

Europe and Your Rights at Work



with an overview by David Lea
and Stephen Hughes

Acknowledgements

When we discussed the idea for this booklet at the turn of the year it sounded deceptively simple – in effect to let union members attest in their own words to the great value of the platform of rights at work which emanate from the European Union; and to show the positive impact of all these measures on the real lives of real people.

Readers will judge the result for themselves but that deceptive simplicity did belie a number of challenges of diplomacy and logistics. We are greatly indebted to all the individual union members who readily volunteered to be quoted; along with the innumerable colleagues of theirs at every level who were also involved.

Dave Feickert has made a huge contribution both in coordinating the illustrations from the 12 unions and in making very helpful suggestions on the overview sections as well.

We also are greatly indebted to Joe O'Hara of Thompsons Solicitors for providing the details of the legislative origins of each of the measures; we believe that this information will act as a convenient source of reference as well as demonstrating a certain contrast between what is inevitably the arcane language of the law and its translation into practice – for example four weeks' paid holiday.

Thanks, too, to John Monks and Brendan Barber for agreeing to write forewords, reflecting the central role of the European Trade Union Confederation and the TUC in the subject matter, and also for their moral support throughout.

Finally thanks to Owen Tudor, Head of the European Union and International Department at Congress House for overseeing the project and for his eagle-eyed reading of the draft text; and to Rob Sanders of the TUC's Campaigns and Communications Department for his diligence and enthusiasm in ensuring the booklet's successful publication.

David Lea and Stephen Hughes, 10 April 2006

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Foreword by Brendan Barber

TUC General Secretary

For years, trade union debates in Britain over the whole gamut of European policy have been vigorous – as indeed they have in the rest of the EU. Meanwhile, the massive advances we have secured in the social field have become part of our rights at work.

Sometimes, we have taken the achievements of social Europe for granted. The massive trade union campaign over the Services Directive, culminating in a historic victory for European trade unionism in the European Parliament in February, has changed all that.

Trade unionists once again have the opportunity to press for a better Europe, one that is for people and not just for business. We must unite, and articulate the views of the citizens of Europe in a genuinely popular campaign.

Rather than be blinded like rabbits in the headlights of the globalisation juggernaut, we can take control of the future, and use the European Union to minimise the human costs of global competition. We can create jobs and at the same time find ways for workers to balance the demands of work with all their other responsibilities.

This pamphlet, by two people who have been centrally involved in European social and political developments for a generation, reaffirms the positive impact of the European social model. And it looks at how we can build on that model for the future.

I think this is an agenda that everyone in the trade union movement can unite around, because it is about the needs and desires of our members for social justice – workers' rights, fairness and equality.

Foreword by John Monks

General Secretary of the European Trade Union Confederation (ETUC)

Europe has once again just passed a major turning point – the expansion of the EU to 25 countries. Turning points have been reached several times since the integration process began after the war, to secure the peace.

In 1986 the single economy approach began in earnest, with a stronger social provision. The integrated market idea itself was implemented from 1993, after the Maastricht Treaty had created the Social Protocol. This, in turn, became the Social Chapter when Tony Blair signed it in 1997.

European trade unions have played a full role in each of these stages. During our recent campaign over the Services Directive, leading to the 50,000-strong ETUC demonstration in Strasbourg in February, we once again put forward our demands for a truly 'Social Europe'. Then by a two-thirds majority the European Parliament amended the draft directive.

Facing the globalisation of markets and a Europe-wide labour market what should unions do?

EU treaties lay down the legal right of trade unions to negotiate framework agreements. In the future, important issues will include: what specific rights should East European workers have when they work in Western European countries? What obligations should companies share, as they compete across the single market?

An essential foundation for Europe is a set of employment rights, a process of social dialogue between the social partners and a recognition that collective bargaining brings practical results. We already have much of this, as this booklet shows, but more is needed.

I therefore applaud this initiative by David Lea and Stephen Hughes MEP – both well known to British and other European trade unionists.

PART ONE INTRODUCTION: A SOLID
PLATFORM OF RIGHTS AT WORK

Introduction: a solid platform of rights at work

Where have many of the most significant advances for British working people in recent years come from? The answer is Europe. Why Europe? Chiefly because economic integration necessitates a Europe-wide means of addressing its structural and social consequences.

It is the trade union movement that has in every case driven the campaign for what Jacques Delors called “collective bargaining at a higher level”. These agreements have increasingly been translated into national and local collective agreements as well as individually applied rights at national level in Britain and elsewhere in the EU.

The rights and obligations shared by trade unions, workers and employers provide a platform for future advances. Members right across the trade union movement have already benefited, as the 12 examples that follow – taken from sectors right across the economy – testify.

In this booklet we present and analyse the significance of some of the key advances and in the final section we set out why globalisation means that the social dimension of the EU is more vital than ever to the rights of people at work.

This booklet is designed for trade unionists to use in explaining the benefits the EU social dimension has produced for people at work.

Too few people in Britain will be aware that all of the 12 rights listed in the booklet are based on EU law, because governments tend to claim credit for any EU measures that are popular, and blame remote Brussels bureaucrats for any that are not. We believe that our colleagues in Westminster too will find this summary invaluable because it is not always straightforward information to acquire.

European social measures, introduced since Britain joined the European Community in 1973, have improved the quality of all workers’ contracts of employment in the United Kingdom. No-one is untouched by the measures set out in this booklet. We hope that the 12 examples, taken from a much longer list, show the range and depth of what has been achieved, in fields as varied as equal pay and consultation on collective redundancies.

