EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY

eiro observer

UPDATE 5'03

ISSN 1028-0588, Issue 5/03

The use of new information and communication technologies (ICT) at the workplace has spread rapidly in recent years. This raises numerous issues for employers, employees and their representatives, especially in terms of the relationship between workers' privacy and employers' need to control and monitor the use of ICT. The matter is especially topical in Europe at present, with the European Commission due to propose a Directive on workplace data protection in 2004 or 2005.

The comparative supplement in this issue of *EIRObserver* focuses on the situation across the EU (plus Norway) with regard to one specific issue raised by the growth of ICT at work - the relationship between internet/e-mail use at work and respect for workers' privacy. It examines: the European and national legal framework on privacy at work, data protection, and workplace internet/e-mail use; guidelines and codes of conduct in this area; the views and activities of the social partners; and the extent to which collective bargaining deals with such topics.

The supplement finds that the legal situation in most countries is complex and sometimes unclear, with only very few countries having provisions that specifically deal with employee e-mail and internet use and its monitoring. In this context, guidelines and opinions published by public bodies in this area are often significant, as is case law. The topic is clearly of some concern to employers and trade unions in many countries considered - though the level of interest varies - and codes of practice and similar guidelines have been issued by some individual employers, employers' organisations and trade unions. The issue of protecting privacy at the workplace, either in general or in relation to the use of e-mail and the internet, is rarely addressed in collective bargaining, especially above the individual enterprise level, though with some notable exceptions.

EIRObserver presents a small edited selection of articles based on some of the reports supplied for the *EIROnline* database, in this case for July and August 2003. *EIROnline* - the core of EIRO's operations - is publicly accessible on the World-Wide Web, providing a comprehensive set of reports on key industrial relations developments in the EU Member States (plus Norway) and an increasing number of candidate countries, and at European level. The address of the *EIROnline* website is:

http://www.eiro.eurofound.eu.int/

EIRO, which started operations in 1997, is based on a network of leading research institutes in each of the countries covered and at EU level (listed on p.12), coordinated by the European Foundation for the Improvement of Living and Working Conditions. Its aim is to collect, analyse and disseminate high-quality and up-to-date information on key developments in industrial relations in Europe, primarily to serve the needs of a core audience of national and European-level organisations of the social partners, governmental organisations and EU institutions.

Mark Carley, Editor

European Foundation for the Improvement of Living and Working Conditions

EU

European code of conduct signed in private security

In July 2003, the European-level social partners in the private security sector signed a code of conduct, aimed at raising standards and guaranteeing a high level of professional ethics in the industry's firms.

There are currently almost 10,000 private security companies employing some 600,000 people within the existing borders of the EU, and these figures will be roughly doubled when the Union is enlarged. A European-level social dialogue process has been underway in the sector for around a decade, with a formal sectoral dialogue committee in place since 1999, resulting in the conclusion of a number of joint texts by the Confederation of European Security Services (CoESS), representing employers in the industry, and UNI-Europa, representing trade unions. On 18 July 2003, the two organisations signed a code of conduct, reflecting a belief that the rules governing their sector need to be harmonised across the EU and that this will be particularly important when 10 new Member States join the EU in May 2004. At present, national regulations and practices vary widely between Member States and are sometimes, in the social partners' view, inadequate or even non-existent, with the result that there are huge variations in the quality of service provided and that the sector is unable to take full advantage of European integration.

The code of conduct

The code contains a set of basic standards of professionalism and quality, which should be applied by all employers and employees in the sector. All firms should meet the basic conditions imposed by national legislation, complying strictly with both the spirit and the letter. According to the code, where there are gaps in national rules, employers and employees should work to improve them. The code covers a wide range of areas, summarised below.

A transparent and fair licensing and authorisation system should be applied throughout the sector, regardless of the size of the individual companies concerned.

Employee selection and recruitment should be carried out according to objective criteria that should be applied to all candidates, and it is crucial that the employer ensures that new employees have the necessary skills to enable them to carry out their tasks.

The code acknowledges the importance of training at all levels, underlining that basic training for new recruits is crucial. Where possible, this should fall within the framework of national or European regulations. Otherwise, the employer should undertake to provide it, and should also provide more specialised training as required. Once employees have mastered basic skills, employers should provide training on a continuous basis, allowing employees to update their competences and develop their careers, utilising the opportunities provided by new technologies. Employee representatives should be consulted on the development and assessment of continuing training programmes where possible.

Both parties stress the key role of social dialogue at all levels in ensuring the professionalism of the sector, and the code recommends that the social partners work together to establish the appropriate structures.

The code states the crucial importance of maintaining good and humane working conditions. Employers should operate according to national laws and regulatory standards, and improvements to working conditions should be negotiated at national and at company level.

According to the code, good standards of work should be remunerated appropriately and good standards of pay will attract good workers, contributing in turn to increased productivity and high standards of service. Rates of pay should, however, also allow the company to maintain competitiveness.

Some tasks within the sector bring with them a degree of risk. All companies should ensure that minimum standards of health and safety are maintained and that risk prevention is of the highest level possible. Norms and regulations in this area should be adhered to and should be regularly reviewed by the authorities and the social partners.

The social partners affirm their support for the principles of equality and non-discrimination. Companies in the sector should apply these principles and guarantee that each employee is fully integrated and not discriminated against on grounds of ethnicity or social background, skin colour, union affiliation, sex, religion, political opinion, nationality, sexual orientation or any other distinctive characteristic.

The social partners consider that the right balance should be found between two key areas: security of employment and ensuring the quality of the employee's private life; and fulfilling the needs of the client. Thus, at enterprise level, the parties should cooperate to optimise the organisation of work, in particular as regards overtime, night work and weekend work.

Employers' organisations representing private security firms should encourage their clients, whether in the private or public sector, to use companies that offer good value for money but also work within the principles laid down in the code, such as equal opportunities and non-discrimination and working conditions.

All private security companies should cooperate with national authorities, in particular with the police, while ensuring that that their employees do not divulge confidential information.

Firms should operate fairly in relation to other companies in the sector and should not compete against each other on the basis of unfair cost-cutting practices.

Finally, the parties agree to ensure the regular follow-up of the code, including monitoring and evaluation at company, national and EU level. They stress that national employers' and trade union organisations must promote the code and its application as widely and as fully as possible.

Commentary

This is a ground-breaking new code of conduct for a burgeoning sector and is the fruit of a constructive dialogue between the social partners. It also sets out a framework for companies in this sector which operate in the Member States set to join the EU in 2004. The fact that the parties have jointly agreed to follow up the code, including the monitoring of its implementation at company, national and EU level, will doubtless strengthen its effectiveness. It was welcomed by Bernhard Jansen of the European Commission's Directorate General for Employment and Social Affairs, who said: 'This is a clear sign that sector social partners are willing to address the challenges in a proactive way, in particular with a view to EU enlargement.' According to Bernadette Tesch-Ségol, the UNI-Europa regional secretary, 'the code will promote responsible behaviour and quality employment in the sector', while Marc Pissens, the CoESS president, added: 'This code is breaking new ground. We must apply it in EU and accession countries, at all levels. Our sector should be cleaned up.' (Beatrice Harper, IRS)

EU0308203F (Related records: EU9906179F)

15 August 2003

Public service restructuring challenges union demarcations

Restructuring of public services has challenged the traditionally clear-cut demarcation lines between the membership domains of the trade unions affiliated to the Austrian Trade Union Federation, and in some cases resulted in inter-union competition.

The Austrian Trade Union Federation (ÖGB) enjoys a de facto monopoly of trade union representation, and Austrian trade unionism thus has a notably high degree of unity and coherence. ÖGB has 13 member unions which together cover all branches of the economy. Their membership domains are, in general, complementary, though not in the strict sense that only one union always covers any given sector or company. In the private sector, six blue-collar workers' unions and one white-collar union coexist. Furthermore, there are two unions which represent both blue- and white-collar workers - in the arts, media, sports and liberal professions and in the printing, journalism and paper industry respectively. The pattern of union representation in the public sector mirrors the structure of the employing public authorities. Accordingly, there are separate unions for central and regional government and for local government. Separate unions also exist for (former) public enterprises - ie postal services and telecommunications companies and the Austrian Federal Railways (ÖBB) - which are undergoing transition due to liberalisation and privatisation.

Although ÖGB's member unions are formally not independent organisations but subunits of ÖGB, in practice the private sector unions negotiate autonomously and conclude collective agreements. However, the unions representing public employees are excluded from the right to collective bargaining: instead, employment relations are fixed by law. However, de facto negotiations between the authorities and the relevant unions take place, covering all matters relating to pay and employment conditions in a way similar to collective bargaining.

Restructuring and the unions

Since the late 1980s, public services have undergone a process of restructuring which has changed the employment relationship and, to an even greater extent, industrial relations. Depending on the type of services, this restructuring has taken several forms: opening up the market for former monopoly public services (liberalisation); selling public businesses (privatisation); and transfer from the status of a public authority to the status of a private-law company ('Ausgliederung'). This has led to quasi-private, 'hybrid' employment relations, since civil servants who were appointed before restructuring of their public service employer have maintained their public-law employment status, while new employees are hired under private-law employment contracts. Industrial relations in these restructured organisations are on the basis of the private sector model, with the relevant laws on restructuring equipping these organisations with the right to bargain.

The fact that in the public services civil servants now co-exist with private-law employees, along with the transformation of industrial relations, has blurred the traditional membership demarcation among ÖGB's member unions and thus threatens to create competition for members. The public sector unions that traditionally cover the restructured organisations maintain their claim to represent their employees, even under the new regime of collective bargaining. However, the private sector unions into whose domains these organisations fall, in terms of the type of business activities they conduct, may be tempted to seek to represent these organisations' employees. For instance, the Union of Salaried Employees (GPA), which represents white-collar employees across the private sector, has successfully entered the domain of the Union of Post and Telecommunications Employees (GPF). The two unions ultimately agreed to negotiate jointly with the employers' side - ie the relevant organisation of the Chamber of the Economy (WKÖ) - with the result that the first ever collective agreement for the posts and telecommunications sector was jointly concluded in 1997. The most recent case of such demarcation problems concerns Austro Control.

The case of Austro Control

A specific case of representational conflict between two unions has recently been settled in the civil aviation sector. Austro Control is responsible for all air traffic control in Austria. It is fully owned by the state, but in 1994 was transferred to private-law company status. Before 1994, the company was an authority and a subdivision of the former Ministry for Traffic Affairs. This state agency was given the right to collective bargaining in 1968, when almost all of its employees opted for a private-law employment relationship even though the employer was a public authority. At the time, this was a very special arrangement, given that the public sector is, in principle, excluded from the right to collective bargaining. This arrangement ended in 1994 when the state's authority was transferred to a private-law company, Austro Control, on which the right to bargain was conferred.

This restructuring prompted the blue-collar Commerce and Transport Union (HTV) to recruit air traffic controllers - the highest qualified and best paid employee group at Austro Control, making up about one third of its 970-strong workforce. It appears that, given their exceptional bargaining power, arising from the crucial task they perform, the controllers no longer appreciated the united and solidaristic interest representation provided by GPF, whose membership domain includes Austro Control. Hence, in 2002 almost all the air traffic controllers switched to HTV, which had promised to represent them in a more specific way. However, this was prevented by intervention from ÖGB itself. Fearing a damaging split among Austro Control's staff and a precedent for separate representation of specific groups, thus questioning ÖGB's unity and coherence, ÖGB ordered the two unions involved to establish a joint negotiating team for future bargaining. This joint team concluded a single collective agreement for all employees with Austro Control management in December 2002. Thus, HTV was able to establish its representative status vis-à-vis Austro Control, though it failed to realise its promise of a tougher bargaining policy in favour of its new air traffic controller members.

Commentary

The restructuring of the public service sector is forcing the actors on both sides of industry to adjust to the new conditions. Since the right to bargain has been conferred on the restructured companies, new actors have emerged on the employer side. In the case of the unions, this restructuring has challenged their traditional demarcation lines. This has given rise to inter-union competition for members, even though all unions involved are under the umbrella of a relatively strong confederation, ÖGB. Nevertheless, the case of Austro Control suggests that ÖGB is strong enough to prevent this competition from bringing about a fragmentation of bargaining. At any rate, HTV's intervention at Austro Control, which enticed a group of employees away from another union, was regarded by most other unions and by ÖGB as unfair and lacking in solidarity. To prevent such 'particularistic' claims from individual membership groups, most unions tend to centralise and coordinate their strategies and bargaining policies across different branches and sectors. These efforts should result in a large-scale merger of five ÖGB affiliates scheduled for 2005. (Georg Adam, University of Vienna)

AT0307203F (Related records: AT0204202F, AT0203202F, AT0212202F)

18 July 2003

BELGIUM

Strike action hits Post Office

In July 2003, a large-scale strike occurred at the Belgian Post Office, triggered by the implementation of a new system for organising delivery rounds, one of 10 measures being introduced by management in the context of the EU-wide liberalisation of the postal sector.

Since 2000, the Belgian Post Office has been undergoing a major modernisation programme, in order to deal with the progressive liberalisation of the EU postal sector. The objective was that the Post Office should be ready for the first liberalisation deadline of 1 January 2003.

