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Policy Memorandum

Emergence and evolution of the European social dialogue

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Summary

If the debates raged around the European Employment Strategy (EES) and more generally on Open Method of Coordination (OMC) and the new modes of governance, less and less attention was paid to social dialogue. An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions. Social dialogue is based on the treaty (Art. 138 and 139) and is generally considered as being part of a hard law approach. Nevertheless, the last cross-industry agreement dated back to 1999 and only few binding agreements have been signed at sectoral level. Since 2000, the agreements signed were autonomous agreements which look like a hybrid between soft and hard law both by flexibility of the content and the nature of instruments to implement the EU agreement.

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 (since 1978). 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.

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I. Introduction

If the debates raged around the European Employment Strategy (EES) and more generally on Open Method of Coordination (OMC) and the new modes of governance, less and less attention was paid to social dialogue. An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions. Social dialogue is based on the treaty (Art. 138 and 139) and is generally considered as being part of a hard law approach. Nevertheless, the last cross-industry agreement dated back to 1999 and only few binding agreements have been signed at sectoral level. Since 2000, the agreements signed were autonomous agreements which look like a hybrid between soft and hard law both by flexibility of the content and the nature of instruments to implement the EU agreement.

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 (since 1978).

This policy memorandum summarises the main results of such research on both the cross-industry and sectoral social dialogues in the last 10 years. 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 in this paper on developments at sectoral level.

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.¹

II. Texts adopted: a classification

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 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 pro-

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

cedure 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.

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.

III. A Quantitative and Qualitative 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.

a. Number of documents by sector

The productivity (number of texts adopted) by sector is very different (note that the date of creation of the committees could be different too). 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.

b. Number of documents per year

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.

c. Type of texts, distribution per year of agreements and recommendations, and topics

About the quality of the documents adopted, we have noticed that 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. Nevertheless, in the last 5 years, there were two important innovations. Firstly, the railways sector signed the first autonomous sectoral agreement “on certain aspects of working conditions of mobile railway workers” which was transformed into a directive by the council. There were discussion within the Commission and the Council on the obligation or not to accept to extend *erga omnes* this agreement. The second novelty was the silica agreement signed by one sector (mine sector) and a few employers and trade unions (not from the same sector). 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.

The main changes are between the “common positions” with a clear decrease the last five years and the “declarations” with an even clearer increase during the same period. 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 the last two years do not confirm this hypothesis either in quantity or in quality. Moreover, there is no statistical evidence of a gathering momentum from “tools” or weak declarations towards recommendations or binding “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).

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.

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

To sum up, 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 dynamics which structure the exchanges between the sectoral actors.

IV. The nature of the exchange by sector

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, we have tried to establish a typology of six groups of sectors, each of which produces a particular type of document. 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.

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

- a. 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” which should also cover enterprises outside EU-27.
- b. 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).
- c. The players in sectors in network (Telecommunications, Electricity, Postal services...), where there is a tradition of partnership, manage deregulation/privatisation by opening up space for negotiation and producing mostly recommendations aimed to accompany restructurations.
- d. Traditional sectors (banking, insurance) confine themselves to a more “conservative” social dialogue while searching for some truly European topic to negotiate.
- e. Finally, those sectors seeking to enhance their (poor) public 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).
- f. 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 compare to the industrial sectors.

The various dynamics illustrated by the typology also indicate that only for the first group do we expect binding agreements. One distinctive feature of the social partners in these sectors is that they are structurally involved in Union policy-making and are consulted about the numerous projects and policies underway. Information is readily available to them and they can influence Community policies in many ways. Their “preference” in terms of social dialogue outputs (at least on the trade union side) is for binding agreements, as was made plain during our interviews and is indirectly borne out by a recent survey on codes of conduct. Indeed, the table showing the different sectors’ attitudes towards these new instruments revealed that *all* the sectors in this category responded in the same fashion: they prefer classic instruments in the form of legislation or collective agreements. They were the only ones to express this preference in such strong terms. For the others, the outcome should be at best recommendations.

V. Conclusions

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. Some authors 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. The new triennial agreement follows the same line of reasoning and action but will evaluate the results achieved so far by the autonomous collective agreements.

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 (training and life long learning). 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 of the sectoral social dialogue 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 with the aim of influencing the EU policies, particularly before 1998. In other words, the main function of social dialogue at that time was to lobby jointly in order to influence the EU policies.

There is no evidence at sectoral level of a gathering momentum from 'tools' and "weak" documents towards more binding 'agreements'. Nor has there always necessarily been discussion of a consensual issue at the outset. Therefore training, which was so important in the Val Duchesse social dialogue at cross-industry level and then the voluntary social dialogue post 2000 on this topic, has not always come first in the sectoral dialogue. Nevertheless, training is becoming a more important issue at sectoral level the last few years.

For a quantitative perspective, the conclusion is clear: fewer than 2% of the texts adopted at sectoral level are agreements with binding effect. 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.

What we have sought to highlight with our typology is the nature of exchange. There are differing tendencies between sectors, some are more inclined towards consultation and adopting 'common positions' and others more for internal consumption and 'mutual undertakings'. Nevertheless, there is no clear cut difference between sectors and there are also internal evolutions in various direction (for example sea transport and civil aviation sectors signed binding

agreement on working time but were not able to negotiate later other binding agreements). The analysis of ‘internal rules’ also demonstrates divergent degrees of ambition.

Some of them mention the possibility of arriving at detailed, binding texts but most of them avoid this subject. The diversity of situations, issues and dynamics is one explanation 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. For some sectors, social dialogue appears purely formal without any impact at EU or national level. Those which signed recommendation which can also be labelled soft law (less than the half of the 33 committees have signed such text in the last 10 years) are facing the same problems: how should the texts be implemented at national level and followed up at EU level ? 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 still 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 instrument. Social dialogue was considered as an autonomous (or semi-autonomous, “on the shadow of the law”) 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 the lack of pressure from the Commission and the Member States for developing an ambitious social program and the lack of interest of the employer side. 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.

According to a more experimental-type vision, European social dialogue is aimed more at innovating, in respect of both themes and instruments. 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.

At the outset Social dialogue and EU collective agreements were thought as an alternative way to EU legislation and a way to create a multilevel industrial relations system. 20 year after the Single Act and the first steps to develop social dialogue, the results look much more like OMC or EES and share the same problems of implementation and participation, at EU and national level.

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 permits 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. To return to a more pro-active role. Without credible pressures from the Commission, little will happen.
3. To evaluation the real implementation of the main agreements and recommendation. 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 contrary to the law protect only the better organised.