

## European employer organisations: structure and recent developments

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Renate Hornung-Draus<sup>\*</sup>

## European Employer Organisations: Structure and Recent Developments<sup>\*\*</sup>

*This paper draws a portrait of employer organisations at European level and their recent development in the context of the social dialogue, in particular the horizontal umbrella organisation of employers „UNICE“. The purpose is to give first hand descriptive information based on practical experience, rather than to elaborate abstract explanations based on theories of collective action. The first part contains a description of UNICE, its membership, purpose and role, its organisational structure and decision making procedures, as well as information about European sectoral organisations and the European Employers' Network created by UNICE in 1993 to coordinate the views of sectoral and horizontal organisations in the field of social policy. The second part describes UNICE's views on social policy and its evolution along with the development of the social dialogue framework set by the Maastricht Treaty and consolidated by the Treaty of Amsterdam. The author concludes that the development of industrial relations at European level will depend – in any case as far as employers are concerned – fundamentally on the legal framework set at the European level.*

*Die vorliegende Arbeit zeichnet ein Portrait der Arbeitgeberorganisationen auf europäischer Ebene und ihrer neueren Entwicklung im Kontext des europäischen sozialen Dialoges, mit besonderem Augenmerk auf dem horizontalen Dachverband der Arbeitgeber „UNICE“. Der Artikel verfolgt eher die Zielsetzung, auf praktischen Erfahrungen beruhende Informationen aus erster Hand zu geben, anstatt nach theoretischen Erklärungen für die Entwicklung und Verhaltensmuster dieser Organisationen zu suchen. Der erste Teil enthält eine Beschreibung von UNICE, ihrer Mitgliedschaft, Zielsetzung und Aufgaben, ihrer Organisationsstruktur und Entscheidungsfindungsprozesse, sowie Informationen über europäische Branchenverbände und das „European Employers' Network“, das 1993 von UNICE gegründet wurde, um die Positionen der sektoralen und horizontalen Wirtschaftsorganisationen im Bereich der Sozialpolitik zu koordinieren. Der zweite Teil beschreibt die Positionen von UNICE im Bereich der Sozialpolitik und ihre Entwicklung im Zusammenhang mit der Schaffung eines gesetzlichen Rahmens für den sozialen Dialog durch den Maastrichter Vertrag und seine Konsolidierung durch den Vertrag von Amsterdam. Die Autorin kommt zu dem Ergebnis, daß die Entwicklung der industriellen Beziehungen auf europäischer Ebene – jedenfalls soweit sie die Arbeitgeberseite betrifft – ganz wesentlich von den auf dieser Ebene festgelegten gesetzlichen Rahmenbedingungen abhängt.*

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## Introduction

Industrial relations at European level have developed against the background of very different national traditions concerning the balance between corporatist and individualist elements in the political systems, or more specifically, the notion of „social partnership“, the role of the State and the autonomy given to employers and trade unions in regulating the labour market, and finally, the types of organisations representing the interests of employers and workers. Nevertheless, it has been a common characteristic feature of (continental) European societies that private business has created an elaborate and highly representative system of organisations which represent its interests in the different political and social spheres, and which is the basis for the European level structure of interest representation.

### *National systems of representation of business interests*

Generally, there are two pillars of business representation in the continental tradition: on one hand, the chambers of industry and commerce, based in most cases on mandatory membership, on the other hand voluntary organisations.

The chambers of industry and commerce have their main function at the local and regional level, where they promote business interests, provide services to affiliated companies on economic matters, administer examinations in vocational training and arbitrate disputes relating to competition between companies. In all European countries, except Austria, the chambers do not look after social policy, nor do they act as social partners or negotiate with the trade unions. In Austria, the only exception, collective bargaining is being dealt with both on the employers' and on the workers' side jointly by the voluntary organisations (Industriellenvereinigung resp. Österreichischer Gewerkschaftsbund) and the mandatory structure (Wirtschaftskammern resp. Kammern für Arbeiter und Angestellte).

The voluntary business organisations exist either as a *single system* in which economic, trade and social matters are covered by the same organisation – e.g. *Conseil national du patronat Français (CNPF)* in France, *Fédération des entreprises belges (FEB)* in Belgium, *Verbond van Nederlandse Ondernemingen – Nederlands Christelijk Werkgeversverbond (VNO-NCW)* in the Netherlands etc – or as a *dual system*, in which economic and social matters are treated by different sets of organisations. This dual structure of voluntary business representation exists in Germany, where social matters are dealt with by the employers' organisations organised by economic sectors, all of which are affiliated to the *Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)* and economic matters by trade organisations like the *Bundesverband der deutschen Industrie (BDI)* representing manufacturing industry, the *Bundesverband deutscher Banken (BdB)* representing private banks etc. (with no horizontal confederation at the top), but it also exists in other countries, like Denmark, Sweden, Iceland, Turkey etc.

