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Summary

An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions, among them the information, consultation, and negotiation between the European trade unions, the European employers and the Commission are often underlined. Because of the lack of space, we will analyse here the main outcome of the social dialogue: the agreed joint texts. We will analyse the social dialogue dynamic as a process *per se* and not benchmark it with industrial relations at national level. By doing so, we can underline the originality of these processes. We will present in an integrated framework both the cross-industry and sectoral social dialogues. Their stories run mostly in parallel but recently the interaction has increased as they have worked on the same topics (telework for example) and as the Commission is trying to combine them. Finally, they have more or less reached the same point (soft law as the main regulatory instrument) and are confronted by the same set of problems (implementation, enlargement, representativeness). As the sectoral social dialogue is much less well-known than the cross-industry one, we will concentrate our attention on developments at sectoral level

This chapter is structured as follows: the first part presents a brief history of the European social dialogue, the second part defines broad categories to classify the joint texts adopted by the EU social partners, the third part presents a quantitative analysis of the texts adopted in the last ten years at sectoral level. Section 4 briefly illustrates the nature of the exchange and presents a typology. Then we draw some conclusions.

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I. Introduction¹

An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions, among them the information, consultation, and negotiation between the European trade unions, the European employers and the Commission are often underlined (Transfer, 2006). Because of the lack of space, we will not address the autonomous initiatives of the trade unions, namely their attempts to develop wage coordination at EU level (Schulten, 2004), or collective action (Hilal, 2005 on the railway sector for example). We will analyse here the main outcome of the social dialogue: the agreed joint texts. Clearly the main topics at EU level are different than those at national level (for example wages or working time are not addressed) (Keller, 2005; Marginson and Sisson, 2004). We will analyse the social dialogue dynamic as a process *per se* and not benchmark it with industrial relations at national level. By doing so we can underline the originality of these processes. In our collective book (Dufresne *et al.*, 2006) we draw a clear distinction between social dialogue and national collective bargaining. We would define the former as “a set of functions (joint action, consultation by the Commission and negotiation between the partners) and “institutional frameworks”, both cross-industry and sectoral, which provide the players with strategic resources in terms of power, influence and finance. These institutions make it possible for the “European social partners” to be involved in European decision-making and, perhaps, to negotiate agreements whose content is binding to a greater or lesser extent” (Dufresne and Pochet, 2006: 21).

We will present in an integrated framework both the cross-industry and sectoral social dialogues. Their stories run mostly in parallel but recently the interaction has increased as they have worked on the same topics (telework for example) and as the Commission (see CEC, 2004) is trying to combine them. Finally, they have more or less reached the same point (soft law as the main regulatory instrument) and are confronted by the same set of problems (implementation, enlargement, representativeness...). As the sectoral social dialogue is much less well-known than the cross-industry one, we will concentrate our attention on developments at sectoral level (see also De Benedictis *et al.*, 2003, de Boer *et al.*, 2005).

This chapter is structured as follows: the first part presents a brief history of the European social dialogue, the second part defines broad categories to classify the joint texts adopted by the EU social partners, the third present a quantitative analysis of the texts adopted in the last ten years at sectoral level. Section 4 briefly illustrates the nature of the exchange and presents a typology. Then we draw some conclusions.

II. A brief history of European social dialogue

Originally the bodies responsible for the consultation of the European social partners were joint committees, established by the European Commission. A first wave of six joint committees was formed in the sectors covered by the “integrated” common policies: mines (1952), agriculture (1963/1974), road transport (1965), inland waterways (1980), fishing (1974) and railways (1972). Their members were appointed by the Commission, with an equal number of employers and employees.

Informal working parties, set up at the request of the social partners, began to appear during the 1980s. They provided for a more pragmatic and flexible form of social dialogue, as well

¹ The paper is part of a research on new modes of governance (NEWGOV) coordinated by the European Institute Florence funded under the 6th EU framework research program.

as being more informal. They were created in a number of sectors with the Commission's backing: Horeca (1983), commerce (1985), insurance (1987), banking (1990), etc.

A second wave of joint committees took shape in the late 1980s and early 1990s in the following sectors: sea transport (1987), civil aviation (1990), telecommunications (1990) and postal services (1994).

In 1985, the Single Act introduced a provision recognising the social partners and allowing them to develop a dialogue. With the support of the President of the Commission, Jacques Delors, cross-industry social dialogue between ETUC, UNICE (now Business Europe) and CEEP began.

