EU Enlargement, Labour Law and Industrial Relations

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The focus of this article is on whether and to what extent common features of labour law and industrial relations in the CEE states present a pattern for coping with the Europeanisation of labour law and industrial relations and what impact these relations might have on the transformation process there. After sketching the basic elements of the Europeanisation of labour law and industrial relations, I address the situation in the CEE states and demonstrate the difficulties and the potential for integration. The conclusion is that EU enlargement could accelerate and to a certain extent shape the dynamics of transformation, which will impact the future structure of EU arrangements.

Key words: enlargement, labour law, collective bargaining, industrial relations

Introduction

On 1 May 2004 eight countries of Central and Eastern Europe (CEE), the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as Malta and Cyprus joined the European Union (EU). The 2004 enlargement is doubtlessly the greatest challenge the EU has ever faced in terms of quantity and quality alike. The surface area of the EU increased by a third and its population grew from about 390 to 450 million. At the same time the GDP only increased by 5%, so the EU GDP per capita fell by about 18% (Ladó, 2002a: 101). The number of languages spoken in the EU almost doubled and the problem of finding a fair balance between countries of various sizes is more urgent than ever.

In the context of this enlargement, the CEE states are of specific interest. They have yet to complete the transformation from a state-controlled to a market-based economy and develop systems of industrial relations that not only function efficiently but are adapted to their specific socio-cultural environment. There are significant differences among the various CEE states in this respect and it would be a mistake to lump them all together (Ladó 2002b). We should bear in mind that their situations were also quite different in Soviet times. There were no signs of reform whatsoever in the Baltic states, which were integrated into the Soviet Union, whereas Poland and Hungary had already introduced economic reforms before the iron curtain fell. And of course the CEE countries have very different traditions dating back to long before the communist period. However, despite their differences it is possible to identify characteristics they all have in common.

My focus is thus on whether and to what extent the common features of labour law and industrial relations in the CEE states (and not Malta and Cyprus) present a pattern for coping with the Europeanisation of labour law and industrial relations and what impact these relations might have on the transformation process there. After sketching the basic elements of the Europeanisation of labour law and industrial relations, I address the situation in the CEE states and demonstrate the difficulties and the potential for integration.

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Elements of the Europeanisation of Labour Law and Industrial Relations

Fundamental Social Rights

After a lengthy and very controversial debate in 2000, the Charter of Fundamental Rights of the EU was passed as a legally non-binding declaration, expressing the consensus of all the member states. The draft for a Constitutional Treaty, replacing and amending the old Treaties on the EU and the EC, has since integrated this Charter into its text and made it legally binding. Despite the controversies on the issue of qualified majority, there is no doubt that the Constitutional Treaty will be accepted in the near future.

There is a specific chapter in the Charter on fundamental social rights called *Solidarity*. But even outside this chapter there is a set of extremely important rights in the social context, including the freedom of association, which implies people's right to found and join trade unions to protect their interests (Art. 12). The chapter on solidarity contains twelve core rights, including the workers' right to working conditions that respect their health and dignity (Art. 31 par. 1), the right to collective bargaining and collective action, guaranteed as a subjective right for workers and employers or their organisations (Art. 28), and the right for workers or their representatives to information and consultation in good time regarding management decision-making (Art. 27). These last two fundamental rights are obviously extremely important in the context discussed in this article.

The chapter on solidarity also includes collective rights and stresses the Community's and the member states' responsibility to provide job security and working conditions that respect the workers' health, safety and dignity and protect young people at work. It stipulates measures for combining family and professional life and providing social security and social assistance. All things considered, this is clearly a concept incompatible with mere deregulation, de-collectivisation and de-institutionalisation. In broader terms, it would be incompatible with a strict neo-liberal approach (Weiss 2002a: 73).

Minimum Standards

Up to now, mainly because social policy only gradually became a relevant factor in the Community context, Community legislative activity has not been characterised by a systematic approach. Now there is far-reaching power to legislate in the field of labour law and social security, but the EC still has no power to legislate as regards pay, the right of association, the right to strike or the right to impose lock-outs. And there is no hope that this will be changed by the Constitutional Treaty.