EU liberalisation

The EU Council of Ministers adopted the initial measures aimed at liberalising the postal sector in 1997, in the form of Directive 97/67/EC on 'common rules for the development of the internal market of Community postal services and the improvement of quality of service'. This identified the notions of a 'universal service' and a 'reserved service', the key issues of the debate on liberalisation. In practice, national post offices were assured a monopoly in some areas in exchange for a guaranteed universal service: this 'reserved service', whereby some letters and packages could be processed only by the national post office, was to cover the costs of the 'universal service', that is to say access to a high-quality postal service at a reasonable price for all people and bodies resident in a Member State. In June 2002, a further Directive (2002/39/EC) was adopted, amending the 1997 Directive and substantially reducing the extent of the reserved service. 'The Directive aims to fulfil the mandate of Directive 97/67/EC to provide for a further gradual and controlled liberalisation of postal services, to take effect from 1 January 2003 and to set out a timetable for further opening. It also proposes to resolve various ancillary issues relating to the smooth functioning of the internal market in postal services,' in the words of the European Commission in December 2001.

As a result, since January 2003, the EU postal sector has been liberalised in respect of packages weighing more than 100 grammes, or costing three times the basic rate. In January 2006, this limit will be lowered to 50 grammes or 2.5 times the minimum rate. Although the deadline for complete liberalisation has not yet been fixed by the European Parliament and Council, this is expected to happen in 2009: it will depend on the results of a study being carried out by the Commission, which will evaluate in respect of each Member State the impact that the provision of the universal service will have on the full application of an internal postal market in 2009. At any event, with Directive 97/67/EC expiring at the end of 2008, the European Parliament and Council will have to take a decision on the final stages of liberalisation.

Belgian restructuring and industrial action

To meet the needs imposed imposed by the EU liberalisation process, the Belgian Post Office has established 10 'focus projects' that are seen as vital to its future, boosting its competitiveness so as to avoid a continuing financial deficit. These projects are based on four strategic pillars: improved quality; lower costs; a wider range of services to mail customers (mail delivery); and a robust 'retail' network (post offices).

One of the projects involves the introduction of 'Georoute' software, which will radically reorganise the delivery of mail: for example, by optimising delivery rounds, 'it will be possible to deliver mail using a smaller number of employees' (according to the Post Office's 2002 Annual Report). The software was initially tested in some 30 sorting offices, and then extended to another 56 small and medium-sized offices. Difficulties encountered 'in the field' in the course of these tests prompted anxiety in the larger offices, where the new system was scheduled for introduction at the end of August 2003.

As a result of these concerns, industrial action took place in the Liège province in early July 2003. It was organised by: the General Confederation of Public Services (CGSP/ACOD), affiliated to the Belgian General Federation of Labour (FGTB/ABVV); Transcom, the communication workers' union affiliated to the Confederation of Christian Trade Unions (CSC/ACV); and the Free Trade Union of Civil Servants (SLFP/VSOA).

During the ensuing few weeks, the unions formed a united front, and on 28 July this culminated in a strike that was widely supported in Wallonia, and partly so in Brussels and in some Flemish towns and cities. The unions stated that they were aware of the need to find a solution to the crisis, but did do not agree with management on a number of issues, notably: the parameters established for the introduction of Georoute; the abolition of the second daily mail delivery; and changes to tasks performed on delivery rounds.

On 30 July, trade unions and management reached a 'pre-agreement' after two days of negotiations. This focuses on 'time brackets' that will take more account of local, and particularly geographical, factors. They allow some more room for manoeuvre in relation to the delivery rounds 'optimised' by Georoute in small and medium-sized offices. The agreement also provides that older employees will, as far as is possible, remain in fixed jobs after reorganisation. Lastly, as far as the second delivery in cities is concerned, the Post Office's chief executive stated that solutions have been presented to the trade unions, which must now put them to their members. He also said that he was ready to discuss union demands relating to negotiations over a new collective agreement, scheduled to begin on 1 September 2003. Members of the three unions represented in the united front agreed to the pre-agreement after being consulted.

Industrial action was therefore suspended until mid-September, when the results of talks on the reorganisation of large offices would be known. However, the spokesperson for CGSP in Liège stated that 'there is a recurrent shortage of staff, and strike action therefore cannot be ruled out,' adding, as a warning to management: 'Let us hope that our strike has been effective, because if all they offer us in September is peanuts, we will be stepping up our action.'

Commentary

Given the problems caused by the introduction of the Georoute software, further trouble can be expected in the coming year. Furthermore, the implementation of Georoute is only one of the 10 objectives determined by the Post Office. In its Annual Report for 2002, Pierre Klees, the president of the Post Office's board of directors and its joint committee, stated that, 'last year, management stressed that it was eager to listen to staff in the field … the long experience of staff has been taken into account.' He was also pleased that the industrial relations climate had improved considerably, and that the Post Office's joint committee was no longer a 'war zone'. It remains to be seen whether the events of July 2003 and the September negotiations will confirm this statement (or perhaps wish) on the part of management, and how far management is really 'ready to talk'. (Marie Schots, Institut des Sciences du Travail, UCL)

BE0308303F (Related records: BE0202304N, BE0003305N, EU9812136F)

15 August 2003

IG Metall defeated over 35-hour week in eastern metalworking

In June 2003, the German Metalworkers' Union (IG Metall) called off a four-week strike in the eastern German metalworking industry, after failing in its attempts to negotiate a 35-hour working week with employers' associations.

On 28 June 2003, a dispute over the introduction of a 35-hour working week in the eastern German metalworking industry ended when the German Metalworkers' Union (IG Metall) called off a four-week strike after negotiations finally broke down without any agreement being reached. The negotiating parties on the employers' side were the federal employers' association for the German metalworking and electrical industry, Gesamtmetall, and two regional employers' associations for the metalworking industry in the eastern states of Berlin, Brandenburg and Saxony - VME and VSME.

Opposing positions

IG Metall had demanded a three-hour reduction - without any corresponding cuts in pay - in the current 38-hour week in the eastern German metalworking, in order to bring it into line with western German metalworking. The union argued that, 13 years after German unification, eastern workers should no longer be treated less favourably than their western colleagues. According to IG Metall, increased productivity indicated that this step was feasible, with productivity in some new eastern car plants exceeding that of plants in western Germany. Furthermore, the 35-hour week was likely to secure jobs and stimulate new employment.

Employers rejected this demand, stating that a 35-hour week would remove an important incentive for employers to invest because it would remove part of the comparative cost advantage of eastern Germany. As employers' costs would increase, the reduction in working time would have a detrimental effect on employment, it was claimed. Employers stated that, prior to any reductions in working time, further increases in productivity were needed. Individual plants with above-average productivity compared with western Germany could not serve as a benchmark for the whole engineering sector.

Development of the dispute

In May 2002, the bargaining parties in eastern German metalworking agreed to negotiate in 2003 a phased reduction of working time in order to bring it in line with the provisions of western collective agreements. After IG Metall cancelled the existing working time collective agreements in January 2003, a number of bargaining rounds followed but, despite several warning strikes held by IG Metall, did not lead to a settlement. On 20 May, the IG Metall executive committee decided to call a strike ballot of members in both the eastern German steel industry (where parallel negotiations were taking place) and the Saxony metalworking bargaining region. The ballot achieved the necessary three-quarters majority in favour of strike action, and strikes commenced on 2 June. The dispute was swiftly settled in the eastern steel industry, after only four days of strike, with a new collective agreement on the introduction of the 35-hour week by 2009. The metalworking employers' associations, however, refused to accept a similar agreement. After another strike ballot in the eastern Berlin and Brandenburg bargaining region had received the necessary support, the union started strike action in this region as well on 17 June.

On 16 June, the chief negotiators for the eastern German metalworking employers' associations issued a joint statement, declaring that they would not agree to any reduction in working time which was contrary to 'the interests of the region'. Nine companies, however, broke ranks during the dispute and signed company agreements on working time reduction with IG Metall.

Amongst the plants on strike were the eastern sites of Volkswagen and a gearbox supplier producing parts for BMW's car factories. This caused Volkswagen to halt production of its best-selling Golf model in western Germany and BMW to lay off 10,000 workers in a number of western German factories, placing them on short-time working - ie they received no wages but instead a lower short-time allowance paid by the Federal Employment Service.

At this stage, IG Metall came under increasing pressure from the media, which on the whole had been very critical of the union from the beginning of the dispute. Members of the government also expressed increasing concern that the strike would damage the whole economy. Matters became further complicated for IG Metall when some western German works council members in the car industry voiced concern about negative consequences if the strike lasted longer and more workers were laid off. The chair of the company works council at General Motors (GM) Germany was even quoted in the press as calling for an immediate end to the strike. IG Metall announced that it would increase efforts to find a compromise and negotiations involving the top leadership of the union and Gesamtmetall were held on 27 June.

Final offers

On 27 June, the trade union offered a phased-in reduction to 35 hours by 2009, with an 'opening clause' to allow the possible postponement of the 35-hour week to as late as 2011. The first step would have been the reduction of the current weekly working time of 38 hours by one hour with effect from 1 April 2004. The timetable for further reductions in the working week would have been negotiated at individual company level between employer and works council. Furthermore, the union offered the introduction of a 'time corridor' ranging between 35 to 40 hours, with working time fixed within this range by works agreement. Hours worked above 38 per week would have been saved in individual working time accounts.

The employers proposed that companies should be allowed to set weekly working time at between 35 and 40 hours, depending on their financial strength. They offered to reduce the standard working week on which basic remuneration is calculated to 37 hours by April 2005, which would have increased hourly remuneration by 2.7%. The proposed collective agreement would run until the end of 2008 without any further reduction in working time being fixed. Investors in the eastern German states were to be granted an additional 'bonus' - ie they would be allowed partially to deviate from the collective agreement.

On the morning of 28 June, after negotiations had finally broken down, IG Metall decided to call the strike off. 'The bitter truth is that the strike has failed,' stated the IG Metall chair, Klaus Zwickel, acknowledging that the union's leadership did not see any prospect of achieving its goals by further strike action. IG Metall last lost a strike in the mid-1950s. IG Metall's joint collective bargaining commission for Saxony, Berlin and Brandenburg ratified this decision on 29 June. The commission acknowledged that the political climate had increasingly turned against the union and denounced the head of the GM company works council for damaging the union's bargaining position by publicly calling for an end to the strike.

Prospects

Collectively agreed provisions retain their validity even when the collective

agreement expires - as long as no new agreement is signed. New recruits, however, can be offered individual employment contracts which deviate from the collectively agreed provisions. The trade union is free to return to industrial action as it is not bound by the 'peace obligation' – a provision which forbids any form of industrial action during the duration of a collective agreement. In eastern German metalworking, however, both bargaining parties have announced their willingness to return to the status quo ante and to reinstate the cancelled collective agreement.

Immediately after the defeat, a debate started within IG Metall about what lessons are to be learned from the events. The future of the IG Metall vice-chair, Jürgen Peters, designated to follow Mr Zwickel as chair of the union in October 2003 and an advocate of the recent strike, was in the balance. The union decided that the agenda for its national congress, scheduled for October 2003, would be split. The delegates met in late August to discuss exclusively the most recent bargaining round and to elect the national executive board. (At this congress, Mr Peters was elected as chair, after Mr Zwickel had resigned early, and the head of IG Metall's Baden-Württemberg district organisation, Berthold Huber, as vice-chair.)

The VSME employers' organisation welcomed the defeat of the union's 35-hour week demand as a good signal to investors, and proposed to reinstate the old collective agreement and to postpone negotiations on working time to an 'appropriate' time in the future.

Commentary

Industrial relations in the eastern German engineering sector were more adversarial than in the west before the dispute and this is unlikely to change in the near future. VSME in particular was regarded as 'tough' on trade unions and employers were less prepared to follow the kind of social partnership culture for which industrial relations in western Germany are known. This western German model of industrial relations evolved from a balance of power where trade unions had considerable organisational strength. In eastern German metalworking, however, overall trade union membership levels are lower, thus putting the union in a more difficult position. IG Metall will now have to analyse whether it underestimated employers' resistance to the 35-hour week or whether the chosen strategy and tactics were inappropriate.

The defeat of the IG Metall comes at a time when the German trade union movement is confronted with government plans for major cuts in the social security system and serious consideration by the government of legislative amendments in order to relax the monopoly of trade unions as sole negotiators of collective agreements, by allowing the conclusion of works agreements which deviate from collective agreements without further mandatory consent of the higher-level bargaining parties. The outcome of the dispute hits the trade union movement at a time when it is on the defensive and the vulnerability displayed by IG Metall might well have implications for other sectors by encouraging employers to oppose more firmly trade union demands in the future. (Heiner Dribbusch, Institute for Economic and Social Research, WSI)

DE0307204F (Related records: DE0211204F, DE0307201N, DE9905200F, DE0303105F, DE9905200F, DE0307107F)

18 July 2003

Employers' organisations demand more flexible industry-wide agreements

The failure of the strike over a 35-hour week in east German metalworking has intensified a long-running debate over the future of Germany's system of industry-wide collective agreements, at a time when its coverage is declining and company-level works councils are taking on new responsibilities, in some cases negotiating more flexible working time in order to safeguard jobs and restore the company's competitiveness. Notably, many companies in Germany's eastern states are opting out of collective agreements in order to negotiate lower wages and more flexible working hours directly with their employees.