The idea behind the creation of the social dialogue was to enable the European social partners to meet around a table and make commitments among themselves, autonomously, in much the same way as they do in social dialogue within Member States (CEC, 1996). From 1985 to 1990 the dialogue between them resulted in the adoption of a dozen "joint opinions" on a range of topics: vocational training, new technology, mobility², etc. The importance of the years 1985 to 1989 lies not so much in the content of the joint opinions adopted and their limited scope (Didry and Mias, 2005: 201) as in the establishment of procedures for regular dialogue (Turner, 1995). The 1991 Social Protocol laid down a legal framework which opened up new scope for dialogue at cross-industry level as well as in the various sectors. The entry into force of the Maastricht Treaty (and its Social Protocol) resulted in an obligation on the Commission to consult the social partners prior to the adoption of a legislative proposal, and the possibility for them to sign collective agreements which may either be extended *erga omnes* by means of a Council directive or else be implemented by the social partners themselves at national level. Joint opinions nevertheless continued to be issued until 1996.

The cross-industry social partners agreed on three collective agreements transformed into directives by the Council (parental leave (1995), part-time work (1997), fixed-term contracts (1999). They failed to agree on others, such as works councils or information/consultation at national level. The failure in 2001 of the negotiations on temporary agency work, which should have been the last text on atypical employment (after the fixed-term and part-time agreements) marks the end of the "negotiated legislation" period. At the end of the 1990s, the trade unions reassessed the role and support of the Commission. In their view, the Commission was no longer pro-active in its support of the social dialogue by proposing new legislation and creating a threat obliging the employers to enter into negotiations. They were willing to explore new avenues.

Concerning the sectoral level, the need to adapt the working time directive in the sectors not covered was an incentive to negotiate. Following its framework decision of 20 May 1998 (CEC, 1998a) the Commission decided on 1 January 1999 to rationalise the system by replacing the joint committees and the informal working groups by a unique new structure: sectoral social dialogue committees (European Commission, 1998). They are formed by joint request of the social partners and approved by the Commission. They comprise a maximum of 40 representatives (with an equal number from both sides of industry) and are chaired either by one

² In particular on social dialogue and new technology (12 November 1985), the growth and employment cooperation strategy (6 November 1986), training and motivation, information and consultation (6 March 1987), the 1987-1988 annual economic report (26 November 1987), the European area of occupational and geographical mobility (13 February 1990), basic education and initial training and adult vocational training (19 June 1990), the transition from school to adult working life (6 November 1990), and new technology and work organisation and labour market adaptability (10 January 1991).

of the social partner representatives or, at their request, by the Commission representative who in any event acts as the committee secretary. Each committee is expected to adopt its own rules of procedure and work programme (often annual). It holds at least one plenary meeting per year and handles more specific matters at enlarged secretariat meetings or in restricted working groups. The negotiating mandate is determined by national organisations: the Commission has not laid down any rules as to the means of approving joint texts.

The last period is the consolidation of the system by the extension of the number of sectoral social dialogue committees (SSDCs). It has grown since the reform from 20 in 1998 to 33 in 2006. Ten joint committees and 16 informal working groups were transformed into SSDCs, while nine sectors established committees directly: live performance (1999), temporary workers (1999), furniture (2001), shipbuilding (2003), audiovisual (2004), chemical industry (2004), local and regional government (2004), hospitals and finally steel (2006). The last new sectors are the leading sectors at national level (steel, chemical, local public services). The last two important sectors missing at EU level are public administration and engineering (which is creating sub-sector committee steel, shipbuilding, garage...).

Ten years after Maastricht, the cross-industry social partners were keen to assert their autonomy vis-à-vis the European institutions, especially the Commission. This shared concern was not based on the same premise in the case of employers' and employees' organisations. For the trade unions, it derived from a reassessment of the Commission's role. The Commission appeared increasingly reluctant to fulfil its role of drafting legislative initiatives in the social policy field. Hence it echoed the trade unions' demands to a much lesser extent than in the past. For the employers, on the other hand, it was a means of shaking off once and for all the pressure exerted by the Commission (Arcq *et al.*, 2003; Branch and Greenwood, 2001). Legally binding framework agreements gradually gave way to so-called "voluntary/autonomous" agreements, where matters such as status and follow-up remain quite nebulous – as in the case of those on telework (2002) and stress (2004) (Branch, 2005) and violence at work (2007). This development was accompanied by the gradual introduction of the open method of coordination, inaugurated at Lisbon, into the social dialogue itself. In 2002 the social partners adopted a three-year work programme (2003-2005) which confirmed the absence of legally binding proposals by promoting "frameworks for action". We would mention among others the frameworks for action on lifelong learning and on gender equality. In 2005 the social partners – a weak ETUC and a still non-committal UNICE – negotiated a second programme of action (2006-2008). One autonomous agreement is foreseen (the topic has still to be decided between lifelong learning and disadvantaged groups). They will evaluate the results of the autonomous agreements.