A comprehensive framework of rights

Running right through the list, as a central theme, is the importance of bringing forward women’s rights at work and more recently vital anti-discrimination measures on racial and age discrimination. This framework of law is particularly important for women, guaranteeing, as it does, equal pay for work of equal value and protection from sexual discrimination. Equality and anti-discrimination laws also help deliver a better work/life balance. Maternity rights, extending now to the linked right to parental leave for fathers and for those adopting children, exemplifies this principle. This has an impact, too, on the groups of workers who previously did not have pro rata rights with full-time workers and this is best illustrated by the directives on rights for part-time workers. And continuing the theme of family friendly policies, every worker in Britain is now entitled to four weeks’ paid holiday every year – with bank holidays soon to be on top.

Looking to other groups of rights, improvements in health and safety rules are a fundamental dimension of the European Union. These have had a very salutary effect on the statistics of death and injury in our workplaces. We illustrate this very broad field in one example that has become iconic, namely the asbestos regulations. Europe also gave birth to protection against dismissal for ‘whistle blowing’ on health and safety issues which resulted from the 1989 framework directive.

The transfer of undertakings regulations (TUPE) show that the European dimension has been a real pathfinder for national policy and hasn't just equalised people's rights at the lowest common denominator. TUPE was an imaginative response to the new development of contracting out and has in recent years been a key protection in the context of privatisation. In the immediate future, this kind of protection is essential for people to adjust and adapt to the challenges posed by India and China and the structural change that globalisation is driving forward.

The TUC, the ETUC and Labour MEPs worked very hard to persuade a majority, including the British Government, to support the information and consultation of workers directive which only came into force in Britain in April 2005. This will require employers to establish procedures when 10 per cent of workforces formally request an agreement.

Several EU directives deal with atypical work – jobs that aren't the traditional full-time, permanent jobs which most employment rights assume to be the model, but which fewer and fewer people (and a minority of women) actually do. This is an agenda that needs completion – it does not yet cover temporary agency work.

Not all of the EU's benefits for workers result from directives. The European Court of Justice ruled that pensions are part of pay, a decision of huge importance and huge consequences. Some non-discrimination measures have also emerged from the case law of the European Court of Justice.

And the UK Employment Relations Act 2004 provision that introduced new rights for trade union members by preventing employers offering them inducements to surrender their rights to collective representation followed the decision of the European Court of Human Rights in the Wilson and Palmer cases [2002].

Likewise the radical reduction in qualifying periods for protection against unfair dismissal and to qualify for redundancy payments are a result of case law in Britain derived from the EU equal treatment and equal pay directives.

Some regulations, far from being handed down by Brussels bureaucrats, have been negotiated under the Social Chapter between the ETUC and the private and public sector European confederations of employers.

The list of rights won from the European level is, of course, much longer than this – including, for example, protection from discrimination on grounds of religious belief or sexual orientation – but the dozen we have highlighted are perhaps the main ones.

The European model of social dialogue

But it may be asked: could not these measures have been introduced in Britain acting on its own? Well, in some cases which transcend national borders, such as European Works Councils, clearly not. But, even for those measures that hypothetically could have been introduced in Britain unilaterally, not all have been strongly supported by UK governments (of whichever party). In many cases they have been seen instinctively in Whitehall as either redundant or offensive. That has been the reality. This attitude has been in part based on arguments (or myths) about international competition that, in practice, can often best be responded to at the European level.

Jacques Delors triggered a remarkable shift in the attitude of the British trade union movement when he set out his vision of "a people's Europe" and the idea of the Social Chapter at the 1988 TUC Congress, but the seeds of social Europe had been sown much earlier.

The European model of employment rights and social dialogue began with the need to restructure the coal and

steel industries after the war. The European Coal and Steel Community brought trade unions and employers' organisations together in a tripartite organisation together with the embryonic European Commission. It received another boost in the 1960s with the establishment of eight sectoral social dialogue committees in agriculture, road transport, sea fishing, inland waterways, railways, footwear, coal and steel. The next phase of social policy began with a series of social directives like TUPE in 1977.

These changes began a shift towards the European Community with a social element, workers' rights and a role for unions – a shift away from a simple free market.

Delors' agenda led to a transformation in the attitude of the Labour Party and the TUC. Long suspicious of involvement in the "capitalist club", the British labour movement embarked upon a period of positive engagement with the European institutions, exerting maximum influence on the EU law-making process.

That influence has been remarkably successful. The fact that we now have an EU directive setting out a general framework for information and consultation in firms employing more than 50 people can be traced directly to the introduction of the proposal for such legislation into the European Commission's work programme by officers of the TUC and British Labour MEPs. The EU's corpus of health and safety laws was shaped to a considerable extent by amendments tabled by British Labour MEPs, but largely drafted by a network of trade union health and safety officers formed in the mid-80s.

The wider labour movement could not be aware of this detail, of course, but there was a general sense that Europe was delivering for working people – indeed through much of the Thatcher and Major years, Europe was the only mechanism for delivering improved conditions for working people. Positive engagement has paid huge dividends over

the last 15 to 20 years but we should not lose sight of improvements gained as a result of even earlier EU social and employment laws. The 1970s, for example, had seen the introduction of landmark EU-wide social laws governing, among others, collective redundancies, equal pay for work of equal value, and workers' rights in the event of the transfer of an undertaking or where insolvency occurs.