Many topics are now covered by Directives, thus influencing the law of the member states. However, my focus is not on these topics. It should be noted though that the Directives are increasingly formulated so as to give the social partners and workers' representatives a significant role in implementing them. An excellent example is the Directive on Working Hours (Barnard, forthcoming).

Social Dialogue

The umbrella organisations of the trade unions and employers' associations at the EU level are not involved in collective bargaining. They are primarily viewed as lobbies for the interest groups they represent. For a long time they cooperated informally with the Commission. This social dialogue was first formalised by the Treaty in 1986. It has since achieved a very elaborate structure as is defined by Art. 138 and 139 of the EC Treaty.

Nowadays the actors referred to above are integrated into the legislative machinery. Before submitting a legislative proposal, the Commission has to consult them on the possible direction of Community action. If the Commission still wants to present a proposal, there has to be a second consultation of the social dialogue parties on the contents of the proposal. Then the social partners can take over the initiative from the Commission and try to regulate the matter by reaching an agreement. They have nine months to elaborate an agreement that can then be transformed into a legally binding Directive by the Council without the involvement of the European Parliament. Directives on parental leave, fixed-term contracts and part-time work are the results of this kind of

procedure. If the social partners cannot reach an agreement within the period of nine months, the job of drafting a proposal goes back to the Commission.

According to the Treaty, the social partners do however have an alternative option. Even in matters where the EC has no legislative power, they are free to conclude agreements to be implemented 'in accordance with the procedures and practices specific to management and labour and the member states'. Agreements of this kind are not legally binding. It is up to the social partners at the EU level to convince the actors in the member states to transform the ideas contained in these agreements into their respective structures in the member states. A recent example of a strategy of this kind is the 2002 agreement on telework, and there are now heated debates on its possible impact in the various member states.

In addition to the inter-professional social dialogue, there are more and more sectoral social dialogues (Keller 2003:30). They are not integrated into the legislative machinery, but their institutional structure has recently been significantly improved. Their job is to represent the specific interests of their sector at the EU level and conclude agreements that may now be binding among them but remain voluntary for the actors at the lower levels. So far agreements of this kind have only played a marginal role (Keller 2003: 37).

Collective Bargaining

Up to now and for a long time to come, collective bargaining has been and will be a matter of policy in the member states. The legal patterns of collective bargaining and collective agreements differ from country to country, but one feature is shared by all the current member states with the exception of the UK: they all have an interrelated multi-level system (Traxler 2003: 85). Once again, the rules on the relations between agreements at different levels or between old and new ones differ from country to country.

In view of this diversity, it is unrealistic to think in terms of a European Collective Agreement as an instrument to promote uniformity. The need for greater cooperation and co-ordination in collective bargaining throughout the Community has nonetheless increased as a result of the European Monetary Union. The new currency has led to greater transparency: prices, wages and other working conditions can easily be compared. Differing working conditions in various member states are becoming more evident. To a growing extent, this can lead to pressure to develop strategies for achieving gradual convergence, at least in a long-term perspective.

The monetary union has had a second impact on collective bargaining that might be even more important. So far it has been possible to cope with labour market problems by way of national monetary policy. There has been some manner of interaction between the actors of collective bargaining and the National Reserve Banks. Nowadays monetary policy is centralised and conducted by the European Central Bank. The question is thus whether a collective bargaining structure can be established that can correspond to the European monetary policy as it did in the past to the national monetary policies (Traxler 2003: 90).

This means improving horizontal transnational co-ordination. A certain extent of progress has been made in this connection in the past fifteen years. The first important step was the Doorn Declaration of 1988, named after the Dutch town of Doorn where it was signed. In this declaration the trade unions of Belgium, the Netherlands, Luxembourg and Germany agreed on three core principles to be observed in collective bargaining throughout the European Community. (a) Wage settlements in collective agreements should correspond to the sum total of the evaluation of prices and the increase in labour productivity. (b) Collective agreements should make an effort to strengthen mass purchasing power and focus on employment-creating measures (shorter working hours etc.). (c) There should be regular information and consultation among the participating trade unions on developments in bargaining policy. In short, the idea has been to influence the contents of collective bargaining by way of the first two principles and strengthen the horizontal communication by way of the third one. The principles on contents have since been redefined and shifted from wage issues to non-wage issues such as life-long learning. And the efforts to achieve more intensive communication have been extended to continuous evaluation.