Concerning the actors, there is a process of concentration on the trade union side. The 33 sectoral committees are covered by the eleven European trade union industry federations (EIFs) (UNI-Europa is present in eleven and Transport (ETF) in six). On the employer side, by contrast, representation is somewhat fragmentary. This is particularly true for civil aviation but also for the mining, banking and audiovisual sectors. At cross-industry level the solution was to integrate minor partners into the delegations: UEAPME with UNICE and Eurocadres with the ETUC. CEEP, which represented public enterprises, is now trying to reinvent itself by representing local public services. All the actors are confronted by the challenge of enlargement which implies organisational (more members, more languages), structural (more fragmentation, less membership) and political questions (global representativeness)

III. Texts adopted: a classification³

When trying to make sense of the huge amount of texts (more than 400 adopted by the sectoral social dialogue committees), we are confronted the problem of the real meaning of these texts. The official titles of the joint documents vary considerably: common opinions, declarations, resolutions, proposals, guidelines, recommendations, codes of conduct, social labels, etc. It is thus not possible to create meaningful categories on the basis of the official designations. In the study carried out for the Commission (OSE, 2004) we distinguished between two broad categories. First, what we call the ‘reciprocal commitment’ between the social partners which corresponds to an internal commitment and secondly the ‘common position’, which covers documents intended for influencing the public authorities, first and foremost the European Commission.

With regard to ‘reciprocal commitments’, we distinguished five levels of commitment: ‘tools’, ‘declarations’, ‘recommendations’, ‘agreements’ and ‘internal rules’. Let us spell out the differences:

a) Agreements

This category corresponds to agreements initiated between the European social partners (pursuant to Article 139 EU Treaty), intended for national organisations and with a follow-up procedure determining precise mechanisms and deadlines for implementation. Agreements may or may not be converted into directives.

b) Recommendations

This category comprises texts with relatively clear provisions addressed mainly to national organisations and for which a follow-up and evaluation procedure is laid down at national and European level. There is deemed to be follow-up if the text sets out (reasonably precise) procedures for national implementation and for a European-level evaluation of this follow-up at a given point in time. This is therefore a procedural definition. Follow-up as such should not be confused with implementation, which relates to substantive aspects.

c) Declarations

This category corresponds to ‘declarations of intent’ drawn up by the European social partners, intended for national organisations or for themselves, and where no explicit follow-up procedures are set out in the text or where the procedure is vague.

d) Tools (for training and action)

This category comprises various sub-categories: studies (only studies carried out jointly by the social partners and not by European and/or national consultants); handbooks; glossaries or databases.

³ At the Observatoire social européen we have created a database including all the joint documents signed by the social partners at European level covering the 33 official sectoral committees and the cross-industry social dialogue. This article will present the results of a quantitative analysis covering all 412 agreements adopted since 1978 (for an analysis covering the whole period see Pochet, 2006). This analysis is based on the reading and classification of all “joint texts” signed since 1978 at sectoral level.

e) Internal rules

Internal rules are recognition agreements between the social partners.