The EU and the national context

The fact that these laws are EU-wide and that they are the product of the EU law-making machine is very important to British workers. It is unlikely that such a body of law could have been introduced by any one nation acting alone. Equally important, the fact that they are EU laws means they deliver rights which will endure – member states cannot unilaterally repeal or weaken them as they can with their own laws (and which we witnessed close-up during the Thatcher years).

The measures represented by our 12 examples cannot, of course, do more than make a modest contribution to removing all the significant causes of inequality and insecurity that persist in Britain. For example, our distribution of income and wealth is far more unequal than that of most other European economies – we are bunched with Greece, Spain and Portugal at the opposite end of the spectrum from the successful Nordic economies or the Netherlands, whose top 10 per cent of earners receive 24 per cent of the national total (after tax) whereas in Britain it is 36 per cent.

We believe it would be timely for the British Government to acknowledge that it is not impotent in this, and commit itself to coming more into line with the income distribution in equally successful European countries.

Jobs and globalisation

The growing sense of precariousness in working life has combined recently with a feeling in some quarters that Europe is adding to, rather than helping to tackle, the problem. For too many working people, the quality of their employment has been deteriorating rather than improving. The Lisbon process adopted by all of our leaders five years ago promised to make Europe “the most dynamic knowledge-based economy in the world with more and better quality jobs and greater social cohesion”. It was supposed to be delivered through a balanced policy mix of economic, employment and social policy. In reality, the economic pillar has dominated.

There has been a failure to deliver promised measures to balance flexibility for businesses with security for workers. For example, laws which were promised to give atypical workers the same rights and protections, pro rata, as full-time workers have not been delivered (although this is not the fault of the EU itself but of national governments).

There is a perception that some in Europe are intent upon pursuing a deregulatory agenda. Suspicion surrounds the drive for better regulation. The fact that any of these employment and social laws could only be repealed if the Commission was to make such a proposal and the Parliament and full Council agreed to it (which is virtually impossible) does not diminish that fear.

So just as there appears to be a slowing down on the social front, there seems to be a speeding up on the liberalising front. The current prime example is the Services Directive – the directive designed to create an internal market for services. The “country of origin” principle (the idea that the regulatory framework of the home country of a service provider will apply to the services they provide rather than the regulatory framework of the country they are working in) is quite rightly seen as a threat to existing standards, terms and

conditions. The European Parliament accepted the trade unions’ arguments on this point and voted 394 to 215 to amend the directive in its first reading in February 2006.

Forward not back

Some of these difficulties are a question of perception – such as the fear of deregulation. Others, such as the blocking of important social dossiers, are a fact. But they combine to produce an overall perception that some want to take us back 20 years, and the confusion they create means that Europe is perceived by some as caring only about economics and the market.

We should put on record the continuing successes of joint work between MEPs and trade unionists, including successfully resisting attempts to use the revision of EU public tendering and procurement rules to assess best value only with reference to price. This will mean that environmental, social and employment considerations can also be taken into account. And enlargement of the EU to the east has meant that common European employment rights now cover many more millions of workers.

Working side by side across the ETUC and the European Parliament we have seen substantial results. Trade unionists can be justly proud of having campaigned for the improvements that the EU has made. This record of concrete achievements is in contrast with many political statements that are long on rhetoric but short on substance. The trade union movement, with the support of a majority of MEPs, has reacted strongly to neo-liberal rhetoric, as the huge ETUC-led demonstration in Strasbourg at the time of the vote on the Services Directive, and the even larger demonstration in Brussels a year ago, shows.

Yet there is unfinished business and trade unionists across Europe need to work with others such as MEPs to go further. Progress towards social justice must not come to an end.

PART TWO UNION CASE STUDIES

equal pay

Shirley Holmes

GMB convenor for Sheffield City Council Social Services which is now Care4You

The legal background to implementation in Britain

Article 119 of the Treaty of Rome (now Article 141) established the principle of equal pay and other considerations for male and female workers.

Council Directive 75/117/EEC (“the Equal Pay Directive”) of 10 February 1975 required member states to implement domestic measures by February 1976.

The Equal Pay Act 1970 came into force on 29 December 1975 and was later amended by the Equal Pay (Amendment) Regulations 1983 with effect on 1 January 1984. The Act entitles women to the same contractual benefits as men working in the same establishment (European law refers to the same service) or on shared common terms and conditions, provided they are engaged on work of the same or a broadly similar nature, on work rated as equivalent under a job evaluation scheme or on work of equal value. Disparities must be objectively justified as caused by a significant and relevant factor other than gender.



“ The GMB used equal rights legislation to harmonise terms and conditions for careworkers such as me, and reduce my hours of work from 39 to 37. I have also benefited from a campaign to win equal pay with male comparators who have been getting a bonus for many years whilst I didn't have the chance to earn any extra. ”

sex discrimination

Julia Upton

**Executive member of the CWU and
an officer of the East Midlands Branch**

The legal background to implementation in Britain

Council Directive 76/207/EEC (“the Equal Treatment Directive”), 9 February 1976 took effect in August 1978. It was amended by Directives 97/80, 15 December 1997 (on the burden of proof) [extended to the UK by Directive 98/52/EC, 13 July 1998] and by Directive 2002/73/EC, 23 September 2002, member states having to comply by 5 October 2005.

Our Sex Discrimination Act 1975 came into force on 29 December 1975: amendments include the Sex Discrimination Act 1986; the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations [S.I. 2001/2660]; the Sex Discrimination (Gender Reassignment) Regulations [S.I. 1999/1102]; the Civil Partnership Act 2004 and the Employment Equality (Sex Discrimination) Regulations [S.I. 2005/2467].