Quite a few initiatives have since been launched at the sectoral level. In 1997 the German metalworkers' trade union started a cross-border collective bargaining network. Each individual district of this trade union was to develop a solid collective bargaining co-operation network with the metalworkers' trade unions of neighbouring countries. A joint day-to-day information system on collective bargaining has been established and joint working groups on specific bargaining issues have been founded. The example of the German metalworkers' trade union has been followed in Scandinavia by the Nordic metalworkers' trade unions and trade unions from other sectors such as the construction and chemical industries.

The most promising and far-reaching step was taken by the European Metalworkers Federation (EMF) in the late 1990s. It covers the EMF member countries as a whole. The EMF developed national collective bargaining guidelines to prevent downward competition. It also developed Charters on specific issues: bargaining on wages, working hours and training conditions. Other issues are to be added. To illustrate the approach to wage bargaining, it notes that 'the point of reference to wage policy in all countries must be to offset the rate of inflation and ensure that workers' incomes retain a balanced participation in productivity gains'. Of course this is no more than a recommendation and the responsibility is still with the individual negotiating trade union. The EMF initiative has been accompanied by a striking process of institution-building. There is now an EMF Collective Bargaining Committee for assessing and further developing the structure of this initiative and there are Working Parties for specific issues. All this has led to continuous evaluation, intensified continuous communication and a strengthening of personal links among the representatives of the EMF affiliates. In 1999 the EMF established a European Collective Bargaining Information Network (EUCOB), an excellent data base on recent developments in collective bargaining in the metal industries. Other European trade union federations in the chemistry, construction, food, public service and textile industries have followed the EMF example.

In view of all these initiatives, in 1999 the ETUC passed a resolution on a European system of industrial relations, urging a European solidaristic pay policy to (a) guarantee workers a fair share of income, (b) counter the danger of social dumping, (c) counter growing income inequality, (d) help reduce disparities in living conditions and (e) contribute to an effective implementation of the principle of equal treatment of the sexes. The resolution stresses the European Federations' responsibility to co-ordinate collective bargaining.

In 2000 the ETUC passed a European guideline for wage increases shaped very much according to the model of the EMF guideline on wage bargaining. The European Trade Union Institute (ETUI), the research institute of the ETUC, now annually evaluates the wage bargaining policy in the light of the guideline.

I have only listed all these initiatives to illustrate how the need for transnational cooperation and co-ordination has been interpreted by the trade unions. Even if the structures are still rudimentary, they are instrumental in developing a transnational perspective and shaping collective bargaining in the national context. Of course there is a clear shortcoming: this development is only taking place on the trade union side (Schulten 2003: 58). There are no similar efforts being made by the employers. However, the more successful the strategy of co-ordination and cooperation is in the hands of the trade unions, the less feasible it will be for the employers' associations to ignore this new reality.

Social dialogue, inter-professional as well as sectoral, could significantly stimulate the transnational co-ordination and cooperation process. Inter-professional social dialogue should not devote all its energy to the preparatory legislation steps, it should focus more on agreements to be implemented according to national law and practice. It could help discover which topics might be of primary interest for regulation in a more co-ordinated way. Model agreements could present frameworks to enhance the imagination of national actors (Weiss 1991: 59). If actors at the European level cannot reach an agreement, each side could at least communicate its respective views to its constituency. Of course framework agreements and communications of this kind would not be legally binding. But they could stimulate debates on the domestic bargaining scene about how to cope with proposals. Obviously this

kind of communication strategy can only function if there is a vertical dialogue between the European umbrella organisations and the various national constituencies.

