

# EUROPEAN SOCIAL DIALOGUE: 30 YEARS OF EXPERIENCE AND PROGRESS, BUT WHAT DOES THE FUTURE HOLD?

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## SUMMARY

At a time of seemingly unrelenting economic crisis, with social Europe appearing to be cruelly absent from the scene, the place and the role of the social partners need to be urgently addressed at both the national and the European levels.

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While national professional relations have been built up over more than a century in individual ways in each one of our member countries on the basis of the given historical context, through different struggles and in different ways, European social dialogue first saw the light of day in a voluntary manner a mere thirty years ago and it aspired to play an active role in the construction of Europe. Its development constitutes a unique story.

This social dialogue was built around the strategy for imparting a fresh boost to European integration starting in 1985, and in its first six years such major institutional developments as the European Single Act and the Community Charter of the Fundamental Social Rights of Workers accompanied a learning curve for collective bargaining in a transnational dimension and a necessary understanding of the specific culture in each one of our member states in order to be able to blend them into a common culture governing professional relations.

The years between 1991 and 2000 allowed the social partners to move on from a lobbying role to a role as producers of social standards thanks to the agreement dated 31 October 1991 that was institutionalised by the Maastricht Social Protocol and subsequently by the start of negotiations leading to interprofessional agreements, some of which were turned into Community law while others were implemented by the national social partners. During this same period of time, social dialogue expanded into new areas at the sectoral level and at the level of multinational companies.

From the early 2000s, the social partners begin to achieve greater independence for social dialogue by drafting their own three-yearly working programme independent of the European Commission's programme. They also boost their role in the governance of the European Union.

The global crisis, the tendency to focus inwards on national problems and the dearth of initiatives on social policy on the European Commission's part have all tended latterly to undermine European social dialogue. Is this a cause for despair, or on the contrary, should we act to impart a fresh boost to social dialogue and to the quality of its achievements? There are paths allowing us to do so, and while they primarily concern the social partners, they also call the European Commission into play. We discuss them in the final part of this Policy Paper. They include consolidating the achievements of social dialogue; structuring social dialogue on a stronger and more independent basis; establishing a "euro area" for social dialogue; coordinating the European and global areas; and developing the complementary character of social dialogue and civil dialogue.

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## INTRODUCTION

European social dialogue first saw the light of day in the course of a meeting comprising four commissioners, the Commission's secretary general, eighteen trade union leaders and fifteen employers' representatives convened by European Commission President Jacques Delors on 31 January 1985. Everyone was aware that the European Economic Community required a fresh boost and that all of its energies and capabilities needed to be mobilised in a strategy for promoting economic and social progress. The Commission's contribution was to be its capacity for initiative; the member states' contribution their ability to decide on the strategy and the means for its implementation; and the social partners' contribution their ability to negotiate and to mobilise businesses and workers within the European social area.

The first six years of European social dialogue made it possible to lay the groundwork for a bargaining area and for the social partners to play a role in the governance of the EU. The following fourteen years witnessed the conclusion of the first European interprofessional and sectoral agreements and the diversification of social dialogue at the level of businesses operating in the European area. The past ten years have proven more difficult, with the European Commission weaker and more reluctant to adopt any kind of social initiative, bowing to pressure from the member states, and with employers interested in nothing but deregulation and cutting labour costs.

So after a period in which social dialogue was extended to all levels (interprofessional, sectoral, transnational businesses), it now seems to be treading water, suffering from an EU enlargement that has yet to be fully digested, a crisis that seems to be never-ending, a weakening of collective bargaining, growing unemployment and job insecurity... Is social dialogue in Europe already walking down sunset boulevard? An analysis of its development shows us that its potential is still there, it simply requires stimulation and the will to make the most of it!

## 1. 1985: The birth of Community social dialogue

### 1.1. 1985: A fresh boost to the European Economic Community through the construction of the Single Market... without a social side to it?

“ THE ARCHITECTS OF EUROPE'S CONSTRUCTION ENCOUNTER FEWER OBSTACLES OVER 'WHAT TO DO' THAN THEY DO OVER 'HOW TO DO IT' ”

In 1984 the European Economic Community (EEC) was completely bogged down in a rut. The framework set up by the Treaty of Rome was at the end of its tether and finding it increasingly difficult to function properly. The Thorn Commission, which had come to the end of the line, was stuck on (admittedly necessary) institutional developments. British Prime Minister Margaret Thatcher systematically vetoed any move towards further integration either in Europe or in the Community budget. It was a time of triumph for the extreme free-marketting and deregulation symbolised by the Reagan/Thatcher double act. The renewal of the European Commission put Frenchman Jacques Delors in the saddle. Aware of the difficulties, Delors toured a number of capital cities before starting his mandate in an effort to verify the conditions for imparting a fresh boost to the EEC and to discuss the means for achieving it, because as

he himself said in his keynote speech to the European Parliament (EP) on 14 January 1985, “the architects of Europe’s construction encounter fewer obstacles over ‘what to do’ than they do over ‘how to do it’”<sup>1</sup>. His goal was to achieve the Single Market and the three major freedoms of movement: for capital, for goods and for European citizens. The date established for the achievement of that goal was set as 1992.

