

THE 23rd COUNTESS MARKIEVICZ
MEMORIAL LECTURE

EUROPE AT THE CROSS ROADS
OF GLOBALISATION AND THE
INFORMATION SOCIETY

THE SOCIAL CHALLENGES

Professor Roger Blanpain
Universities of Leuven and Tilburg

Dublin 30
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The Countess Markievicz Memorial Lecture has been established by the Irish Association for Industrial Relations with the support of the Department of Enterprise, Trade and Employment. Countess Markievicz was appointed Minister for Labour in the Executive of the first Dail Eireann in 1919. The object of the Memorial Lecture is to provide an occasion for a substantive contribution to discussion in the industrial relations area by a distinguished practitioner or academic.

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INTRODUCTORY REMARKS

Now and then

Since the Treaty of Amsterdam, questions have arisen concerning the future of work, labour law and social policies, namely:

1. what kind of work (in a subordinate relationship) will there be and for whom?
2. what kind of labour law, national and/or European, will (de)regulate the labour markets?
3. what kind of social policies?

It is no wonder that these questions continue to come to the forefront of political debates. Indeed, the traditional labour markets have exploded. The main factors causing this explosion are well known. They are:

- 1) the globalisation of the free market economy and the growing world-wide competition between enterprises, together with
- 2) the massive introduction of information and communication technologies.

Exploded labour markets

The labour markets are in disarray as repetitive jobs are being shed on a massive scale. The added economic value, at present, is often knowledge/information¹, which can be delivered from anywhere in the world. Creative work is on the rise.

Employment relations² are undergoing enormous change moving:

- from hierarchical to more translateral;
- from subordinate to more independent;
- from collective to more individual;
- from full-time to more part-time;
- from indefinite labour contracts to contracts of a definite period.

¹ In the USA, the information sector, by some definitions, already accounts for a sixth of the domestic economy (Waters, Richard, 'The stop-start revolution', Financial Times, 10 September 1997).

² Of a total population of 365,000,000 in the EU, 148,000,000 are economically active, of which 124,000,000 (84 per cent) on a full-time basis. 82 per cent are employees: 89 per cent with contracts of an indefinite duration and 11 per cent in temporary jobs. 24,000,000 (16 per cent) work part-time of which 80 per cent are women. 65 per cent work in services, 30 per cent in industry and 5 per cent in agriculture. 41 per cent of the employees are women; youngsters less than 25 years of age constitute 12 per cent of the working population.

Unemployment stands at 18,000,000 (11 per cent). 49 per cent unemployed for a year or more; 20 per cent first time job seekers. 16 per cent works part-time. The Netherlands ranks first in part-time employment with 38 per cent, followed by the UK (34 per cent), Sweden (23 per cent) and Denmark (21 per cent). Belgium has 11 per cent; Portugal 9 per cent, Spain and Luxembourg 8 per cent, Italy 7 per cent and Greece 5 per cent part-timers. Almost 2/3 of workers are happy with their part time job (De Standaard [Belgium], 19 September 1997).

These are the current trends.

Today, more and more work is done in teams, transcending enterprises and countries. Increasingly tasks are being outsourced³. Enterprises become networks, sometimes virtual networks⁴.

Restructuring, including downsizing and relocations are the order of the day⁵.

It's only the beginning⁶

There is massive and growing unemployment in Europe. The unemployed are numerous. More and more we live in a dual society One can rightly speak of the 'economic horror'.

¹ 'A 1996 survey by the US magazine PC week and the Society for Information Management found nearly three out of four corporations surveyed outsourced one or more IT functions. A recent study by the US research firm Gartner Group predicted that by 2000 more than 80 per cent of large enterprises would use consultants and system integrators as a routine means to increase competitiveness or gain new skills' (Wheelwright, Geoffrey, 'Outsourcing management', Financial Times, 3 September 1997).

⁴ 'The driving force behind this trend is that companies recognise they cannot do everything for themselves when faced with greater competition, growing cost pressures, faster technological change and the increasing need for more marketing muscle internationally. They also believe that small, nimble suppliers save time and money by cutting out bureaucracy. Advances in information and communication networks have made it easier for a network of autonomous companies to work together. In a survey by Andersen Consulting and the Economist Intelligence Unit last year, 42 per cent of 350 respondents predicted, that, in the future, their companies would operate in a wide network of alliances and relationships with other organisations'(Holder, Vanessa, 'Prescription for cutting costs', Financial Times, 12 January 1998, 10).

⁵ Blanpain, Roger, 'Work in the XXIst Century', in Law in Motion, Proceedings of the 1st World Law Conference, Kluwer, The Hague, 1997.

* See: Lynch, David I, 'US style downsizing comes to corporate Europe', USA Today, September 29, 1997. 'Facing unforgiving competition from leaner US rivals and demands from institutional investors, European companies are resorting to pink slips to cut costs'. 'Fueling the restructuring: institutional investors who want European companies to set and meet ambitious profit goals. Portfolio managers are demanding profit targets from companies that once didn't feel obliged to develop them, but now must in order to get their shares listed on US exchanges'.

According to Unctad, the growth of the world economy is too weak to solve the problems of unemployment and poverty. The gap between poor and rich countries grows systematically. In 1965, the average income in the countries of the group of seven was 20 times higher than in developing countries; in 1995 it was 39 times higher. Only a few countries in East-Asia have succeeded in decreasing the gap. Nationally, the share of the wealth of the richest 20 per cent of the population has increased. The share of the poorest has diminished. The wage differentials between skilled and unskilled workers increases. The real wages of low skilled often go down. The income from capital (profits-rent-dividends) increases at the expense of the income, generated by work. Work and income security diminish. These are not temporary phenomena, but permanent features. The increasing inequality and income concentration do not go along with more growth and investment (Trade and Development Report 1997, Geneva, 1997, 216 p).

Atkins, Ralph, 'German jobless climbs to 4.5 million. Further post-war record gives no indication of a decisive break in upward trend', Financial Times, 8 October 1997.

There is no doubt that these developments lead to dual societies, to a world of more poor and rich and between them the guns of private police. The European Union, to give one example, has more than 54 million poor, over 3 million or more without a roof over their heads, and their numbers are increasing. In Wallonia, the French-speaking region of Belgium, almost one person in two lives from social security aid in one form or another. Poverty doubled in the last 10 years. In Brussels 9% lives below the poverty line; 30% just above⁷. The biggest risk groups are youngsters and single mothers. According to Commissioner Pádraig Flynn only 7% of the unemployed in the EU have the chance to learn new skills, as against 93% who are "left on tender-hooks in a dead-end of no learning", 50% of workers over age 55 are no longer in the labour market and 20% of young people reaching the labour market have no recognised skills.

In the EU the employment rate has declined to 60.5 % in 1997⁸ from 65.5 % in 1973. This means a rate of jobless of 39.5 %. In the US, 53.3 % of jobholders are employed in the services vs. 39.7 % in the EU. Western European Governments are not doing enough to create employment, the European Commission said in a critical report (October 1998) on job creation across the EU. In the US there is an employment rate of 74%. The report singled Germany out for very poor job creation over the last years⁹.

In Great-Britain 2 million children work of which 500,000 are less than 15 years of age¹⁰.

This is also the case for the USA. "The rich are getting richer and the poorer are finding themselves even further adrift", says Jef Gates. US Census Bureau statistics for 1996 showed that the top fifth of American households were receiving 48.2 % of the nation's income compared with a bottom fifth surviving on 3.6 %. Supply side economic measures from the Reagan and Thatcher eras have created not so much a trickle-down but trickle-up effect¹¹. The same message can be read in a study by the Economic Policy Institute¹²: '..most workers' real wages are still not back to the levels of 10 years ago. Nor have the living standards of most working families fully recovered from the early 1990s recession... American families are working harder to stay in the same place and are seeing little

⁷ 'Armoede is verdubbeld in Wallonie', De Standaard, 29 September 1998.

⁸ Employment rates by broad sector, 1997, in percent were as follows: Europe: agriculture 3.0 %; industry 17.8%, services 39.7%; jobless 39.5%. USA: agriculture: 2.0%; industry: 17.7%; services: 54.3%; jobless 26%.

⁹ Mitchener B., "Report Assails EU Job-Creation Efforts. Growth Urged for Region's Employment Rate", The Wall Street Journal, 15 October 1998.