The Act outlaws direct and indirect sex discrimination, whether in respect of opportunities for access to employment, promotion, transfer or training or non-contractual benefits, facilities or services, or through dismissing or harassing a woman worker (including during pregnancy) or subjecting her to any other detriment.



“ The EU directive on sex discrimination directly helped my union in negotiating a good maternity leave agreement with BT which I benefited from when my son was born. I was able to take paid leave and return to my job which I really enjoy and did not want to lose. ”

business changes

Lyndsey Mouland

PCS Commercial Sector

The legal background to implementation in Britain

Council Directive 77/187/EEC (“the Acquired Rights Directive”) of 5 March 1977 took effect in March 1979. It was amended by Council Directive 98/50/EC of 17 July 1998, then replaced by Council Directive 2001/23/EC of 12 March 2001. The Transfer of Undertakings (Protection of Employment) Regulations [S.I. 1981/1794] (“TUPE”) came into force fully on 1 May 1982.

TUPE was amended by the Trade Union Reform and Employment Rights Act 1993 and the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations [S.I. 2587] and 1999 [S.I. 1925], before being replaced by its 2006 namesake [S.I. 246 (2006)] with effect from 6 April 2006.

On the transfer of a business or undertaking (including contracting out or in and re-contracting), the workforce become employed by the new owner on their existing terms and conditions (save for pensions). Recognition and collective agreements also transfer; and key information must be given to the workforce in advance.



“ I may have changed company but TUPE protected my pay and conditions. My union is still there to look after me, too, thanks to TUPE. ”

paternity & maternity rights

Yvonne Evans

Teacher and NUT Cymru member employed at Llangatwg Comprehensive

The legal background to implementation in Britain

During the 1990s, the European Court of Justice ruled that discrimination on grounds of pregnancy/maternity breached the Equal Treatment Directive and loss of benefits breached the Equal Pay Directive.

The Pregnant Workers Directive 92/85/EEC, 19 October 1992 required member states, by October 1994, to protect the health of pregnant workers and mothers and to provide at least 14 weeks' maternity leave, with pay for those with 12 months' service.

In December 1995, the European social partners reached a Parental Leave Framework Agreement, implemented by Council Directive 96/34/EC, 3 June 1996, extended to the UK by Directive 97/75/EC.

The UK adopted a series of measures, now the Employment Protection (Consolidation) Act 1986, Maternity Pay Regulations [S.I. 1986/1960, 1987/235, 1994/1882] and Maternity and Parental Leave Regulations [S.I. 1999/3312]. The 1999 Regulations also implement the right to parental leave.

The Labour Government has built on this platform in legislating for working mothers and fathers.



“ I was very pleased to have additional maternity leave entitlements negotiated on behalf of teachers (26 weeks paid leave in all), and the significant benefit when I returned to work was being able to request flexible working arrangements ”

part-time workers

Gloria Mills

**President of the TUC in 2006 and
Equalities Officer of UNISON**

The legal background to implementation in Britain

At first, part-time workers won limited protection through European law against indirect sex discrimination. Then on 6 June 1997 the ETUC reached a “Framework Agreement” with its employer counterparts, UNICE and CEEP, for equal treatment for part-time workers.

That agreement was implemented by Council Directive 97/81/EC, 15 December 1997 under the Treaty of Amsterdam’s Social Policy Protocol (“the Social Chapter”). When the 1997 Labour Government signed up to the Social Chapter a further Council Directive 98/23/EC, 7 April 1998, was adopted, extending the Framework Agreement to the UK. The Employment Relations Act 1999 empowered the Secretary of State to make the appropriate regulations, which took the form of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 [S.I. 2000/1551], coming into force on 1 July the same year.

The Regulations require equal treatment for part-timers with comparable full-time workers in all aspects of employment on a pro rata basis.



“ Many thousands of part-time workers in UNISON – many of whom are women – are today benefiting from this framework agreement which we negotiated in Brussels. It gives pro rata rights over every aspect of the employment package – from pay and holidays through to pensions ”

fixed-term workers

Nigel Titchen

Prospect branch chair, Biotechnology and Biological Science Research Council

The legal background to implementation in Britain

On 18 March 1999 the ETUC, UNICE and CEEP reached a Framework Agreement on fixed-term work, which was adopted under the Social Chapter by Directive 99/70/EC of 28 June the same year. The Directive required implementation by member states no later than 10 July 2001.

The UK's Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 [S.I. 2002/2034] took effect on 1 October 2002. The Regulations require employers to treat workers employed under fixed-term contracts no less favourably than their "permanent" counterparts engaged on broadly similar work in the same establishment, without objective justification.

In particular, there should be no discrimination in contractual terms, training opportunities, or the opportunity to secure a permanent post. Periods of service should be counted for conditions of employment requiring a service qualification. There is a presumption in favour of permanent employment if after four years a fixed-term worker is re-employed under another fixed-term contract.



“ The FTC Regs led to a review of the contracts of all research scientists at the Biotechnology and Biology SRC. As a result 75 per cent of those on short-term contracts were placed on indefinite contracts and the new negotiation framework provides a basis for fairer terms and conditions of employment overall. ”

paid holidays

Anne Meacock

Bar worker and USDAW member, Swansea

The legal background to implementation in Britain

Directive 93/104/EC (“the Working Time Directive”) of 23 November 1993 required member states, within three years, to legislate so workers receive four weeks’ annual paid leave. The UK Conservative Government voted against, but on 12 November 1996 the European Court of Justice held that the Directive did not require a unanimous vote by the Council of Ministers.