The issue arising back then was to find a way of mobilising the citizens and the social players in order to achieve this new goal when the “White Paper on Completing the Internal Market”, date 14 June 1985, failed to address the social aspect. The trade unions, through the European Trade Union Confederation (ETUC), were extremely reticent and the employers were not especially mobilised with regard to a socio-economic approach. Previous attempts at dialogue between Europe’s employers and trade unions had resulted in failure or deadlock both in tripartite conferences and in the context of the Permanent Employment Committee. While the trade unions displayed a certain reluctance with regard to the single market as presented, the president’s arguments aroused greater interest, not to say hope. In the course of his tour of Europe’s capitals prior to taking office, Jacques Delors had taken great care to meet with some of the most important trade union leaders. And could the president be faulted for forgetting the social side of things, when he said in the course of his address to the EP on 14 January 1985 that “in connection with the broad spheres covered by employment and labour market policies, I would like to say that we will succeed only on two conditions: that the reforms be negotiated by the social partners, in other words that bargaining policy continue to be one of the mainstays of our entire economic system, and that a minimal level of harmonisation be sought in the European arena.”<sup>2</sup>.

Furthermore, this address came shortly before the first “Val Duchesse”<sup>3</sup> meeting to which the president summoned the national trade unions’ and employers’ leaders in the ETUC, the UNICE (which represents the national private-sector employers’ confederations) and the CEEP (public-sector and public participation) on 31 January 1985.

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### BOX 1 ► The European social partners

**European Trade Union Confederation:** 88 national confederations from 37 countries and 10 European professional federations.

**UNICE (became BusinessEurope in 2007):** 39 national employers’ organisations from 33 countries.

**CEEP:** 3 direct member European organisations (European Broadcasting Union (EBU), European Hospital and Healthcare Employers Association (HOSPEEM) and European Federation of Education Employers (EFEE)) and 21 national sections.

Other players complement these three initial members. First of all, the **UEAPME**, in conjunction with the UNICE, representing 80 national craft and small and medium enterprise organisations from 27 countries. Then, under the aegis of the ETUC, the **Managerial Staff Liaison Committee** embracing Eurocadres (organisations of managerial staff belonging to the ETUC) and the CEC European Managers (whose leading member is France’s CGC).

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A Commission document suggests that this meeting “points to a perceptible change in the psychological climate”<sup>4</sup>. For the first time the social partners were being called on, as President Delors put it, to “mobilise with a view to marking a new stage in the construction of Europe and to establishing mutual dialogue at the Community level on issues of Community interest”<sup>5</sup>. Two issues for debate were raised during the discussion: the functioning of the labour market with the organisation of working time on the one hand; and the introduction of new technologies and their social repercussions on the other.

The ensuing social dialogue summit on 12 November 1985 was preceded by numerous bilateral or trilateral contacts between the social partners and the Commission. The practical conclusions were implemented by

1. Address by Jacques Delors to the European Parliament on 14 January 1985 on the basic guidelines underpinning the action that the new Commission planned to take (EP Debates N°2-321/3 dated 14.01.1985).

2. *Ibid.*

3. 13th century priory in a Brussels suburb, owned by the Belgian Government and designated to host national and international meetings.

4. Internal Commission analysis produced by Patrick Venturini, social affairs advisor to the president, and by Carlo Savoini, director in charge of social dialogue with DG V (December 1988).

5. Cited by Jean Degimbe, former director general of the Commission, in his book entitled *La politique sociale européenne : du Traité de Rome au Traité d’Amsterdam* (page 207) published by the European Trade Union Institute in 1999.

two working groups: the first, known as the “macro-economic” group, was tasked with developing a common stance on a “cooperation strategy for growth and employment”, while the second was tasked with developing a common stance on “new technologies and social dialogue”. The die was cast!

To date some 77 interprofessional social dialogue documents have been published, three accords of which have been extended in the form of Community directives, and over 300 documents have been published by the 41 sectoral social dialogue committees (SSDC), four accords of which have been extended in the form of Community directives. But how have things come this far?

## 1.2. 1985/1987: The start of European social dialogue

Once social dialogue had been established in the course of Val Duchesse meetings I and II, the two above-mentioned working groups began to meet in earnest.

The “macro-economic” group adopted a text on 6 November 1986 in connection with the Commission’s Annual Economic Report for 1986/7. A year later, the group was to adopt another common standpoint, also in connection with the Annual Economic Report for 1987/8. This opinion, dated 26 November 1987, spawned a message submitted by the social partners to the heads of state and government meeting at the European Council in Copenhagen on 4 and 5 December, the first instance of a common contribution from the social partners.

The second working group, on “new technologies and social dialogue”, was to adopt a common stance on 6 March 1987 regarding the training and motivation of staff and information/consultation with regard to the introduction of new technologies in the workplace. This opinion, in its information/consultation aspect, was to continue to be used as a focal point in subsequent discussions on this issue in transnational companies and on the theme of restructuring.