Historically, the tendency to establish a dual structure of voluntary business representation was motivated by two factors: Firstly, the existence of a strong and

united (horizontal) trade union movement like *Landsorganisationen (LO)* in Denmark at the turn of the century or the *Deutscher Gewerkschaftsbund (DGB)* in post-war Germany required an equally strong and united horizontal employers' organisation. Since business interests in labour and employment matters are more homogeneous across the different sectors of the economy than economic and trade matters, which very often imply a conflict of interests between sectors, the separation of economic and trade issues from labour and employment issues was a basis for constructing strong and united employers' organisations on an interprofessional (horizontal) level. Secondly, the dual structure of organisations on the employers' side enabled employers to draw a clear delimitation of the issues to be dealt with in the industrial relations framework, i.e. only labour and social affairs, while economic and trade matters were outside the scope of relations with the trade unions.

In contrast to this situation, a single but sectorally fragmented structure of business representation often developed in countries, where the trade union movement had less bargaining power because it was less united and more politicised, consisting of politically oriented rivalling organisations, or where company level bargaining played an important role (e.g. France, Italy, Spain, Great Britain).

### ***The notion of „social partnership“***

A further feature common to the (continental) European traditions of industrial relations is that the „social partners“, i.e. employers' organisations and trade unions, are not perceived as pure lobbying organisations or pressure groups: they have a mission which goes beyond the representation of their specific interests and includes a responsibility for the public welfare. In accordance with this function they play an eminent role in the social security systems, labour market policy and the labour courts. In some traditions, e.g. Denmark, the State has left to the social partners the entire regulation of the labour market. The concept underlying this notion is, that – under the assumption of a balance of power between the two sides of industry – the active role of the employers' organisations and trade unions in these fields leads to a better functioning of the labour market and social security systems as well as to an income distribution which is both economically sound and equitable, which in turn contributes to the competitiveness of the economy by keeping unemployment down, providing for an optimal allocation of resources on the labour market and minimising the number and negative impact of industrial disputes.

These features – voluntary and highly representative employers' organisations and the notion of „social partnership“ – are the basis on which the European level of business representation in the social field has developed.

### **The structure of employer representation at European level**

The representation of employers' interests at European level has developed in parallel with and as a response to European integration. A key factor in the

development of a truly European strategy for the representation of business interests has been the introduction and extension of qualified majority voting for European legislation. As long as decisions in Brussels were taken on the basis of unanimity, a purely national strategy of lobbying was sufficient in most cases, since every single government had the power to veto a decision in Council. With the introduction of qualified majority voting, this strategy was no longer efficient, because one, or even more governments could be overruled by the majority. It became necessary for employers to coordinate their positions and their lobbying at European level, so as to develop a truly European position with which they could convince at least the number of governments sufficient for constituting a potential blocking minority of their views.

### ***The horizontal level: UNICE***

UNICE is the European confederation of central national business organisations. It was created in 1958 under the name of „Union des Industries de la Communauté Européenne“ (hence the acronym UNICE). In 1987 it changed its title to „Union des Confédérations de l’Industrie et des Employeurs d’Europe“ in order to reflect its identity more accurately: UNICE’s members include both industry and employers’ organisations from European countries which are members of the Council of Europe.

### ***Membership***

As a general rule, central business organisations based on voluntary membership from all countries which belong to the Council of Europe can apply for membership in UNICE. The decision about the admission of new members is made by UNICE’s highest body, the Council of Presidents, on the basis of consensus. Since 1990, UNICE’s membership has undergone significant change.

In 1990 UNICE had 32 member federations from 22 countries. The countries included the EC and EFTA member countries and furthermore Turkey, Malta, Cyprus and San Marino. The difference between the number of member countries and the number of member organisations indicates that the dual system of business representation, i.e. different central organisations for trade matters on one hand and employer matters on the other, existed in a significant number – nearly half – of countries: CH, D, DK, IRL, IS, P, S, SF, TR. The Dutch case was somewhat different in that the distinction between the two UNICE member federations VNO and NCW was based on religion (the NCW represented the Christian employers), while both organisations covered social as well as economic matters.

Since 1990 two major changes took place with regard to UNICE’s membership: some western European member organisations merged, and new organisations from Central Europe joined UNICE as associate members with a special status. In December 1996 UNICE had 33 member organisations from 25 European countries.<sup>1</sup>

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<sup>1</sup> In July 1997 the following organisations were members of UNICE:

*Mergers:* Firstly, in some countries the two central organisations merged to become a single structure. This was the case in Ireland, where CII (Confederation of Irish Industry) and FIE (Federation of Irish Employers) became IBEC (Irish Business and Employers' Confederation). In Finland the two UNICE member organisations, the Industrialists' Association TKL and the Employers' Organisation SDK also merged to become TT; however since TT represents only the manufacturing industry, the central Finnish organisation representing the service industry LTK, also joined UNICE in 1995. In Norway the economically oriented UNICE member organisation NHO merged with the Employers' organisation NAF (which had not been a member of UNICE before) and the voluntary chambers of industry and crafts, the new central organisation being called CNBI – Confederation of Norwegian Business and Industry. The Swedish members of UNICE, SAF and Industri-Förbundet also decided to merge in 1995, however this decision was cancelled again after a year of fruitless efforts to implement it. In 1995 the two Dutch UNICE members, VNO and NCW, which had been characterised by a substantial overlap both of member companies and of topics covered, merged and became „VNO-NCW“.