The new Labour Government passed the Working Time Regulations 1998 [S.I. 1998/1833], which took effect on 1 October 1998. Regulations 13–17 provide for four weeks’ paid holiday each year.

At first, the right applied only after 13 weeks’ employment, but on 26 June 2001 the ECJ upheld BECTU’s challenge to this threshold and it was removed with effect from 25 October 2001 by the Working Time (Amendment) Regulations [S.I. 2001/3256].

In 2005, the Labour Government agreed with trade unions to add public holidays to the guaranteed four weeks’ paid annual leave.



Anne Meacock (right)

“ We only get 20 days’ paid holiday a year, and as bank holidays are our busiest times we usually have to work them, too. Now that the trade unions and the Labour Government have agreed the principle that public holidays should be additional to the 4 weeks, I am looking forward to an extra 8 days’ paid leave, which will be marvellous. ”

working week limits

Martin Chalk

**747-400 pilot, member of BALPA and
President of ECA**

The legal background to implementation in Britain

Directive 93/104/EC (“the Working Time Directive”) of 23 November 1993 required member states to provide, among other things, for an average maximum of 48 working hours per week, minimum rest breaks where the working day exceeds six hours, 11 consecutive hours’ rest in each 24 hours and a weekly rest period of at least 24 uninterrupted hours in addition to the 11 hour break. It took effect on 1 October 1998 in the UK.

Many transport workers were exempted from the original directive, with arrangements left to be agreed later.

Through social partner negotiations in Europe the civil aviation sector reached an agreement which became Directive 2000/79/EC. This provided a maximum of 2000 hours duty a year, including no more than 900 flying hours, 4 weeks’ annual leave, a regular free health assessment, appropriate health and safety protection and at least 7 days a month and 96 days a year “free of all duty and standby”.

BALPA is the largest and founder member of the European Cockpit Association (ECA), one of the social partners which negotiated the agreement.

“

As our sectoral agreement shows, by setting a limit on flying hours, and requiring specified annual leave and days free of all duty and standby, the EU institutions show that they can often establish these rules more effectively than national governments. ”



a voice at work

Tony Burke

Assistant General Secretary, Amicus

The legal background to implementation in Britain

Many obligations on employers to consult workers derive from European law. The Collective Redundancies Directive 75/129/EEC, 17 February 1975, now Directive 98/59/EC, 13 July 1998, requires employers to inform and consult workforce representatives before triggering collective redundancies – in the UK, now implemented by the Trade Union and Labour Relations (Consolidation) Act 1992.

The Acquired Rights Directive requires employer to give key information to representatives in advance of transfer – for the UK, see TUPE (above).

Directive 2002/14/EC, 11 March 2002, requires sizeable employers to inform and consult workforce representatives about the organisation's development, prospects for employment and likely substantial changes to work organisation or contractual relations – implemented in the UK by the Information and Consultation of Employees Regulations [S.I. 2004/3426] from 6 April 2005 for undertakings with 150 or more employees, 6 April 2007 if at least 100 workers and 6 April 2008 if at least 50 workers.



“

Based on the EU Directive and UK law, Amicus has reached company agreements on information and consultation, notably in the graphical, paper and packaging sector. They contain best practice, structures for company and group arrangements, training, representation, the role of experts and details of the issues to be discussed.

”

european works councils

John Fetherston

TGWU convenor at GM Vauxhall Ellesmere Port

The legal background to implementation in Britain

As companies expand within the Europe Union, so trade unions increasingly co-operate on the same scale. Support comes from the European Works Council Directive 94/45/EC, 22 September 1994, which after the 1997 Labour Government signed the Social Chapter was extended to the UK by Directive 97/74/EC, 15 December 1997, with which the UK had to comply by 15 December 1999.

The UK's Transnational Information and Consultation of Employees Regulations [S.I. 1999/3323] took effect on 15 January 2000. They apply to large undertakings having at least 1000 employees in the European Union and undertakings of at least 150 employees each in two or more different member states.

The purpose of the legislation is to encourage dialogue and consultation between central management and workforce representatives on at least an annual basis, for example, on the structure of the business, the economic and financial situation, the probable development of the business and any substantial changes in organisation or new working measures.



“ The car industry is a global industry these days. The European Works Council helped us talk jointly with fellow trade unionists and the company to get a European-wide agreement to avoid site closures. ”

posting of workers

Alan Ritchie

General Secretary of UCATT

The legal background to implementation in Britain

The Posting of Workers Directive 96/71/EC, 16 December 1996 required member states, by 16 December 1999, to remove restrictions based on nationality or residence requirements hindering employers from posting of workers to other member states to provide services on a temporary basis.

In particular, employers have to guarantee workers equality in the main terms and conditions enjoyed by workers in the member state to which they are posted, whether laid down by law or by collective agreements.

The UK's Race Relations Act 1976 already prohibited discrimination on grounds of race, nationality or ethnic origin and the Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations [S.I. 1999/3163] brought us fully into line with the Directive by the deadline for transposition.

Other member states have also adopted equivalent measures, so that European workers should not be exploited by discriminatory terms but instead should enjoy parity working alongside their colleagues throughout the European Union.



