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## **NEWGOV**

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## Summary

Traditionally, the European social dialogue has been studied by experts in its interprofessional dimension. Yet, the sectoral social dialogue has attracted less attention until now. That limit of the contemporary literature seems even more evident if we compare last trends in both fields. Interprofessional dialogue has developed in three phases a) the emergence from Single Act to Maastricht b) the consolidation from Maastricht to 2000 c) the uncertain time from the autonomous joint programme to today. Recently it has entered into a crisis as the last legally binding agreement was signed in 1999. In the new century, the interprofessionnal social partners have only signed soft law agreements (e.g. telework, stress, long life learning). As to the sectoral dialogue, then, recent studies stressed that the type of documents adopted has underwent a qualitative change. In other words, it appeared that significant developments were underway both at interprofessional and sectoral level which needed to be better understood, analysed and assessed.

To improve the knowledge of all these elements, the Observatoire social européen has created a database including all the joint documents signed by the social partners at European level covering the 31 official sectoral committees and the interprofessional social dialogue. From this quantitative analysis we can detect certain overall trends on the emergence and evolution of the sectoral social dialogue and compare its dynamics with those of the interprofessionnal dialogue.

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## O. Introduction

Traditionally, the European social dialogue has been studied by experts in its interprofessional dimension. Yet, the sectoral social dialogue has attracted less attention until now. That limit of the contemporary literature seems even more evident if we compare last trends in both fields. Interprofessional dialogue has developed in three phases a) the emergence from Single Act to Maastricht b) the consolidation from Maastricht to 2000 c) the uncertain time from the autonomous joint programme to today. Recently it has entered into a crisis as the last legally binding agreement was signed in 1999. In the new century, the interprofessional social partners have only signed soft law agreements (e.g. telework, stress, long life learning). As to the sectoral dialogue, then, recent studies stressed that the type of documents adopted has underwent a qualitative change. In other words, it appeared that significant developments were underway both at interprofessional and sectoral level which needed to be better understood, analysed and assessed.

To improve the knowledge of all these elements, the Observatoire social européen has created a database including all the joint documents signed by the social partners at European level covering the 31 official sectoral committees and the interprofessional social dialogue. From this quantitative analysis we can detect certain overall trends on the emergence and evolution of the sectoral social dialogue and compare its dynamics with those of the interprofessional dialogue.<sup>1</sup>

## I. Texts adopted: a clarification

The official titles of the joint documents vary considerably: common opinions, declarations, resolutions, proposals, guidelines, recommendations, codes of conduct, social labels, etc. It is not possible to create any meaningful category on the basis of such official designations. We shall refer to them generically as ‘joint texts’ or ‘joint documents’.

We distinguish between ‘mutual undertakings’ between the social partners, and ‘common positions’, i.e. documents intended for the public authorities (first and foremost the Commission but it could be the Council or the national governments as well). With regard to ‘mutual undertakings’, we distinguish between ‘tools’, ‘declarations’, ‘recommendations’ and ‘agreements’.<sup>2</sup> Each is addressed to the social partners but the degree of constraint is different. The last category is ‘internal rules’, laying down the rules of the game.

These categories allow us to test the hypothesis that the social dialogue is increasingly taking place between the social partners, and the alternative that it is mainly addressed to public authorities. We can also test whether we notice a trend from non-binding to more binding documents or whether the story is more complex. Having all the joint texts from the beginning of the social dialogue process, this gives us the temporal dimension that is necessary to analyse the emergence and evolution of the European social dialogue.

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<sup>1</sup> All the technicalities, details and references can be found in the full NEWGOV paper.

<sup>2</sup> a) Agreements: are initiated between the European social partners (pursuant to Article 139), 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 texts signed by the European social partners intended for national organisations and for which a follow-up and evaluation procedure is laid down at national and EU level.  
c) Declarations: drawn up by the European social partners, intended for national organisations or for themselves, without explicit follow-up procedures or where the procedure is vague.  
d) Tools: comprises studies (only studies carried out jointly by the social partners and not by European and/or national consultants); handbooks; glossaries or databases.