The aborted merger of central industrial trade organisations and employer organisations in Sweden seems to confirm the continued validity of the hypothesis which had originally led to the development of dual structures of business representation at the central level, i.e. that in the context of strong trade unions and high collective bargaining responsibilities a single structure of representation may not always be the most efficient form of creating a countervailing power to the unions, due to inter-sectoral conflicts of interest on trade and economic matters. This is further supported by recent developments in Denmark, where the metal processing employers' organisation – the most important member of the Confederation of Danish Employers (DA) – merged with the Danish Industry Federation (DI), thereby making DI implicitly a member of DA, without however merging the two central organisations.

*Central and Eastern Europe:* With the fall of Soviet dominated communism the countries in Central and Eastern Europe strove to set up liberal and democratic political institutions and market economy based on private property which included private entrepreneurship and the possibility for companies to set up free and voluntary business associations.

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A: IV	B: FEB/VBO	CH: VORORT and ZVSAO
CZ: ZPCR	CY: OEB	D: BDA and BDI
DK: DA and DI	E: CEOE	F: CNPF
FIN: TT and LTK	GB: CBI	GR: SEV
I: CONFINDUSTRIA	IRL: IBEC	IS: VSI and FII
L: FEDIL	M: MFOI	N: CNBI
NL: VON-NCW	P: CIP and AIP	PL: KPP
RSM: ANIS	S: SAF and SI	SK: AZZZ
TR: TISK and TÜSIAD		

Contrary to the situation on the workers' side – free and democratic trade unions existed partly even before the 1990 revolution, and where they existed, e.g. Solidarnosc in Poland, they were a key factor in bringing about the political changes of 1990 – the establishment of voluntary and truly representative „western style“ business organisations has been characterised by great difficulties. Doubtless, the main difficulty arose from the fact, that those sectors which were privatised first – commerce and services – are by nature less engaged in collective action, while the most important industrial sectors remained for a long time, and in many cases still remain, owned and/or controlled by the State.

Nevertheless, sufficiently representative structures of voluntary business associations at the central level have emerged in the meantime in some of the CEECs. Some of these organisations have become associated members of UNICE with a special status, which includes inter alia the provision that membership is limited in time: after two years UNICE's Council of Presidents must decide whether to renew membership of the organisations in question. To date the following organisations from CEECs are associate members of UNICE: KPP from Poland, ZPCR from the Czech Republic and AZZZ from the Slovak Republic.

UNICE's policy with regard to membership of business organisations from the CEECs is guided by three principles: Firstly the organisations must be eligible for membership (voluntary membership, broad representativeness of the business community, adherence to democratic principles, horizontal organisation at the central level), secondly, given that the development of business organisations in the CEECs is still very unsatisfactory and far from being consolidated, UNICE must not preempt or hinder national developments in these countries – therefore membership is limited to two years –, thirdly, since it is UNICE's mission to „influence the European legislator“ membership in UNICE should include only those countries which have a direct interest in shaping the EU-policy through UNICE.

*Representativeness:* Due to the different traditions of national business representation (cf. p. 292), the structure of UNICE's member organisations is not identical and therefore UNICE's representativeness of the different economic sectors is not even throughout the different countries. While it is true that all national member federations of UNICE are representative of companies of all sizes in manufacturing industry, some member federations do not represent the entire spectrum of service sectors. The extreme case is the Italian member Confindustria which includes services close to the manufacturing industry, but does not represent banks, insurances, trade or the crafts associations. In those countries, where there exists a dual structure of business representation (cf. p. 292f), the employer organisation competent for labour and employment affairs typically represents all the sectors, while the trade association often represents only a part of the service sectors.

However, as far as small and medium sized companies are concerned, UNICE is highly representative of them, since the great majority of its member companies belong to this category. A survey undertaken by UNICE in 1992 shows that all member federations involved in the social dialogue today have SME-membership and

that craft industry is a member of the UNICE member federation in eight out of the 15 countries involved (UNICE).

UNICE's representativeness has become the subject of controversy in the framework of the social dialogue, and more specifically with regard to the consultation and negotiation mechanism of the Maastricht Social Policy Agreement (cf. p. 304f). Certain sectoral organisations representing for instance commerce (Eurocommerce) and crafts (UEAPME) claimed that the interests of these sectors were not sufficiently represented by UNICE and asked to participate in the horizontal Social Dialogue together with UNICE.