“Workers in the construction industry have always travelled to work. The posting directive provides a floor of rights that employers must follow. In Britain these rights are based on national laws whereas in some other European countries they are based on collective agreements.”

health and safety

Geoff Waterfield

Community safety representative, Corus Teeside

The legal background to implementation in Britain

The EU has provided comprehensive protection for workers in health and safety. In 1989 and 1990 the so-called “six-pack” health and safety directives were adopted: the Framework Directive (89/391/EEC), Workplace (89/654/EEC), Work Equipment (89/655/EEC), Personal Protective Equipment (89/656/EEC), Manual Handling (90/269/EEC) and Display Screen Equipment (90/270/EEC). They set out framework rules and minimum health and safety requirements. With manual handling, for example, employers have to provide employees who are doing manual handling with relevant information about the loads to be carried by them.

Regarding the Control of Asbestos at work there have been several directives 83/477/EEC, 91/382/EEC, 98/24/EC (on chemical agents) and most recently 2003/18/EC. This requires the establishment of limit values and specific harmonised minimum requirements for the protection of workers, to reduce the exposure to asbestos to lessen the risk of the disease occurring. It is presently being transposed in the UK.



“

It is very reassuring to know that, based on EU health and safety legislation, Corus has very high standards on asbestos elimination and control. Working with its safety representatives Corus maintains a very stringent policy to safeguard the company's employees.

”

PART THREE THE FUTURE:
THE SOCIAL DIMENSION IS
MORE VITAL THAN EVER

The future: the social dimension is more vital than ever

In its message to the Spring European Summit 2006, the ETUC Executive called for moving 'Social Europe' up a gear. There was a danger that the member states would get caught in a spiral, outbidding each other for the lowest wage, the most flexible labour regime, the least labour rights and the lowest taxation on profits. Liberalisation, deregulation and flexibility for employers have become the watchwords for some – all in order to compete in the global marketplace, it is claimed by the supporters of this view.

For the ETUC and for us, too, one of the conditions for creating a socially sustainable competitive economy, with world class companies and working conditions (part of the aspirations of the European Council), is to continue to build Social Europe in a modern setting, not pull it apart. At the outset of launching the internal market, the EU put in place a process that designed in a social dimension. This is based upon employment rights, social dialogue and European collective bargaining. European measures aimed at creating a single European economy have proceeded in tandem with matching social measures. Only when these two processes have fallen out of step have we encountered serious difficulties. The vigorous debate over the Services Directive is a case in point. The lesson can be learned that, where there is no matching social proposal, the single market development itself becomes blocked, or fraught with tremendous difficulties.

The European social dimension, therefore, has been vital in building the EU. It is vital now and will be even more vital in the future, in a globalising world. In particular, the strengthening of the social dialogue in Brussels was a

feature that led up to the hugely significant economic and social changes of the late 1980s. These were associated with the Presidency of Jacques Delors and the Social Chapter, the subsequent signing of which by the British Government was one of the first acts of the Labour Government which came into office in 1997.

Facts and fallacies about globalisation

Trade unionists have always known that we now live in a global world, not just a European one, and have demonstrated precisely that through the long history of international solidarity and international unionism. However, has the global economy changed so much that we must change our European model fundamentally? We believe not. This is not because of nostalgia for the past, nor is it because we have failed to understand the developments in the modern global economy.

The positive processes of globalisation do have some negative effects on income distribution in Europe but national governments in conjunction with the EU Council are not impotent in being able to correct this. Market forces do not synchronise the broader benefits – price decreases in some cases, for example – with the immediate costs. As a recent paper by the European Commission, based on wide research across the EU, demonstrates, costs and benefits are typically concentrated in different regions. Furthermore, "trade-dislocated workers" often have vocational skills very specific to declining occupations and industries.

Wage rates in replacement employment can be especially low for older job losers – the very group which are meant to be playing a larger role in the labour market with advances in longevity. The biggest impact is on less skilled and more vulnerable workers, in particular women, as a result of the high female representation in the trade-affected sectors.

The Commission's concern and its determination to rebalance this unequal distribution is because in political, as well as social and economic terms, "this mismatch directly fuels rejection of the opening-up of the economy – in other words it leads to protectionism".

The US business model, or an adaptation of it, is not the only way for a globalising world. That is made self-evident by the fact that China and other Asian countries now own most of the US public debt. The global economy is becoming integrated, too. And citizens of other countries aspire to the advances we have made in the developed world. China alone is contributing one third to the annual increase in global economic growth. We all have an interest in their citizens being lifted out of absolute poverty, as 200 million of them have been, but we also have an interest in raising the quality of the working lives of their people, too.

We very much welcome the fact that India and China are growing at 10 per cent per annum – indeed, we wish that the continent of Africa, for example, was doing the same. But typical European countries which are ten times better off do not need to berate themselves about not growing at that pace. Indeed, that is what world development is all about. It is disingenuous, under the cloak of this new historicism, and an economic fallacy, for our critics to pursue their economic and employment nostrums based on that line of argument. Our long-term interests on trade are not opposed and we are looking forward to an early and successful outcome to the present round of trade talks, recognising the need for much stronger social measures to protect the living standards of trade-dislocated workers, as the Commission are just beginning to acknowledge.

The same exaggerations typify much of the preaching in the financial press about structural unemployment and competitiveness, the hours we work in Europe, and so on.

Structural change is empirically speaking a constant and whilst we, for our part, recognise that each country can learn from and benchmark each other's best ways of doing things, there are a number of constants here as well, including retraining opportunities, income security and measures to include the most disadvantaged.