Generally, the Gesamtmetall metalworking employers' organisation argues that the system of industry-wide bargaining has substantial advantages, one of the most important being the obligation to refrain from industrial action during the life of agreements. According to Gesamtmetall, 'this system contributes to the maintenance of industrial peace at the workplace level, creates a secure foundation for relationships with suppliers, provides a reliable basis for planning, and ensures that individual plants are not exposed to the possibility of trade union pressure.' Therefore, Gesamtmetall and the Confederation of German Employers' Associations (BDA) support industry-wide agreements in principle. However, they believe that such agreements should include only minimum conditions which do not hamper employment or economic growth, leaving more leeway for actors at the firm level to shape conditions.

A number of industry-wide collective agreements already contain 'hardship clauses' enabling companies to apply for an exemption to the wage rates set out in the sectoral agreement if they are close to bankruptcy, but have a promising strategy for restoring economic viability. However, both industry-level collective bargaining parties have to accept that a case of hardship exists and that, for example, temporary wage cuts could save the firm. If one of the bargaining parties disagree, it can veto agreements to this effect between local management and the works council. According to Gesamtmetall, hardship clauses that include a veto right for both bargaining partners over the company-level application of the clause do not suffice to introduce more flexibility into collective bargaining, and may thus hurt employment and economic growth. Gesamtmetall supports the idea of local 'alliances for jobs', based on a sound legal footing, that should be allowed before companies face bankruptcy. Moreover, there should be clarifications in the law on collective agreements to make such local alliances for jobs easier to negotiate. Such changes should result in 'opening clauses' without veto rights. They would provide local management and the works council with a limited opportunity to conclude a works agreement that undercuts the industry-wide collective agreement, and that need not be approved by the relevant employers' organisations and trade unions.

However, according to Jürgen Peters, IG Metall's then vice-chair (now chair), IG Metall will apparently not countenance suggestions that far-reaching opening clauses should be allowed without the collective bargaining parties having veto rights. As he stated on 16 July 2003: 'We shall not accept the possibility that local actors in companies will be able to hollow out collective agreements.' (Lothar Funk, Cologne Institute for Business Research, IW)

DE0307107F

New legislation on fixed-term and part-time work

In July 2003, new legislation regulating fixed-term and part-time employment came into force in Hungary. The new provisions of the Labour Code seek to transpose the EU Directives on these issues.

From 1 July 2003, the Labour Code of the Republic of Hungary was amended by Act XX of 2003. The modifications include the transposition of five EU Directives on: working time (2000/34/EC); fixed-term work (1999/70/EC); part-time work (1997/81/EC); transfers of undertakings (2001/23/EC); and seafarers' working time (1999/63/EC). Here we focus on the new and harmonised regulations on fixed-term and part-time work. Both phenomena have been well known in Hungary for decades. According to the Central Statistical Office (KSH) Labour Force Survey for the first quarter of 2003, 6.6% of employees had fixed-term contracts while 4.8% worked part time - levels lower than in the majority of the current EU Member States. Part-time work is especially popular among parents with young babies and among students, while fixed-term work is usually used for the replacement of employees on parental leave.

Main points of new regulations

The new Labour Code provisions prohibit discrimination against part-time or fixed-term workers. Part-timers must receive monetary or non-monetary remuneration at least pro rata to that of full-timers if the basis for the remuneration is the amount of time spent at work.

To avoid misuses, the amended Labour Code states that any fixed-term contract shall be deemed as indefinite if the contract is repeatedly established or extended without the employer having a legitimate reason to do so and this violates the employee's legitimate interests. While this has been the practice in Hungarian case law for a long time, there have been a number of cases even recently where an employer has employed the same workers consecutively on fixed-term contracts without good reason.

Under Hungarian law, the maximum duration of a fixed-term contract is five years. This rule is also to be applied for extended fixed-term contracts. Thus, even when the extension of a contract is legal according to the abovementioned rules, no fixed-term extension will be valid after the fifth year of employment. This rule also applies if the employment is not continuous but there are no interruptions longer than six months. These rules are not applicable for employment involving an 'authorisation permit' (eg in the case of foreign employees).

If an employee, after the end of the fixed term, works for at least one extra day with the knowledge of their immediate superior, the employment becomes indefinite. An employment relationship established for a period of 30 days or shorter can be extended only by the period for which it was originally established. These provisions do not apply to employment established by election (usually executives) and to those subject to authorisation permit.

According to the new rules, if the end of the fixed term is not defined by an exact date, the employer is obliged to inform the employee on the probable duration of the employment. This could be difficult if the employee replaces another employee, for example one on parental leave.

In accordance with the relevant EU Directives, employees may now request the modification of their employment contract with regard to the term of the employment or to the length of regular working time. Thus fixed-term workers may ask to be employed for an indefinite period, full-timers may ask to work part time, and part-timers may ask to work full time. The employer is required to inform the employee on the acceptance or refusal of such request within 15 days. The employer must also inform employees about those jobs for which it is possible to amend the contract duration or the length of the working time.

It should be noted that, under Hungarian labour law, fixed-term employment cannot be terminated by either party giving ordinary notice. The employee may terminate such employment only by giving 'extraordinary' notice or during the probation period with immediate effect, while the employer, in addition to these two possibilities, may also terminate such employment by paying the employee one year's average pay or, if the time left until the expiry date of the fixed-term employment is less than one year, the average pay due until the expiry date. Termination by mutual consent is also possible.

Social partner input

The amendments to the Labour Code related to fixed-term and part-time work were supported by both trade unions and employers' organisations. During negotiations in the National Interest Reconciliation Council (OÉT), however, employers, unions and the government made proposals which were not agreed by the other parties. These included the following:

- the government proposed that severance pay should be paid to fixed-term workers;
- the unions proposed that a list of circumstances in which the conclusion of a fixed-term contract is lawful should be included in the Labour Code (such a list is found in the Acts on Civil Servants and on Public Service Employees, whereby fixed-term employment may be used only to replace an absent worker or fulfil a given task);
- the unions proposed permitting ordinary termination of fixed-term contracts by the employee; and
- the employers proposed giving less information to employees with respect to the possible amendment of fixed-term and part-time employment contracts.

Since no agreement was reached on these issues, any new legislation on them may be expected only during the general review of the Labour Code which is due in the coming years.

Commentary

With regard to fixed-term contracts, Hungarian case law had elaborated practically the same rules as those in the relevant EU Directive, and therefore the formal transposition of the Directive has not brought too much novelty into Hungarian employment law practice.

With regard to part-time work, an interesting point is that, although the Labour Code does not say so expressly, from a practical point of view it is illegal to abuse part-time work. Reportedly, as a reaction to the substantially increased statutory minimum wage, in recent years some employers have concluded sham part-time contracts in order to evade the minimum wage law or the tax laws by formally (but not in reality) shortening the worker's working time and paying proportionally lower wages. Therefore this interpretation of the law is highly relevant in low-wage industries.

Finally, requests to alter employment contracts with regard to their term or the length of regular working time are mainly expected from part-time workers and fixed-term workers, in the case of part-timers because of their relatively low wages and the disadvantageous social security rules affecting them. If a part-time worker earns less than the minimum wage, only a proportionate period of employment is recognised for pension calculation purposes. For example, if a part-timer earns 50% of the minimum wage, two years of such employment is recognised only as a one-year period of employment from a social security point of view. (Gábor T Fodor and László Neumann, Institute of Political Science, Hungarian Academy of Science)

HU0308101F (Related records: HU0209101N, HU0212105F)

15 August 2003

NETHERLANDS

Social partners oppose changes to dismissals law

In July 2003, the Dutch social partners issued an opinion opposing a proposal for reform of dismissals law made by a government-appointed committee.

Dutch dismissals law is governed by a 'dual system'. First, a private sector employer wishing unilaterally to terminate an open-ended employment contract requires prior permission from a public administrative body, the Centre for Work and Income (CWI). This procedure acts as a preventative check to determine the reasonableness of any intended dismissal. If the intended dismissal is not sufficiently founded on reasonable grounds, the employer is denied a permit to dismiss; if dismissal nonetheless follows, the employee has legal grounds to contest its validity. Second, since the 1970s, an employer can request a subdistrict court to dissolve an employment contract under the provisions of the Civil Code (referring to 'compelling grounds' or 'changed circumstances'). The court checks the request's validity and, if the contract is dissolved, the court usually imposes compensation to be paid by the employer. Use of this method increased greatly in the 1990s and, in 2002, 68,331 requests for dissolution were submitted to the courts, while 70,925 requests for dismissal permits were submitted to the CWI.

Following failed previous attempts to reform dismissals law, in February 1999 the government established a committee to study alternative approaches. The 'Rood committee' published its report in November 2000. It called for abolition of the CWI's preventative check on dismissals and expressed a preference for a system in which dismissal decisions would only be tested by a civil court in retrospect. The committee also made an alternative secondary proposal (not discussed here) to update the dual system.

The government submitted the Rood report to the bipartite Labour Foundation (STAR) for further recommendation. The STAR issued its opinion in July 2003, and the fact that the trade union and employers' organisations represented in the Foundation took over two and a half years to report illustrates how controversial the issue of dismissals law still is.

Arguments for change unfounded

In the STAR opinion, the social partners express disapproval of the Rood committee's arguments for change, and the proposed alternatives to the current system are subject to numerous objections.

The Rood committee argued that the CWI's preventative check on dismissals could be seen as a form of government intervention that can no longer be considered appropriate in current conditions. Jurists, too, believe it inappropriate for an administrative body to rule on the civil law relationship between employer and employee, and argue that this should be left to the normal courts. However, STAR sets the question of principles aside and points instead to the practical advantages of the current 'low-threshold' and relatively inexpensive and swift procedures. According to STAR, it need not be a government body that issues an advance recommendation on the reasonableness of a dismissal, and this could just as well be a body installed by the social partners themselves, provided that the courts still have the final say. STAR studied possibilities for such a body but no alternatives could be found with sufficient backing.

The Rood committee also argued that Dutch dismissals law deviates too radically from that in other EU Member States, which could obstruct the integration of European labour market policy. STAR finds the information presented by the committee too thin to draw such a conclusion, but claims that the notion of Dutch dismissal protection hindering labour market mechanisms rests more on an image than on concrete facts. Neither, in the social partners' view, does adjustment to the 1982 ILO Convention No. 158 on termination of employment. – not yet ratified by the Netherlands – provide cause to change Dutch dismissal law, as STAR believes that the current law already complies.

STAR criticises the Rood committee's stance that current dismissals law is ineffective and contributes little towards protecting employees whose labour market position is weak. The Foundation believes that this conclusion cannot be drawn based on the information available, while there are indications that the necessity for employers to justify a proposed dismissal in advance to an independent third party (the CWI or a court) contributes towards treating more carefully employees who do not enjoy a position of strength in the labour market.

Transparency vs uncertainty

With regard to the complexity and lack of transparency of the present dual system, the STAR concurs with the Rood committee that the latter's proposals would contribute towards transparency, but objects to these proposals as they would result in 'trading complexity for legal uncertainty'.

In the Rood committee's main proposal, the current preventative check would be replaced by an internal hearing procedure organised by the employer within the company. This legally prescribed hearing procedure should provide sufficient room for consultation and negotiation between the employer and the employee on the conditions under which the employment contract is dissolved. If the employer failed to meet the statutory requirements with respect to the hearing procedure or if the grounds for dismissal were not reasonable, the employee could request a court to nullify the notice of dismissal.

STAR states that a number of advantages of the current system would vanish if this proposal were implemented. The check for reasonable grounds would no longer precede the actual dismissal. As a result the employee will have already been dismissed at the time of the court ruling and the employer may be confronted with significant costs after the fact. In STAR's view, the proposed procedure lacks the 'low-threshold' element inherent at present and would lead to additional legal proceedings and, consequently, an additional burden for employers, a greater need to use legal counsel and more protracted procedures. Finally, unlike in the present situation, the employer and employee could find themselves in uncertainty about the validity of the notice of dismissal for a protracted period of time.

In short, for STAR, none of the Rood committee's proposals offer an attractive alternative to the present system.

Commentary

In the social partners' view, the latest proposal for dismissals law reform should join its predecessors in the Minister's drawer. The system of a prior check conducted by a government body to assess whether reasonable grounds exist for dismissal, in place for nearly 60 years, appeared to be on the way out, but may remain in place for the time being according to the social partners. While none sing its praises, the current system has proved its practical worth, and its low threshold, low costs and high predictability, coupled with the degree of protection it affords employees, provide sufficient reason for its retention. However, it is unfortunate that the idea of an internal hearing procedure over proposed dismissals will be filed away for the moment. Given the way in which this proposal was presented by the Rood committee, the social partners' lack of enthusiasm is understandable. Nonetheless, the fact remains that internal communication about intended dismissals within Dutch companies would benefit from some form of regulation. (Robert Knegt, HSI)

NL0308104F (Related records: NL9909160F, NL0012116F)

15 August 2003

Government seeks 'father-friendly' parental leave changes

In autumn 2003, the Norwegian parliament is due to consider government proposals for changes to the present parental leave rules, with greater incentives for men to take leave and a possible extension of the part of parental leave reserved exclusively for fathers.