UEAPME has instituted proceedings against the framework agreement on parental leave in September 1996. The European Court of Justice (Tribunal of First Instance) has received the suit and is expected to pronounce its verdict in summer 1998. UEAPME's suit is based on two claims: a) that organisations representing SMEs have been excluded from the negotiation procedure and b) that the agreement does not take adequate account of the interests of SMEs. In UNICE's opinion both assertions are unfounded: First of all, as shown above UNICE, is highly representative of SMEs – in fact, the most important member organisations of UEAPME are also members of UNICE's national member organisations. Secondly, the parental leave agreement contains specific clauses in favour of SMEs, taking account of their specific situation in giving the employer the right to postpone the employee's wish for parental leave, if his absence would provoke organisational problems for the company. These clauses favour employers more than existing legislation e.g. in Germany.

While UNICE has always pleaded in favour of extensive consultations of all interested organisations by the European Commission and encouraged autonomous sectoral social dialogue on sectoral matters, it has refused to include European sectoral organisations as independent actors on the employers' side of the autonomous horizontal social dialogue which consists of negotiating joint opinions or agreements on interprofessional matters with the European Trade Union Confederation (ETUC). UNICE has taken this position on the grounds that it is by far the most representative horizontal employers' organisation at European level and covers, in fact, many of the national branch organisations, which Eurocommerce and UEAPME claim to represent. Furthermore, adding more actors to the employers' side – which consists already of two organisations: UNICE for private employers and CEEP for public employers -, which will have to negotiate with a single and united ETUC, would substantially weaken the employers' negotiating position. As mentioned before, UNICE's representational gaps in certain service sectors concern only some countries and should therefore be closed in a pragmatic way by coordinating the employers' side at national level in the countries concerned. However, when it comes to negotiating horizontal matters, which are of particular importance for certain sectors, UNICE is quite willing to invite experts from the sectors concerned to assist the employers' negotiating team. This has been the case for the negotiations on part-time work: since part-time work is of particular



importance for commerce, hotels and restaurants and the industrial cleaning sectors, UNICE has invited experts from these three European branch organisations to assist the UNICE negotiating team.

UNICE's position has been based on the Commission's communication concerning the application of the Agreement on social policy (European Commission 1993), which clearly states that it consults a broad range of representative EU-level organisations, but that it respects the autonomy of the social partners when it comes to negotiations on the grounds of mutual recognition (para 31). The Commission intends to maintain this position in its second Communication on the Social Dialogue at European level, which is in the process of drafting at the time being.

The study on the representativeness of European level employers' organisations and trade unions published by the European Commission in 1993 together with the above mentioned Communication shows however, that UNICE is by far the most representative horizontal European level employers' organisation (European Commission 1993).

It is probably true to say, that a certain amount of incoherence concerning UNICE's representativeness of service sectors is the expression of the pluralism of national traditions in Europe which cannot disappear completely as long as these traditions continue to exist at national level. Therefore the notion of representativeness cannot be defined in the European context with the same degree of stringency as at national level. Nevertheless, a tendency towards more coherence at European level is emerging in the context of the European employers' network which was created by UNICE in order to coordinate the views of all European level business organisations in the field of social policy (cf. p. 302).

### *UNICE's Purpose and Role*

UNICE's purpose is to defend the interests of business vis-à-vis the European legislator. This means that UNICE is the spokesperson for European business on all *horizontal* matters which are subject to European level legislation and/or policy. UNICE does not deal with sector-specific issues – these are covered by the European sectoral business associations (see below).

UNICE's main interlocutor is the European Commission. Furthermore, UNICE has to lobby the European Parliament, the powers of which have greatly increased since the Single European Act and the Maastricht Treaty, and the Economic and Social Committee, which has no power to amend or block legislation, but emits comments and opinions which are taken very seriously by the European Parliament and the other European Institutions. Once a draft proposal has been adopted by the Commission, lobbying of the Council of Ministers is done jointly by UNICE and its national member federations, who are in direct contact with their respective government representatives.

UNICE has always been a strong supporter of European integration, and consequently one of its main tasks has been to promote the completion of the single

market. In doing so, UNICE's lobbying activities were directed at ensuring that European legislation

- was in line with the principles of the market economy and of an open multilateral trading system (no „Fortress Europe“)
- was practicable, so that it could be implemented by companies
- avoided additional costs or bureaucracy for companies
- contributed to the competitiveness of European companies by eliminating national barriers.