## II. The main institutional developments at sectoral and interprofessional level

Joint committees, established by the European Commission were first created for the consultation of the European social partners. 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). Later, informal working groups HORECA (1983), commerce (1985), insurance (1987), banking (1990), etc, began to appear during the 1980s. They provided for a more pragmatic and flexible form of social dialogue. A second wave of joint committees took shape in the late 1980s and early 1990s: 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 hold a dialogue. With the support of the President of the Commission Jacques Delors the interprofessional social dialogue between ETUC, UNICE and CEEP began. The 1991 Social Protocol laid down a legal framework which opened up new scope for dialogue at interprofessional 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.

The interprofessional social partners agreed on three collective agreements transformed into directives by the Council (parental leave, part-time work, fixed term contract). They failed to agree on others such as works councils or information/consultation at national level. The turning point was the failure in 2001 of the negotiation on temporary agency work which should have been the last text on atypical work (after the fixed-term and part-time agreements).

At the sectoral level, following its framework decision of 20 May 1998 (European Commission 1998), the Commission decided to harmonise the system, replacing the two former types of body with sectoral social dialogue committees (SSDCs), ‘*intended to promote dialogue between the social partners at European level*’. Thus the sectoral social dialogue was put on an institutional footing as an extension of the interprofessional social dialogue initiated at Val Duchesse in 1985.

The number of sectoral social dialogue committees (SSDCs) has grown since the reform: the sectors organised into committees increased from 20 in 1998 to 31 in 2005. By contrast, certain sectors with a tradition of national collective bargaining are not represented, for example metalworking and public services.

At interprofessional level, the turning point was represented by the social partners’ autonomous work programme (2002-2005) that seeks to increase the degree of autonomy from the Commission. Even though there have been numerous measures, the number of joint documents negotiated with potential binding effects is limited. A new program (2006-2010) has been adopted by ETUC, UNICE and CEEP.

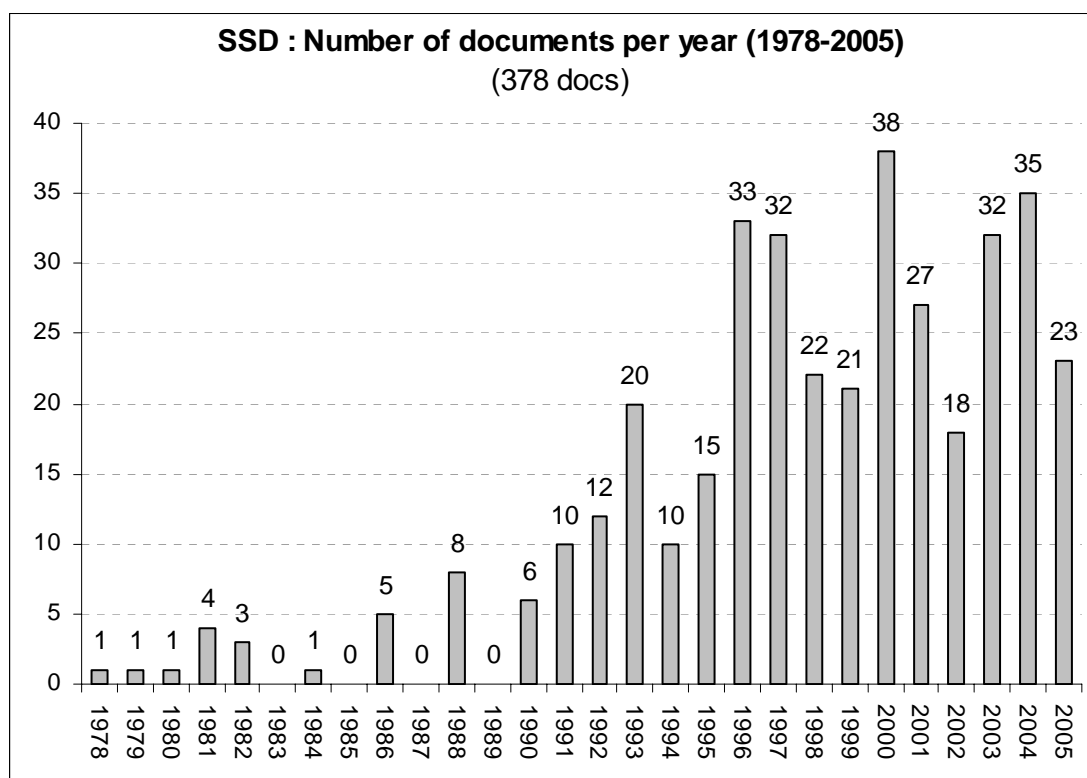
### III. Qualitative analysis of sectoral social dialogue

Our analysis is based on two periods. The first period covers all documents since the very outset; the second period runs from 1998 onwards, the date when it was decided to establish the new social dialogue committees.