Norwegian parents may receive state benefits related to childbirth for either 42 weeks with 100% wage compensation, or 52 weeks with 80% wage compensation. The last three weeks prior to birth and the first six weeks afterwards are reserved for the mother (ie maternity leave), while four weeks are earmarked for the father (the 'father quota'). The remaining leave may be shared between the parents as they see fit. The 'father quota' was introduced in 1993 as an attempt to increase fathers' involvement in their children's early life. It may be used at any time during the shared period of leave, but is lost if not used by the father. The introduction of the 'father quota' meant an overall extension of parental leave, and did not come at the expense of women's leave opportunities.

Parental leave benefits, whether awarded to the mother or the father, were previously linked to the mother's prior employment and earnings history, but following legal amendments in 2000 the father is now entitled to benefits calculated on the basis of his own prior income. Thus both parents may now receive pay compensation up to a ceiling of NOK 319,398 (six times the national insurance 'basic amount') (2002 figures). However, full wage compensation for the father is still conditional upon the mother having been employed for more than 75% of normal working hours prior to the birth (assuming that the father works full time). If the mother worked less than 75% of normal hours – or goes back to such part-time work – the father's compensation or leave period is reduced proportionately. If the mother worked less than 50% of normal hours or has not been in employment at all, the father receives no compensation.

Take-up by men

At the time of the introduction of the 'father quota', the number of men taking leave from work to take care of children had increased from 4.1% in 1993 to 45% in 1994. This figure had increased to approximately 85% in 2001. It was hoped that the 'father quota', and its obvious success, would encourage more men to take leave beyond the four 'compulsory' weeks. This, however, has not been the case. In 2001 only 13.5% of the men receiving parental leave benefits did so for over four weeks. Fathers took an average of 26 days of paid parental leave in 2001, compared with 128 days taken by mothers.

There are a number of reasons why men fail to use the shared part of the parental leave period. Notably, men's wages are on average higher than women's, and as such men more often than women earn more than the national insurance basic amount (see above) and thus lose out financially. Furthermore, as described above, fathers do not receive full compensation if the mother has been employed part time prior to birth (below 75% of full-time). As many women work part time in Norway, this is a significant problem. In such situations, a family may lose income if the father takes parental leave over a longer period.

Government proposals

On 30 April 2003, the centre-right coalition government published a white paper on family policy, in which it recommends changes to the present parental leave regulations. The main objective is to encourage men to spend more time at home with their children. To this end, the government proposes to extend the 'father quota'. It also proposes to improve the compensation level for self-employed women during parental leave. The government states that its new proposals seek to remedy some of the impediments to the goal of gender equality that still exist in the legal framework. To this end, the father should be given a more independent standing vis-à-vis the mother in terms of parental leave.

The first step in this direction is to make the father's right to benefits less dependent on the mother's employment activities both before and after birth. Thus both parents should be entitled to benefits calculated on the basis of each parents' individual income, independent of each others' activities. The only requirement should be that 'the benefit recipient stays at home taking care of the child, and does not pursue employment'. This means that the father will receive full wage compensation (up to the basic amount) regardless of the mother's previous earnings and working time. To begin with, the government proposes, the father will be entitled to have the existing 'father quota' of four weeks' paid leave based on his own earnings, but a further extension of this period is envisaged at a later stage.

The government acknowledge that, within the present system, an extension of the compulsory 'father quota' alone would have serious consequences for families' income. It also recognises that such an arrangement would in many quarters be seen as an infringement of women's rights (ie women would be deprived of leave they now are entitled to). Thus the government recommends that such a reform should take the form of an extension of the total parental leave period (from the current 42 or 52 weeks). Although the proposal does not explicitly state the length of the proposed extension, the government envisages a gradual increase.

Commentary

The 'father quota' is clearly a success story, as evinced by figures such as the 85% take-up rate. It has not, however, had the desired effect of encouraging more men to take parental leave beyond the four 'compulsory' weeks. The extent to which this is achieved is an important measure of gender equality in working life as well as in society in general. The government is thus considering extending the compulsory period. Although the government has presented no time-frame for the extension of paternity leave, the Christian Democratic Party, one of the coalition parties, has previously campaigned for 10 weeks' paternity leave (including the existing four compulsory weeks), although has not gone into details as to how this is to be achieved.

The government's proposal seek to correct deficiencies in parental leave by means of changes to the legal framework, but research indicates that there are a number of other more fundamental reasons why so few men make use of the opportunities provided by the law. One of the more important obstacles is the gender wage gap that still exists in Norway. The extent of part-time work among women is an equally important problem. Moreover, many women are reluctant to let go of their parental leave rights, and there is also evidence to suggest that employers, and indeed fathers themselves, are reluctant to see fathers using their paternity leave rights.

The government's recommendations are to be considered by parliament in autumn 2003 as part of the annual budget negotiations. There seems to be a general consensus about the need to allow men increased opportunities in relation to childcare, and increased paternity leave is one measure by which this may be achieved. The government's recommendations entail significant extra costs for the state, and it thus remains to be seen whether they will survive the forthcoming budget negotiations. (Håvard Lismoen, FAFO Institute of Applied Social Sciences)

NO0308103F

22August 2003

UNITED KINGDOM

Employer and union reaction to decision to defer euro entry

In June 2003, after a detailed assessment of five economic tests, the government decided that it would not be in the national economic interest of the UK to join the European single currency at present. This article examines the rationale of government policy, and the response of trade unions and employers' organisations to the decision.

Following the election of the Labour Party government in May 1997, the new Chancellor of the Exchequer, Gordon Brown, signaled a clear shift in UK policy towards the European single currency in a major speech to Parliament in October 1997. Whereas the previous, 'eurosceptic' Conservative Party government had negotiated an 'opt-out' from the final stage of European Economic and Monetary Union (EMU) as part of the Treaty on European Union, Mr Brown indicated that the Labour government was committed to the principle of joining the European single currency, but that there had been insufficient convergence between the economies of the UK and those of prospective members of the euro area. Thereafter, the main features of the government's policy towards EMU were that:

- a successful single currency would in principle be of benefit to Europe and to the UK in terms of trade, cost transparency and currency stability;
- constitutional issues need not be a barrier to UK entry, as long as membership is in the national interest, the case is unambiguous and there is popular consent;
- the decision on whether there is a clear and unambiguous economic case for membership would be based on a comprehensive and rigorous assessment of five economic tests conducted by the Treasury; and
- whenever the decision to enter is taken by the government, it should be subject to approval by a referendum of the British people.

The manifesto of the Labour Party for the June 2001 general election restated this policy, adding that the assessment of the five economic tests would be conducted within two years of re-election.

Assessment of the five economic tests

On 9 June 2003, after what Mr Brown described as 'the most robust, rigorous and comprehensive work the Treasury has ever done', it published its conclusions in a report, *UK membership of the single currency: An assessment of the five economic tests*, accompanied by 18 technical studies of different aspects of EMU.

The five tests focused on: convergence; flexibility; investment; financial services; and growth, stability and employment. The findings on each are outlined below. However, the assessment of the first two tests proved to be crucial to the government's decision.

Convergence

The report argues that there has been significant progress since 1997, and the UK meets the EU convergence criteria for inflation, interest rates and government deficits and debt. Nevertheless, it argues that structural differences remain between the UK and the euro area, especially in the housing market. Thus, 'we cannot yet be confident that UK business cycles are sufficiently compatible with those of the euro area to allow the UK to live comfortably with euro area interest rates on a permanent basis.'

Flexibility

The report notes that labour market flexibility in the UK has improved markedly since 1997, and considerable progress has been made to reform labour, product and capital markets in the UK and the euro area. Nonetheless, more needs to be done to ensure that the UK economy can deal with the risks inherent in EMU membership (eg inflation volatility is likely to increase inside EMU). Thus, 'we cannot be confident that UK flexibility, while improved, is sufficient.'

Investment

The data show that there has been a decline in the UK's share of total EU foreign direct investment (FDI) flows coinciding with the start of EMU but, because of the many other influences, 'it is difficult to say with confidence that EMU has boosted FDI within the euro area'. The report accepts that a delay in joining the euro area might postpone the potential gains of increased inward investment.

Financial services

The report argues that the competitiveness of financial services (especially in the City of London) can be sustained either inside or outside the euro area, but that entry would offer additional potential benefits. Thus, 'the financial services test is met'.

Growth, stability and employment

The report argues that EMU membership could significantly increase UK output and jobs in the long term through the growth in intra-euro area trade. The lack of sustainable and durable convergence, however, means that 'macroeconomic stability would be harder to maintain inside EMU than outside' if the UK joined at the present time. This is partly because of the potential constraints on the use of fiscal policy for stabilisation under current interpretations of the EMU Stability and Growth Pact.

Conclusions

The report concludes that 'despite the risks and costs from delaying the benefits of joining, a clear and unambiguous case for membership of EMU has not at the present time been made and a decision to join now would not be in the national economic interest.' This negative conclusion is accompanied by a set of 'policy requirements' designed to achieve better UK economic performance and sustainable convergence. These include: demand and supply policies to improve the functioning of the UK housing market; reforms designed to increase the flexibility of UK labour, product and capital markets; and the evolution of EU monetary and fiscal policy frameworks. The Chancellor indicated that he would report on the progress made in pursuing these reforms in 2004 and decide whether it merited a further Treasury assessment of the five tests.

Reactions to the government's decision

Trade unions

The general secretary of the Trades Union Congress (TUC), Brendan Barber, responded positively to the Chancellor's statement on the euro on 9 June. He argued that it 'set out a clear series of steps towards a positive decision and a referendum … a project with a purpose'. However, a statement by the TUC general council, prepared for the annual Congress in September 2003 and published on 25 July, identified a number of concerns that the TUC wished to discuss with the Chancellor. These included: the achievement of a sustainable exchange rate to reduce the decline in UK manufacturing; a consolidation and expansion of the 'European social model'; and fears that planned public expenditure growth could be threatened by the Stability and Growth Pact. The TUC also warned the Chancellor that it would resist any moves to deregulate the labour market 'undertaken under the spurious reasoning that they are necessary for UK membership of the single currency'.

The statement reveals areas of potential conflict between the TUC and the government, and does not conceal differences in the 'uneasy pro-euro alliance among union leaders' (in the words of the *Financial Times* on 28 July 2003). Two of the four largest UK unions - the GMB general union and Amicus - have a long-standing commitment to membership of the euro and have criticised the government over the last few years for its timidity in preparing the ground for entry. John Edmonds, before his retirement as general secretary of the GMB, argued in March 2003 that the government should call an early referendum because 'the exchange rate of the pound is at last moving in the right direction and Gordon Brown's five tests have been met'. On 9 June, Roger Lyons, one of the joint general secretaries of Amicus, argued that 'entry is absolutely essential to secure the long and short term future of manufacturing and to maintain London and Edinburgh as serious international financial centres.'

In contrast, Bill Morris, the general secretary of the Transport and General Workers' Union, supported the Chancellor's conclusion that the five tests had not been met, adding that the government 'should make the politically courageous decision by ruling out a referendum for the lifetime of this Parliament and give a clear priority to the reform of public services'. Dave Prentis, general secretary of Unison, the public service union and the largest UK union, made a similar argument: 'To join the euro now would be a step into the unknown and would seriously jeopardise the ongoing massive investment programme in our public services.' Unison has called on the government to include an addition 'public services' test before deciding on whether to join the euro - namely, one that 'would ensure UK public investment plans were protected from cuts in the future'.

Employers

The main employers' organisations supported the government's policy to defer a decision on membership of the single currency, but they differed slightly in their interpretation of its consequences. The director-general of the Confederation of British Industry, Digby Jones, welcomed the rigour of the assessment and agreed that further sustainable convergence is necessary before the government initiates a referendum. He noted that it was good for business that the Chancellor had reassured other countries about the UK's commitment to the European Union, but added that 'if EU countries want the UK to join a successful euroland, they should be redoubling efforts to make the euro-zone more globally competitive.'

The director-general of the Engineering Employers' Federation, Martin Temple, restated its policy that, given the right conditions, there could be important benefits from euro membership for manufacturing, and supported the decision that 'the time is not right to propose joining the euro'. However, he criticised the government for failing to remove potentially damaging speculation surrounding euro entry over the next few years, arguing that 'the economics on which a decision to join are based are so fundamental that it is difficult to envisage how they could be readdressed in the current parliament.' The same point was made even more forcefully by Ruth Lea, head of the policy unit of the Institute of Directors.