Recent developments in promoting the transnational co-ordination of collective bargaining in the EU context have definitely been extremely promising. However, all the available instruments need to be used to intensify and accelerate this process. A multi-level system with specific articulation at each level needs to be constructed with possibilities for feedback from one level to the other and for mutual learning in the process of co-ordination. This type of system should leave actors at the lower levels with the utmost bargaining autonomy and at the same time put pressure on them to cope with the frameworks established at the higher levels. This *open method of co-ordination* has become the catchword for a flexible strategy in balancing the needs for centralisation and decentralisation in a multi-level system of collective bargaining (European Commission 2002; De la Porte/Pochet 2002: 27).

Employees' Involvement in Management's Decision-Making

Perhaps the most important European Community contribution to industrial relations was made in the area of employee involvement in management decision-making (Weiss 1996: 213). As in collective bargaining, here again the situation in the various member states was characterised from the start by extreme diversity. Some countries were averse to a philosophy of cooperation and focused exclusively on conflict and collective bargaining. To guarantee a minimum of employee influence in management decision-making, in the 1970s the European legislator prescribed patterns of information and consultation in the event of collective redundancies[1] or a transfer of undertakings[2] and later in the 1980s on health and safety.[3] This was only a beginning though and the programme has since become far more ambitious. There have been successful efforts to establish patterns of employee involvement at a transnational scale and significantly raise the minimum level in the national context.

The first step in this direction was the Directive on European Works Councils (EWCs) in 1994.[4] Instead of regulating everything in a substantial way, it only provides a procedural arrangement, establishing a special negotiating body representing the workers' interests and leaving more or less everything to the negotiations between this body and the central management of a transnational company or group of companies. It is up to the special negotiating body to decide with a two-thirds majority not to request an agreement. Only if the central management refuses to open negotiations within six months of receiving a request or if after three years the two parties are still unable to reach an agreement, do the subsidiary requirements set out in the Annex to the Directive apply. These subsidiary requirements are the only form of pressure available to the special negotiating body. Until the implementation into the national law of the member states, the Directive allowed for voluntary agreements where even the minimal conditions of the Directive did not play a role. Somewhat more than a third of the companies covered by the Directive have since put it into practice (Demetriades 2002: 49; Müller and Platzer 2003: 58). As regards subsidiaries of the CEE states, representatives of the candidate countries have voluntarily been included in the EWCs. This turned out to be an excellent way to reduce reservations against employee involvement in management decision-making in the CEE states (Sewerynski, 2002: 272). As empirical studies show, the EWCs develop unpredictable dynamics of their own, sometimes achieving far-reaching agreements with the central management: everything depends on the interface with other factors of the overall industrial relations structure (Müller and Platzer 2003: 80).

The same pattern as in the EWC Directive is followed in the second step, the Directive of October 2001 on employee involvement in the European Company.[5] The Directive should be read with the Statute on the European Company containing the rules on company law.

A European Company only can be registered if the Directive requirements are met. This guarantees that the provisions on employee involvement cannot be ignored. The structure of the Directive is very much the same as in the Directive on European Works Councils, and provides for a special negotiating body, lists the

topics for negotiation and leaves everything to negotiations. If the negotiations fail, there is a fall back clause, the standard rules. The Directive contains two different topics that should be carefully distinguished. The first is information and consultation. Here the structure is similar to the one developed in the Directive on European Works Councils. The application of the Directive on European Works Councils is excluded in the European Company.

The crucial and interesting topic of the Directive is employee participation, which is defined as 'the influence of the body representative of the employees and/or employees' representatives in the affairs of a company by way of (1) the right to elect or appoint some of the members of the company's supervisory or administrative organ, or (2) the right to recommend and/or oppose the appointment of some or all members of the company's supervisory or administrative organ'. Normally the further details are decided upon in the course of the negotiations. Only in the event of transformation should the agreement 'provide at least the same level of all the elements of employee involvement as the ones at the company to be converted into a European Company'. If in other cases, a reduction in the participation level would result from the negotiations, qualified majority requirements apply that ensure that by way of agreement, the existing highest level cannot be easily or carelessly reduced. If no agreement is reached, the standard rules apply and ensure that in cases where there was already significant workers' participation prior to the registration of a European Company, its level is maintained. However, no participation scheme is needed if none of the participating companies were 'governed by participation rules prior to the registration of the European Company' (Weiss 2002b: 63).