#### Number of documents

The social dialogue resulted in 378 joint texts. The yearly distribution reveals a significant increase in their numbers. Yet the increase is not continuous and there are sharp fluctuations from one year to another (see 2002 and 2003).

**Figure 1: Total number of documents per year, all sectors**



More documents were signed after 1998 than between 1978 and 1997. Finally, the number of documents began to rise in 1996, or two years before the formation of the new committees.

There are highly significant differences between one sector and another. Five of them (telecoms, agriculture, railways, postal services and civil aviation) each signed more than 20 joint texts and account for more than a third of all joint documents. Nine sectors, on the other hand, signed five joint documents apiece or fewer: these are recently established committees for the most part. The sectors which were the most prolific before 1998 were no longer so thereafter. After 1998, Horeca, Commerce, Sea fishing, Construction and Sugar signed 11 or more documents.

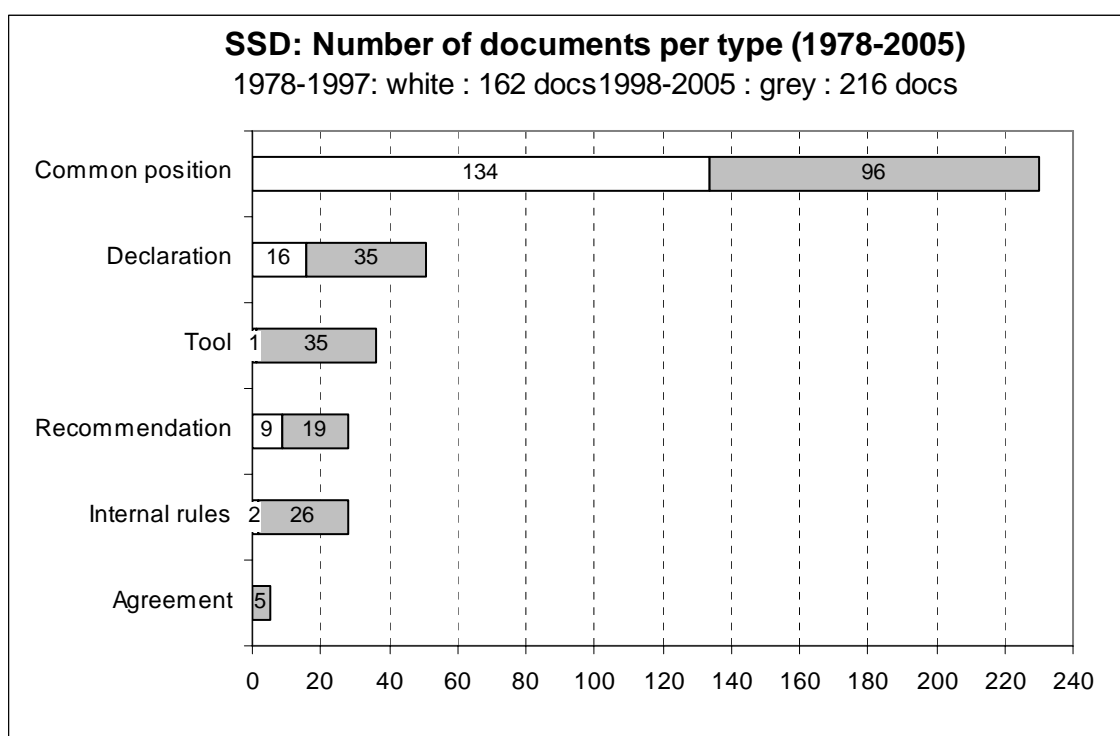
From 1998, only two sectors, sugar and commerce, signed one or more document(s) per year. Private security signed one in six years out of seven. Railways, HORECA/tourism, postal services, sea fishing, telecommunications and sea transport: five years out of seven. At the other end of the scale, inland waterways have signed no agreement since 1997. Moreover, six sec-

tors signed no joint texts at all in 2003 or 2004: these are agriculture, footwear, inland waterways, personal services, textiles/clothing and temporary work.