Commentary

It is clear that UK policy on economic and political integration in Europe generally and, in particular, the terms on which membership of the single currency could be accepted, divides opinion in the UK more sharply than in other EU Member States. The statement made on 9 June 2003 was widely anticipated, but its consequences remain controversial within the trade union movement, the business community and political parties. With hindsight, it is clear that the economic and political context of the June statement was much less favourable to the pro-euro cause than a few years earlier. Many commentators have linked the low growth and high levels of unemployment in major euro area economies with the policies of the European Central Bank and the fiscal constraints of the Stability and Growth Pact. The latter has increased trade union anxieties about the potential impact of euro membership on public expenditure, not least because the government's commitment to a rapid growth in expenditure that began a few years ago is forecast to exceeed EU borrowing limits by 2005. Recent surveys of manufacturing firms have also shown that comparatively strong economic growth in the UK, and the recent depreciation in the value of the pound against the euro, has reduced the level of support for membership of the single currency (reported in the *Financial Times* on 5 August 2003). In this context, the inherent difficulty of demonstrating 'clear and unambiguous' evidence that the five economic tests have been passed and, thereafter, in persuading the British electorate to produce a positive referendum result, suggests that the UK is unlikely to join the single currency in the near future. (David Winchester, IRRU)

UK0308104F (Related records: UK9802102F, UK0004166N, UK9905102F, UK9907118N)

15 August 2003

eiro observer

12

EIRObserver

ISSN 1028-0588, Issue 5/03

EIRObserver is published by the European Foundation for the Improvement of Living and Working Conditions. It is the regular information newsletter of the European Industrial Relations Observatory (EIRO). Enquiries about EIRO should be made to the EIRO Unit, tel: +353 1 204 3100, fax: +353 1 282 6545, e-mail: eiroinfo@eiro.eurofound.eu.int

Editor: Mark Carley
Production: Shivaun Lindberg
Typeset and printed by Printset & Design Ltd, Dublin

The European Foundation for the Improvement of Living and Working Conditions is an autonomous body of the European Union. It was established by a regulation of the EC Council of Ministers of 26 May 1975. This regulation was the result of joint deliberations between the social partners, national governments and Community institutions on the ways and means of solving the ever-growing problems associated with improving living and working conditions.

Acting Director: Willy Buschak

An advisory committee for industrial relations has been set up to monitor EIRO as well as all the Foundation's other industrial relations activities. The advisory committee has a tripartite structure: employers, trade unions, governments and the European Commission are represented.

Initial enquiries about other Foundation work should be made to the Information Centre.

European Foundation for the Improvement of Living and Working Conditions, Wyattville Road, Loughlinstown, Dublin 18, Ireland, tel: +353 1 204 3100, fax: +353 1 282 6456, e-mail: postmaster@eurofound.eu.int

Printed in Ireland

Cat. No TJ-AB-03-005-EN-C
Foundation No. EF/03/87/EN

THE NATIONAL CENTRES OF EIRO

European Union Level
60 Boulevard de la Woluwe, 1200 Brussels, 18-20 Highbury Place, London N5 1QP
Contact: Andrea Broughton, tel: +44 20 7354 6714, fax: +44 20 7359 4000, e-mail: andrea.broughton@irseclipse.co.uk

Austria
Institute of Government, Department of Industrial Sociology, University of Vienna, Bruenner Strasse 72, A-1210 Wien
Contact: Georg Adam, tel: +43 1 4277 38316, fax: +43 1 4277 38318, e-mail: Georg.Adam@univie.ac.at

Belgium
Institut des Sciences du Travail, Place des Doyens 1, 1348 Louvain-La-Neuve
Contact: Catherine Delbar , tel: +32 10 473923 , fax: +32 10 473914, e-mail: delbar@trav.ucl.ac.be

Bulgaria
Balkan Institute for Labour and Social Policy, Tzarigradsko shousse, bl.22, 4entr.3, app. 31, Sofia-1113
Contact: Elina Skarby, tel: +359 2 971 25 58 , fax: +359 2 870 96 61, e-mail: elina.skarby@bilsp.org

Institute for Social and Trade Union Research, 1, Macedonia Sq. Sofia 1040
Contact: Nikolay Sapundzhiev, tel: +359 2 9170 631 , fax: +359 2 9170 668, e-mail: niki_sap@abv.bg

Cyprus
Cyprus Labour Institute, 14 Simonidou Street, ETKA PEO, 1045 Nicosia
Contact: Nicos Trimikliniotis, tel: +357 22 877673, fax + 357 22 877672, e-mail: inek@cytanet.com.cy

Denmark
FAOS, Dept of Sociology, University of Copenhagen, Linnésgade 22, 1361 Copenhagen K
Contact: Carsten Jørgensen , tel: +45 35 323299, fax: +45 35 323940, e-mail: cj@faos.dk

Estonia
Institute of Economics, University of Tartu, Narva Rd 4-A206, 50009 Tartu
Contact: Kaia Philips, tel: +372 7 376345, fax: +372 7 376312, e-mail: Kaia.Philips@mtk.ut.ee

Finland
Labour Institute for Economic Research, Pitkänsillanranta 3 A, FIN-00530 Helsinki
Contact: Reija Lilja, tel: +358 9 2535 7333, fax: +3589 2535 7332, e-mail: reija.lilja@labour.fi

France
Institut de Recherches Economiques et Sociales, 16 boulevard du Mont-d'Est, 93192 Noisy le Grand Cedex
Contact: Maurice Braud , tel: +33 1 4815 1895, fax: +33 1 4815 1918, e-mail: Maurice.BRAUD@ires-fr.org

Germany
Institut der deutschen Wirtschaft Köln, Gustav-Heinemann-Ufer 84-88, D-50968 Köln
Contact: Lothar Funk, tel: +49 221 4981 748, fax: +49 221 4981 548, e-mail: Funk@iwkoeln.de

Wirtschafts- und Sozialwissenschaftliches Institut in der Hans-Böckler-Stiftung
Hans-Böckler-Strasse 39, 40476 Düsseldorf
Contact: Thorsten Schulten, tel: +49 211 7778 239, fax: +49 211 77 78 250, e-mail: Thorsten-Schulten@boeckler.de

Greece
Labour Institute of the General Confederation of Greek Labour, Emm. Benaki 71A, 10681 Athens
Contact: Eva Soumeli, tel: +30 210 3327 765, fax: +30 210 3327 736, e-mail: ineobser@inegsee.gr

Hungary
Institute of Political Science of Hungarian Academy of Science, Orszaghaz Utca 30, Budapest
Contact: Andras Pulai, tel: +361 375 9011/224-6700, fax: +361 224 6721, e-mail: eiro@mtapti.hu

Ireland
Centre for Employment Relations and Organisational Performance, Graduate School of Business, University College Dublin, pCarysfort Avenue, Blackrock, Co. Dublin
Contact: John Geary, tel: +353 1 716 8974, fax: +353 1 716 8007, e-mail: john.geary@ucd.ie

Industrial Relations News, 121-123 Ranelagh, Dublin 6
Contact: Brian Sheehan, tel: +353 1 497 2711, fax: +353 1 497 2779, e-mail: bsheehan@irn.ie

Italy
Centro di Studi Economici Sociali e Sindacali, Via Po 102, 00198 ROMA
Contact: Marta Santi, tel: +39 06 84242070, Fax: +39 06 85355360, e-mail: cesos@mclink.it

Fondazione Regionale Pietro Seveso, Viale Vittorio Veneto, 24 I-20124 Milano
Contact: Roberto Pedersini, tel: +39 02 290 13 198, fax: +39 02 290 13 262, e-mail: eiro@fondazioneseveso.it

Istituto di Ricerche Economiche e Sociali Lombardia - IRES, Via Pompeo Litta 7, I-20122 Milano
Contact: Livio Muratore, tel: +39 02 541 18 860/541 20 564, fax: +39 02 5412 0780, e-mail: ireseiro@galactica.it

Latvia
Institute of Economics Latvian Academy of Sciences, Akademijas laukums 1, Riga, Latvia, LV-1050
Contact: Raita Karnite, tel: +371 7222830, fax: +371 7820608, e-mail: raimara@lza.lv

Luxembourg
Marc Feyereisen, Cour administrative, 1, rue du Fort Thuengen, L-1499 Luxembourg
Contact: Marc Feyereisen, tel: +352 42105 7860, fax: +352 42105 7888, e-mail: Marc.Feyereisen@ja.etat.lu

Netherlands
Hugo Sinzheimer Institute, Rokin 84,1012 KX Amsterdam
Contact: Robert van het Kaar, tel: +31 20 525 3962, fax: +31 20 525 3648, e-mail: kaar@jur.uva.nl

Norway
Fafo Institute for Applied Social Science, PO Box 2947 Toyen, N-0608 Oslo
Contact: Kristine Nergaard, tel: +47 22088667, fax: +47 22088700, e-mail: kristine.nergaard@fafo.no

Poland
Foundation Institute of Public Affairs, ul. Szpitalna 5 ap. 22, 00-031 Warsaw
Contact: Malgorzata Zielonka, tel: +48 22 556 42 90, fax: + 48 22 556 42 62, e-mail: malgorzata.zielonka@isp.org.pl

Portugal
Universidade Autonoma de Lisboa - UAL, Palácio dos Condes de Redondo, Rua De Santa Marta 47, P-1150-297 Lisboa
Contact: Maria Luisa Cristovam, tel: +351 21 844 14 08, fax: +351 21 317 76 73,
e-mail: luisa.cristovam@dgct.mts.gov.pt

Romania
Institute of National Economy Romanian Academy, Calea 13 Septembrie nr. 13, Casa Academiei Române Sector 5 Bucuresti, 76117 Romania
Contact: Diana Preda, tel: +40 21 4119733, fax: +40 21 4119733, e-mail: dianapreda@xnet.ro

Slovak Republic
Bratislava Centre for Work and Family Studies, Drotarska cesta 46, 811 04 Bratislava
Contact: Ludovit Cziria, tel: +421 2 5975 2522, fax: +421 2 5296 6633, e-mail: cziria@vupsvr.gov.sk

Slovenia
Institute of Macroeconomic Analysis and Development (IMAD), Government of the Republic of Slovenia, Gregorčičeva 27, 1000 Ljubljana
Contact: Stefan Skledar, tel: +386 1 478 1040, fax: +386 1 478 1068, e-mail: stefan.skledar@gov.si

Organisational and Human Resources Research Centre (OHRC), Faculty of Social Sciences, University of Ljubljana
Kardeljeva ploščad 5, 1000 Ljubljana
Contact: Aleksandra Kanjuo Mrčela, tel: +386 1 5805 220, fax: +386 1 5805 213, e-mail: aleksandra.kanjuo@uni-lj.si

Spain
Fundació Centre d'Iniciatives i Recerques Europees al la Mediterrània, Travessera de les Corts 39-43 lat, 2ª pl., 08028 Barcelona
Contact: Daniel Albarracín, tel: +34 91 4021616, fax: +34 91 4021723, e-mail: daniel.albarracin@cirem.org

QUIT (Grup d'Estudis Sociològics Sobre la Vida Quotidiana i el Treball), Departament de Sociologia, Edifici B, Campus Universitat Autònoma de Barcelona, Bellaterra 08193, Barcelona
Contact: Martí López, tel: +34 93 581 2405, fax: +34 93 581 2405, e-mail: gr.eiro@uab.es

Sweden
Arbetslivsinstitutet (National Institute for Working Life)
112 79 Stockholm
Contact: Annika Berg, tel: +46 8 619 6799, fax: +46 8 619 6795, e-mail: annika.berg@arbetslivsinstitutet.se

United Kingdom
Industrial Relations Research Unit (Warwick Business School), University of Warwick, Coventry CV4 7AL
Contact: Mark Hall, tel: +44 24 7652 4273, fax: +44 2476 524 184, e-mail: mark.hall@warwick.ac.uk

Other Relevant European Commission Observatories
Employment Observatory
Contact: ECOTEC Research and Consulting Ltd, 28/34 Albert St, Birmingham B4 7UD, UK, Email: eeo@ecotec.co.uk, web: http://www.ecotec.com/eeo

Community information system on social protection (MISSOC)
Contact: ISG, Barbarossaplatz 2, D-50674 Cologne, Germany, Tel: +49 221 235473, Fax: 49 221 215267,
Email: web:http://europa.eu.int/comm/employment_social/missoc2000/index_en.htm

eiro observer

New technology and respect for privacy at the workplace

Information and communication technologies (ICT) now play a significant role in enterprises, with growing use of computers in all aspects of operations and increasing communication and dissemination of information through the internet, internal intranets and e-mail. For both employers and workers, there are new dangers linked to the development of ICT:

• for employers, there is the danger that vital data may be accessed by unauthorised parties, creating a need to instal devices for protecting and monitoring access to such data. There is also a fear that ICT facilities will be used by staff for personal reasons during working hours, to the detriment of their work, and that the enterprise may be held legally responsible for information transmitted by workers in such circumstances; and

• for workers and their representatives, the main danger lies in the new capacity for monitoring and surveillance. New technology may allow employees' work and productivity to be monitored, and also aspects of their personal lives, while their use of the internet and e-mail can be monitored. This raises questions of both privacy and the relationship of control at the workplace.

These dangers on either side of the employment relationship have grown sharply over recent years, given the increased use of ICT at the workplace and throughout enterprises' activities. In this context, new problems are arising in relationships between employers and workers - eg how far can employers' actions aimed at preventing potential dangers be extended without undermining workers' fundamental rights? The issue of privacy and ICT use at the workplace is thus becoming increasingly important for employers and trade unions. International and European institutions, including the EU, are also paying increasing attention to the relationship between ICT and privacy at work, as are some national governments.