Unlike some European business clubs, e.g. the European Round Table, a group composed of the chairmen of the largest European multinationals, who can select a very limited agenda of key topics for their activities, UNICE has to cover the whole range of European policy which is of relevance to companies from more than one sector. The issues covered by UNICE include economic and financial affairs, external relations, company affairs, industrial policy, and last not least, social affairs. The priorities of UNICE's activities moved along with the European policy agenda: European social policy, for instance, which had played only a minor role for UNICE in the first decades of its existence, has become one of its most important fields of action since the entry into force of the Maastricht Treaty and the Maastricht Social Policy agreement (see below).

However, UNICE has not only followed the European policy agenda, it has also been able to influence European policymaking in a proactive way: UNICE's studies on competitiveness and on deregulation have paved the way for important European initiatives like the creation of the high-level group on competitiveness, which reports to the President of the European Commission twice yearly and the 1995 „Molitor report“ on deregulation.

#### *Organisation and decision making*

The task of defending the interests of business at the European level is a very complex one: first of all, UNICE has to find out about legislative projects within the Commission, which are of relevance to business. It has to inform member federations about these possible projects and coordinate the process of establishing the European employers' position on every single issue. This position will then be made known to the European policy makers – either in consultations organised by the European Commission or European Parliament or in individual contacts and at other occasions.

The flow of information between UNICE and its member federations and the decision making processes are channelled through UNICE's governing bodies:

*The Council of Presidents* is composed of the Presidents of UNICE's member organisations and chaired by the President of UNICE. It meets at least twice a year and is the highest ranking decision-making body of UNICE, deciding on matters of vital concern, e.g. the election of the UNICE President, the admission of new members, UNICE's statutes.

After the entry into force of the Maastricht Social Policy Agreement the Council decided, that it should be the body responsible for deciding about the entry into negotiations, the adoption of the negotiating mandate, and the conclusion of negotiations. Decisions on this matter are taken on the basis of *consensus* of all the federations concerned, i.e. to date all EU and EEA member federations except the United Kingdom.

*The Executive Committee* consists of the federations' Directors General and is also chaired by the President of UNICE. It meets at least three times per year and decides about major policy matters, i.e. position papers submitted by the main policy committees, the management of the association and the budget. It also prepares all the decisions to be taken by the Council of Presidents.

The Executive Committee has two sub-committees, which prepare its decisions:

- the *Finance Committee* meeting at least twice a year and preparing the budget
- the *Committee of Permanent Delegates* which is composed of the Brussels representatives of UNICE's member federations. This committee meets every two weeks and is the most important link between the secretariat of UNICE and the member federations.

*Five Main Policy Committees* composed of the competent representatives of the national member federations have been set up to develop UNICE's positions on

- Economic and Financial Affairs
- Social Affairs (labour law, labour market policy, health and safety, social security, education and training, social fund)
- Company Affairs (company law, technical harmonisation etc)
- Industrial Affairs (energy, environment, small and medium sized companies etc)
- External relations.

The main policy committees are assisted by technical working groups, who follow the concrete projects in detail and prepare the position papers.

*Decision making procedures:* On policy positions UNICE's statutes require a qualified majority: a proposal is adopted unless a minimum of three countries voting together oppose it. In the event of a federation being overruled by the majority, it has the right to make its minority position known in a footnote to the position adopted. In reality it hardly ever happens that federations are being overruled – in most cases a compromise position which is acceptable to all federations can be found. For internal budgetary matters, votes are weighted with each country's share in the UNICE budget, the blocking minority being at votes representing 20% of the budget. However, the procedure governing the Council of Presidents' decisions on negotiations in the framework of the Maastricht Social Policy Agreement is more severe than the procedures applied to the other policy matters: on these matters UNICE's statutes require a consensus (not unanimity) of all federations concerned. This means, that one federation can block a decision in this framework.

*Secretariat:* Compared to the amount of work and topics covered, the secretariat of UNICE is extremely small – it operates in Brussels. with a permanent staff of some

33 to 35 employees directed by the Secretary General. This is only a fraction of the staff employed by its counterpart on the workers' side, the ETUC or by certain sectoral business federations at European level.

### ***The sectoral level: the „FEBI“ and the European Employers' Network***

#### ***The „FEBI“***

Since the beginnings of the European Community a multitude of sector-specific business organisations were created at the European level. They are often referred to as „FEBI“, from the French expression „Fédérations européennes par branche d'industrie“. Their task has been to defend the companies' interests in the different stages of the creation of the single market: The common agricultural policy has led to the creation of an extremely powerful organisation representing agriculture – COPA, and a large number of organisations representing agricultural sub-sectors, e.g. sugar, meat, cereals, etc.. Technical harmonisation has been the main purpose for the creation of sectoral associations in manufacturing industry, e.g. CEFIC for the chemical industry, Orgalime for machine tool makers, the European association of automobile producers, FIEC for the construction sector, etc. Finally, Delors' Single market project of 1987 which contained a large number of Community initiatives aiming at completing the creation of the Single market and implementing the four freedoms was accompanied by the rapid development and proliferation of European level associations representing the different service sectors, the most important of which are undoubtedly the organisations representing banks (EBF, EABC and ESGB), the insurances (CEA) and commerce (Eurocommerce).