### Types of document

In the first section we have defined six types of joint document. A large majority of the 376 documents – 230 (60%) – are common positions. Next come declarations – 51 – and then, in turn, tools (36), recommendations and internal rules (28 each) and lastly agreements (5). Therefore, if we interpret the social dialogue restrictively as the negotiation of binding agreements, ‘agreements’ constitute fewer than 2% of all texts. Three of these are directly related to the sectoral implementation of the 1993 Working Time Directive in the transport sectors, in the wake of the European directive. The other two were signed in the rail transport sector in 2004.

**Figure 2: Number of documents by type (1978-2005)**



A somewhat different view is obtained by scrutinising the texts signed since 1998. 96 of these are common positions, which still constitute the largest category, but now it covers around 45% of all joint texts. Declarations, tools and recommendations are clearly gaining ground. In 2003, for the first time, there were fewer common positions (11) than the sum of declarations, recommendations and agreements (12), i.e. joint undertakings by the social partners. The same happened again and was more pronounced in 2004, with 11 common positions against the sum of 11 declarations, recommendations and agreements. This seemed to indicate a shift from a social dialogue initially more prone to issue common positions addressed to the Community authorities, towards a social dialogue focusing more on internal social partner priorities. But 2005 did not confirm this trend. 13 out of 23 joint texts were common positions. Only one was a recommendation and the sum of agreement, recommendation and declaration is reaching 6, less than a half of the common positions). Only the results of the next few years will confirm whether the 2003/2004 results were a meaningful trend or just an exception.

Between 1978 and 2005 13 sectors adopted recommendations and three others, agreements. Interestingly, they are not the same ones. One might think that this outcome is mainly due to the implementation of the Working Time Directive. The recommendations are often codes of conduct or charters, as in the case of sugar, textiles, footwear, leather, woodworking and private security. Agriculture has adopted several recommendations on working time and has been a pioneer in this field. Three sectors – agriculture, electricity and sugar – have passed recommendations on training and one sector agriculture on health and safety issue.

We know extremely little about the effective implementation of recommendations: in many cases follow-up has been minimal and fragmentary and, has sometimes been set in motion after a delay of several years. The sugar code of conduct is innovative in that the implementation is assessed each year with the publication of follow-up document.

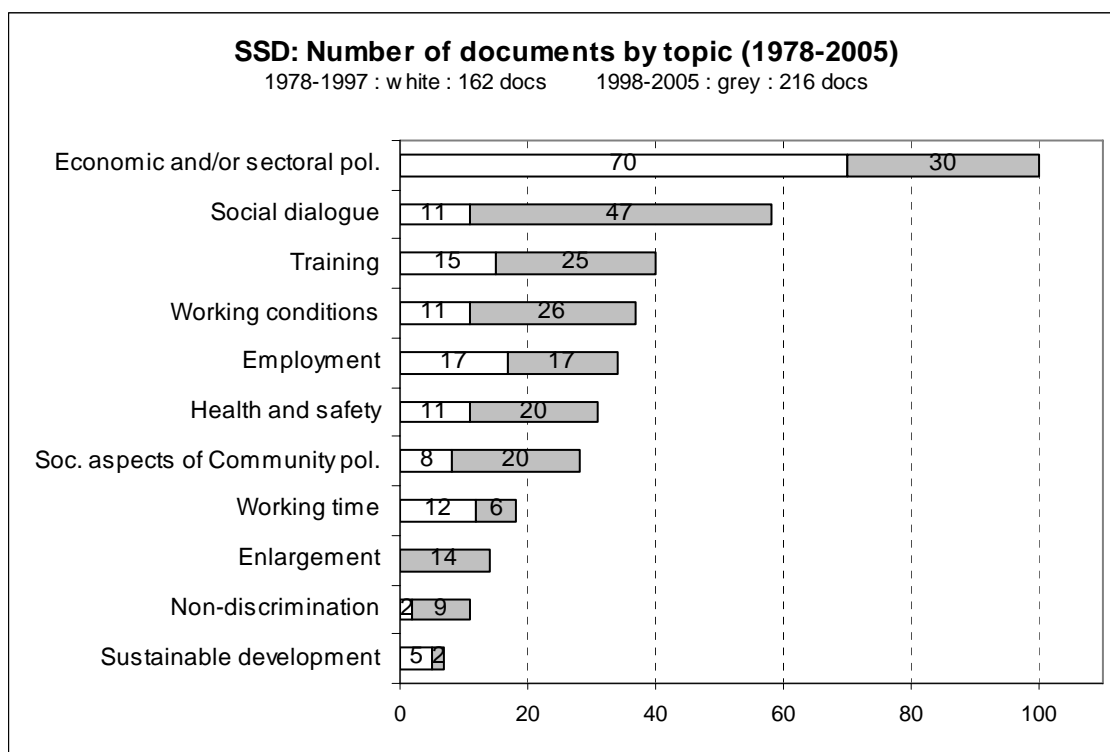
21 sectors out of 31 have at best adopted declarations, a rather meagre achievement.

