a comparable system in their country of residence.

The Rapporteur noted that although the 380,000 European frontier workers constituted only a small proportion of the 150 million European workforce, they nevertheless played an important symbolic role, both in respect of the general goal of European integration and the development of the single labour market. However, frontier workers, often working in peripheral areas and few in number, had been neglected by national governments. Consequently, it was necessary for the Union to address these issues.

The Rapporteur argued that problems arose principally with respect to social security and taxation. In general, only frontier workers currently in employment enjoyed access to health care in the country of employment; their family members and retired frontier workers were excluded. Problems also arose with early retirement schemes, and supplementary pension schemes, which fell outside Regulation 1408/71. Further problems arose concerning the definition of entitlement to unemployment benefits, and concerning replacement income during career breaks.

Turning to taxation, the Rapporteur noted that under the OECD's Model Convention on double taxation, frontier workers were exempted from the normal principal that income should be taxed in the country of employment. Frontier workers instead paid tax under any one of three possible arrangements. First, income might be subject to tax in the country of employment. In this case, frontier workers frequently paid higher taxes than residents, as they were unable to enjoy either the tax benefits granted to residents on the basis of their family situation or various deductions extended to residents. Although the European Court of Justice had held that frontier workers earning the greater part of their income in a country where they did not reside were entitled to the same tax benefits and deductions as residents, in practice such workers still experienced problems. Alternatively, frontier workers might pay tax in their country of residence or might be liable to tax in both countries, with a compensation system operating to transfer tax revenues between the two.

The Rapporteur pointed out that Regulation 1408/71 provided that frontier workers should pay their social security contributions in their country of employment. Where frontier workers also paid tax in their country of residence, problems arose as there is no uniform definition of social security contributions. For example, Belgian frontier workers in France pay both French social security contributions of 20 per cent of income, and 13 per cent tax in Belgium; however, one-third of the Belgian tax is used to fund social security. Frontier workers thus end up paying two sets of social security contributions.

In a comprehensive Resolution, Parliament called on the Commission to undertake a broad range of initiatives to address the problems identified by the Rapporteur. The Resolution urged the Council to adopt the Commission's current proposals for the reform of Regulation 1408/71 concerning rules for early retirement, access to health care in the country of employment and eligibility for unemployment benefits and called for the Commission to make further proposals concerning social security rights with respect to career breaks, supplementary pensions and non-statutory social security schemes. The Resolution also called on the Commission to apply at once the Memorandum on the implementation of Recommendation 94/79 concerning the taxation of non-

residents, urged the Commission to submit a proposal for a Directive on this subject and called on the Member States to bring their legislation into line with the case law of the European Court[295].

More generally, the Resolution called on the Commission to take action against the inconsistencies between national tax and social security systems which affected frontier workers, to undertake research into the various possible taxation systems for frontier workers and called for the adoption of a uniform definition of "frontier worker". Parliament called for an evaluation of the effect of existing double taxation agreements between the Member States and called for a European Convention on the avoidance of double taxation. Parliament also drew attention to the precarious situation of frontier workers employed in third countries with which the European Union had not concluded agreements on social security and called for these situations to be reviewed.

The Resolution called for a Directive requiring the Member States, when adopting new legislation concerning social security, taxation or employment, to apply a "Europe test" to assess the effect on frontier and migrant workers. When the "Europe test" revealed that a legislative change would disadvantage frontier workers, the affected workers should be entitled to compensation from statutory compensation arrangements established by the Member States. Parliament welcomed the Commission's action plan for the free movement of workers and the proposed merger of two Advisory Committees on Migrant Workers and Free Movement into a single body; Parliament urged these Committees to pay particular attention to the problems of border areas. The Resolution welcomed the Commission's proposal to promote cross-border co-operation, especially concerning issues affecting border workers. In particular, Parliament called on the Commission to conduct experiments in border regions whereby frontier workers would be able to choose freely between health care either in their country of residence or in their country of employment.

Parliament considered that the European Employment Service partnerships (EURES) should be intensified and called for the role of EURES' consultants to be extended from providing information to warning of problems in border areas; to this end, the Commission should plan the financing and functions of EURES with special reference to cross-border initiatives. The Resolution also asked the Commission to consider other cross-border forms of co-operation, such as Interreg and Euregio, and called on the Commission to publish annual studies on the situation of frontier workers.

Padraig Flynn gave the Commission's response to the Report on 27 May 1998[296]. He noted that the Commission supported the Rapporteur's concerns and that the Commission's 1997 action plan for free movement of workers had underlined the need for action to overcome the problems caused for frontier workers by disparities in national systems of social security, taxation and health care[297]. The Commissioner noted that the Commission had for many years been attempting to tackle the tax problems faced by frontier workers; as long ago as 1979, the Commission had presented a draft Directive to harmonise certain aspects of the tax treatment of non-residents but the proposal had not been adopted by the Council. Thus in 1993 the Commission had adopted Recommendation 94/79 which, together with the judgment of the European Court of Justice in *Schumacher*, had improved

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295 Commission Recommendation 94/79 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are resident, 21.12.1993, OJ L 39/94, p.22.