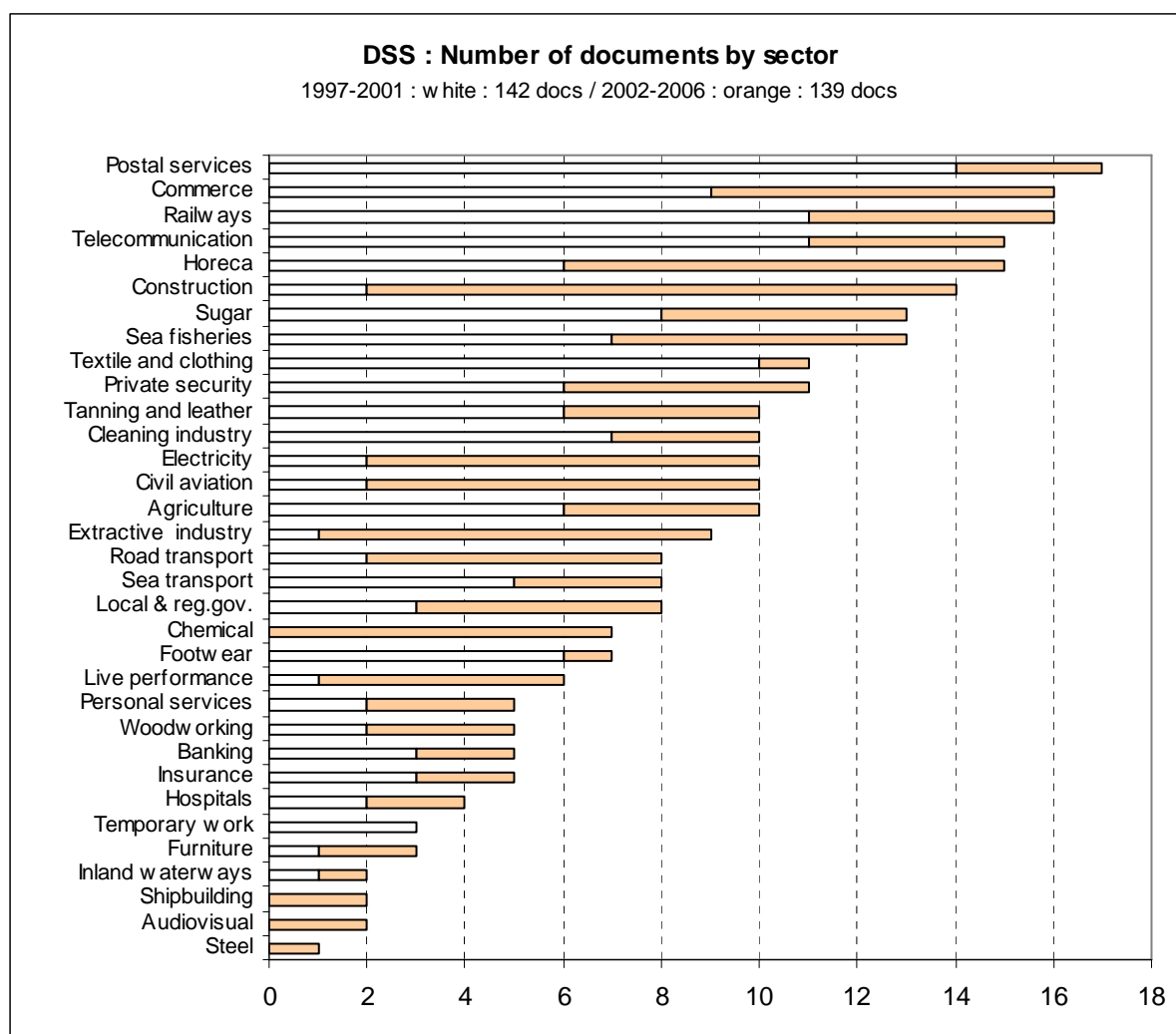
f) Common positions

This category corresponds to texts addressed to the European institutions. These texts may be produced under very different circumstances.

IV. A quantitative analysis

The advantage of a quantitative analysis is that we are able to cover all sectors and present the main global trends. The key question is the possible evolution from a dialogue centred on influencing European policies (mainly addressed to the European Commission) toward a more bilateral internal social dialogue. The second question bears on the binding nature of the instruments. We will present a set of graphs covering the number of documents signed per sector and per year; the number of agreements and recommendations per year, the nature of the documents, the topics covered and to whom they are addressed. We have broken down the 10 year period into two five year periods to be able to compare recent trends. We first present the results by sector.

Figure 1: Number of documents per sector 1978-2004 (353 docs)

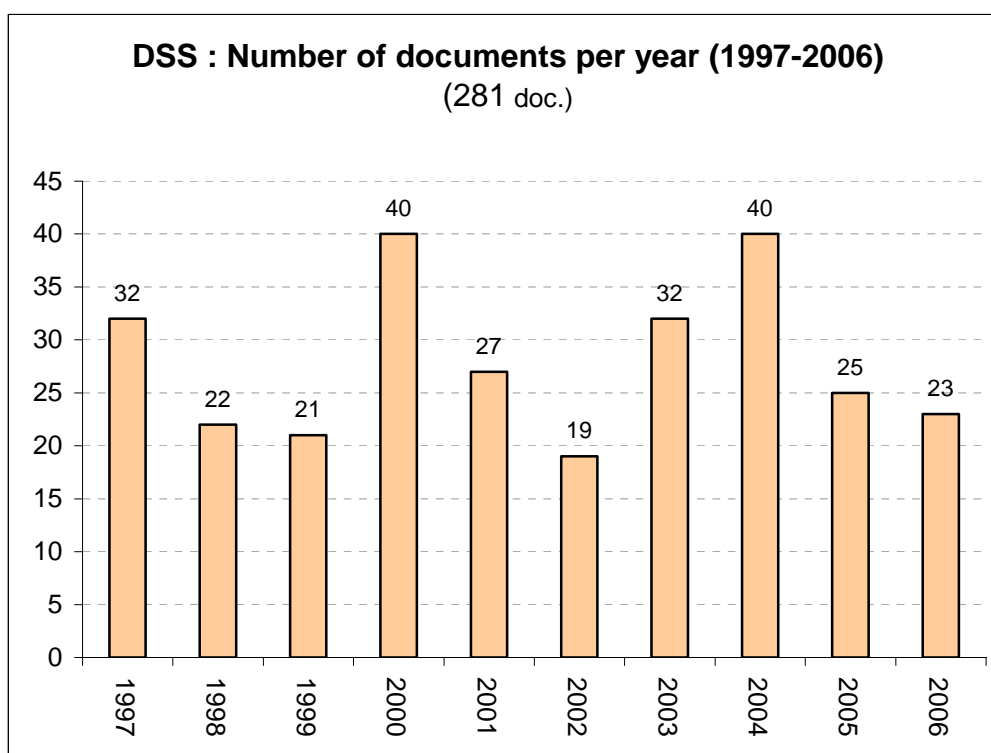


Source: Observatoire social européen own data base

What is striking is that the productivity (number of texts adopted) by sector is very different (note that the date of creation of the committees could be different too)⁴. This productivity is also changing, for example most of the joint texts in the postal sector were adopted in the first five years; the opposite is the case for the construction sector. *Per se* this indicator says nothing about the quality of the texts adopted. We will return to that below when analysing the agreements and the recommendations.