Detailed sector-by-sector analysis shows that there is no general dynamic progressing from common positions to tools, declarations, recommendations and then agreements. In other words, an examination of each sector individually reveals no obvious gradual move towards more binding undertakings in terms of follow-up. The hypothesis that the trust created between the actors in signing common position can be translated into more binding agreements is not confirmed here. Meaningful trends in this direction can only be inferred from the sum of all the different sectors.

### Topic areas covered

Many joint documents are confused and deal with a variety of topics. Their main objective does not clearly emerge. Caution is thus needed to interpret these results.

**Figure 3: Number of documents by topic (1978-2005)**



‘Economic and/or sectoral policies’, ‘social dialogue’ and ‘training’ are the three largest topic areas judging by the number of texts. The order is different after 1998, with ‘social dialogue’ in the lead followed by ‘Economic and/or sectoral policies’ and in third position ‘working conditions’. The rarest topics are sustainable development, non-discrimination, enlargement and working time. Health/safety is in a middle position as 2005 was very productive with 5 joint texts dealing with this issue. It is particularly surprising to see non-discrimination, including gender equality, so low down the list. Contrary to expectation, ‘employment’ and ‘working time’ are the only ones to crop up more frequently or being equal before 1998 than afterwards. No very clear trends emerge from the ‘year-on-year’ analysis of topic areas.

### **Addressees**

Five categories of addressee have been identified: 1) European social partners, 2) European institutions, 3) national organisations, 4) businesses and 5) national public authorities.

A large majority of documents are primarily intended for the European institutions, yet this applies basically to the period as a whole. It is no longer the case if we take 1998 as our starting date. Next come national organisations: of the 72 documents, just 13 were addressed to them before 1998, thereby marking a major change in the nature of the social dialogue. Last of all come national public authorities with a fairly high figure, since there are 28 sets of ‘internal rules’ which are by definition addressed first and foremost to the national authorities.

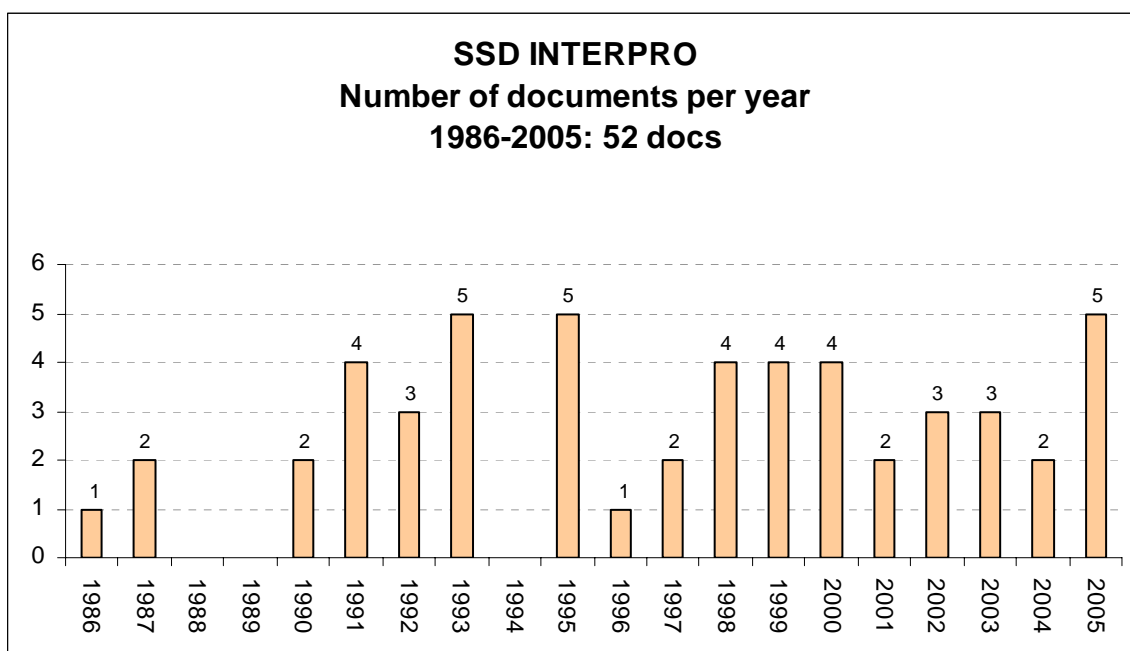
It is worth noting that 13 joint texts are intended primarily for businesses, while 20 more have businesses as a second addressee. Lastly, national public authorities are also mentioned, especially with respect to training and lifelong learning.