The third and perhaps most important step, the March 2002 Directive on the Minimum Framework for Information and Consultation at the National Level,[6] is formulated according to the same philosophy. It sets some minimum conditions and leaves everything else to the member states. The Directive applies to companies with at least 20 employees and to undertakings with at least 50 employees. In the original version of the proposal, a reference was only made to undertakings.

The purpose of the Directive is 'to establish a general framework setting out minimum 'requirements for the right to information and consultation of employees in undertakings or establishments within the Community'. The Directive defines the structure of information and consultation in a much more comprehensive way than in other Directives. The definitions contain important procedural requirements. Timing, contents and manner of information should be such that they correspond to the purpose and allow the employees' representatives to examine the information and prepare for consultation. Consultation has to meet with several requirements. (1) The timing, method and contents need to be effective. (2) The information and consultation need to be at the appropriate level of management and representation, depending on the subject under discussion. (3) Employees' representatives are entitled to formulate an opinion on the basis of the relevant information to be supplied by the employer. (4) Employees' representatives are entitled to meet with the employer and obtain a response and the reasons for the response to any opinion they may formulate. (5) In the event of decisions within the scope of the employer's management powers, an effort should be made to seek a prior agreement on the decisions covered by information and consultation. Unfortunately the Directive does not make it clear what happens if an agreement is reached but the employer does not implement it.

Information should cover the recent and probable development of the activities and economic situation of the undertaking or establishment in the broadest sense. Information and consultation should take place on the structure and probable development of employment in the undertaking or establishment and on any anticipatory measures envisaged, especially if there is a threat of unemployment. Information and consultation should take place on decisions likely to lead to substantial changes in work organisation or contractual relations, including those covered by the Community provisions.

On the whole the Directive remains flexible and largely leaves the structural framework and modalities to the member states. However, the opposition of some countries could only be overcome by granting transitional provisions,

which apply if at the date when the Directive goes into effect in the specific member state (March 2005) there is 'no general, permanent and statutory system of information and consultation of employees, nor a general, permanent and statutory system of employee representation at the workplace allowing employees to be represented for that purpose'. In these countries, for the first two years after implementation into national law, the Directive only applies to companies with at least 150 or establishments with at least 100 employees. In the third year this is lowered to 100 and 50. Afterwards the Directive applies as everywhere else. In short, countries without an institutionalised system of employee information and consultation are not exposed to shock therapy but have an opportunity for a smooth transition.

The mere existence of these Directives does not leave any doubt that the promotion of employee involvement in company decision-making has become an essential part of the Community mainstreaming strategy in its social policy agenda. It has definitely gone past the point of no return. This policy is in line with Art. 27 of the Charter of Fundamental Rights of the EU, guaranteeing the workers' rights to information and consultation. This has an important implication: countries with a tradition of exclusively adversarial structures now have to restructure their systems towards a concept of partnership and co-operation.

All these Directives have their weaknesses: they are unnecessarily complicated, not always consistent and very vague in their terminology. The Directive supplementing the Statute of the European Company and the Directive on a National Framework for Information and Consultation have been watered down in the legislative process and the result is the lowest denominator. However, in assessing the importance of these measures for the future of industrial relations in the EU, these deficiencies should not be overstated. The decisive element is that as a whole, these instruments force all the actors involved - trade unions and workers' representatives, employers' associations, employers and employees - to discuss and reflect on the potential of employee information and consultation and in the case of the Directive supplementing the Statute on the European Company, even workers' participation on company boards. It should be noted that the Community approach does not focus on introducing specific institutional patterns but simply stimulates and initiates procedures for promoting the idea of employee involvement in management decision-making.

Labour Law and Industrial Relations in the CEE States.

The Challenge of Transformation

After the fall of communism the CEE states were faced with the job of simultaneously transforming an authoritarian regime into a democracy, a planned economy into a market economy, and a party-dictated system of labour law and industrial relations into one that is compatible with political freedom and a market economy. The present structure of labour law and industrial relations in the CEE states can still largely be interpreted as a reaction to and a legacy of communism. It is an expression of a highly individualistic neo-liberal approach (Stanojevic and Gradev 2003), which is quite problematic. It is incompatible with the philosophy of fundamental social rights in the Charter of Fundamental Rights of the EU.