We now turn our attention to the total number of documents adopted per year.

Figure 2: Total number of documents per year, all sectors



Source: Observatoire social européen own data base.

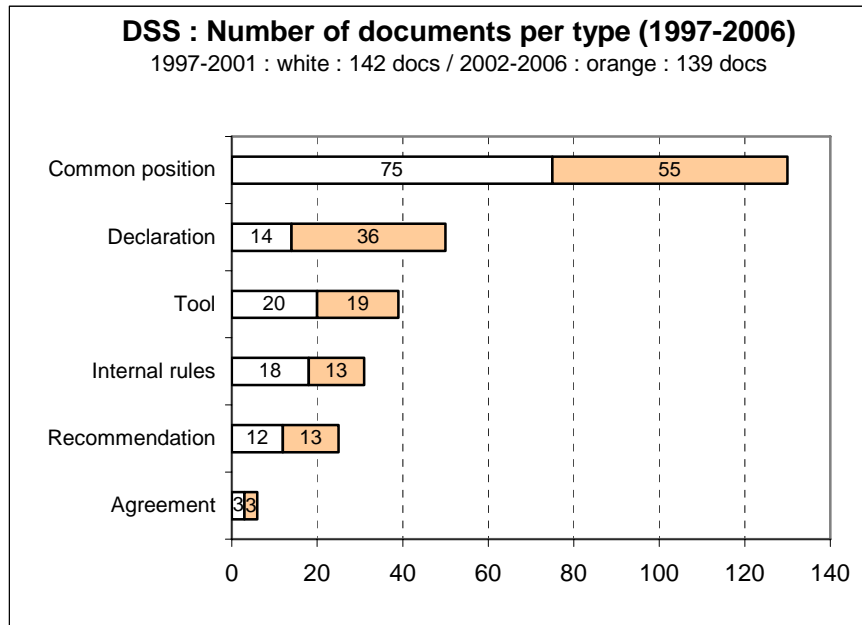
Concerning the number of documents adopted per year, there is not a clear trend. The maximum is reached in 2000 and 2004. It appears that the creation of the sectoral committees in 1999 did not modify the number of joint documents adopted which had already increased in 1997 and 96 not in the graph. The total in 2005 and 2006 is particularly low taking into account that the number of committees has increased since the beginning of the period analysed (less than one text per sector). The 2004 communication of the Commission trying to improve the quality of the sectoral social dialogue had no impact (or apparently a negative impact) on the quantity.

If in quantitative terms we cannot notice any influence of the EU communication, what about the quality? Do we notice a change in the nature of the documents adopted?

⁴ When a committee is officially created as a SSDC we take into account the joint texts adopted before the official date of creation.

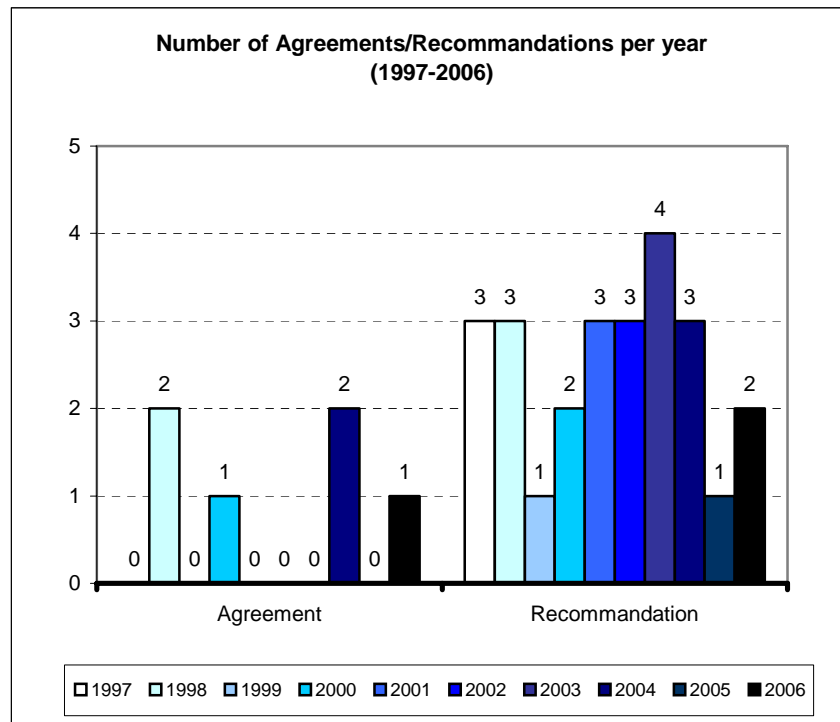
The first graph shows the type of text adopted and the second the distribution per year of agreements and recommendations, which are the more binding texts (we do not discuss here other categories which can also sometimes have an important impact, see Dufresne *et al.*, 2006).