¹⁰ Validire J.L., 'Social: les cacophonies de l'Union Europeenne. Rapporteur du Parlement Europeen sur les 'liens entre le systeme commercial et les normes de travail' Andree Sainjon plaide pour une plus grande coherence des pays de L'UE". Le Figaro economique, 30 Septembre 1998."

¹¹ Donkin R., 'Working on a new ethic', FT., 28 August 1998.

¹² The State of Working America 1998-1999, Washington, 1998.

gains in the overall economy. Amidst positive overall growth significant economic disparities persist as trends in wages, income and inequality in the 1990s continue to follow patterns set in the 1980s. The report adds US jobs have grown less secure and less likely to offer health and pension benefits. Middle class wealth (the value of tangible assets such as houses and cars, plus financial assets, minus debts) has also fallen.... The main reason for common income trends is a continuing wage deterioration among middle - and low-wage earners and white-collar and some college educated workers...The share of wealth held by the top 1 % of US households went up from 37.4 % of the national total in 1989 to 39.1 % in 1997 while the share held by the families in the middle fifth of the population dropped from 4.8 % to 4.4 %"¹³.

In its World Employment Report 1998-1999, the ILO reports that up to one-third of the world's 3 billion workers will be either without a job or under-employed in 1999 with the growing global recession. It estimates that the number of jobless will reach 150m by the end of 1998, with a further 25 to 30 % of workers under-employed (between 750 million and 900 million people) either working substantially less than full time. The Asian financial crisis has added 10 million new unemployed to the total since it began in mid-1997. In Thailand, Malaysia, Indonesia and the Philippines 40 million people lived on less than \$1 a day (1997). By 2000, the number could be 100 million. "The social consequences have been alarming. Households are coping by rationing food, pulling children out of school, and in some cases resorting to illegal activities. Violence, street children and prostitution are all on the increase and the social fabric is under increasing strain"¹⁴.

The ILO indicated also that 66 million young people between 15 and 24 years of age are looking for work but not finding any. These figures do not take into account the considerable numbers of those who have given up looking for work or involuntary part time workers.

The report also refers to the rapid rising unemployment in Central and Eastern European countries and Russia. Latin American countries have had substantial growth but this has not led to significant expansion of job opportunities.

The ILO concludes that the Asian financial crisis "has shown the cost of neglecting social concerns". The pace of globalisation has been primarily driven by market forces and national, and to some extent, international rules, institutions and practices needed to render its consequences socially acceptable have been insufficiently developed". The report finally confirms its belief in the benefits of a global economy, but insists that depressed world commodity prices, the introduction of the EMU, asset price 'bubbles' and further liberalisation of trade with increased competition will affect future employment trends"¹⁵.

³ Taylor R., 'Wages of US workers start to bounce back', FT., 7 September 1998.

⁴ Chote R., 'Poverty coming back to E Asia', FT., 28 September 1998.

⁵ Taylor R., 'World Unemployment. Third of all workers affected, says ILO Report. Asia crisis will add to job less total', FT, 24 September 1998.

There is thus no need to stress that prostitution, crime, drug use, violence and racism are on the rise, inevitably accompanied by more alarm systems, more private police and the like. Unemployment is society's gangrene.

"At the same time, the ILO observes a growing 'informalisation' of the labour force and employment relations, a phenomenon which appears to go together with falling income levels, lower standards, and diminished access to collective representation. Of the 15.7 million new jobs in Latin America between 1990 and 1994, 84 percent were in the informal sector.

In Asia the informal sector accounts for 40 to 50 percent of the urban labour force - varying, from 10 to 20 percent in the newly industrial countries of south-east Asia (before the recent financial crisis) to 65 percent or more in Bangladesh and India. In Africa, as stated earlier, the informal sector covers 60% of the urban labour force and 90% of the additional jobs in the 1990s. Work in the informal sector is often highly unstable, precarious, unsafe or even inhumane.

'Informalisation' appears to be linked to a stagnation or decline of the formal sector and reflects according to the ILO three factors:

1. the rapid growth of the urban population and labour force;
2. the impact of the economic stabilization and restructuring programmes introduced in the 1980s in many African and Latin American countries which caused a contraction of public sector employment, retrenchment for many industrial workers and a fall in real wages;
3. the quest for increased flexibility and deregulation required on account of the growing competitiveness in global markets, which has resulted in enhanced capital intensity and reduced labour costs. Many retrenched workers or members of their families are drawn into the informal sector for lack of other employment opportunities and income.

The distinction between formal and informal employment is increasingly blurred and more global corporations operate in both. In other words, informal labour is not necessarily a characteristic of economic backwardness or a consequence of lack of access to capital, but can be part of a global strategy in which modern firms depend for their expansion or survival upon forms of labour that conform to the standards of the informal sector, such as no minimum wages, no welfare benefits, no unions, no legal protection, and no job security.

This phenomenon is not limited to the developing world. One may estimate that roughly ten to fifteen percent of all wage earners in Western Europe, probably less in Northern Europe, and twenty percent of all wage earners in Southern Europe are employed in the informal sector, in small firms and under highly flexible or poor employment conditions, with signs of a rising trend in recent years. This does not include the unemployed - currently averaging eleven per cent in the European Union - and on the rise in most other parts of the world. None of these figures takes into account the unknown number of people involved in illegal activities and begging"¹⁶.

In Eastern Europe, thousands of companies have, due to the recent crisis in Russia, been

forced into bankruptcy. They range from furniture workshops in eastern Poland, to the results should help suggest ways in which the Organisation can more actively assist its Hungarian food traders and Ukrainian sugar merchants. Many of them operate in the 'gray market' beyond the reach of official statistics. To survive, companies have to re-learn the tricks of the past, such as barter and payment in advance for all shipments'⁷.

Questions

So, the questions are numerous. Is there work? What kind of work? How to create employment? How to train people permanently for a meaningful and preferably remunerated contribution to society? How to (de)regulate work?

To provide answers to these questions is not easy. Finding answers proves to be exceedingly complex as ideology and political opinions beset these questions, which vary enormously, even if most of us in the EU adhere to a societal vision, which embraces the idea of a free market economy.

According to some, the labour market is over-regulated and jobs are destroyed because the markets are too rigid and employees enjoy too many privileges and acquired rights. A plea is made for more flexible workers and for labour markets responsive to economic change. This is the opinion of the OECD and international financial organisations, such as the IMF and the World Bank, and the conventional wisdom of many in society at large.

In its most recent Economic Outlook, the OECD reflected the conventional wisdom in arguing that over 90 per cent of Europe's unemployment is structural.

Others argue that a fully fledged market economy is socially too disruptive and leads to social instability, thus paving the way for an unacceptable dual society. The Government, so they say, cannot stand by as an idle spectator, but has to be pro-active in order to see to it that there is work and that workers are socially protected.

World-wide and national/local

One thing is sure: the economy is becoming a global reality. Enterprises, even local ones, are confronted with competitors arriving from everywhere. Another factor is that social policies, up to now, have remained mainly national/local affairs.

It is however clear that local/national governments, as well as the social partners, are powerless in the face of the global economic-technological decisions, which are taken above their heads. Enterprises operate on the basis of pure economic rationale and, increasingly, utilise cross-border market-inspired strategies.

⁶ Visser J., 'Globalisation and informalisation of labour: is there an organised response?', in: IIRA, 11th World Congress. Developing competitiveness and social justice: the interplay between institutions and social partners, 22-26 September 1998, Bologna, Italy, Vol. 3, 35-39.

⁷ Bobinsky C, and others, "Eastern Europe's companies are forced to re-learn old trading tricks", FT., 24 September 1998.

And Europe?

The next obvious question is: where does the European Union stand on this? What can the European Union do?

No doubt, unemployment is placed high on the European, and also on international agendas. There are now no European Council meetings at which employment is not discussed.

The question is also, what about employment and labour law, now that the meeting of the European Council in Amsterdam (16-17 June 1997) and the IGC meetings are over?

I. THE TREATY OF AMSTERDAM

The meeting of the European Council in Amsterdam dealt with employment as well as with social policies. We will consider the results of the Council meeting and how the decisions which have been taken, have been incorporated through the Treaty of Amsterdam into the Treaty establishing the European Community.