## **IV. Quantitative analysis of interprofessional joint documents**

This section focuses on the outcome of the interprofessional social dialogue following the same approach proposed for the sectoral one.

### **Number of documents**

52 joint documents have been signed by the ETUC, UNICE and CEEP since the start of the Val-Duchesse social dialogue in 1986: roughly a seventh of the number signed at sectoral level over the same period. On average, the interprofessional social partners sign 2.5 joint documents per year. Just three documents were signed between 1986 and 1990, whereas 14 were adopted during the following four years. 1994 was exceptional in that it was the only year when no documents at all were adopted. Thereafter there was a resumption of activity, albeit with highs and lows: five years with four or more documents signed and six years with two at most.

**Figure 4: Number of documents per year (1986-2005)**

### Types of document

The joint documents are also of a very different type from those adopted in the sectoral social dialogue. The six agreements include three which were subsequently transposed into directives (parental leave, fixed-term employment and part-time work) and two agreements implemented by the social partners themselves: those on telework (2001) and stress (2003). Last agreement is the one which became the Maastricht Social Protocol. The bulk of the activity (at least judging by the number of documents) has revolved around common positions: these constitute 60% of the documents adopted (30 documents). Similarly, there have been only five tools, 2 declaration and only 2 recommendations.

### Topic areas covered

Topic area frequency of coverage is also different from that in the sectoral dialogue. Employment and training come top of the numerical list. In contrast to the sectoral dialogue, however, there are few joint documents concerning economic policy or the social consequences of integration. As with the sectoral dialogue, social dialogue itself appears as a main topic in several documents. This shows the importance of defining and even redefining joint activities and the objectives pursued. Nevertheless, the vast majority of the documents with social dialogue as their principal topic area are addressed to the Commission. The interprofessional social partners wish to exert influence over the Commission, which they see as the principal actor/organiser of social dialogue.

### Addressees

More often than not, they are intended for the European institutions themselves (35 out of 52, a far higher proportion than in the sectoral dialogue). This can be partially explained by the fact that most of the documents dealing with employment matters are addressed to the European institutions, as are some of those concerning training. There are also more documents addressed to the Commission than there are common positions (30), since the agreements

were sent to the Commission with a view to becoming directives (the same applied, in the sectoral dialogue, to the working time agreement and especially the railway agreement).

## V. Concluding remarks

To sum up the interprofessional social dialogue has three main strands. The first is its involvement in a range of general European policy areas: macroeconomic policy, employment policy, etc.; the aim being to influence the overall European agenda. Didry and Mias have shown how the earliest joint opinions had a limited yet distinct impact on certain Community texts.

The second strand is the reinforcement of social dialogue. This has happened in two different ways: firstly, the conclusion of agreements for which the Treaty makes provision (subsequently transformed into directives or else implemented by the social partners themselves); secondly, various initiatives aimed at encouraging the Commission to shape the social dialogue. The social partners took similar action when seeking to step up the role of social dialogue in Article I-48 of the constitutional Treaty, which is another illustration of their desire for autonomy and their dependence on the Community authorities.

The third and final strand is the construction of an independent agenda. The 2001 document on the three-year work programme is clearer than any other in this regard; it is nevertheless ambiguous since it overwhelmingly falls in with the EU's priorities, as proclaimed by the Commission. The autonomy is therefore only relative.

Sectoral social dialogue has not developed in a way that mirrors the interprofessional social dialogue. The latter began with non-binding texts, principally in consensual areas and addressed to the Commission. Then there was a move towards 'agreements' extended *erga omnes* by means of Council directives, finally ending up with so-called voluntary agreements and more flexible instruments as in the case of lifelong learning.