Figure 3: Number of documents by type 1997-2006



Source: Observatoire social européen own data base.

Figure 4: Number of Agreements/Recommendations per year (1997-2006)



Source: Observatoire social européen own data base.

When comparing the two sub-periods of 5 years each, a first remark is that there is a rather stable number of texts adopted during both periods (142 against 139).

Clearly too there is no visible trend toward the adoption of more binding texts. 3 agreements were adopted in the first 5 year period and 3 in the second one. The main innovation was the silica agreement signed by one sector (mine sector) and a few employers and trade unions (not the same organisations). There is no evidence of a gathering momentum from “tools” towards “agreements”. It is worth mentioning that five of the six agreements were signed in the transport sector (for the list of agreements and recommendations see Annex 1).

As for the recommendations, 12 were signed during the first period and 13 during the second (a majority of recommendations are codes of conduct, CSR agreements and the like). If we consider the yearly distribution, the situation seems to be worse with a reduction in the number of recommendations over the last two years (table 3).

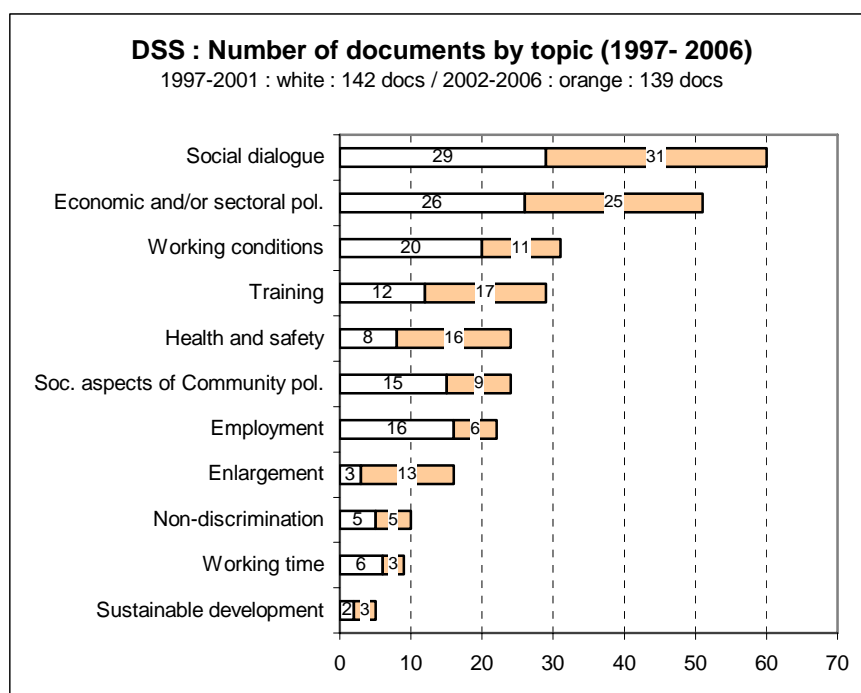
The main change is between the “common positions” with a clear decrease the last five years and the “declaration” with an even clearer increase.

The communication of the Commission in 2004 speculated on the possibility of a qualitative change (a new generation of texts), meaning by that that more binding texts were being signed and hoping that this trend would continue. Clearly, the results of last two years do not confirm this hypothesis either in quantity or in quality.

Concerning the topics covered, social dialogue itself is the most important topic in quantitative terms (it is quite natural as the actors are struggling to establish the rules of the game (internal rules) at EU level and trying to promote social dialogue at all levels (codes of conduct, enlargement...)).

The second topic concerns economic and sectoral policies which are the common positions addressed mainly to the Commission. Working conditions and employment are less important in the second period. Enlargement and training are more important in the second period.