A. Genesis and democratic decision making

It must be stated at the outset that the texts, which were on the discussion table in Amsterdam, were unknown to the public at large. It was common knowledge that certain Governments had proposals relating to fundamental social rights, such as non-discrimination; there was also talk about a chapter relating to employment. It was also presumed that the UK would join the social chapter, but that was about all that the European citizen knew. Even the most eager researcher did not know concrete texts and proposals.

The Ministers of Labour and Social Affairs of the Member States were not directly involved, as IGC negotiations are conducted by the representatives of the Member State Governments, who are often Ministers of Foreign Affairs, and for whom social policies are not always the first priority. As a matter of fact, the EURO was again to the forefront of discussion. It was particularly at the insistence of France that employment was placed somewhat higher on the agenda and that an extraordinary European Council meeting on employment was agreed upon for 20-21 November, 1997, in Luxembourg.

It was only after the European Council meeting was decided upon that the agreed texts were made available. The Ministers of Foreign Affairs adopted them on 2 October 1997. The procedure of ratification in the Member States began with referenda in Denmark and in Ireland.

These texts were not democratically discussed by the public at large and/or parliaments, neither national nor European. Only a small group of insiders were involved and now the texts are ready for ratification, to be accepted or rejected in their entirety.

It was only after the meeting had taken place in Amsterdam that the real significance of the European agreements, which will eventually determine the social destiny of European citizens for the coming decennial, can be appreciated. This once again throws the enormous democratic deficit of the European structure, into the limelight.

B. Employment: objective no.1

1. A high level of employment

At the meeting in Amsterdam, the employment objective was formulated strongly. The Treaty of Amsterdam contains a new chapter dealing exclusively with employment.

The chapter first contains an amendment to Article B (Art. 2) of the Treaty of European Union (TEU):

'The Union shall set itself the following objectives:

to promote economic and social progress which is balanced and sustainable and a high level of employment, in particular...'. Article 2 of the Treaty of the European

Communities (TEC) is amended as follows:

'The Community shall have as its task ... to promote throughout the Community a harmonious and balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth respecting the environment, a high degree of competitiveness and convergence of economic performance'.

2. Co-ordinated strategy for employment

The method of obtaining this high level of employment is to be found in the amended Article 3 of the TEC, that reads as follows:

'(i) 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.'

The 'co-ordinated employment strategy' is further elaborated in the 'New title on employment' and can be summarised as follows:

1) It is the *Member States*, which are in the first place competent as regards employment policy. The role of the EU is merely suppletive and co-ordinative. This follows from the wording of Article 109p,1 (Art. 127) of the new Title on Employment, which reads:

'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 competencies of the Member States shall be respected.'

2) *Member States* must *co-ordinate* their employment strategies at European level. This is set out in the Articles 109n (Art. 125) and 109o,2 (Art. 126) of the Employment Title:

'Member States and the Community shall, according to this Title, work towards developing a co-ordinated strategy for employment

Article 109o,2(Art. 126):

'Member States, having regard to the national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall co-ordinate their action in this respect with in the Council, in accordance with the provisions of Article [109q] (Art. 128).'

3) The employment policy must be compatible with the broad guidelines of the economic policies of the EU, namely the EMU⁸.

18 Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article [109n] (Art. 125) in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community adopted pursuant to Article 103(2) (Art. 99)'. (Art. 109o,1) (Art. 126).

4) The Member States and the Community shall work towards developing a co-ordinated strategy....

'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 Article B (Art. 2) of the Treaty on European Union and in Article 2 of this Treaty'. (Art. 109n, 1 (Art. 125)).

5) The European strategy shall consist of drawing up guidelines; writing annual reports; adopting incentive measures; exchanging information and best practices; promoting innovative practices and recourse to pilot projects; making non-binding recommendations (Arts. 109q and r) (Arts. 128 and 129).

6) National policies consist of implementing the European guidelines; and the drafting of annual reports to the Council (Art. 109r) (Art. 129).

7) The measures that the Council can take, 'shall not include harmonisation of the laws and regulations of the Member States' (Art. 109r, last indent) (Art. 129).

8) An Employment Committee with advisory status will be established in order 'to promote co-ordination between Member States on employment and labour market policies' (Art. 109s) (Art. 130).

C Social policy

1. Fundamental rights and non-discrimination

The Treaty of Amsterdam contains in its first chapter:

- a mere reference to the fundamental social rights as defined in the European Social Charter¹⁹;
- the possibility for the Council to unanimously take 'appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, age or sexual orientation' (Art. 6a TEC) (Art. 13)²⁰;
- a declaration regarding persons with a disability stating that the Community shall take account of their needs;
- a clause concerning 'equality of men and women'. To this end Article 2 of the TEC is supplemented as follows:
'The Community shall promote a high level of employment and social protection, equality between men and women, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States';
- a new Article 213b (Art. 286) concerning the protection of individuals with regard to the processing and free movement of personal data.

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

²⁰ The following grounds were not retained: colour, national or social origin, culture or language, political opinion, marital status and family responsibilities. One has however to take into account that the Treaty prohibits discrimination on the basis of nationality for EU nationals and contains a declaration regarding persons with a disability.

2. Social goals

With the Treaty of Amsterdam, the two-track social policy in the EU will come to an end, which has to be applauded, as the UK renounces its opt-out of the Agreement on Social Policy, concluded at Maastricht in 1991. This agreement is now incorporated in the TEC in a chapter, called 'Social Policy', which replaces the earlier Title VIII on Social Policy of the TEC²¹. De facto, the Maastricht Agreement on Social Policy (1991) and the earlier Title 111 of the EC have been merged into one. Once the Treaty of Amsterdam is ratified, the Social Protocol and Maastricht Agreement (1991) shall be repealed.

It is well known that the Maastricht Agreement was a rather weak social compromise. One will recall that it was the intention in 1991, that the Council would be competent to decide on more social matters by way of a qualified majority. Indeed, the Conservative British Government, which had been in power since 1979, vetoed most EU proposals for social legislation. This veto was possible due to the fact that Article 100a,2 TEC (Art. 95) stipulates that the 'rights and interests' of workers need a unanimous vote in the Council of Ministers.

In an ultimate attempt to convince the British to do more in the social field, the Dutch Presidency (1991) had laid a rather weak proposal on the table in order to obtain at least a minimum result. The Dutch could not, however, persuade the British, who refused even this meager text. The (then) other 11 Member States, on the contrary, agreed to accept the Agreement on Social Policy. This agreement can be summarised as follows:

- certain matters can be decided upon by way of a qualified majority; other very important issues continue to require unanimity;
- other points (i.e. regarding pay) were simply excluded;
- the social partners could conclude collective agreements concerning certain social issues, which can be extended and rendered legally binding by a decision of the Council of Ministers.

It was generally accepted that Maastricht (1991) would be a first step in the direction of more majority decisions in the social field and that social Europe (the so-called Social European model) would be further developed on the occasion of the European Council meeting in Amsterdam (1997). This expectation became stronger after the triumph of New Labour in the UK elections (May, 1997) and the unexpected victory of the Socialists in France, both occurring just before the meeting in Amsterdam started. These expectations did not, however, materialise: the (1991) Maastricht Agreement was almost literally taken over in the Treaty of Amsterdam and thus, once ratified by all the Member States, becomes quasi eternal. Indeed, a Treaty like the TEC can only be changed by way of unanimity between all the Member States. Unanimity on 'social matters in the TEC is almost impossible to reach.

²¹ Concerning social policy, education, vocational training and youth.

The Treaty of Amsterdam views the European social policy as follows:

a. Objectives

The Community and the Member States shall have as their objectives:

- the promotion of employment; improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained;
- proper social protection;
- dialogue between management and labour;
- the development of human resources with a view to lasting high employment;
- the combating of exclusion (Art. 117, 1st indent) (Art. 136).

To this end, measures shall be implemented which take account of..

the diverse forms of national practices, in particular in the field of industrial relations and the need to maintain the competitiveness of the Community economy (Art. 117, 2nd indent) (Art. 136).