While the original purpose of the FEBI was directed at purely economic matters subject to European legislation, the social dimension of the Single market included in the Single European Act of 1987, and especially the development of the social dialogue between employers and trade unions at European level, led to an increasing involvement of FEBI in social policy issues. This development was triggered off by the sectoral committees of the European trade union movement which wanted to set up sectoral social dialogues as a preliminary form of European level collective bargaining and was strongly supported by the European Commission and its President Jacques Delors, who devoted large amounts of financial resources and of personnel (DG V created a whole department for the sectoral social dialogue) to the promotion of the sectoral social dialogue (cf. European Commission 1995).

#### ***The European Employers' Network***

The involvement of the FEBI in European social policy, most of which was of a horizontal nature, involved the risk of duplication, or worse, of fragmentation and incoherence of the employers' positions at European level, despite the fact, that the national member organisations of the FEBI are in general the sectoral members of UNICE's member organisations. This risk became even more acute with the entry into force of the Maastricht Treaty and the Social Policy Agreement, which

strengthened the role of employers and trade unions at European level by providing for regular consultations and the possibility to negotiate the content of European social measures between employers and trade unions (cf. p.....).

In order to coordinate and give a certain coherence to European social policy on the employers' side, UNICE created the „European Employers' Network“ (EEN) in 1993. The EEN is an informal structure open to all sectoral employers' organisations at European level which are interested in European social policy. Its objectives are to provide a forum for the exchange of views and informations on social policy between European employer organisations, to promote convergence of views and positions among employers in order to enhance their ability to make strong and credible representations to the Community Institutions and European Trade Unions, and to prevent proliferation or duplication of overlapping agreements at European level.

The EEN functions on the basis of voluntary membership and mutual confidence on the understanding that every federation retains its full autonomy and the right to make its own final decisions. It has been very successful in coordinating the employers' views so far: 57 European organisations including all the major sectors have joined it to date. The only organisation which had refused to join the EEN until very recently is UEAPME, an organisation representing crafts associations at European level, although it must be said that some of the most important members of UEAPME e.g. the German crafts association, are represented in UNICE through their national central organisations.

The integration of the European sectoral organisations in UNICE differs from the way in which the ETUC has handled this problem: there, the European sectoral committees have become members of ETUC alongside the national trade union confederations, which are the prime members of ETUC. This type of solution has not been favoured by the majority of UNICE's member federations, who argue that the integration of sectoral interests takes place at national level within UNICE's member federations, which are themselves composed of the same national sectoral organisations which form the FEBI at European level. A double membership of the sectors at national and at European level, would complicate the organisational structure and confuse the decision making procedures. However, this topic will certainly be rediscussed within UNICE against the background of increasingly scarce resources of the national central organisations and the conflicting need to increase the employers' commitment at European level.

### **Social policy and European industrial relations from the employers' point of view**

The starting point for UNICE's considerations about European social policy and industrial relations is the recognition that Europe does not constitute a social tabula rasa, on which any desired policy can be imposed, but that they have to build upon and be compatible with the great variety and heterogeneity of existing national traditions (cf. R. Hornung-Draus, 1994). Furthermore, the notion of European industrial relations

should not be focused too narrowly on collective bargaining, but it should take into account the complexity of relations between the social partners at European level and, indeed, between the social partners and the European Institutions.

### ***European social legislation***

UNICE has consistently held the view that Europe's political and economic integration does not presuppose a harmonisation of national social policies, indeed such a harmonisation would be impossible to achieve, bearing in mind the deeply rooted fundamental differences between national traditions. Therefore UNICE has argued that European level legislation in social policy is legitimate and necessary only in the following areas:

- The elimination of any obstacles to the free movement of persons in the Single market, especially through the coordination of social security systems; most of this work has been achieved in the 1960s and 1970s – e.g. Regulation 71/1408.
- The establishment of European minimum standards on the protection of health and safety at the work place, in order to avoid that competition in the Single market takes place at the expense of workers' health. In this field a large number of directives have been adopted on the basis of Article 118a EC-Treaty (which was inserted in the Treaty by the Single European Act in 1987).

UNICE's criticism of many European proposals based on Art. 118a has been twofold: Firstly, in many cases the provisions included in the directives were not minimum, but rather unnecessarily high maximum standards, the implementation of which involved heavy costs for companies. The result of these unrealistic „minimum“ standards has been that the enforcement of these standards turned out very unequal throughout the EU. The employers would have preferred less ambitious standards, but where even enforcement throughout the EU would have been guaranteed. Secondly, UNICE criticised the excessive interpretation of Article 118a by the European Commission, which resorted to it as a legal basis even for proposals going far beyond the protection of workers' health and safety, e.g. in the working time directive which was adopted by Council in 1993.