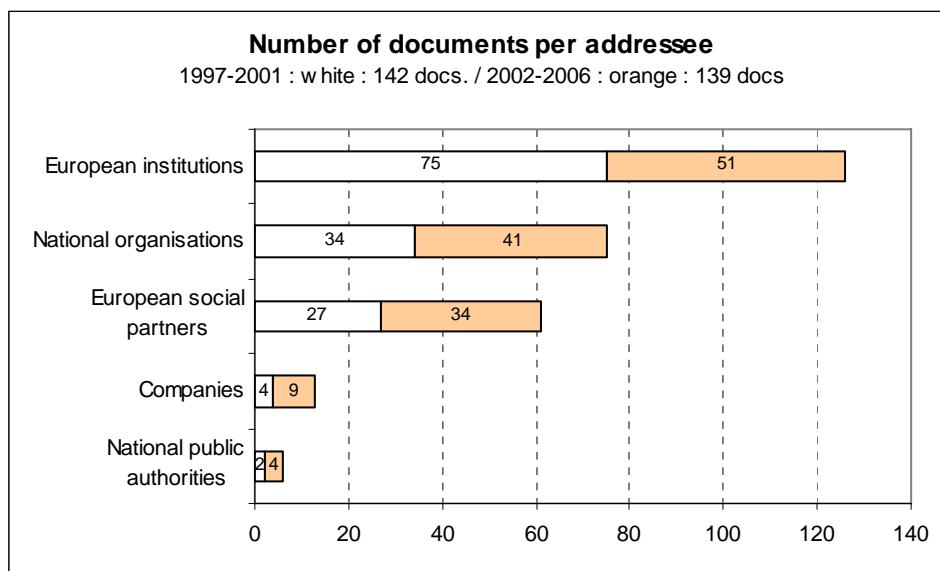
Figure 5: Number of documents by topic (1997-2006)



Source: Observatoire social européen own data base.

Concerning the addressees, the main difference between the two periods is a clear decrease in the category of documents addressed to the European institutions.

Figure 6: Number of documents per addressee (1997-2006)



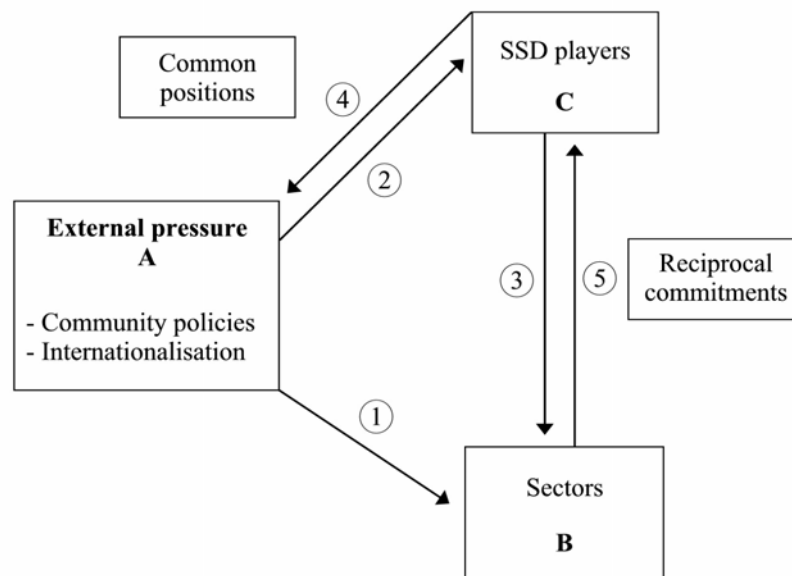
Source: Observatoire social européen own data base.

To sum up this section, we cannot find a clear tendency toward a more internal social dialogue. Influencing EU policies seems to remain an important part of the formal activities, but its importance is decreasing. The innovation has been the development of autonomous agreements (3 in the last three years). Nevertheless when compared with the nearly 35 sectors, this result remains unimpressive. As for recommendations, we notice no progress either in the number adopted, or in the process of verification of their implementation. In order to better understand future developments we have to explain the underlying dynamic.

V. Nature of the exchange

In the previous section, we have mainly concentrated our analysis on the output (joint texts). Could we link these results with particular groups of sectors? In previous work (Dufresne *et al.*, 2006), we have tried to establish a typology of six groups of sectors, each of which produces a particular type of document (Pochet *et al.*, 2006).

In our analytical framework the external pressures from EU policies or global pressures were the key factor. A second factor is the tradition of the sector at national level which influences the construction of the EU actors. There is also an interaction between the nature of the external pressure and the organisation of the sector at national level. In our approach, although there are structural determinants, actors nevertheless play an important role. They have to invent some European “substance”, in other words why the EU level matters. The diagram below summarise the interactions.

Figure 1: Analytical Framework

Based on this global framework and the analysis of the documents signed, we distinguish six groups of sectors.

The players in sectors which are in decline and heavily exposed to international competition handle the industrial and employment crisis by producing “codes of conduct”.

Those in sectors covered by integrated Community policies (Agriculture, Railways, Sea transport, Road transport, Civil aviation ...) attempt to build a European tier of industrial relations, in some cases even managing to sign agreements (in the narrow sense of the term).

The players in sectors forced to interconnect with one another (Telecommunications, Electricity, Postal services...), where there is a tradition of partnership, manage deregulation/privatisation by opening up space for negotiation and producing mostly recommendations.

Traditional sectors (banking, insurance) confine themselves to a more “conservative” social dialogue while searching for some truly European “substance”.