Such a development will ensue not only from:

the functioning of the common market, which will favour the harmonisation of social systems; but also from the procedures provided for in this Treaty and the approximation of provisions laid down by law, regulation or administrative action (Art. 117, 3rd indent) (Art. 136).

b. Qualified majority

The following issues can be decided upon by way of a qualified majority;

- workers' health and safety;
- working conditions;
- the information and consultation of workers;
- social integration;
- equality between men and women (Art. 118, 1) (Art. 137, 1).

c. Unanimity

Unanimous voting is required for:

- social security;
- the social protection of workers;
- the protection of workers where their employment contract is terminated;
- the representation and collective defense of the interests of workers and employers, including co-determination;
- the conditions of employment for workers from a third-world country legally residing in Community territory;

- the financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund (Art. 118,3) (Art. 137,3).

d. Excluded matters

Excluded matters are:

- pay;
- the right of association;
- the right to strike;
- the right to impose lock-outs (Art. 118, 6) (Art. 137,6).

e. Collective agreements

The social partners can conclude agreements concerning matters indicated in Article 118 (Art. 137). These agreements can generally be rendered binding by way of a Council decision (Art. 118b) (Art. 139) which is, for practical purposes, a directive.

/ Equal pay and treatment

Article 119 (Art. 141) contains the principle of equal pay as well as the possibility for positive discrimination, countering the outcome of the *Kalanke* case²².

g. Annual reporting

The Commission shall draw up a report each year on the progress made in achieving the objectives of Article 117 (Art. 136), including the demographic situation in the Community (Art. 120) (Art. 143).

CONCLUSION

The Treaty of Amsterdam sets very high goals for the EU and the Community regarding employment and social policy, since this was already the case in earlier versions of the Treaty, namely:

- a high level of employment;
- a high level of social protection;
- equal treatment;
- improved living conditions;
- improved working conditions;
- dialogue between management and labour;
- harmonisation while the improvement is maintained;
- combating of exclusion.

²² In this area, a very controversial decision was taken by the Court of Justice in the case between Kalanke and Freie Hansestadt Bremen (City of Bremen) (17 October 1995, Case C-450/93, 1995 E.C.R. 305 1) in which the Court rejected the positive action plans with quotas

The British opt-out in the Maastricht Agreement on Social Policy has been repealed. There are new chapters on employment and social policy and the possibility of taking decisions with qualified majority voting on a number of issues²³. There is the possibility of engaging in positive discrimination when combating inequality between men and women, which is socially very positive.

But, *social policies*, including employment, remain matters of *national competence*. Regarding employment, the EC only has a mere suppletive and co-ordinating role.

Equally, regarding issues like *social security, social protection and job security, unanimous decisions are necessary*.

Pay, freedom of association, the right to strike or the right to impose lockouts are excluded from the EU competence.

This means that the wage cost (pay and social security contributions) remains a purely national affair.

It is striking that such great asymmetry exists between a global market economy: an iron clad monetary agreement in the framework of the EMU on the one hand and social policies, the 'core' issues of which remain employment and wage costs, (essentially national), on the other hand. There is no appropriate balance.

All this has now been laid down in the founding treaty of the European Union, which can be considered a kind of European Constitution. As previously stated, the Treaty of the EC can only be changed by way of unanimity. In a Union with 15, and later with 25-30, Member States, the chances of changing the Treaty on points like employment and social policy by way of unanimity, are almost non-existent.

II. EVALUATION

In order to evaluate the societal relevance and importance of Europe's renewed employment and social policy, the following points must be examined:

- 1) what order the various objectives have within the hierarchy of the overall aims of the EU;
- 2) whether the means which have been accorded to the EU to realise the social objectives are appropriate;
- 3) what are the consequences of the given order and of the means retained to realise the social objectives, in general, and their impact upon society as a whole and the well-being of citizens, in particular.

Finally, it is necessary to evaluate the kind of 'social model' which is implicitly

embedded in the European construction. We will compare this model with the

experience of those countries, where identical or equivalent socio-economic systems

have been put into practice for various periods of time

²³Health and safety; working conditions; information and consultation of workers; social integration; equality of men and women (Art. 118,1) (Art. 137); free movement of workers (Art. 48 TEC); the European Social Fund (Art. 126 (Art. 149) and 127 TEC (Art. 150)); the economic and social cohesion

In doing so, the socio-economic policies pursued in the USA, the UK and Central and Eastern Europe will be discussed. We will also have a look at the much acclaimed Dutch model.

A. The hierarchy of the objectives

When one analyses the order of the various objectives which the EU pursues, one has to recognise that the European social policy, and especially the employment strategy, is subordinated to the overall economic-monetary goals of the EU. This conclusion follows clearly from an analysis of the text of the TEC, especially of the Amsterdam Treaty.

Indeed, at the top of the hierarchy of these objectives is the goal of *non-inflationary growth and an economic policy, in conformity with the EMU*, namely: low inflation, public deficit under control and the like. These are the well known Maastricht criteria.

This conclusion follows from the wording of the Title on Employment. Art. 109o (Art. 126) very clearly states:

'Member States, through their employment policies, shall contribute to the achievement of the objectives ... in a way consistent with the *broad guidelines of the economic policies of the Member States and of the Community...*'

In other words, the employment strategy of the Member States has, in the first place, to be non-inflationary.

Social policy, according to the Treaty of Amsterdam, will take account of the need to maintain the competitiveness of the Community economy (Art. 117, 2nd indent) (Art. 136).

Let us repeat this conclusion, given its vital importance: social policy, including employment strategies, have to be non-inflationary and geared towards maintaining the competitiveness of the European economy.

The conclusion of the Dutch Presidency (QGC 1997) translated these choices as follows:

'Restoring a sustained, high rate of non-inflationary growth is necessary to achieve a long-lasting solution to the Community's unemployment problem and to make further headway towards sound public finances.'

'These social objectives will ensue (in *the first place*²⁴) from the functioning of the common market, which will favour the harmonisation of the social systems', Article 117 (Art. 136) declares.

Indeed, the means which would allow the EU to be proactive in realising its ambitious goals, are meager

²⁴ added by the author.

B. Means to realise the objectives of employment and social policy

1. Employment

a. Euro-watchers

The European way of tackling employment problems can best be described as 'Euro-watching'. This involves the EU establishing guidelines which Member States have to take into consideration when developing their own employment strategies. A procedure of reciprocal reporting is set up between the EU and the Member States. There is also an exchange on experiences and on pilot projects. Fundamentally, this strategy contains nothing new. It was already explicitly laid down on the occasion of the Summit meeting of the European Council at Essen (1994), when the EU tried to put Jacques Delors' White Paper on growth, competition and employment (1993) into practice, which only very partially succeeded. The big infrastructure projects, which Delors envisaged, in order to stimulate the demand in the economy and thus growth, did not take off due to a lack of financial means and the necessary political will²⁵.

The employment strategy formulated at Essen was confirmed at the meeting of the European Council in Dublin (1996) and maintained in Amsterdam (1997).

The European guidelines (1994) are rather vague and read as follows:

- (i) Improving employment opportunities for the labour force by promoting investment in *vocational training*. The acquisition of vocational qualifications, particularly by young people is vital. As many people as possible must receive initial and further training which enables them, through lifelong learning, to adapt to changes brought about by technological progress, in order to reduce the risk of losing their employment.
- (ii) Increasing the employment-intensiveness of growth, in particular by a more *flexible organisation* of work in a way which fulfills both the wishes of employees and the requirements of competition; a wage policy which encourages job-creating investments and, in the present situation, *requires moderate wage agreements* below increases in productivity and finally, the promotion of initiatives, particularly at regional and local level, that create jobs which take account of new demands, e.g. in the *environmental and social-services spheres*.
- (iii) Reducing *non-wage labour* costs extensively enough to ensure that there is a noticeable effect on decisions concerning the hiring of employees and, in particular of unqualified employees. The problem of non-wage labour costs can only be resolved through a joint effort by the economic sector, trade unions and the political sphere.

²⁵ One such example is reflected in a French newspaper. 'Impossible relance des grands travaux. Voulues par Jacques Delors, remises A l'ordre du jour recemment par le gouvernement francais, les propositions du Livre Blanc se heurtent toujours A la rigueur budgetaire' (The impossible re-launching of big public works. As wanted by Jacques Delors, the French Government has placed the matter on the order of the day, the proposals in the White Paper constantly collide against budgetary restrictions), Roquelle, Sophie, Le Figaro Economique, 17 June 1997.