This comparative supplement examines the legal and industrial relations aspects of one specific issue raised by the growth of ICT at work, the relationship between internet/e-mail use at work and respect for workers' privacy, across the EU Member States and Norway. The supplement - based on contributions from the EIRO national centres - is an edited version of a full comparative study available on the *EIROnline* website, which provides considerably more detailed information and analysis on the issues examined.

The concept of privacy at the workplace

The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms - ratified by all the EU Member States and Norway - states in Article 8 ('Right to respect for private and family life') that: '(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' Case law in the European Court of Human Rights has established that the right to respect for private life extends to 'professional or business activities' and that as well as correspondence it applies to telephone conversations (business or private) - a principle which suggest that e-mails and internet use may also be covered.

The Charter of Fundamental Rights of the European Union proclaimed by the European Council, Parliament and Commission in 2000 essentially repeats (in Article 7) the first paragraph of Article 8 of the Convention, stating that 'Everyone has the right to respect for his or her private and family life, home and communications' - given developments in technology, the Convention's 'correspondence' has been replaced by 'communications'.

There are difficulties in adapting the concept of respect for private life to the workplace. The right is taken to cover professional or business activities and to employees' communications - arguably including e-mail/internet use - thus implying that employers may not, in principle, interfere in these areas. However, such interference is acceptable in certain circumstances – notably where necessary for the reasons set out in Article 8(2) of the Convention, ie 'in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'. This situation raises many questions about the extent to which workers may be monitored and the relationship between their rights and employers' prerogative.

However, a number of principles on workplace privacy and employer monitoring can be drawn from bodies of relevant national legislation:

• *relevance* - the aims for which monitoring by the employer is authorised in respect of electronic online communications data must be relevant to the workers' situation;

• *proportionality* - monitoring must be appropriate, relevant and proportionate with regard to the aims pursued. This relates to finding a balance between the interests of the employer and of the worker;

• *transparency* - this may be expressed concretely by obligations on employers to inform and/or consult employees or their representatives over the installation and/or use of the monitoring system; and

• *non-discrimination* - the measures adopted must not lead to discrimination between workers or groups of workers, and must apply to all.

European law

As with national law (see below), European law - emanating from both the EU and Council of Europe - rarely addresses specifically privacy issues related to the workplace use of ICT, with this matter being covered by more general provisions relating to the right to respect for privacy and the protection of personal data.

Conventions and charters

As noted above, the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees a right to respect for private life, which has been interpreted as covering professional or business activities and employees' communications (arguably including e-mail/internet use). The EU Charter of Fundamental Rights restates this right (in a slightly updated form) and adds (Article 8) a right to protection of personal data.

In 1981, the Council of Europe adopted a Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ratified by EU Member States and Norway) which seeks to ensure respect for rights and freedoms, and in particular the right to privacy, with regard to automatic processing of personal data. To adapt the Convention to the employment context, in 1989, the Council of Europe Committee of Ministers adopted a Recommendation (R(89)2) on the protection of personal data used for employment purposes, with specific reference to automatically processed data. With growing ICT use in employer/employee relations, this Recommendation seeks to reduce the potential risks to workers' rights and freedoms, notably the right to respect

European Commission's suggested framework for workplace data protection

The European Commission's October 2002 second-stage consultation of the social partners suggests a new European framework of principles and rules on data protection at the workplace. The proposed framework would cover data about employees, such as personal health records, as well as data created by or used by employees, such as e-mails or internet use. It would deal with the issues of consent, medical data, drug and genetic testing and monitoring and surveillance. On the latter issue, the Commission notes that surveillance and monitoring of workers by their employers is regulated in the Member States through a number of principles and rules contained in various legal acts, including national constitutions, legislation on employment, data protection and telecommunications, the penal code etc. The interaction of the relevant provisions, in terms of their application in the employment context, is often not clear and the situation is, in some cases, quite controversial. This situation becomes even more critical given that traditional monitoring means are increasingly complemented by technologically more advanced and potentially more intrusive means - ie monitoring through the workers' own work tools such as their computer (e-mail, internet etc). It therefore suggests that the following principles should form part of the proposed European framework:

- workers' representatives should be informed and consulted before the introduction, modification or evaluation of any system likely to be used for monitoring/surveillance of workers;
- a prior check by a national data protection authority should be considered;
- continuous monitoring should be permitted only if necessary for health, safety, security or protection of property;
- secret monitoring should be permitted only in conformity with safeguards laid down by national legislation or if there is reasonable suspicion of criminal activity or serious wrongdoing;
- personal data collected to ensure the security, control or proper operation of processing systems should not be processed to control individual workers' behaviour except where this is linked to the operation of these systems;
- personal data collected by electronic monitoring should not be the only factors in evaluating workers' performance and taking decisions in their regard;
- notwithstanding particular cases, such as automated monitoring for purposes of security and proper operation of the system (eg viruses), routine monitoring of each individual worker's e-mail or internet use should be prohibited. Individual monitoring may be carried out where there is reasonable suspicion of criminal activity or serious wrongdoing or misconduct, provided that there are no other less intrusive means to achieve the desired purpose (eg objective monitoring of traffic data rather than of the content of e-mails, or preventive use of technology);
- there should be a prohibition in principle on employers opening private e-mail and/or other private files, notably those explicitly indicated as such, irrespective of whether use of the work tools for private purposes was allowed or not by the employer. Private e-mails/files should be treated as private correspondence. Secrecy of correspondence should not be able to be waived with a general consent by the worker, in particular upon conclusion of the employment contract; and
- communication to occupational health professionals and workers' representatives should receive particular protection.

for privacy. It makes recommendations on collecting and processing data in the contexts such as recruitment, and on the introduction of monitoring procedures.

Existing EU legislation

The main item of EU legislation in this area is Directive 95/46/EC 'on the protection of individuals with regard to the processing of personal data and on the free movement of such data' , whose aim is 'the protection of the rights and freedoms of individuals, notably the right to privacy, with regard to the processing of personal data' in the EU Member States. The Directive - which had to be implemented by the Member States by October 1998 - has some employment implications, dealing with: the quality of personal data (eg they must be processed fairly and lawfully and collected for specified, explicit and legitimate purposes); criteria for making data processing legitimate (eg personal data may be processed only in certain circumstances, such as if the person concerned has unambiguously given consent, or it is necessary to meet legal obligations or protect vital interests, or in the public interest); banning the processing of special categories of personal data (revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, or concerning health or sex life), with various exemptions; information and access for the person concerned; and obligations on the party responsible for processing personal data.

In 1997, a specific EU Directive (97/66/EC) 'concerning the processing of personal data and the protection of privacy' was adopted for the telecommunications sector. It was repealed and replaced in July 2002 by Directive (2002/58/EC) 'concerning the processing of personal data and the protection of privacy in the electronic communications sector'.

EU initiative on workers' personal data

In August 2001, the European Commission launched a first stage of consultation of the social partners on the protection of workers' personal data, seeking views on the possible orientation of policy in this area. It noted that the two existing EU Directives on processing of personal data contain very few provisions on the employment context and asked the partners if they believed that these Directives, as implemented nationally, adequately addressed the protection of workers' personal data. The social partners were asked if it was advisable that the EU should take an initiative in this field focusing notably, in the employment context, on: consent; access to and processing of medical data; drug and genetic testing; and monitoring and surveillance. The partners were also asked what form they thought a Community action should take and what its main features might be.

The responses indicated widespread consensus among the social partners on the importance of the question of personal data processing in the employment context, given recent socio-economic and technological advances. However, employers' associations and trade unions disagreed over the need for further EU-level action and its direction. For example, some employers' organisations did not see the point of Community legislation on the subject, because they think that Directive 95/46/EC is appropriate and capable of ensuring that workers' personal data are protected. All employers' organisations emphasised the merits of flexibility and national diversity, as well as the need to avoid over-regulation and supplementary burdens on employers. UNICE highlighted the need for information and transparency as regards national regulations and favoured enhancing awareness and exchange of information and best practices. UNICE favoured 'non-binding instruments at the

Finnish Act on Data Protection in Working Life

The Act on Data Protection in Working Life (477/2001) came into force on 1 October 2001. It applies to all employment relationships and to both employees and job applicants. It provides that an employer may process only personal data that directly relates to an employee's employment relationship. Outdated or unnecessary data must not be kept by employers. Companies must draw up a description of the personal data files they hold, making this available to any interested party, and must notify the Data Protection Ombudsman of automated data processing by sending it a description of the files held. There is an employer's obligation to notify employees about these issues and employees have a right to check personal data concerning them (subject to restrictions related to state security, defence, general order and safety, and the prevention/investigation of crime). The Act covers international transfers of personal data, requiring a Finnish company that transfers employees' personal data outside the EU/EEA to notify the Data Protection Ombudsman.

national level through the social partners who are better placed to tackle possible problems'. UEAPME also stated that non-binding measures at European level, such as a code of conduct, could be useful.

By contrast, European-level trade union organisations supported a new EU Directive on the subject. They believe that the existing Directives on personal data protection are useful but not sufficient with regard to the specific employment context. Furthermore, current national legislation implementing the Directives is not seen as totally satisfactory or comprehensive.

In October 2002, the Commission launched a second stage of consultation, this time on the content of an envisaged proposal in this area, having concluded that it is advisable that a framework of employment-specific rules on data protection should established at EU level - giving the social partners the opportunity to negotiate an agreement on the issue and thus forestall a proposed Directive. The second-stage consultation was more concrete and detailed, suggesting a new framework of principles and rules on workplace data protection (see box on p.ii). However, following the responses of the social partners to the second round of consultations, it appears that this opportunity has been rejected, and the Commission is planning a draft Directive in 2004-5.

National law and guidelines

The EU Member States and Norway have several kinds of legislation on the protection of privacy in general, or in the context of work or new technology. These include provisions in constitutions or legal codes, legislation and, in the case of Belgium, collective agreements with the force of law. Of the countries examined, only Belgium and, to a lesser extent, Denmark and Germany, have provisions that specifically deal with employee e-mail/internet use and its monitoring.

General provisions

Many national constitutions contain a general right to protection of privacy/private life - as in Belgium, Finland, Germany, Greece, the Netherlands and Spain - while such a right, though not explicit, is implied in other cases - eg Austria, Ireland and Norway. Such a general privacy right may also stem from the Civil Code, as in France, or specific legislation, such as the UK's Human Rights Act (while the ratification of the European human rights Convention by all countries concerned also implies the application of its privacy provisions). Many constitutions guarantee some form of secrecy of communications (sometimes alongside a general privacy right) - such as Denmark, Finland, Greece, Italy, Luxembourg, the Netherlands, Portugal and Sweden. Penal or Criminal Codes forbid interception (without specific consent or authorisation) of communications and sometimes specifically telecommunications in countries such as Belgium, Denmark, France and Spain, while specific legislation covers these issues in cases such as Belgium, France and the UK. Though some of these basic provisions may be assumed to cover internet/e-mail use, this is rarely explicit, though Denmark is an exception (see below). Unusually, Sweden has a specific constitutional right to privacy protection related to electronic data processing.

All countries have data protection legislation. This is either in direct implementation of the EU Directive (95/46/EC) on the issue or pre-existing legislation which has been amended in the light of the Directive - only France does not appear specifically to have transposed the Directive (with draft legislation currently before the National Assembly). As seen above, the Directive and its implementing legislation have implications for employment. However, it is rare for countries to have introduced specific legislation applying data protection rules to the employment context - this has occurred most notably in Finland (see box on p.iii) as well as in France, Greece (a Data Protection Authority directive) and, to some extent, Portugal. EU Directive 97/66/EC, dealing specifically with the telecommunications sector, has been transposed in countries including Belgium, Germany, Greece and the UK, again with some employment implications. Germany is unusual in having legislation which governs data protection specifically in the context of the internet.

Beyond the employment-related provisions of general or specific data protection legislation, at least some aspects of privacy at the workplace are governed by employment (or other) law in most countries (with some exceptions, such as Ireland) - though this is rarely comprehensive. In general terms, the French Labour Code prohibits restrictions of workers' rights and freedoms except where justified and proportionate, while a Belgian national collective agreement (such agreements are given the force of law and thus included here) provides that interference in the private lives of job applicants (and, by extension, employees) can be justified only when relevant to the employment relationship. The Italian Workers' Statute regulates a number of privacy matters, while Portugal's new Labour Code provides for privacy in areas related to workers' personal lives. The specific issue of monitoring and video surveillance at the workplace is subjected to various conditions by legislation in countries such as Belgium, Denmark and France.

In some cases, works councils or other workplace employee representatives have powers over the introduction and/or use of equipment for monitoring employees' performance, work etc. Agreement or co-determination is required in Austria (where employees' 'dignity' is affected), Germany, Luxembourg and the Netherlands, while information and consultation is required in Belgium (see below), Finland and Spain. Similar rights relating to the more general issue of introducing new technology may also apply to monitoring equipment in countries such as France. The co-determination rights of local unions in Sweden are taken to include personal integrity matters.

Internet and e-mail use

While some of the general and workplace-specific privacy and data protection law outlined above may have implications for employees' e-mail and internet use, there is little specific legislation on this issue across the countries considered. The most notable exception is a Belgian national collective agreement (with the force of law) on the issue, outlined in the box on p.iv.