In the communist period, employment relationships were embedded in large production units or large administrations, distinctions between private law employees and state employees were virtually non-existent, and at least on paper, employees had far-reaching protective standards. Even if party-dominated trade unions played an important role in this overall bureaucratic and highly regulated system, collective labour law in a Western sense was virtually unknown. Although the terminology of collective bargaining was used, the respective mechanism had nothing to do with counterparts in the West. On an individual level, the individual employment contract had almost nothing to do with contractual freedom: here again the terminology was misleading. The mere mention of these characteristic signs of labour law and industrial relations in the communist period demonstrates the dramatic challenge the CEE countries were confronted with after the downfall of communism.

Trade Unions, Employer Associations, Tripartite Arrangements and Collective Bargaining

In the period before the political change in the CEE states, the rule was a monistic system of trade unions that were more or less instruments of the ruling party. There was one important exception: *Solidarnosz* in Poland was created as an autonomous alternative to the existing trade union structure. The monistic pattern of the communist period has since been replaced by excessive pluralism. Trade unions often seem to be more interested in competing with each other than understanding their role as counterpart to the employers. This weakens the labour movement as a whole (Kohl and Platzer 2003). But the situation is even worse, the creation of a private sector in the economy has been accompanied by an extensive erosion of the system of trade union representation. Small and medium-sized companies (SMEs) are the backbone of the new private sector in these countries, and there trade unions are virtually non-existent and play no role at all (Ladó and Vaughan-Whitehead 2003). Since there are no other bodies to represent employee interests in the SMEs, in most cases the result is the total individualisation of relations between employers and employees. As was the case in the old system, trade unions only play a role at larger enterprises, which were or still are state-owned. On the whole the organisation rate of trade unions has declined significantly (Ladó and Vaughan-Whitehead 2003).

The situation of employers' associations is even worse. They are only rudimentary and mainly represent the interests of large enterprises, many of which have not yet been privatised. In principle the employers at SMEs are unaware of any need to organise. If employers' associations are founded at all, it is not as a counterpart to trade unions but with the intention of lobbying for common business interests (Ladó 2002). So on the whole employers' associations have been rather marginal (Ladó and Vaughan-Whitehead 2003: 70).

Tripartite arrangements at the national level are characteristic of most of the CEE states. They involve bodies that discuss restructuring the economy and promoting social justice. There is no doubt that tripartite social dialogue has its merits and has played an important role in restructuring industrial relations in the CEE states, but the problem is that this social dialogue is asymmetrical. The state still dominates the weak trade unions and even weaker employers' associations and these discussion forums largely serve to legitimise state policy (Ladó 2002a: 111). In spite of the structural deficiency, many decisions are made in the tripartite social dialogue, thus preventing to a certain extent the evolution of autonomous bilateral collective bargaining structures. At present there is however no alternative to the tripartite social dialogue, and it is absolutely necessary to create acceptance for all the transformation work that has to be carried out. These arrangements at the national level do not have a supporting structure though at the lower levels.

In view of the weakness of the employers' associations and the non-existence of collective actors in large parts of the economy, it is no surprise that collective bargaining is the exception rather than the rule and that at least in principle, it only takes place at the company or plant level. Multi-employer bargaining mainly occurs at companies that were formerly parts of large state-owned enterprises and are now fragmented (Ladó 2002b). However, there is virtually no bargaining at the higher levels, be they sectoral or national (Ladó and Vaughan-Whitehead 2003: 73). The coverage by collective agreements is very low. They only play a role at larger companies, and most companies in the private sector are not affected by them at all.