(iv) Improving the *effectiveness of labour-market policy*: the effectiveness of employment policy must be increased by avoiding practices which are detrimental to readiness to work and by moving from a passive to an active labour market policy. The individual incentive to continue seeking employment on the general labour market must remain. Particular account must be taken of this when working out income-support measures.

The need for the efficiency of the instruments of labour-market policy must be assessed at regular intervals.

(v) Improving measures to help *groups which are particularly hard hit* by unemployment: particular efforts are necessary to help young people, especially school leavers, who have virtually no qualifications, by offering them either employment or training.

The fight against long-term unemployment must be a major aspect of labour-market policy. Varying labour-market policy measures are necessary according to the varied groups and requirements of the long-term unemployed.

Special attention should be paid to the difficult situation of unemployed women and older employees.

These non-binding guidelines undoubtedly contain an indication of certain courses of action which should be taken. Basically, however, they conform to the basic economic-monetary policies, which have been chosen by the EU in the framework of the EMU. It is remarkable that these guidelines are the same for the conservative John Major, as for the 'New' Labour Tony Blair and the (old) socialist Lionel Jospin. It means that they give a great deal of leeway. One could hardly contend, therefore, that this constitutes a strong, fully-fledged European employment policy.

Such a policy reminds us of the weight-watchers philosophy. Europe watches what the Member States do and is ready to give 'good advice', which is voluntary and thus non-binding.

On 15 December 1997, the Council of Ministers adopted the employment guidelines for 1998 concentrating on:

- employability;
- a new enterprise culture;
- the adaptability of enterprises;
- improving equal opportunities.

b. Promoting a skilled and trained workforce

Everyone will agree that promoting a skilled and trained workforce is a desired goal.

The basic questions, however, remain to be tackled at national level: what kind of skills, what kind of training, for whom, by whom, and who pays? These open questions need to be addressed by the Member States, as they see fit.

c. Flexibility

Article 109n (Art. 125) of the new Title on Employment states that the Member States and the Community shall work towards developing a co-ordinated strategy for ... promoting ... *an adaptable workforce and labour markets responsive to economic change ...*'

In the conclusions of the Dutch Presidency of the EU (1997) this idea reads as follows:

'Structural deficiencies continue to restrain both growth and the degree to which growth can be translated into additional employment.

The European Council attaches paramount importance to creating conditions in the Member States that would promote a skilled and adaptable work force and flexible labour markets responsive to economic change. This requires active intervention by the Member States in the labour market to help people develop their employability. Such action is important if the European Union is to remain globally competitive and in order to tackle the scourge of unemployment.'

This is the first time that the flexibility of workers and labour market regulations have been incorporated into the fundamental European treaties. It is clear, 'workers have to be adaptable'. This is a perpetual maxim.

To summarise one can say that the European strategy regarding employment boils down to rather vague guidelines which are to be implemented by the Member States and about which there will be reciprocal reporting. Furthermore, the Member States have to see to it that the workforce and the labour markets are adaptable.

The European Union is not competent to take measures of a nature, which would lead to the harmonisation of the legislation of the Member States (Article 109r, in fine) (Art. 129).

In short, the EU has no general regulatory competence whatsoever that might lead to a genuine centrally co-ordinated European employment policy.

2. Social policy

a. Fundamental social rights

The TEC does not, to the disappointment of some, contain a list of (enforceable) fundamental social rights, notwithstanding the favourable report of the Comite des Sages and the support by some Governments for it to include fundamental social rights.

There are, however, a number of symbolic references to the European Social Charter (1991) of the European Council and the (voluntary) Community Charter of Fundamental

Social Rights of the Workers (1989)²⁶.

Fundamental social rights, however, are not a mere gimmick to cover up inaction. They have a substantial impact on the social policies which the European Union, the European Parliament, and the social partners will develop in the future.

First of all, those rights give much needed legitimacy to the various European institutions, especially to the Court of Justice, engaging in social policies or interpreting European legal acts. Indeed, in the European legal structure, powers of the EU are granted by the Member States and increased or modified through the ICGs. This is of essential importance.

Secondly, the inclusion of certain fundamental rights in the TEC has already abundantly proven its merits in the development of European social policies. Reference is made to Articles 119 (Art. 141) on equal pay for men and women, and Article 48 (Art. 39) on free movement of labour, which lead to extremely important case-law, developed by the Court of Justice. The Defrenne and the Bosman cases amply demonstrate this point.

Finally, inclusion of fundamental social rights also gives a clear message about where the EU is going. Ambitious goals, which are not backed up either by efficient policies, rights or encouraging results, are counterproductive. The EU is experiencing this today. Its rate of public approval stands at a very low level.

b. Regulation

The weak social agreement of Maastricht (1991) has, as indicated above, been incorporated into the Treaty of Amsterdam, together with the earlier Chapter on Social Policy of the EEC Treaty of 1957, which was and has continued to be over the years, with the exception of Article 119 (Art. 141), a mere face-saver.

The *social competencies of the EC are rather limited*. Only a number of important but secondary social/labour matters can be decided upon by way of qualified majority, as indicated earlier.

Competence over 'core' social competencies remains solely with the national Member States. This is especially true for pay (= direct wage cost) and social security issues (= indirect wage cost).

Pay is excluded from Article 118 (Art. 137)²⁷ social security is a matter of unanimity.

Furthermore, since unanimous voting is required for *tax matters*, unanimity remains required.

²⁶ The reference to the Charter in Article 117 (Art. 136) cannot have far reaching legal consequences. One can accept that the reference could add to the legitimacy of the Court of Justice when the Court refers to the Charter. But one will have to accept that it is impossible to conclude that all the obligations and rights contained in the Charter now become binding upon Member States which did not ratify the Charter in its entirety. The Charter contains matters which are excluded from the competence of the EC, such as remuneration, trade union freedom and others; or matters for which unanimity is necessary, like social security. One cannot seriously contend that the treaty text 'having in mind the fundamental social rights such as those stated in ... [the Charters] would support the conclusion that those rights are binding.

Fiscal dumping between countries happens especially in relation to the most mobile taxable elements, in particular capital. The consequence is that taxes on 'mobile' income decrease constantly while those on labour increase continuously, especially on non mobile and unskilled labour. From 1980 to 1994, average taxation on labour in the EU increased from 37.5 per cent to 40.5 per cent while taxes on other production factors, in particular capital, decreased from 44.1 per cent to 35.2 per cent. Professor Mario Monti, European Commissioner competent for taxation in Europe, has indicated that the very heavy taxation on employment is responsible for 4 per cent (or 1/3) of unemployment in Europe²⁸.

Conclusion:

Social policy remains basically a national competence. This goes for the 'core' issues of labour law and of social security

In short,

- there is EMU with a stringent European anti-inflationary policy;
- social policies, and in particular employment, remain national matters.

C. Consequences for social cohesion and for society at large 1.

Macro-economic: inflation and NAIRU

The EMU intends to maintain a non-inflationary economy. Such an economy presupposes a certain degree of unemployment. So it is that a certain level of increasing unemployment is 'the instrument' to contain inflationary tendencies. 'Fiscal and monetary tightening, to head off accelerating inflation, is designed to keep unemployment at its present rate or to push it higher.'

The EMU approach translates a certain economic vision, represented by the Chicago school, favouring supply-side economies, which has gradually conquered the world since the beginning of the 1970s, first the UK and the USA, then Western Europe and later Latin-America, Africa, Asia and since the beginning of the 1990s, Central and Eastern Europe.

²⁷ The relationship between the Articles 100a2 (Art. 95) (rights and interests of workers = unanimity), 118 (Art. 137) and 235 (Art. 308) TEC is not at all clear. According to Article 235, if action by the Community should prove necessary in order to attain one of the objectives of the Community and the Treaty does not provide the necessary powers, the Council can, acting unanimously on a proposal from the Commission and after consultation with the EP, take the appropriate measures.

It is, at this point, an open question as to whether the EC would be competent to deal with pay on the basis of 100a2 (Art. 94) or 235 (Art. 308), unanimously, or in the frame work of the closer co-operation - flexibility - between Member States, as envisaged in Section VI of the Treaty of Amsterdam (e.g. by 8 Member States). Even if the answer was in the affirmative, which I doubt, the fact remains that achieving unanimity on a contentious issue like the minimum wage is for practical purposes as remote as the prospect of life on Mars.