### ***The Val Duchesse Social Dialogue***

In addition to legislation, the social dimension of Europe also includes consultation practices between the European Commission and the social partners as well as voluntary contacts and exchanges of experiences between the social partners at European level. They were first formalised with the Social Dialogue between UNICE, CEEP (the public employers' organisation) and ETUC, which was inaugurated at the Val Duchesse summit meeting (named after the place in which the event took place in Brussels) convened by Commission President Jacques Delors in 1985. It consists of two elements: on the one hand the Commission undertook to hold regular consultations with the three organisations prior to the adoption of legislative

proposals in the social field, on the other hand, the Commission gave financial and logistic support to the European social partners for creating joint working groups which discussed certain topics of particular relevance to them and developed „joint opinions“. These joint opinions included subjects such as information and consultation of employees in the context of the introduction of new technology, pay moderation to promote economic growth and employment, access to further training, lifelong learning and the adaptability of the labour market (cf.: Hornung-Draus 1994, European Commission 1995).

The Val Duchesse Social Dialogue has sometimes been criticized as being too general and failing to lead to any binding agreements between the social partners. However, this criticism overlooks the most important effect of the joint opinions, which was that the respective working parties provided – for the first time – a truly European platform for the exchange of experiences between representatives of national social partners. The working groups of the social dialogue offered the national social partners the opportunity to widen their horizon beyond their national system, to develop an understanding of other systems and traditions and to arrive at European common positions which were compatible with the different national approaches. In achieving this mutual understanding, the Val Duchesse Social Dialogue is a necessary element in the development of European level industrial relations. UNICE therefore advocates the continuation of this „traditional“ social dialogue in parallel with the new consultation and negotiation procedures introduced by the Maastricht Treaty in 1993.

### *The Maastricht Social Dialogue*

The Maastricht Agreement on Social policy strengthened the role of the social partners at European level considerably. The consultation and negotiation procedure introduced by this Agreement was elaborated by UNICE/CEEP and ETUC within the framework of the Social Dialogue and submitted to the Intergovernmental Conference in 1991.

UNICE was opposed to a further extension of European legislative competence in the field of social policy. However, once it became clear in the course of the Intergovernmental Conference that governments were heading for an extension of the EC's social powers, which went so far that it covered even areas which in some countries belong to the sphere of autonomous regulation by the social partners – e.g. „working conditions“, UNICE considered it vital to improve the possibilities for the social partners to participate in the legislative process in the social field.

The procedural proposal submitted to the Intergovernmental Conference by UNICE/CEEP and ETUC was included in the draft social chapter, which was to replace the existing social chapter of the EC-Treaty (Art.117 following). However, due to the UK's persistent objections against the new social chapter, the other Heads of State decided to leave the social chapter of the EC-Treaty unchanged and to incorporate the new draft social chapter into the Maastricht EU – Treaty as an annex

to the Social Policy Protocol, which stipulates that the eleven member States (all member States except the UK) could use the EC-Institutions in order to adopt social policy on the basis of the Agreement.

The Maastricht Social Policy Agreement contains three key provisions concerning the social partners' role in shaping European social policy:

*Consultation:* the double consultations practiced by the Commission on a voluntary basis in the framework of the Val Duchesse Social dialogue were now introduced into the Agreement as an obligation for the Commission (Article 3 of the Agreement).

*Negotiation:* Following the second consultation, the social partners may decide to negotiate the content of the Commission's proposal, thereby obliging the Commission to suspend the normal legislative process for the duration of the negotiations (maximum 9 months, with a possibility for extension by a joint decision of the social partners and the Commission)

An agreement adopted by the European social partners on this basis can be implemented either by submitting it via the Commission to Council, which will then adopt it as a legally binding instrument (in most cases a directive) – or reject it, or it can be implemented via the voluntary route of the social partners' organisations. In concrete terms this would mean that the signatories to the agreement – the European social partners – would recommend that their national member organisations implement it: Unlike „real“ collective agreements at national level which are binding both for the signatories and their member organisations/companies, the implementation of European agreements concluded in this framework cannot be enforced with regard to the national member organisations or companies.

*Transposition:* The Maastricht Social Policy Agreement finally stipulates that European social policy directives – irrespective of whether they were adopted in the traditional legislative procedure or by an agreement of the European social partners and then submitted to Council – may be transposed into national provisions not only by the legislator, but under certain conditions also via an agreement of the social partners at national level. This option, known as the „Christophersen-clause“ (named after the Danish Commissioner who introduced it for the first time in the working time directive) is particularly important for those countries, in which the issues dealt with in the European directives are covered by the social partners at national level. This clause has already been applied in certain countries for the transposition of the working time directive (DK), and the transposition of the European works council directive (B,I,N).