Finally, those sectors seeking to enhance their image (Private security, Cleaning industry, Personal services, Live performance, Temporary work...) construct such European “substance” with varying degrees of success, in certain instances by creating a sort of European quality label, trying to devise codes of conduct not based on ILO standards (ethical, for example).

The commerce sector (and to a lesser extent local government) is a separate case, experimenting with a variety of social dialogue instruments in a bid to better highlight its specific characteristics.

Table 1: Correspondence between social dialogue categories and types of joint document adopted

	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
External environment: degree of integration with Community policies	Very strong	Average + considerable EU legislative activity	Average + little EU legislative activity	Weak	Weak	Specificity of services versus industry
Exposure to international competition	Controlled	Weak	Weak	Strong	Weak	Benefits from international competition (lower prices) or is not sensitive to it
Sectors concerned	Agriculture Fishing Railways Sea transport Civil aviation Road transport Inland waterways Mines	Telecommunications Electricity Postal services Construction	Banking Insurance ----- Chemicals	Textiles/clothing Tanning Footwear Sugar Woodworking Furniture Shipbuilding	Private security Cleaning industry Personal services Live performance Temporary work Audiovisual ----- Horeca	Commerce Local and regional government

The various dynamics illustrated by the typology also indicate that only for the first group do we expect autonomous agreements. For the others, the outcome should be at best recommendations. But new external pressures (globalisation, new technology, EU sectoral directives) could change the situation.

VI. Conclusion

The purpose assigned to social dialogue depends partly on our vision of Europe. According to a classic federalist vision, its purpose is to take up or coordinate the key elements of national trade union objectives and develop a multilevel industrial relations system (Falkner, 1998). According to a more experimental-type vision, European social dialogue is aimed more at innovating, in respect of both themes and instruments (Pochet, 2003). For the time being, the European sectoral and cross-industry social dialogues are manifestly following the latter approach which is not the first choice of the trade unions: they would prefer to have more classic, binding instruments, and would like the effects not to be confined just to a few representatives meeting in Brussels.

Our general conclusion is that the cross-industry and the sectoral social dialogues – albeit in largely different ways – are converging towards the production of texts which are not legally

binding but are increasingly coming to resemble codes of conduct or optional guidelines: what we have called recommendations (very similar to soft law). Thus implementation is the task of decentralised stakeholders, perhaps with moral pressure exerted on those who fail in their duty.

Another aspect is the increasing number of sectoral committees (a few new ones should be agreed in 2007). This indicates at least a “conservative” interest of sectoral employers’ associations in entering the game (by conservative we mean controlling future development) which could perhaps change into a more proactive attitude. In our framework (section 4) we point out that external pressure (increasing competition from India and China, the new technological revolution - telecoms, commerce) could perhaps lead to new approaches. Nevertheless, the main challenge to be addressed will be on the one hand enlargement and thus the global representativeness of the actors at national and EU level, and on the other hand the implementation and monitoring of agreements.

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VIII. Annexes

VIII.1. Agreements

Sector	Date	Agreement	Directive
Mining and others	2006	Agreement on Workers Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it	
Sea transport	1998	Agreement on the organisation of working time	Council Directive 1999/63/EC of 21 June 1999
Civil aviation	2000	Agreement on the organisation of working time of mobile staff	Council Directive 2000/79/EC of 27 November 2000
Railways	1998	Agreement on some aspects of the organisation of working time	
	2004	Agreement on the European licence for drivers carrying out a cross-border interoperability service	
	2004	Agreement on certain aspects of the working conditions of mobile railway workers	Council Directive 2005/47/EC of 18 July 2005

VIII.2. Recommendations

Sector	Date	Recommendation
Agriculture	1997	Recommendation framework agreement on the improvement of paid employment
	2002	Agreement on vocational training
	2005	European agreement on the reduction of worker's exposure to the risk of work-related musculo-skeletal disorders
Commerce	1999	Agreement on Fundamental Rights and Principles at Work
	2001	Guidelines on Telework
	2003	Joint statement on Corporate social responsibility
	2006	Social partners sign letter of intent - BeQuaWe European Certified Training
Electricity	2002	Joint declaration on telework
	2003	Joint declaration on equal opportunities / diversity
Footwear	1997	Charter of children rights
	2000	Code of conduct
Hairdressers	2001	Code of conduct
Horeca	2004	An initiative for improving corporate social responsibility
local and regional government	1998	Joint declaration on equal opportunities
	2004	Joint statement on telework
Mining	2004	Joint declaration on general questions of health and safety
Postal	1998	Agreement -Promoting employment
Private security	2003	Code of conduct and ethics
Road Transport	2006	Joint recommendations on employment and training in logistics
Sugar	1998	Apprenticeship. Joint recommendation
	2003	Corporate social responsibility : Code of conduct
Tanning and leather	2000	Code of conduct
Telecom	2001	Guidelines for telework
Textile	1997	A charter. Code of conduct
Woodworking	2002	Code of conduct