²⁸ Europe, Europe Agence, 23 August 1997, no. 7092.

Supply-side economies are not - in contrast to the economic policy inspired by Keynes - centred on demand and full employment, but directed at the control of inflation. This theory accepts a so-called national degree of unemployment, which is, so the argument goes, mainly the consequence of structural rigidities in the labour market.

When inflation is threatening to accelerate, the (independent) Central Bank will intervene and eventually raise the interest rate. This has a negative effect on employment.

The idea is that the economy will become overheated when unemployment is too low. The leading economic school is of the opinion that accelerating inflation is unavoidable unless a certain number of workers are unemployed.

The minimum employment needed to check inflation, is called NAIRU, which stands for 'non accelerating inflation rate of' unemployment'. The minimum is not a standard, but differs from period to period and from country to country. Supposedly, NAIRU would at present amount to 5.7 per cent in the UK. In the USA, 5 per cent. In the UK in the fifties, it amounted to 2 per cent, in the sixties 3 per cent, in the eighties 11 per cent. It seems that it is not possible to know the NAIRU beforehand, only afterwards.

The use of unemployment as a weapon to contain inflation is a blunt instrument and leads to lasting and great damage. Certain enterprises close down, machines become idle, investment decreases and bankruptcies increase. Long-term unemployed become unemployable and are no longer fit to work.

Moreover, the acceleration of inflation can have many different causes. Price rises can be a consequence of the increased retribution of public services, such as transport, or of the increase of taxes on wine or on tobacco or of certain services, like medical services, which are also determined by the government, or have to do with the rising price of petroleum, which is imported.

In short, enterprises and workers are often the innocent victims of anti-inflationary policies, when in fact they are not responsible at all for the eventual acceleration of inflation, as the price of the goods/services they produce may have diminished and inflation goes up for reasons which have nothing to do with their behaviour in the labour markets.

When financial credit becomes more expensive, 'cross-sectionally, small companies that do not have significant buffer-stock cash holdings are most likely to trim investment ... around the periods of tight money' Nevertheless, it is argued that employment will be especially created by SME's.

One has also to keep in mind, in order to grasp the full impact of the EMU on employment, that interest rates are raised and the monetary volume restrained, not because inflation actually accelerates, but because it threatens to do so.

2. Flexibility

Micro-economic supply-side economies are intended to free enterprises from certain regulatory constraints by providing enterprises with more flexibility, so as to promote economic growth and consequently create more jobs. Protective labour measures, such as a minimum wage, working time restrictions, dismissals and others, are looked upon as hindrances to growth and should be done away with.

Labour cost especially has to be reduced. The worker has to be paid according to, and in relation to, the economic value that he adds in the process.

It is up to the Member States and their national social partners to see that the necessary flexibility is introduced. In any case, they have no other choice as the market forces will oblige them to do so anyway.

a. Social dumping

The fact that social policy in the EU remains mainly a national affair means that social dumping - the deliberate attraction of investment on the basis of lower wage costs and lower working conditions - is not only accepted, but globally and on a European scale intentionally organised as the way to enforce more flexibility. The market will play in full: the more expensive operators will have to give up, unless they succeed in becoming cheaper, which means reducing the cost of their operations.

b. Wage costs

It is a fact that wage costs differ enormously from country to country, also within the EU.

One example is Germany. 'The financing of the welfare system means that Germany's non-wage labour costs exceed their US equivalent by 175 per cent and those of Japan by 140 per cent....

In a global, market driven economy, services and goods have to become continuously better and cheaper. This means that enterprises will invest in those countries where the costs are the lowest. There are certainly other factors which come into play when companies decide to invest, but labour costs may be an important one. Consequently, European nations that are competing with each other will also do their utmost to diminish labour costs because everyone else is doing it. So, the trend is downwards and is the direction the social harmonisation in Europe will go in.

It is similar to a theatre. When spectators on the first row stand up in order to see the stage better, the others have to get up in order to see something and then the benefit the first standing spectators had, is done away with. So it is with the downward spiral of wages and labour conditions. Labour cost must be reduced; others do the same, and again the former countries are no longer competitive. So, they downsize their costs even more; this means more restructuring, relocations, and more machines to replace workers, more dismissals. It is clear that national social systems cannot stand on their own and must yield in the face of a fierce globalised market economy. They have to give way to the lowest social denominator.

The European employment strategy can be summarised in three main points.

The first is the goal of achieving and maintaining a non-accelerating inflation role of employment (NAIRU).

The second is a generalised flexibility of wages and labour-conditions, which introduces job-insecurity in the lives of many workers as a strategic element to contain inflation.

The third point is the organisation of an ongoing competitive battle, which will be waged

between the national social and fiscal systems of the Member States in and outside the EU. A country with high wage costs or which spends more on social policies than others will become less competitive. This means a kind of institutionalised social dumping between the EU Member States themselves, outside the EU.

Europe has no 'core' social competencies, which could bring about a real European social policy, including a proper employment strategy, which would involve wages, working conditions - e.g. job security - and social security, being based on fundamental social rights; and minimum standards.

Such a policy will only be possible when the EU has the competence to make decisions, including decisions about 'core' matters and fiscal affairs, with a qualified majority

What things are about now is an harmonisation downwards and not 'while the improvement is being maintained' as Article 117 TEC (Art. 136), rather naively promised.

Obviously, inflation has to be kept under control, as well as public finances, but is it conceivable that Europe is not empowered to take appropriate social measures to combat unemployment and establish minimum standards? That a European collective agreement concerning pay would have no proper European legal status? That a European minimum wage will never be possible and that even the idea of a European social security system could always be countered by the veto of one Member State?

In short, the European treaties beyond Amsterdam, are much more than a choice or a preference for a free market economy, with which most will agree. It is a definite and final choice for a certain type of ultra liberal (conservative) policy which precludes almost forever, a proper European social policy, employment included. Once the Treaty of Amsterdam is ratified, this political choice will indeed become quasi-eternal.

This non-Europe leads to unacceptable social destruction, more unemployment, great inequality, social exclusion, more marginalised people, more crime, more drugs, more prisoners, more police, and so on. The promise of a high level of employment and social protection repeatedly made in the Treaty of European Union and the Treaties of the European Communities is evidence either of cynicism, unimaginable naivety or a lack of proper insight.

This model - *ne varietur* - cannot be incorporated into the European Constitution. It would be more acceptable if the economic model of the Treaty of Amsterdam were merely a kind of governmental declaration which could eventually be democratically adopted by majority voting. Thus, the EU could change the course of action and engage in more employment friendly policies. But it is more. Once ratified, this policy becomes practically unchangeable, as the TEC needs unanimity to be changed.

This Amsterdam model deserves to be repealed.

III. LOOKING FORWARD FOR A NEW SOCIAL ERA: FUNDAMENTAL SOCIAL RIGHTS

Everyone agrees that the economy is not an end itself, but only a way to achieve more wealth in the service of mankind, but that is where the societal consensus on social progress stops. For example, "how" to provide work for a greater number of people remains

widely debated. Some believe that only market forces can really solve the problem, so that we have to deregulate even more; still others believe that measures must be taken to guide the otherwise too socially destructive invisible hand of Adam Smith.

The same is true for social protection. Some claim almost complete flexibility regarding labour regulations, others call for more and efficient regulation.

So, a balance must be struck between what is economically necessary, technological possible and socially indispensable.

There is, to my mind, no doubt that social rights and corresponding obligations should monitor the transition from an industrial to an information-network-communication society. Here one thinks as well about fundamental social rights as about minimum standards. Our proposal is that there should be a social roof on top of the societal building, containing fundamental social rights and a floor, containing minimum standards of protection at the bottom of the house, so that in between both the free market can play in full, including a degree of flexibility, necessary to conduct a business in the XXIst century.

Various means should be explored to introduce and to follow up on these measures. We should not only consider the role of the law, especially of legislation in its broadest sense and collective bargaining, which have been traditional measures of protection.

One should also address newer avenues, like corporate codes of conduct.

In this area one has also to realise that the traditional powers of national governments are insufficient in the face of global capitalism. The same is true for the power of trade unions. Therefore measures elaborated at international level are especially welcome.