Other privacy provisions which deal specifically with employees' internet and e-mail use are rare, though they include the following:

- The Danish Penal Code's provisions on secrecy of mails (§263) make it a

Belgian national agreement on protection of employees' on-line privacy

On 26 April 2002, employer and employee representatives on the National Labour Council signed national collective agreement No. 81 on the protection of workers' privacy with respect to controls on electronic on-line communications data (EOCD). The agreement was made mandatory by a Royal Decree of 20 September 1998.

The agreement adapts general provisions concerning the protection of privacy with a view to making them applicable to the working environment, and applies only to the private sector. The agreement does not relate to company rules for accessing and/or using electronic on-line communications equipment, as these are the employer's prerogative. Instead, the agreement governs workers' right to privacy when EOCD are collected for monitoring purposes.

The agreement covers on-line technologies such as the internet, e-mail and WAP, but has been drafted sufficiently widely to cover future developments. In principle, monitoring of such EOCD should not impinge on a worker's private life but, if it does, this must be kept to an absolute minimum. Only data necessary for monitoring may be collected. The monitoring may cover:

• with regard to internet site controls, the collection of data on the duration of the connection per workstation, but not individual data on the sites visited; and

• with regard to the use of e-mail, the collection of data on the number of messages sent per workstation and their volume, but not identification of the employee who sent them.

The employer may monitor EOCD if it is pursuing the following objectives:

• the prevention of acts which are illegal or defamatory, contrary to good ethics or can damage the dignity of another person;

• the protection of the company's economic, commercial and financial interests;

• the security and good operation of the company's ICT systems; and

• the observance of the principles and rules applicable in the company for the use of on-line technologies.

The employer must clearly and expressly define the objectives of the control exercised. Moreover, the content of data may be controlled only if the employee and other parties concerned (eg the recipient of the message) have consented. Before introducing a monitoring system, the employer must notify both the works council and the workforce.

'Individualisation' of EOCD, as referred to in the agreement, means an action whose purpose is to process EOCD collected during controls by the employer, in order to attribute them to an identified or identifiable person. In principle, the employer will first perform a general control without being able to determine what wrongdoing can be attributed to what employee. Only in the second instance can the employee responsible be sought.

The agreement should be interpreted in the light of existing constitutional and statutory principles.

criminal offence to open or acquire access to the content of a letter or other closed message addressed to another person. Private e-mails are covered, though e-mails sent to employees in their capacity as a representative of the employing organisation are not considered private. Under these provisions, along with the Act on Processing of Personal Data, whether or not an employer has the right to read the content of e-mails or register e-mail addresses depends on whether it has a justifiable reason for doing so which does not exceed the employee's legitimate interests. Information about employees' incoming or outgoing e-mails or about what webpages they have visited is considered as personal information, and any monitoring can be performed only with the consent of the person concerned. In 2000, the Data Protection Agency stated that considerations relating to computer-system security and control of employees' observation of company policy are legitimate reasons to implement monitoring measures - however, the employer must inform the employee about the surveillance.

• Germany's Telecommunications Act (TKG) and Teleservices Data Protection Act (TDDSG) apply where the employer has permitted private e-mail and internet use by employees. In such cases, employers' control of employees' private use of such electronic media is subject to more restrictions than is the case for professional use. Where the TKG applies, the collection and use of data is permitted for accounting purposes, to remedy service disruptions or to ensure an orderly communication process. Generally, any check on content is not permitted, unless there is specific suspicion of a serious criminal offence. Analysis of private e-mail/internet connections must be restricted to the minimum needed for recording costs. If private employee use is permitted without reimbursement of costs, then the connection data may not be analysed, with the exception of anonymous data needed to check the working of the equipment. Where private internet use is permitted, a provider-user relationship is created between the employer and the employees for the purposes of the TDDSG, because the employer provides access to information to the employee. If the employee is not obliged to reimburse the cost of use, then the employer does not have any right of control without the employee's consent. Furthermore, if the employer permits the use of the company's e-mail systems for private purposes, the Works Constitution Act provides that the relevant rules of conduct must be agreed with the works council and set down in a works agreement.

Despite a lack of specific legislation, the general legal framework and principles are interpreted as having implications for employees' internet and e-mail use in some countries. For example, in Norway, it is held that the employer may not read an employee's private e-mail (or other documents), unless the employee has given consent. Enterprise-related e-mails may be read by the employer, though it has a duty to inform employees about such measures.

Given the general absence of specific legislation on employees' workplace privacy, the introduction of such provisions has recently been discussed or proposed in a number of countries, sometimes with direct relevance to internet/e-mail use. This is currently the case in Finland, Germany, Norway and Sweden.

Case law

The lack of specific legislation on employees' e-mail/internet use and workplace privacy makes case law important in some countries. Significant rulings on the issue - or on related themes, such as telephone monitoring and video surveillance, which may have implications for e-mail/internet use - are reported at various levels of the judicial apparatus from countries such as Austria, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden and the UK. Many of these rulings refer to very specific individual cases, while judgments from the same country may appear contradictory. However, a few themes seem common across a number of countries. Notably, cases in Denmark, Germany, the Netherlands and the UK have established the necessity for employers

Portuguese National Data Protection Commission guidance on employees' internet and e-mail use

- It is illogical and counterproductive for employers to forbid absolutely the use of e-mail and internet access for any purpose other than work. Employers should allow their employees to use the resources placed at their disposal with moderation and within reason.
- Employers should establish clear, precise rules on personal use of e-mail and the internet, based on the principles of appropriateness, proportionality, joint cooperation and mutual trust.
- These rules should be submitted to workers and their representatives for their consideration. They should be publicised and provide clear information on the degree of tolerance, the type of control exercised and the consequences of disobeying the rules.
- Employers do not have the right to open e-mails addressed to workers.
- Employers can process data only if they take into account the legitimate interests of the person concerned and the rights, freedoms and privileges of the owner of the data.
- Employers should choose non-intrusive control methods that comply with pre-defined principles and of which the workers are aware.
- Employers should not monitor workers' e-mails constantly and systematically, but only occasionally, and in areas that pose a greater 'risk' for the company.
- E-mails may be monitored to guarantee the safety and performance of the system.
- With the workers' knowledge, employers may adopt the necessary procedures to 'filter' certain files attached to e-mails which, in view of the nature of the worker's job, clearly indicate that e-mails are not work-related.
- If an employer finds that there has been disproportionate use of e-mail or the internet, the worker should be warned and then monitored, if possible by non-intrusive methods.
- Access to e-mails should be the employer's last resort, and they should preferably be accessed in the presence of the worker in question and of a representative of the works committee. Access should be limited to the recipient's address, the subject and the date and time sent.
- There should be a degree of tolerance in relation to personal internet access, especially if it is out of working hours.
- General statistics may be enough for the employer to ascertain the degree of use of the internet in the workplace, and the extent to which access by employees compromises work or productivity.
- In order to examine the impact on cost or productivity, a worker may be monitored by counting average time online, rather than the sites visited. If there is found to be excessive, disproportionate internet use, the worker should be warned.

to have issued a clear policy or instructions on internet/e-mail use before it is legitimate for them to dismiss or discipline employees on grounds of misuse. The courts in some countries - such as Germany, the Netherlands, Spain and the UK - understandably take a very dim view of employees using e-mail or the internet for purposes of crime, harassment or distributing obscene or offensive material.

Guidance

Given the general paucity of specific legislation on workplace privacy and employees' e-mail/internet use, guidelines and opinions issued by public bodies in this area are significant in some countries. These are often the independent 'supervisory authority' which Member States are required to nominate by the 1995 EU data protection Directive.

With regard to workplace privacy and ICT, the Greek Data Protection Authority has issued a specific directive seeking to apply data protection legislation to employment relationships. The Irish Data Protection Commissioner has recommended that the protection of privacy in the workplace is best served through a policy statement or code of practice from the employer, 'where a balance is struck between employees' expectations and employers' rights'. Similarly, the Norwegian Data Inspectorate has recommended that employers and employees jointly establish procedures for monitoring e-mails at work. In September 2000, the Danish Data Protection Agency issued a statement on legitimate reasons for employer monitoring of employees' e-mail/internet use (see above).

A number of supervisory bodies have issued detailed codes of practice on employees' e-mail/internet use. In June 2003, the UK Information Commissioner published the third part of an Employment Practices Data Protection Code, covering *Monitoring at work*, including employees' internet and e-mail use. The Code (which does not impose new legal obligations but seeks to clarify existing provisions) aims to strike the correct balance between the legitimate expectations of employees and the interests of employers. It provides that where employers have to monitor how staff are using computers at work, the monitoring must be open and transparent and with the knowledge of the employee. There are few circumstances in which covert monitoring is justified. Employees are entitled to expect that their personal lives remain private and they have a degree of privacy in the work environment.

The Portuguese National Data Protection Commission has issued detailed guidance on privacy at the workplace in relation to ICT. This includes a number of general principles and detailed recommendations on the issue of internet and e-mail use, as set out in the box on p.v.

Guidelines may also be issued by official bodies other than the supervisory authorities for data protection. For example, Denmark's IT Security Council (an agency within the Ministry of Science) has published a guide on private use of the internet and e-mail at work by employees. In the Luxembourg public sector, the relevant Minister has issued a 'charter of good practice' for users of ICT facilities belonging to the state, which has applied since 1 January 2003 to all state employees.

Social partner views and initiatives

The issue of employee e-mail/internet use and privacy is clearly of some concern to employers and trade unions in many countries considered - though

Commentary

Against the backdrop of increasing use of ICT, and particularly of e-mail and the internet, in the employment context, the frontier between private life and work life is becoming increasingly blurred. The use of ICT at the workplace must therefore be examined as part of a broader context incorporating respect for privacy and the protection of personal data at work.

At EU level, the issue is high on the agenda from both a legislative and industrial relations point of view. The European Commission is planning to propose a specific Directive establishing a regulatory framework governing the protection of workers' personal data. At international level, the ILO has drawn up a code of practice on the protection of workers' personal data, while a global trade union body, UNI, has issued a code of practice on on-line rights at work (see p.viii).

Examination of the national situations in the EU Member States and Norway allows us to draw some conclusions. As far as the use of ICT at the workplace is concerned, it is important to distinguish: on the one hand, the *use* of these new facilities by workers, and the opportunity for these workers to use them for private reasons; and, on the other hand, the *monitoring* and *surveillance* of workers by the employer. Both of these questions may be governed both by 'a priori' measures - ie by the regulatory framework - and 'a posteriori' - ie through the courts.

The principle of the *use* by workers of the internet and e-mail for private purposes is not regulated at national level, either by legislation or by collective agreements. There are no regulations permitting or preventing workers using the internet or e-mail for personal purposes at work and usually this is at the discretion of individual employers. The idea that employees should be entitled to at least reasonable personal use of their employers' internet and e-mail facilities is raised only in a few guidelines from national regulatory bodies such as Portugal's National Data Protection Commission, or in trade union codes of practice or model agreements (notably the UNI code), or in individual company policies - or more rarely company agreements.

Where employees are permitted, explicitly or implicitly, to use workplace internet and e-mail facilities for private reasons, then a modus operandi for such use may be laid down in codes of practice and policies, drawn up by regulatory authorities (eg in Portugal), employers' organisations (eg in France, Italy and the Netherlands) or individual employers (eg in Austria, Denmark, France, Germany, Ireland, Luxembourg, Norway and the UK), or proposed by trade unions (eg in Ireland and the Netherlands) - and, less commonly, laid down in company agreements.

Measures that a priori regulate the *monitoring* and *surveillance* of workers' use of new technology are primarily based on a body of national law, made up of: general (often constitutional) provisions relating to respect for privacy and the secrecy of correspondence; personal data protection provisions; and, less extensively, workplace-specific privacy provisions. While general privacy and secrecy provisions may often be assumed to cover internet/e-mail use, this is rarely explicit. With regard to personal data protection, most national measures implement the relevant EU Directive and thus have implications for the employment relationship. However, specific legislation applying data protection rules to the employment context is rare, with the main example being Finland. Beyond data protection, some general protection of workers' privacy is provided by law in countries such as France, Belgium, Italy and Portugal. The specific issue of workplace video surveillance and monitoring is regulated by legislation in countries such as Belgium (national collective agreement), Denmark and France. In some cases, works councils or other employee representatives have powers over the introduction and/or use of monitoring equipment. Agreement or co-determination is required in Austria, Germany, Luxembourg, the Netherlands and Sweden while information and/or consultation is required in Belgium, Denmark, Finland, Norway and Spain. Specific legislation on the monitoring of employees' e-mail and internet use exists only in Belgian (national collective agreement) and, to a lesser extent, Denmark and Germany. New legislation in this area is under debate in Finland, Germany, Norway and Sweden.

Outside the field of legislation, employer surveillance and monitoring of employees' e-mail and internet use is the subject of guidance or codes from regulatory authorities in countries such as Denmark, Greece, Portugal and the UK. It is also dealt with in codes of practice and policies drawn up by employers' organisations or individual employers or proposed by trade unions. This is also an issue regulated by the little multi-employer bargaining which relates to employee e-mail and internet use (eg in Belgium, Denmark and Norway) and in company agreements on the matter.