Participation in the cross-sectoral as well as the sectoral social dialogues at a European level requires structures in the national context. The same holds true for the strategy of co-ordinated collective bargaining. Here the shortcomings of the CEE states are significant. In particular, social dialogue and collective bargaining at the sectoral level still need to be developed. Without these intermediary structures, there can be no CEE state input to the European social dialogue and these states will be unable to cope adequately with the input provided by the social dialogue. Neither framework agreements in the context of European cross-sectoral social dialogue such as the one on telework, nor similar agreements or guidelines in the context of European sectoral social dialogues will have any relevance to the CEE

states as long as there are no intermediary structures in place. And as long as trade unions and employers' associations do not have an appropriate organisational structure, of course they will not be able to play a role in the open method of co-ordination. Social partners and industrial relations in the CEE states are undeniably at risk of remaining disconnected from the patterns established at the European level (Ladó and Vaughan-Whitehead 2003: 83), in which case the widely praised open method of co-ordination would be totally ineffective. Combating this danger is not only a challenge for the trade unions but even more so for the employers' associations. And it is a challenge to the social partners of the present member states and the present EU to support this development, as was promised at the summit in Laeken when Belgium last had the EU Presidency.

The trade unions have since developed a significant number of networks focused on assistance[6] and close cooperation. The European Trade Union Forum for Cooperation and Integration was founded in 1993, and there is the Baltic Sea Trade Union Network (BASTUN) where trade unions from Poland, Lithuania, Latvia and Estonia closely cooperate with trade unions from Sweden, Norway, Finland and Denmark. Based on the Interregional Collective Bargaining Policy Memorandum - Cooperation Networks of the Trade Unions signed in Vienna in 1999, the metalworkers' trade unions of Germany, Austria, the Czech Republic, Slovakia, Slovenia and Hungary agreed to exchange information and mutual support (Langewiese and Tóth 2001).[7]

Employee Involvement in Management Decision-Making

Due to the experience before the fall of communism, there is still reluctance to accept workers' participation as a feasible pattern in the new market economy (Sewerynski 2002). There is nonetheless ample legislation providing for institutionalised workers' participation (Kohl and Platzer 2003: 15; Ladó 2002b), in most cases without the support of the social partners. In particular there is scepticism and opposition on the part of trade unions. There are mainly three problems. Firstly, this pattern only plays a role at large companies (Stanojevic and Gradev 2003: 45). Secondly, in some cases the institutional arrangements are excessively copies of Western European systems and do not really fit into the country's overall structure. Thirdly, there is no appropriate division of labour between trade unions and these workers' participation bodies. This lack of a consistent and coherent concept of the system of industrial relations as a whole creates rivalry and suspicion and ultimately weakens and delegitimises the position of elected workers' representatives as well as trade unions. However, at most companies in the private sector, there are neither trade unions nor other bodies of workers' representatives. If they do formally exist, in practice they are often under management control and mere 'extensions of managerial structures' (Stanojevic and Gradev 2003: 45).

Employee involvement in management decision-making has not only become one of the core activities in mainstream EC social policy, it has reached a point where member states can no longer escape it. With the recent Directive on a Framework of Information and Consultation, the question is no longer whether member states may have this type of institutional arrangement, it is merely how they shape it. Even in this respect there is less leeway and all the topics in the Directive are to be covered and the requirements for adequate information and consultation are to be met. There is no doubt that the arrangements established so far in the CEE states do not yet live up to these standards. Of course it is up to the CEE states whether they prefer a system exclusively based on trade union representation or a dual system with special elected bodies in addition to the existing trade unions. It is also up to the CEE states whether they establish different structures for enterprises with or without trade unions. So far the Directive does not prescribe anything, since it refers to workers' representatives according to national law and practice. However, the Directive is only adequately implemented if workers' representatives are available at the establishments and undertakings covered by the Directive. This is not only an implementation problem facing the CEE states but quite a few of the old member states of the present EU as well. There will be a unique opportunity to learn from each other by way of an intensive exchange of infor-

mation.

However, the problem for the CEE states is not just a matter of how to shape the pattern of information and consultation but of how to develop a consistent and coherent multi-level system of industrial relations where employee involvement in management decision- making has its proper place. It is crucial to have a clear-cut division between the system of information and consultation in management decision-making and collective bargaining. If there are too many overlaps, the industrial relations machinery will not be able to function properly and be accepted by the trade unions. It is important to develop the respective systems in co-operation with the trade unions, though there are some doubts as to whether they are already in a position to play this role.