Also, the consumer power has to be brought into the picture. Consumers' attitudes can have a wide impact. Here social labeling comes into play.

Looking forward towards a new social era, we should not only look at the fundamental and other social rights to be implemented, but also at the kind of institutions, notions and categories, which suit the information society.

This last point may mean that we have to radically reorganise the labour market and tackle categories like employees and self-employed, which have been sacrosanct over the last few decades.

Finally, in the search for employment for all, we need to address issues like employment policies, training, community work schemes and labour costs.

Fundamental social rights have been long on the agenda. Time and again, it has been underlined that international competition and commerce accommodate differences on the labour market and in remuneration, but have to take into account the respect of fundamental human rights, such as the prohibition of:

- child labour;
- forced labour;
- trade union freedom;
- free collective bargaining;
- equal treatment.

Europe and the US have repeatedly expressed their wish to include "a social clause" in international trade agreements, to be discussed within the framework of the World Trade Organisation. This idea is not welcomed everywhere, especially not in Asia, where many proclaim the social clause to be a protectionist move imposing Western cultural standards. This is rightly countered with the objection that these fundamental rights are laid down in ILO conventions, which have been negotiated and should apply world-wide²⁹.

A. A first look has to be global. The ILO Declaration (1998)

Recently, however, there has been a real break through, namely with the adoption of the Declaration on Fundamental Principles and Rights at Work and its follow-up at the 1998 International Labour Conference.

"The Declaration states that all Member States of the ILO, whether or not they have ratified the Conventions in question, have an obligation to respect, promote and realise the principles concerning :

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour and
- (d) the elimination of discrimination in respect of employment and occupation".

The Declaration recalls that these principles have been developed "in the form of specific rights and obligations in Conventions recognised as fundamental both inside and outside the Organisation".

It also recognises the ILO's obligation to assist its Members, including by encouraging other international organisations with which the ILO has established relations to support countries' efforts to attain the objectives of the Declaration. The Declaration stresses that labour standards should not be used for protectionist trade purposes and that a country's comparative advantage should, in no way, be called into question by the Declaration or its follow-up.

The follow-up is designed to be strictly promotional and provides for an annual review of efforts made by Member States which have not yet ratified the fundamental ILO Conventions and for a global report to be prepared under the authority of the Director General of the ILO to submit to the International Labour Conference for tripartite discussion.

In addition to identifying core workers' rights, discussions in the ILO have revealed that much more empirical work is needed to assess the impact of globalisation and increased trade on the distribution of the benefits deriving from those developments both between and within nations. The ILO is now examining these questions in eight country studies and

²⁹ In this context one should mention the UNOCAL-Total case in which an American Federal Court (1997) held a company responsible for crimes against humanity. Both Total and UNOCAL were accused of forced labour in the building of a gas-pipeline in Myanmar, former Burma (De Morgen, "Ook bedrijven kunnen misdaden tegen mensheid began", 7 November 1998).

constituents in meeting the challenges posed by a free-trading, globalised economy. The ILO has also carried out work on social labeling and the social responsibilities of enterprises, particularly in the context of the struggle to eliminate child labour.

Like the ILO, the World Trade Organisation has a membership of both developed and developing States, and there is considerable overlap of the countries participating in both organisations. Yet in terms of both its mandate and structure, the WTO is quite different from the ILO. Country statements at the Singapore Ministerial Meeting reflected the lukewarm reception many countries were giving to the immediate impact of more liberalised trade, but its further development was generally recognised as important for economic growth. Many developing and some developed countries expressed concerns over disguised protectionism under the guise of workers' rights³⁰.

B. A regional response: the case of the EU

Up to now, attempts to include a list of fundamental social rights in the Treaty of the European Community has failed. Undoubtedly, the TEC contains some fundamental social rights, like equal treatment, the principle of non discrimination and even references to the European Social Charter and the European Convention on Human Rights, but not a full-fledged article enumerating the fundamental social rights every European citizen would be entitled to enjoy.

Basically one has to consider three models for the future of European social law and policy³¹.

The first is *l'Europe a la carte*, i.e., Member States are free to pick and choose which Union policies to accept. This was the position with the Maastricht Social Protocol and Agreement of 14 Member States, from which the UK was allowed to opt out. This approach undermines the EU as a constitutional order of States and is at variance with the objectives of Article B of the TEU, in particular 'to maintain in full the *acquis communautaire*'. Practical experience with the Social Agreement shows that *de facto* Member States cannot avoid the consequences of measures adopted under the Agreement. For example, despite the exclusion of the UK from Council Directive 94/45/EC on European works councils, all companies with UK employees that have set up works councils to date have included British workers in their agreements and an increasing number of UK companies are signing agreements, although not legally required to do so. However, *de jure*, there is unnecessary complexity and divisiveness. This model is dangerous and should not be totally accepted.

The second model is a *multi-speed Europe*. Member States pursue the same social objectives, but some move faster than others do. This has been used in the Accession

³⁰ Trebilcock A., "What future for social clauses? Differing institutional approaches", in: IIRA, 11th World Congress. Developing competitiveness and social justice: the interplay between institutions and social partners, 22-26 September 1998, Bologna, Italy, Vol. 3, 121-125.

³¹ See: Blanpain R., Hepple B., Sciarra S., and Weiss M., *Fundamental Social Rights: Proposals for the European Union*, Leuven, Peeters, 1996

Treaties to allow new Members a longer period of adaptation. It will certainly have to be used when the Union is enlarged to include some Central and Eastern European States, Cyprus, and Malta. It is also a technique, which has been used in some employment directives (e.g., on working time and young persons), and it may become more common in the future.

The third model is *Europe with variable geometry*. This would allow non-participation in certain social policies as a limited exception, but subject to certain rules. This differs from *Europe à la carte* because all Member States accept the same limitations on their sovereignty in certain 'core' policy areas, there is a single institutional framework and there is the same set of social objectives and respect for certain fundamental rights applicable to all EU activities.

The second and third models can work only if there is a clear definition of specific social objectives and a statement of fundamental social rights. Measures in the social field, whether at Community level or on the basis of subsidiarity at the national or regional level, must not be allowed to violate these objectives and fundamental rights.

Fundamental rights must also be distinguished from those 'instrumental' rights by which they are achieved. While fundamental rights must be prescribed for the whole Community and must be applied at all levels and by all institutions and persons, the specific policies and instrumental rights by which they are achieved are best formulated in accordance with the principles of subsidiarity and proportionality.

Our proposal is to include fundamental social rights in the Treaty of the European Union, as follows.

In Title 1 (Common Provisions), Article 6.2, add the italicised words:

'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, *the European Social Charter signed at Turin on 18 October 1961, and the Protocols thereto, and the Community Charter of Fundamental Social Rights of Workers adopted at Strasbourg on 9 December 1989*, and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'

In Title II, Part One (Principles), Article 3, add the italicised words:

'For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

a contribution to the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to high employment and the combating of exclusion and the promotion of equal opportunities and equal treatment for all persons.

In Title XI (Social Policy, Education, Vocational training and Youth), Chapter 1: Social Provisions, replace Article 136 with the following new Article on Fundamental Social Rights:

'Article 136 [Fundamental Social Rights]

The Member States agree that labour is not a commodity and that everyone has the right to lead a life in accordance with human dignity and with adequate social protection

To this end, the European Institutions and the Member States, having due regard to the reciprocal obligations of all those concerned, shall take appropriate measures, whether general or specific, to guarantee economic and social rights.

They shall abstain from any measure, which could jeopardise their realisation.

These rights include specifically:

1. The right to work, and to earn a living in an occupation freely entered upon;
2. The right to life-long education, vocational guidance and training;
3. The right to equitable remuneration, to just terms and conditions of work, and to protection against unjustifiable termination of employment;
4. The right to equality of opportunity and equality of treatment, without distinction of any kind, such as race, colour, ethnic, national or social origin, culture or language, religion, conscience, belief, political opinion, sex or gender, marital status, family responsibilities, sexual orientation, age, or disability;
5. The right to health and safety in the working environment;
6. The right of children and young persons, pregnant women and those who have recently given birth, and the elderly to protection;
7. The right to protection of health, to social security, to social and medical care, and to benefit from social welfare services;
8. The right to personal privacy in respect of employment and occupation.
9. The right to associate, to organise, to bargain collectively, and to resort to collective action in the event of a conflict of interests;
10. The right to information, consultation and participation, in respect of decisions affecting the interests of workers.'