Our quantitative analysis has shown a plethora of documents unevenly distributed across the years but growing in number especially from 1996 onwards. The majority of these documents consist of 'common positions' addressed to the European institutions, particularly before 1998.

There is no evidence of a gathering momentum from 'tools' towards 'agreements'. Nor has there always necessarily been a consensual issue at the outset. This is borne out by an analysis of the questionnaires used in our research which makes plain that, whatever the topic area, the conclusion of an initial joint document is consensual by its very nature (for example working time in agriculture). Therefore training, which was so important in the Val Duchesse social dialogue, has not always come first in the sectoral dialogue.

It proved difficult to classify many of the texts, and choices had to be made. However, the aim was not to supply precise statistics but to distinguish between and highlight dynamics and trends. One point is clear: fewer than 2% of the texts adopted are agreements with binding effect. The results for 2005 which have to be interpreted very cautiously also indicate that the momentum we noticed the last few years did not repeat this year. The attempt of the Commission to clarify the nature of the document signed in order to improve their quality and bindingness has not been successful. It is evident when we examine the number and the quality of 2005 joint texts.

What we have sought to highlight are the differing tendencies, some more inclined towards consultation – 'common positions' – and others more for internal consumption in given sectors – 'mutual undertakings'. This duality is confirmed by an analysis of 'internal rules',

which likewise demonstrate divergent degrees of ambition. Some of them mention the possibility of arriving at detailed, binding texts but others avoid this subject.

Topic areas were a particularly sensitive matter. This was undoubtedly the most difficult part of our quantitative work, but the difficulty is also very indicative of the ambiguous nature (to put it mildly) of many joint documents. Without going into detail, divergent tendencies emerge. Nonetheless, our quantitative and qualitative analysis does reveal certain overall trends.

The diversity of situations, issues and dynamics explains why it is so difficult to build a well-structured system of industrial relations at Community level. It nevertheless seems that several sectors have reached a critical point. First and foremost, in view of the overall development of the sectoral social dialogue, those sectors which are performing least well, in whatever category they may be, are confronted with various questions as to the prospects for further dialogue, entailing an analysis of the obstacles and how to overcome them.

However, the same applies to sectors which have made substantial headway in recent years. They all in fact come up against the same problems: how should the texts be implemented and followed up? What linkage should there be between the European and national sectoral levels (and between the sectoral and interprofessional dialogue)? Thus the aims of the social dialogue have to be clarified.

Our general conclusion, however, is that the interprofessional and the sectoral social dialogue - 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. Thus implementation is the task of decentralised stakeholders, perhaps with moral pressure exerted on those who fail in their duty.

If it is the case, this implies important consequences. First, it means a blurring of the EU instruments. Social dialogue was considered as a autonomous (or semi-autonomous) way to reach binding agreements. The move toward a more soft approach was not fully the result of a choice but mainly a second best form in a trade union perspective. It was the consequence of a) the lack of pressure from the Commission and the Member States for developing an ambitious social program and b) the lack of interest of the employer side.

The question for policy makers is to evaluate if this situation is optimal or if they have to intervene in order to improve the outcomes (in term of real implementation). The present situation has permitted blame avoidance (the social should be dealt by social partners) but with few exceptions it does not lead to full partnership.

My recommendation to the Commission would be the following:

- 1) Increase dramatically the support for capacity building of the social partners the 10 new countries and candidate countries. It is a precondition to continue to speak about European wide social dialogue in the future.
- 2) Return to a more pro-active role. Without credible pressures from the Commission, little will happen. Even if for the moment, many member states are reluctant to adopt new directives, it is the function by the treaty of the Commission to support the social dialogue which supposes to intervene and not to be passive.
- 3) Evaluate the real implementation of the main agreements and recommendations. Do they empower the national stakeholders or do they reinforce the strong trade-unions (using the soft law) and have no impact for countries with weak unions ? In such case, EU soft law

would be the contrary to the law protecting only the better organised actors and/or countries.

- 4) Improve their database by putting the relevant documents directly on line and removing the document which are not clearly linked to joint text. For example the work program should be in a category apart as the letter to the Commission which should not be taken into account. It would clarify directly what is happening

My recommendations to the social partners

- 1) To clarify in line with the Commission proposal, the nature of the document they sign. It would be better to have less joint document but to improve their quality.
- 2) To set up procedure to follow the implementation of their commitments and to analyse how to guarantee an even implementation around the EU25.
- 3) To create a forum to exchange best practices and ideas on these topics.