Making global enterprises more socially accountable

As we look back over 30 years, it is striking just how far the European dimension of the labour market and the results of free movement of labour have started to have an impact on union members' concerns. This period has seen the creation of a single European labour market where any European citizen can travel to work in any of the other 24 countries. Migrant workers from outside the EU 25 are part of this labour market, too, although their rights vary considerably. For the trade union movement these movements of workers have thrown up many critical questions, just as they have for the EU institutions.

An excellent example of a constructive response – illustrated in Part 2 – was the multinational European Works Councils Directive, which was implemented in Britain in 1999. The TUC was particularly involved in promoting and facilitating the United Kingdom trade union input into the European Works Councils Directive. This was important because the UK has one of the largest groups of transnational companies in the EU.

Another example is the directive on posted workers, which has been important not only in its own right, but also as one of the first moves to providing a proper balance in the liberalisation of services. It now needs to be accompanied by the proposed Temporary Agency Workers Directive in order to ensure that groups of workers who are not covered by conventional collective agreements do not find that they are exploited by cowboy employers.

Just as in the last 30 years, the agenda year by year in the next 30 years will be set by concrete experience. Trade unions have the capability through dialogue and negotiation with employers at the European and national levels to produce policies for the future that are deliverable by both sides. It is the fruits of mutual negotiation, as with the part-time work and fixed-term contract directives, which form the continuing core of the European social dimension.

Also, company law in most European countries – although models differ – is moving in the direction of directors' duties being much wider than simply maximising the short-term profitability of shareholders. We believe that this is an essential dimension for the future as we look to the wider effect of new ideas such as the European Company Statute, which provides for European companies to have a single European HQ and worker consultation arrangements.

In working for the social and environmental responsibility of companies we have many friends among the NGOs and political parties of Europe. They, like us, also have a global reach, examining the practices of European and other companies that have operations around the world, some of which have relocated their major plants and facilities outside the EU. The catapulting of energy policy to the top of the European agenda entails very difficult trade-offs, as the debate about global warming shows, but they will not be resolved satisfactorily without a very intensive process of information and consultation.

Work/life balance

It would be remiss of us if we did not make some comment on the debate over the UK opt-out from the 48-hour working week. This debate is not yet concluded. The reality is that where the individual opt-out is in effect a condition of employment, it is very difficult to see that this is a question of freedom of choice. We have little doubt that the Working

Time Regulations, which are derived from general health and safety considerations and specific ones in industries such as transport, are vital protections for workers and the general public. The daily and weekly rest periods are integral to them.

Long working hours are the enemy of work/life balance not least, though not exclusively, for women. The stress of long hours is in sharp contrast to the stated aim of the European governments firstly to increase the participation of women in the workforce, and secondly to make it easier for them and their partners to bring up families. Long hours need to be reduced if men are to be able to share more of the responsibilities for raising families.

As so often with these strategic challenges of social policy, it is our Scandinavian friends who have long been the most innovative. They have demonstrated that not only are these trade-offs economically possible but also that they can – with the relevant managerial planning – actually enhance their position in the “world competitiveness index”. The value of an agreed framework of principles embracing these trade-offs – part and parcel of the huge debate on financing pensions, of course – suggests that this whole area should be the subject of a renewed social dialogue. Employers certainly have as much to gain from a better joint understanding of them as have trade unionists. This is a very good illustration of the principle enunciated clearly by Jacques Delors: the use of “collective bargaining at a higher level” to resolve practical but often difficult European-wide issues.

The successful European economies, including those in Scandinavia, demonstrate that there is certainly no incompatibility between, on the one hand, proper worker protection and rules on equality and health and safety, and a successful economy on the other. We do not claim that the social provisions are themselves a guarantee of high living

standards. Public welfare must be combined with a successful, internationally competitive economy. Matching policies in the education systems through to vocational training, R&D and the whole range of new technologies are clearly needed to compete in the modern world.

The next phase: social solidarity versus protectionism

The real message of our analysis is that if policy is simply left to market forces then the result will be protectionism; for economic policy driven by market forces which are left completely unregulated is already showing an accumulation of huge benefits for those at the top of the income distribution and a freeze in real terms at the bottom. Social solidarity and social cohesion are constantly being undermined.

We challenge the idea that there can be a European Union without a social dimension. What sort of Europe would that be? A huge single market with no safety nets and no protections as social systems compete with each other to be cheapest and to be the most entrepreneur-friendly. That kind of Europe will not get – and does not deserve to get – worker and trade union support.

It is the kind of thinking that has led to the cul-de-sac of attempting liberalisation of services without any attempt to introduce protection for workers changing their jobs, re-skilling or even providing basic protections for temporary agency workers in the proposed directive. The huge ETUC demonstration of 50,000 outside the European Parliament on 14 February made these points most eloquently. The Parliament took the message and voted those provisions into the directive, and deregulation out of it.

Embracing free movement of labour

Campaigning for a better social model requires trade unions, MEPs and national political and social movements to work even more closely together. This is nowhere more

needed than in dealing with the ramifications of the free movement of labour across Europe.

The balance between flexibility for companies and individuals and security of employment runs as strongly through the 'free movement' discussion as it has through the negotiations over part-time work, fixed-term contracts and temporary agency work. This is an area of EU competence, tailor-made for the social dialogue and Social Chapter union-employer negotiations. Moreover, it needs to be done at the sectoral level as much as at the European-wide level, requiring the active involvement of the ETUC's European industry federations.