Turning from the 'a priori' regulatory framework, to the 'a posteriori' role of the courts, the key question dealt with in case law is the link between the employer's right to monitor and respect for workers' privacy. The courts are often called on to rule on both whether or not the dismissal (or disciplining) of a worker for 'improper' private use of e-mail or the internet is justified, and whether or not an employer's intrusion into the worker's private life is justified. In some countries, such as Spain, these issues appear to be becoming increasingly 'judicialised', and in some countries, case law has become an essential source of regulation of disputes associated with the use of ICT at the workplace.

the level of interest varies and the topic does not appear to figure highly on their agendas in Greece, Luxembourg and Portugal.

At the level of individual employers, there seems to be an increasing tendency to draw up and apply policies on employees' use of company e-mail and internet facilities (in some cases based on agreement with workplace employee/union representatives - see below), as in Austria, Denmark, France, Germany, Ireland, Norway and the UK. The need for such policies stressed by some court cases (see above) may increase the pressure to draw them up. In general, employers' organisations - eg in Belgium, Ireland and the Netherlands - tend to stress issues such as employers' need and prerogative to monitor employees' activity in this area, on grounds such as: possible damaging consequences of misuse for the company; the fact that employees are meant to be working during their working hours; and the fact that the equipment and facilities concerned are the employers' property. Employers' organisations in some countries - such as Norway, Spain and the UK - are concerned about the lack of clarity in the legal situation. By contrast, Austrian employers are reported as in many cases appreciating the freedom provided by a current vagueness of regulation, while German and Swedish employers' bodies are generally happy with the current legislation and opposed to changes. However, Confindustria, Italy's main employers' confederation, maintains that current regulations are excessively protective of workers' right to privacy, and that this increases employers' costs. The procedures should be streamlined and adjusted so that interests are more evenly balanced.

In a number of countries, employers' confederations have drawn up codes of conduct or guidelines related to workplace privacy and e-mail/internet use. These include MEDEF in France, IBEC in Ireland, Italy's Confindustria, the Dutch VNO-NCW and NHO in Norway.

Trade unions in many countries are concerned that the current relationship between employees' privacy rights and employer monitoring rights is

Examination of the internet/e-mail use cases that have reached the courts in the various countries indicates that rulings sometimes go the way of the employers and sometimes the way of the workers - this varies from country to country, but also within a given country. However, some of the criteria used in assessing the cases appear to be recurrent. The first is whether or not the employer concerned has a written policy on the private use of e-mail and the internet at the workplace - if not, the decision will probably be in favour of a worker complaining of unfair dismissal, on the grounds that the employer had no stated policy on the issue, or the policy was not clear enough. However, whether the use of new technology for private reasons is permitted or not, some situations will usually result in the worker's dismissal being regarded as fair - for example: if e-mails or webpages visited are pornographic, discriminatory, obscene or violent; if the use of e-mails or the internet for private purposes is done improperly, or leads to a serious loss of working time; or if the messages sent constitute harassment. In such a posteriori situations, the role of the trade unions will consist of supporting and defending workers involved in court cases.

Individual employers in many countries (eg Austria, Denmark, France, Germany, Ireland, Norway and the UK) seem increasingly aware of some of the issues raised by employee internet/e-mail use, and draw up and apply policies in this area. However, at the level of employers' associations and trade unions, interest in these matters appears to vary considerably, and few see them as a major priority. Among national instersectoral employers' organisations, there has been some activity in drawing up codes of conduct or guidelines for member companies, as in France, Ireland, Italy, the Netherlands and Norway. One factor which seems to focus the attention of employers' organisations on workplace privacy and internet/e-mail use issues is the prospect of legislation, as currently discussed in Germany, Norway and Sweden, or of regulatory guidance, as recently in the UK, with employers keen to protect their prerogatives.

Trade unions, while generally promoting workers' privacy rights, rarely give the topic the highest priority, but like employers' organisations may be spurred into action by the prospect of legislation. Unions representing technical, professional or managerial staff, or sectors such as ICT and telecommunications, may tend to take a greater interest in workplace internet/e-mail use issues - for example, launching campaigns and promoting codes of practice or model agreements.

The issue of protecting privacy at the workplace, either in general or in relation to the use of e-mail and the internet, is rarely addressed in collective bargaining (especially above the enterprise level). At intersectoral level, Belgium has a notable agreement on workers' privacy related to electronic online communications data, while some more general privacy provisions can be found in central agreements in Norway, Denmark and (to a lesser extent) Greece. At sectoral level, there is one specific agreement on workers' e-mail use in the Danish service sector, plus a handful of less specific privacy provisions in some Dutch or Italian agreements. It is at company/workplace level that joint regulation of employees' privacy and in some cases internet/e-mail use is most common, either through agreements or through the exercise of co-determination rights by works councils or other workplace employee representatives. Some such bargaining is reported from countries such as Austria, Belgium, Denmark, France, Germany, Ireland, the Netherlands, Norway, Spain and Sweden, though the extent to which such joint regulation is widespread is hard to assess.

To sum up, the various roles taken by trade unions and employers' associations in relation to workers' privacy and internet/e-mail use are principally as follows:

- in some countries, union representatives (along with works councils etc) are informed, consulted or entitled to negotiate over the installation or use of measures for monitoring workers;
- the social partners rarely conclude collective agreements on this issue, though this is slightly more common between enterprise/workplace-level union representatives (along with works councils etc) and management;
- in a number of countries, trade unions and employers' associations are invited to comment on draft legislation or guidance on relevant issues, and sometimes formulate proposals and recommendations;
- in some cases, employers' associations or trade unions have drawn up codes of practice or similar documents relating to the use of new technology at the workplace and/or the monitoring by the employer of workers, which may be important where the regulatory framework is unclear; and
- trade unions give members assistance in court cases arising from alleged 'improper' workplace use of e-mail and the internet for private reasons.

(Catherine Delbar, Marinette Mormont and Marie Schots, Institut des Sciences du Travail)

unbalanced, with the latter unfairly privileged. Unions are calling for clearer rules in this area and restrictions on employer monitoring in countries such as Austria, Denmark, France, Germany, Ireland, Norway, Spain, Sweden and the UK. Reflecting their concerns over privacy and employee internet/e-mail use, trade unions have undertaken a number of initiatives in this field. The fact that these issues particularly affect groups such as technical, professional or managerial staff, or specific sectors (such as ICT and telecommunications) is sometimes reflected in the activity of unions representing these employees. Initiatives include:

- setting up working groups or committees to examine the issue - as with FTF in Denmark and LO in Norway - or launching campaigns - as with the UK/Irish Amicus-MSF technical workers' union;
- drawing up proposals for new legislation in this field, as in France with CGT and the managerial staff union affiliated to CFDT;
- promoting the regulation of this topic through agreements - eg at company level in the case of Germany's ver.di or at national intersectoral level in the case of France's CGT-FO; and
- issuing and promoting model company agreements or codes of practice on e-mail/internet use. For example, the UK/Irish Amicus-MSF has drawn up a 'model e-facilities agreement' and draft code of practice for the protection of privacy at work, while the Dutch FNV has created a model privacy code as a tool for works councils and its affiliated Allied Unions has produced a protocol on internet and e-mail use.

Only in Belgium (and to some extent Denmark and Norway - see below) does it appear that the views of the social partners on the need for, and content of, regulation in this area have coincided sufficiently for a major joint initiative - the 2002 national agreement on protection of employees' on-line privacy (see box on p.iv).

UNI code of practice on on-line rights at work

UNI, which brings together white-collar and private service sector workers' trade unions from around the world (including unions in the ICT sector), has been active in campaigning in the area of employees' 'on-line rights' since at least 1998. It has recently drawn up a code of practice on on-line rights at work, designed to 'establish an internationally recognised yardstick of what constitutes good practice'. The code is in four parts:

1. **Trade union communication**. Works councils and/or trade unions and their representatives should have the right to access and use enterprise electronic facilities for works council/trade union purposes, both internally and externally. This includes the right to send relevant information to all employees. Employees should have the right to use enterprise electronic facilities to communicate with their trade unions and/or works council and their representatives.

2. **Non-business communication**. Employees should be permitted to use enterprise electronic facilities for non-business purposes, both internally and externally, provided that this is not detrimental to their work responsibilities.

3. **Monitoring and surveillance of communication**. The employer should be obliged to undertake not to subject employees' use of the enterprise's electronic facilities to clandestine surveillance and monitoring. Communication should be subject to surveillance and monitoring only if: this is permitted by collective agreement; the employer is legally obliged to do so; or the employer has reasonable reason to believe that an employee has committed a criminal offence or serious disciplinary offence. Access to surveillance and monitoring records relating to individual employees should take place only in the presence of a trade union representative or a representative selected by the employee.

4. **Conditions for use of electronic facilities**. Employees' rights to use enterprises' electronic facilities should be subject to a number of conditions, as follows: communication must be lawful and not include defamatory or libellous statements; enterprises' electronic facilities shall not be used as a means of sexually harassing other members of staff or spreading offensive comments based on an individual's gender, age, sexuality, race, disability or appearance, or knowingly to visit websites promoting pornography, racism or intolerance; and the employer can require a disclaimer when employees are communicating internally and externally, making clear that the views expressed are those of the author alone and not those of the enterprise.

Collective bargaining

In most countries considered, there is generally little reference in collective bargaining to protecting privacy at the workplace, either in general or in relation to the use of e-mail and the internet. This is especially true of bargaining at multi-employer level, and where joint regulation of this matter exists, it generally occurs at company level, either through agreements or through the exercise of the co-determination rights of works councils or other employee representatives.

Despite the general lack of multi-employer bargaining on privacy and e-mail/internet use, there are exceptions. At national intersectoral level, the most notable and specific example is Belgium where, as seen above, a 2002 national collective agreement governs the protection of employees' private lives with respect to controls on electronic online communications data (while earlier agreements covered matters such as workplace video monitoring). On more general privacy/monitoring issues, in Norway, the central 'basic agreement' between LO and NHO contains a supplementary agreement on monitoring activity in enterprises (there are similar rules in other basic agreements between social partner confederations). The supplementary agreement stipulates a wide range of conditions under which monitoring and control measures may be implemented by the employer, emphasising the principles of objectivity and proportionality. Furthermore, measures should not discriminate between employees or groups of employees, and thus must apply to all. The introduction of such measures should be discussed - though negotiations are not required - with trade union representatives as early as possible prior to implementation. Employees should receive notice of the proposed measures before implementation. Union representatives should also be consulted with regard to the handling and registration of the information acquired through such monitoring. If the provisions of the agreement are ignored prior to the implementation of measures, the measures may be deemed unlawful by the Labour Court. It is assumed that the agreement does not apply in cases where there are suspicions of criminal acts such as fraud or theft.

Similarly, in April 2001 the Confederation of Danish Trade Unions (LO) and Danish Employers' Confederation (DA) agreed a supplement to their 'basic agreement' on new control initiatives at the workplace. It states that any new workplace control arrangements or mechanisms must be announced at least two weeks prior to introduction. Finally, and very generally, in Greece the National General Collective Agreement refers to protection of personal integrity stating that: 'the contracting employer organisations underscore to their members the obligations for enterprises arising from the legislative framework as regards the protection of the individual relative to matters of a personal nature, aimed at protecting workers' personal integrity'.

Provisions on privacy and e-mail/internet use in sectoral collective agreements are very rare, with the main example being a framework agreement concerning private e-mail use at the workplace signed by the Union of Commercial and Clerical Employees in Denmark (HK) and the Danish Commerce and Service (DHS) employers' association. The aim is to provide a model which can be used by companies to establish a policy on employees' use of e-mail. Elsewhere, only in Italy and the Netherlands are any sectoral agreements reported, and these refer to more general privacy matters. In the Netherlands, the agreement for public transport has an annex containing a model privacy code, while several collective agreements state that employers, when they register sickness absence, should take measures to safeguard employees' privacy. In Italy, some sectoral agreements (notably for chemicals, metalworking, banking/insurance and commerce) make explicit reference to the data protection legislation, and in particular to the protection of 'sensitive' personal information. It is thought likely that privacy issues will be widely addressed in the next round of sectoral bargaining.

It is at company/workplace level that joint regulation of employees' privacy and in some cases internet/e-mail use is most common. In some countries - such as Austria, Belgium, Germany, the Netherlands, Norway, Spain and Sweden - bargaining or consultation on at least some aspects of the issue is promoted by legislation (or central agreements) giving works councils or other workplace representatives powers in this area (see above). At least some company/workplace-level bargaining of relevance is reported from the countries mentioned, as well as from all other countries apart from Finland, Greece, Italy, Luxembourg, Portugal and the UK (where there are some agreements on more traditional privacy issues such as searching individuals, and evidence of more informal company-level regulation of ICT-related privacy matters). However, the extent to which such joint regulation is widespread is often hard to assess. Agreements with works councils or local union representatives are reported from a number of countries - for example, Austria, Belgium, Denmark, France, Ireland, Norway, Spain and Sweden - but it is not known how many of them there are.

TN0307101S

12 August 2003