296 Verbatim Report of the Debates of the European Parliament for 27.5.1998, point 11.

297 European Commission, *An action plan for free movement of workers*, 12.11.1997, COM(97)0586.

the position of frontier workers[298]. Most Member States had now more or less adapted their legislation in line with Recommendation 94/79.

The Commissioner pointed out that the Commission kept under review the legislation in the Member States and had initiated infringement proceedings against several Member States for failure to respect the non-discrimination rule. Although the Commission in principle accepted the need for Community action in the field of tax jurisdiction, it had to take into account the need to achieve unanimity in the Council in order to adopt legislation in this field. Any attempt to conclude a European convention on the avoidance of double taxation would also require unanimity. Nevertheless the Commission undertook to pay particular attention to the need for a coherent solution to the tax and social security problems faced by frontier workers.

Turning to social policy, the Commissioner drew attention to the recent case law of the European Court of Justice which had established that a person insured for medical care in one Member State is entitled to reimbursement by that State for medical care received in another State in accordance with the rates applicable in the State of insurance[299]. The Commissioner took the view that these judgments rendered otiose the Rapporteur's suggestions concerning health care.

The Commissioner welcomed the suggestion that EURES partnerships should be stepped up but noted that, while the number of partnerships had increased from eleven to eighteen during the previous two years, the budget had fallen slightly. Mr Flynn noted that the cross-border partnerships provided information to frontier workers about their rights and obligations and helped to bring obstacles to mobility to the attention of national and European institutions; the Commission intended to gather this information in a more structured way in the future. While the EURES network would not be able to provide complete coverage in all border areas within the Union, the Commission intended to present a comprehensive report to Parliament on the work of EURES for 1996-97, which would provide an opportunity for detailed dialogue on the future development of EURES[300]. Furthermore, the Commissioner noted that the Cardiff European Council would announce the establishment of call centres in all Member States to advise all citizens of their rights[301].

Finally, addressing the proposal for a Directive on a "Europe test" to assess the effect of national legislation on frontier workers, the Commissioner noted that in general the Commission would use its powers to ensure that national laws were compatible with Community laws. As far as an assessment of legislation which was compatible with Community law but which nevertheless had a detrimental effect on frontier workers was concerned, while the Commissioner thought that a Directive would be inappropriate, he undertook that the Commission would stimulate cross-border

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298 Case 215/87, *Schumacher*, (1989) ECR 617.

299 Case 120/95, *Decker*, (1998) ECR I-1831 and Case 158/96, *Kohll*, (1998) ECR I-1931.

300 European Commission, *Developing a European Service in favour of mobility and employment. Report on EURES activities 1996-97 in accordance with Regulation (EEC) No 1612/68, Article 19(3)*, 3.7.1998, COM(98)0413.

301 At the Cardiff European Council, the Commission launched a new and comprehensive information service "Europe Direct" designed to inform citizens of their rights by means of guides, fact sheets and practical advice, *General Report on the activities of the European Union 1998*, para.1152.

co-operation to assess the social and economic consequences of national legislation on frontier workers.

CONCLUSIONS

From the establishment of the Reflection Group onwards, Parliament was fully involved in the Intergovernmental Conference and contributed to the discernible and practical progress in the areas of employment and social policy made by the Treaty of Amsterdam. Parliament's principal objectives, the incorporation of the Agreement on Social Policy into the Treaty and the adoption of a Chapter on Employment, were both realised. However, the divergent views of the Member States on employment policy ensured that the provisions of the new Chapter on Employment were rather vaguer than Parliament had wanted. Nevertheless, the Employment Chapter creates a framework for co-operation between the Member States, establishes clear objectives and gives the Member States and the Commission the tools to achieve these objectives. Not only was the Agreement on Social Policy incorporated into the Treaty but it was amended so as to take account of several points raised by Parliament; a legislative basis is provided for certain measures concerning social exclusion, the provisions concerning gender equality are strengthened and reference is made to the European Social Charter and the Community Charter of Fundamental Social Rights. Other recommendations were not taken up. In particular, the Community Charter of Fundamental Social Rights is not incorporated into the Treaty, nor is any attempt made to strengthen the rights of third country nationals legally resident in the Community.

Parliament adopted a detailed Resolution in preparation for the Luxembourg European Council on Employment and many of its recommendations are reflected in the Council's conclusions. The Council agreed with Parliament on the importance of completing the Single Market, of reducing regulatory burdens on business, of making venture capital more readily available and of establishing trans-European networks. Parliament and the Council also agreed on the need to shift from passive to active measures against unemployment, to encourage training and to promote flexibility in working patterns without sacrificing security. Perhaps Parliament's most notable achievement, however, was to stimulate the creation of the growth and employment initiative, which will finance employment by SMEs.