It is one of today's ironies that a typical business-orientated speech will state that we have to have access to low-cost labour in Europe if we are to compete with China and India. Therefore, they say, we must cut down the costs of production within Europe and labour costs. But on the other hand the political culture seems to be very reluctant to look at the lack of transparency of business or at irresponsible business practice. The fact that companies in global markets are able to transfer production at prices which, in the accounts, support tax havens, is now mainstream to international business.

The Charter of Fundamental Rights and the organisational basis of representation of people at work is of critical importance if we are to escape from the cul-de-sac of protectionism as a response to trade liberalisation. Any set of new negotiations on European-wide labour market issues – and this is what is now needed – requires a set of fundamental rights as a base.

So far very few measures have been built in to provide transitional assistance to workers and companies for the re-structuring of workplaces. One new measure that has recently been established is the EU Globalisation Adjustment Fund. This fund will aim to help workers and

companies involved in radical company restructuring by redirecting European funds to retraining, for example. In addition, within the social dialogue, the ETUC and the European employers' organisations have started a process of discussion about how to respond to restructuring. What is needed is for the social dialogue to begin some serious negotiations leading to collective agreements on specific restructuring issues such as training and skills, of both a voluntary and a legally binding kind.

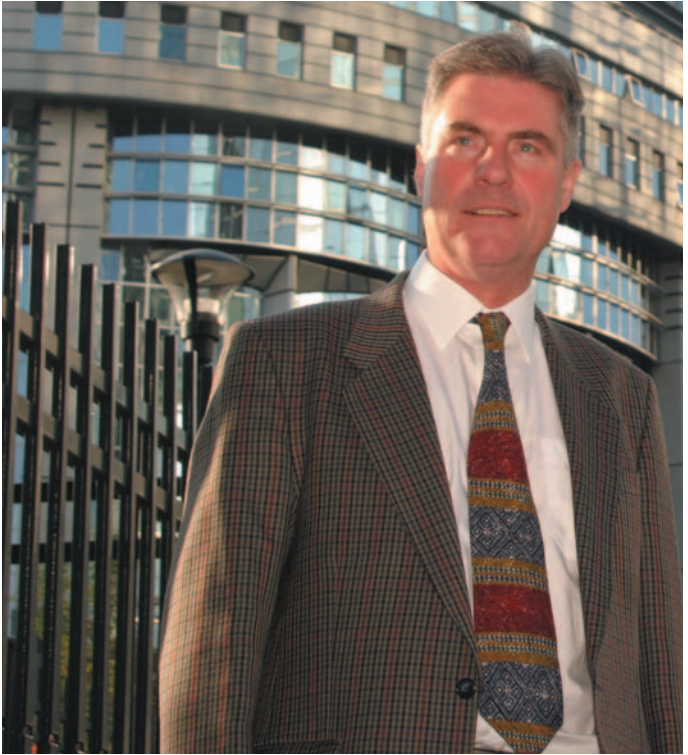
Putting Britain once again at the heart of Social Europe

History shows that Europe works best when Britain is playing a positive and active role in the vision of the future, just as the TUC works best when all the unions are fully committed to working within the TUC. This is also true of the involvement of the TUC within the ETUC, which is symbolised for us by the fact that our colleagues Brendan Barber, the General Secretary of the TUC, and his predecessor in that role, John Monks the General Secretary of the ETUC, are both playing a prominent role in European trade unionism. The TUC and the ETUC will continue to rely to a huge degree on co-operation with members of the European Parliament, most notably in the grouping that includes the European Parliamentary Labour Party.

We believe that the 12 case studies shown in Part 2, from the platform of rights achieved during the past 30 years, present a powerful picture which can inspire the younger generation of trade unionists in Britain – as elsewhere – to come forward, based on their own union experiences, to define new agendas for the coming period. It is the concrete experiences of workers day-by-day which, after all, inspired past action. It was the emergence of significant numbers of workers on fixed-term contracts or others on atypical hours, for example, that led via the resolutions of the TUC and other affiliates of the ETUC, via the social

dialogue and the European Parliament, to the recent measures in those fields.

Each decade will therefore continue to show where new issues will lead to new demands and new reforms and we are confident that the people of Britain – as in all other parts of Europe – will assert that this is, and will continue to be, the key to delivering together a successful economy and a socially just society.

**Stephen Hughes**

Stephen Hughes is the son of a Durham mining family, and has represented Durham and the North East in the European Parliament (EP) since 1984. He leads on employment matters for the 200-strong Socialist Group in the Parliament. He is convenor of trade union convenors and GMB members in the Labour group and convenor and chair of the EP's cross-party Trade Union Intergroup, the main link between the Parliament and the European Trade Union Confederation. He is therefore at the centre of trade union and employment concerns at EU level.

**David Lea**

David Lea was born in Tyldesley, Lancashire. After studying economics at Cambridge he joined the TUC in 1964, was Head of the Economic Department, then Assistant General Secretary 1978–99; Secretary of the TUC-Labour Party Liaison Committee 1972–94; a member of the Royal Commission on the Distribution of Income and Wealth 1974–79; the Delors Committee on Economic and Social Concepts in the Community 1977–79; the Kreisky Commission on Unemployment in Europe 1986–89; and a Vice President of the European TUC; House of Lords 1999; and a member of their European Scrutiny Committee on Foreign Affairs, Defence and Development.

“This booklet provides information about people’s legal EU rights at work in an objective, lucid and easily accessible way. I hope that it will be widely read” – Neil Kinnock



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