Law on the Books and Law in Action

The production of legislation after the political changes in the CEE states has been quite impressive and is still very much underway.[8] This ties in with the legalistic approach still commonly found in the CEE states, where a problem is regarded as having been solved if a law or regulation has been passed to deal with it. There is still a considerable gap between the normative level and day-to-day practice (Ladó and Vaughan-Whitehead 2003: 80). There are many reasons why the implementation side is so unsatisfactory, ranging from a resentment of intervention based on labour legislation to a lack of control and inefficiency on the part of the existing judicial system or other conflict-resolving bodies. In view of their weakness, neither the trade unions nor the other workers' representation bodies are in a position to really monitor the implementation of statutory law.

In addition, in practice labour law plays no role whatsoever at the numerous companies in the private sector of the CEE states. It has been made too easy for companies to sign contracts on the basis of general civil law and thus avoid the statutory labour and social provisions aimed at giving employees a certain degree of protection (Kollonay-Lehoczky, forthcoming). This leads to a constant delegitimisation of labour and social security legislation and as a result to a mentality that praises the free play of market forces in the absence of labour law and social security law as well as the absence of collective structures as an ideal precondition for prosperity.

To meet the Copenhagen criteria for accession, the CEE states and the other candidates were required to transpose EC legislation (the *acquis communautaire*) into their own legal systems. In view of the vast EC legislation, this difficult job had to be done in a relatively short time. In general the candidates including the CEE states had no problem meeting this precondition for accession. With the help of external experts (screening), they managed admirably to transpose EU law into their own legal structure (Clauwaert and Düvel 2000). However, the gap between law on the books and law in action plays a role in this context. The focus remains on the normative level. As long as there are no institutions and actors to guarantee a satisfactory implementation in actual practice and the necessary implementation resources are lacking, it would be illusionary to assume that the mere transposition of EU law can have an effective impact on the reality of the CEE states (Ladó and Vaughan-Whitehead 2003: 80). There is still the undeniable risk that it may prove to be mere window dressing.

Quite a few of the Directives, such as those on working hours or health and safety, two areas where the CEE states are still lagging far behind the present EU average (Ladó and Vaughan-Whitehead 2003: 80), need the involvement of social partners and/or workers' representatives to be adequately implemented. This is not feasible without the necessary actors and instruments (Ladó and Vaughan-Whitehead 2003).

Conclusion

The CEE states are still at the transformation stage as regards labour law and industrial relations. Systems of employee involvement in management decision-making are the exception rather than the rule, and if they do exist they are weak. There is not yet a consistent multi-level system of industrial relations. Collective bargaining is still rudimentary and mainly takes place at the company level. Intermediary levels of collective bargaining and social dialogue are virtually non-existent. The

private sector is still largely lacking any collective representation whatsoever.

In this situation, accession to the EU means a particular challenge for both sides, for the EU in its efforts to built up an integrated system of industrial relations and for the CEE states in their aspiration to not be disconnected from this EU pattern. EU enlargement could play the role of catalyst in this process. It may well accelerate and to a certain extent shape the dynamics of transformation. This of course will impact the future structure of the EU arrangements. There is reciprocity and not a one-way perspective. The optimistic view would thus entail a learning process that benefits the EU as well as the CEE states. This, however, is a long-term and not a short-term project.

Notes

1 (1975) Official Journal (OJ) L 48.
2 (1977) OJ L 61.
3 (1989) OJ L 183/1.
4 (1994) OJ L 254/64.
5 (2001) OJ L 294/22.
6 (2002) OJ L 80/29.
7 For these and quite a few other examples see R. Langewiesche & A. Tóth, Introduction: Making unification work, in: R. Langewiesche & A. Tóth, *The Unity of Europe – Political, Economic and Social Dimensions of EU Enlargement*, Brussels 2001, 7 (65-68).
8 See the discussion paper by A. Bronstein, *Labour Law Reform in EU Candidate Countries: achievements and challenges*, on-line http://www.ilo.org/public/English/dialogue/ifpdial/download/papers/candidate.pdf.

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