Mention has also to be made of developments in other regional bodies like Mercosur, where a creation of a floor of rights is under discussion, as well as of NAFTA where there is a side accord dealing with labour issues³².

³² See: Erickson C.L., & Mitchell D.J.B., "Labor standards and trade agreements: the U.S. experience", IRRA, World Conference 1998, o.c, 145-148.

C. National developments

International and regional measures should be supported by national provisions. One good example is Article 23 of the Belgian Constitution, which was recently (1994) adopted, after a long period of incubation. Article 23 reads as follows³³:

"Everyone shall have the right to live in a manner consonant with human dignity.

To this end economic, social and cultural rights shall be guaranteed, having regard to the corresponding obligations, and the conditions governing their exercise shall be prescribed by law or decree.

These rights shall include in particular:

1. the right to work and the right to a free choice of occupation within the framework of a national employment policy whose objectives include ensuring the highest and most stable level of employment, the right to decent working conditions and fair pay, and the right to information, consultation and collective bargaining;
2. the right to social security, health protection and social, medical and legal assistance;
3. the right to decent housing;
4. the right to protection of a healthy environment;
5. the right to cultural and social self-fulfillment."

The rights to equal treatment and privacy, contained in the constitution are directly binding. Those contained in Article 23, namely the economic, social and cultural rights, are not. They are nevertheless legally extremely significant. They are first to be considered as norms of public order, which has the following consequences: 1) agreements between private parties cannot deviate from these norms, while 2) the judge, evaluating the facts of a case, is entitled to ascertain *de jure* the failure to live up to them, while 3) every judge is obliged, when interpreting an act of Parliament, to give an interpretation which is compatible with the Constitution.

³³ Other related rights read as follows:

Art. 10. There shall be no distinction in Belgium on the grounds of personal and social standing. All Belgians shall be equal before the law; only they shall be eligible for appointment to civil and military posts, save for such exceptions as may be established by law for particular purposes.

Art. 11. The rights and freedoms granted to all Belgians shall be enjoyed without discrimination. To this end, the rights and freedoms of, more particularly, ideological and philosophical minorities shall be guaranteed by law and decree.

Art. 22. Everyone shall have the right to respect for their privacy and family life, except in the case and subject to the conditions prescribed by law. Protection of this right shall be guaranteed by law or decree. Art. 27 protects the freedom of association.

These rights also have a horizontal effect: in the relationship between the citizens themselves, as every citizen, which follows from the words 'having regard to the corresponding obligations'. These rights will only come to life as they are implemented by Governmental action.

The Government/Parliament have a political obligation to enact necessary measures to their utmost. Moreover theirs is a 'stand still obligation' meaning that the authorities cannot enact legislation, which would diminish those rights.

Many constitutions in quite a number of countries contain fundamental social rights, but more could provide for the kind of "roof protection, we are talking about.

D. Private initiatives: codes of conduct, consumer boycotts.

Mention should finally be made of private initiatives, such as corporate codes of conduct and consumer boycotts organised by non-governmental organisations. In November, 1998, Nike, Reebok and other clothing and shoe-producers concluded an agreement with a number of American human rights organisations. The companies concerned accepted that conditions of work in their subsidiaries in the third world would be controlled. The agreement signifies a break through in the fight against child labour and inhuman working conditions in the clothing industry.

On 22 October, 1998, the ILO signed an accord with Pakistan's carpet makers that aims to end child labour in the country's largest cottage industry. The deal follows a similar agreement (1997) with Pakistan's soccer ball industry to phase out, within two years, some 7,000 child workers in and around Punjab City of Sialkot, centre of Pakistan's sports good industry. The hand-woven carpet industry in Punjab posed a far larger problem. It employs an estimated 30,000 children, aged under 14, mostly girls, who earn on average about \$2 a day. The ILO scheme will provide educational opportunities for 8,000 children in 30 villages with spot checks to ensure they are not working. Other family members, especially women will receive training in income-earning skills. The US Department of Labour is putting up most of the \$ 300,000 needed for the three-year project, with the rest coming from the Pakistan Carpet Manufacturers and Exporters Association. Last, Pakistan's first child labour survey in 1996 in collaboration with the ILO showed that there were 3.6 million children between the ages of 6 and 14 working full-time in the country³⁴.

The Italian clothing giant Benetton has recently been accused by a Turkish textile trade union that children from 9 to 13 years of age make cloths for the multinational. Wages would amount to US\$3 a day. Benetton said it was not aware of this. It stated that its Turkish partner had assured that it did not employ children. Benetton promised to examine the complaint and to take sanctions if the accusations were true³⁵.

³⁴ Williams F, "Carpetmakers agree to end child labour", F.T., 23 October 1998.

³⁵ 'Benetton wist niets van kinderarbeid', De Standaard, 13 October 1998

Concluding remarks

Our world of work is undergoing a revolution. We have been catapulted into a new information society, where the realities and the truths of yesterday are becoming increasingly irrelevant. Globalisation and new technologies are causing enterprises to explode into networks of teams where work will be done on a project basis, fundamentally altering the employment relationship and the role of the social partners. There is a need for a mental revolution, especially in the area of vocational training, in order to grasp the challenge before us and what has to be done in order to respond creatively and appropriately to the call of new opportunities which the information society offers. There is no shortage of work.

Wild capitalism has made economic systems crumble, first in Asia, later in Russia. At the time of the crisis' eruption (1997), the dominant view was that its origin was the defective capitalism as practiced by Asian countries: lack of transparency in business deals, dubious ties between enterprises and the government, undisciplined banking systems, imprudent investment and so on. The implications were political, social and even cultural. It was as if Asians were declared incapable of living up to the rules of capitalism. Now it seems that there is a growing consensus that the currency crisis was caused primarily by rampant moves of a huge amount of highly volatile short-term funds in international financial markets. It is clear that in order to stabilize the global economy one needs a stabiliser'. The lack of adequate monitoring entails great dangers. One needs international enforceable rules: world governance.

Moreover, poverty and unemployment have reached alarming levels. One-sided economic policies, like supply side economics, pushed all the way through, increase unemployment and inequalities. The EMU should have a balanced approach between non-inflationary policies and employment growth. The EU should be given a mandate to conduct full-fledged social policies, including pay and social security. A European collective agreement on wages, including a minimum wage, and a European social security system should be (legally) possible under the TEC, on the basis of a majority vote.

Today, there is too much demand for unbridled flexibility. "It's time to take a sober look at the way we work; there have been radical changes in the course of the recent economic boom. These changes have, I believe, done workers real social and personal damage. No 'long term serve' as the motto of modern labour; in search of new market opportunities around the world, corporations want employees to behave flexibly and take continual risks rather than slowly climb the fixed rungs of a company ladder. Corporations themselves have become unstable institutions ... But no long term can disorient individuals and families, chameleon institutions, cannot command much loyalty, and risk taking frequently proves more depressing to ordinary employees than energising",³⁶. Rightly, the ICFTU states that globalisation is on trial.

³⁶ Sennet Fl., 'Work can screw you up. Changes in modern labour practices create more problems than they solve', FT., 18 October 1998

Just to repeat, we are looking forward to a new social era. We need a social roof on top of the societal building, containing social rights and a floor of minimum standards within which the the free market can operate.

The ILO Declaration of 1998 on Fundamental Principles and Rights at Work is a hope giving start, but the road is long and narrow.

The EU should include a list of fundamental social rights in the Treaty of the European Communities.

One should also address newer avenues, like corporate codes of conduct.

Consumer power, also, has to be brought into the picture. Consumers' attitudes can have a wide impact. Here social labeling comes into play.

The question is then, how to organise the labour market in order to suit the needs of the information society and, at the same time, to see to it that enough added value and wealth is created to be able to establish and guarantee an adequate system of social protection, which should shield the worker of the XXIst century as far as his needs for income, health and safety and social security (unemployment, sickness insurance, pension...) are concerned in a globalised volatile economy.

Finally, in the search for employment for all, we need to address a range of issues, such as employment policies, training, community work schemes and labour costs.

'Globalisation has only one true meaning and significance. More than ever, we are all in the same boat, but it does not mean that we are powerless in charting its course'.

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