Parliament proposed formal amendments to fifteen of the twenty-one legislative acts concerning social policy adopted by the Council between September 1995 and December 1998. Although Parliament made suggestions concerning Directives 96/34 and 97/81, it was, under Article 4 of the Agreement on Social Policy, excluded from formal participation in the legislative procedure. Parliament tabled no amendments to Directives 97/74, 97/75 and 98/23 which were merely administrative measures designed to take account of the United Kingdom's acceptance of legislation already adopted under the Agreement on Social Policy. Parliament also adopted without debate Directive 98/59 on the approximation of the laws of the Member States relating to collective redundancies, which was purely a codification measure.

Parliament's impact on the remaining fifteen measures varied. Parliament had a very significant impact on Directive 96/71 on the posting of workers; the Directive reflected Parliament's views on its application to undertakings established outside the Community, the type of rules covered, the exceptions allowed and the means of enforcement.

Parliament had very little impact, however, on Directive 98/50 on the transfer of undertakings. Even though Parliament was able to reach agreement with the Commission that the Commission's proposed alteration to the definition of "transfer" should be dropped, the Council refused to respect this agreement. Of Parliament's eighteen amendments, the only one to survive was a provision that

the Member States must prohibit the fraudulent misuse of insolvency proceedings so as to deprive employees of their rights.

Parliament's impact on Decisions concerning the operation of the labour market was equally limited. Parliament had no impact whatever on Decision 97/16 establishing an Employment and Labour Market Committee. Although Parliament tabled eight amendments concerning Decision 98/171 on Community activities concerning analysis, research and co-operation in employment and the labour market, the Commission's proposal was substantially altered by the Council and the amendments were disregarded. Parliament adopted sixteen amendments to Decision 98/347 concerning financial assistance for SMEs, but again had a negligible impact, securing only one substantial change concerning the inclusion of an article on management fees.

Turning to social security, Parliament had almost no impact on the Regulations amending Regulations 1408/71 and 574/72, largely because neither Commission nor Council was willing to accept that proposals intended to effect technical amendments to Regulations 1408/71 and 574/72 should become a vehicle for extensive substantive changes to social policy legislation. Parliament's amendment concerning a matter of detail in Regulation 1290/97 was accepted in part. However, all Parliament's amendments to Regulations 3095/95, 3095/96 and 1223/98 were rejected. While Parliament tabled eighteen amendments to Directive 98/49 safeguarding supplementary pension rights, it secured only minor changes to the wording of one article and the modification of a definition.

Parliament had much greater impact on Directives concerning health and safety, which were adopted using the co-operation procedure. In Directive 95/63 on health and safety requirements for the use of work equipment, Parliament secured the inclusion of a reference to ergonomics, which had not been contemplated in the Commission's proposal, and required the provision of information about risks to workers, as well as adding fifteen more detailed amendments. Parliament's impact on Directive 97/42 on protection from exposure to carcinogens was more restricted: Parliament secured only one important change, concerning the measurement of exposure to carcinogens. Parliament also had a very significant impact on Directive 98/24 concerning exposure to chemical agents at work. The Council accepted thirty of its thirty-eight amendments at first reading, including several important amendments to the key provision of the Directive, and six out of twelve amendments at second reading.

Parliament also had a considerable impact on two measures concerning vocational training. Parliament secured substantial amendments to Regulation 1572/98 concerning the European Training Foundation, concerning the functions of the Foundation, the Director's term of office, the provision of detailed information in the Foundation's budget, the introduction of an independent element in the monitoring process and the establishment of guidelines for the Foundation's work. Parliament successfully exerted influence on Decision 1999/51 on the promotion of European pathways in work-related training; the Decision reflected Parliament's amendments concerning wider access to the scheme, the need for the EUROPASS Training document to be issued on the basis of common principles and the submission of a report by the Commission.

Parliament's impact on legislation adopted under the consultation procedure is thus in general very limited. With the exception of Regulation 1572/98, Parliament was usually able to secure only minor changes to proposals brought forward under the consultation procedure. However, in certain cases, it was able to persuade the Council to accept a significant amendment, as in the case of the addition of the provision concerning fraudulent misuse of insolvency proceedings in Directive

98/50. Parliament had a considerably greater impact on legislation adopted under the co-operation and co-decision procedures. Of the four Directives adopted under these procedures, Parliament had a significant impact on all but one.

Parliament's own-initiative reports enjoyed mixed fortunes. Many of the recommendations in the Resolution on the European Social Fund were accepted by the Commission, while the Resolution on a reduction and adaptation of working time has been welcomed as a valuable contribution to the ongoing debate on the future of European social policy. The Resolution on housing policy, however, has been entirely ignored. The report on trans-national trade union rights was largely rebuffed by the Commission, which drew attention to the exclusion of the right to freedom of association and the right to strike from Article 137 of the Treaty, while accepting that the issue of fundamental social rights required further exploration. The Commission welcomed the Resolution on frontier workers and agreed that it would pay attention to the need to achieve a coherent solution to problems concerning the social security entitlements and taxation of frontier workers, while drawing attention to the difficulty of securing agreement in the Council on any proposals concerning taxation. Moreover, the Commission agreed to tackle this issue by encouraging cross border co-operation, improving the provision of information to frontier workers and examining the operation of EURES.