With the Maastricht Social policy Agreement European industrial relations have entered a completely new stage: for the first time in the history of European integration, the role of employers' and workers' organisations as „social partners“ with responsibilities going beyond mere lobbying, has been formalised at European level. One of the great achievements of this Agreement is that it has provided a formal basis for the development of European level industrial relations which is compatible with the different national systems of industrial relations. Considering the



novelty of the procedure, it is quite encouraging to see that the negotiating procedure has already been used successfully by UNICE/CEEP and ETUC to substitute a Commission draft directive on parental leave by an agreement at European level. A second framework agreement about working conditions for part-time work replacing the Commission's draft proposal on this issue has been concluded in 1997 and adopted by Council on 15 December 1997. In 1998 the negotiating activity may well gain momentum: UNICE has offered to ETUC to negotiate on working conditions for fixed term work, in order to replace a Commission initiative in this field. ETUC has accepted these negotiations despite the fact that UNICE has not offered to negotiate on information and consultation of workers in a national framework. A very large majority of UNICE's member federations are in favour of such negotiations, but the consensus which is necessary for such a decision has not been reached, mainly because some federations believe that the UK Labour government which holds the EU Presidency at the moment may be able to convince the Commission to withdraw its initiative on this subject matter or organise a blocking minority in Council.

However, in UNICE's view – which differs in this point from ETUC's interpretation – the negotiations in the framework of the Agreement are primarily a tool in the process of shaping European social legislation. They are different in nature from the classical national or sectoral collective bargaining and therefore they are not meant to constitute the beginning of European level traditional collective bargaining.

### ***The future development of European industrial relations***

The situation today is characterised by the existence of relatively strong, representative and well established European social partner organisations at the horizontal level who have at their disposal the Maastricht Social Policy Agreement, which has become an integral part of the EC-Treaty with the Amsterdam Treaty in 1997 – a new platform for exercising influence and actively shaping European social policy, which is compatible with the different national traditions of industrial relations.

However, as far as the development of collective bargaining is concerned, Europe is currently experiencing several contradictory trends, which make it difficult to foresee, in which direction industrial relations will move at European level: On one hand there is a trend of convergence towards less ideological and politicised and more cooperative styles of industrial relations. This trend is particularly visible in countries like Italy, Portugal, Ireland or partly in France where national agreements on pay moderation, working time and other working conditions were concluded recently. On the other hand, some countries, which have a particularly strong tradition of centralised, or regional multi-company collective bargaining are undergoing a period of failures to reach agreements, which are accompanied by State interventionism as in the case of Belgium, or of companies questioning the usefulness of such arrangements and asking for a greater decentralisation of industrial relations: e.g. the Swedish employers pulled out of central bargaining altogether and concentrate on the regional and sectoral level, many companies in the German metal processing industry – the most important sector of the German economy – have

criticised the „Flächentarifvertrag“ in their sector as being too rigid for the needs of individual companies. It seems today that the reforms of this instrument towards more flexibility and options for individual companies as well as findings of comparative research, which underline the positive economic performance of multi-employer bargaining (Traxler 1997) have resulted in a more positive appraisal by those who had questioned its principle.

It is argued sometimes that the European works council directive provides the basis for the first „real“ collective bargaining to emerge at European level, which will take place at company level in the multinational companies. This hypothesis does not hold true on the basis of the experiences made so far. In fact, the directive does oblige companies to negotiate with a „special negotiating body“ representing the workers' side about the establishment of a procedure for information and consultation on transnational issues. Negotiation ends however as soon as such a procedure has been established, either on the basis of a negotiated agreement, or in the event of no agreement being reached on the basis of the subsidiary requirements defined by the directive. Experience with existing voluntary agreements has shown so far, that the fora for transnational information and consultation were not used for more than information and consultation, and certainly not for European wide bargaining about working conditions. Even within a country working conditions in different plants of a company or different companies of a group can vary considerably without leading to company or group level negotiations despite the fact, that central information and consultation bodies have existed (e.g. Comité de groupe in France, Gesamtbetriebsrat or Konzernbetriebsrat in Germany) – so there is no reason to expect that the existence of European works councils will lead to European-wide bargaining within the companies in question.

Finally, the passage to EMU will certainly make cost structures within companies more transparent throughout Europe. However, this in itself will not necessarily lead to autonomous Europe-wide collective bargaining (Fröhlich 1994). If it is likely though that European industrial relations will intensify with the introduction EMU, this will happen as a reaction to political decisions and pressures by governments to complement EMU with a social dimension – a phenomenon already present at the introduction of the Single market project of 1987. So the most likely forecast for the near future is that industrial relations will intensify at European level, but that this intensification will be very closely linked to the social policy agenda of the European Union and the legal framework set at European level for the promotion of Europe wide industrial relations. In the short run it will probably not involve „classical“ collective bargaining patterns comparable to the national level – mainly because there exists no Europe-wide framework for such bargaining patterns.

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