“ THIS INITIAL PHASE  
IN EUROPEAN SOCIAL  
DIALOGUE AIMED TO FORGE  
A SHARE BARGAINING  
CULTURE”

This initial “exploratory” phase in European social dialogue aimed primarily to forge a shared bargaining culture. Moving on to a supranational level of bargaining presupposes a knowledge and understanding of the different systems governing social relations in the various European countries in order to ensure that supranational bargaining is a factor for progress rather than becoming a factor for disturbance or for undermining negotiations at the national, sectoral and/or territorial levels<sup>6</sup>. This introductory phase was thus crucial even if the documents published were to have only a minor impact on implementation at the national level. Indeed, the same difficulty in independently implementing European agreements was also to be encountered at later stages, because the UNICE and the ETUC clearly had different goals in mind when European social dialogue first got off the ground. Europe’s employers did not want social dialogue and its results to be used in support of the legislative or contractual regulation of Community social policy, while the ETUC’s strategy, in parallel with that of the Commission president, was to develop a fully-fledged space for collective bargaining at the European level<sup>7</sup>.

## 1.3. The late 1980s: developments that “revolutionised” the European social area

A number of major institutional developments were to cause the meaning and content of European social dialogue to evolve fairly rapidly with the introduction of qualified majority voting in social affairs, the establishment of institutional support for social dialogue and the drafting of a Community Charter of the Fundamental Social Rights of Workers and of a social action plan.

6. Understanding what a Swedish employer is saying and the circumstances in which he is saying it is not easy for a Greek trade unionist, nor does the term collective convention have the same meaning in Germany as it does in France.

7. See on this question and on the construction of the European Social Dialogue in general the excellent book by Claude Didry and Arnaud Mias, *Le moment Delors : les syndicats au cœur de l’Europe sociale*, Edition PIE-Peter Lang, Collection Travail et Société, n°48, 2005.

### 1.3.1. The European Single Act changes the social policy situation

Up until 1986, social affairs were influenced by unanimous voting on the Council. During discussions over a revision of the Treaty of Rome, the Commission proposed introducing qualified majority voting in numerous areas affecting social policy, particularly with regard to living and working conditions, equal opportunities, professional training and worker information/consultation. Yet the Intergovernmental Conference (IGC) tasked with revising the treaties was to curb the Commission's aspirations in the social sphere by deciding that qualified majority voting procedure would be adopted solely in areas concerning the protection of workers' health and safety. Yet it is worth highlighting the fact that the drafting of Articles 118A and 118B was to open up new areas of social regulation and to prompt the social partners to ask themselves questions regarding the nature of the bargaining area as alternative and/or complementary to the legislative area. A careful examination of Article 118A ("Member states shall pay particular attention to encouraging improvements, **especially in the working environment**<sup>8</sup>, as regards the health and safety of workers, and shall set as their objective the harmonisation of conditions in this area, while maintaining the improvements made") allows us to interpret the concept of "working environment", just as Jacques Delors did back then, in a "northern" sense, in other words in a broader sense than mere regarding health and safety in the work place, supplementing it with aspects concerning working conditions and the organisation of labour.

Moreover, Article 118B in the Single European Act stipulates that "the Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement", while Article 3 in the Maastricht Social Protocol affords consultative priority to the social partners in connection with the Commission's social initiative projects and it allows them the possibility of negotiating the issues involved. The new Article 118A in the Maastricht Treaty's Social Protocol states that the Commission must "take any relevant measure to facilitate social dialogue, providing balanced support for both sides of industry"<sup>9</sup>.

### 1.3.2. The Community Charter of the Fundamental Social Rights of Workers and the social action plan stimulate social dialogue

In June 1988, the European Council in Hanover reaffirmed the importance of the Single Market's social aspect, which gave Jacques Delors the opportunity, in a joint letter drafted with Commissioner Manuel Marin on 9 November 1988, to seek an opinion from the European Economic and Social Committee (EESC) regarding the potential content of a "Community charter of fundamental social rights for workers". That opinion was to be adopted by a broad majority, after some lively debating, on 22 February.

On the basis of that opinion, and with strong backing from the EESC<sup>10</sup>, Jacques Delors ordered the drafting of a blueprint for a charter, which was subsequently to be adopted by all of the member states except for the United Kingdom<sup>11</sup> at the Strasbourg summit on 9 December 1989, while simultaneously taking note of the Commission's drafting of a social action plan for the charter's implementation.

“ THE CHART IS A REFERENCE TOOL FOR BOTH NATIONAL COURTS AND THE EUROPEAN COURT OF JUSTICE ”

This charter is first and foremost a political act couched in the terms of a solemn declaration, yet it transcends the symbolic aspect, first on account of the simultaneous existence of an action plan comprising 47 social proposals, 17 of which are of a legislative nature, and second, in its nature as a reference tool for both national courts and the European Court of Justice. This, together with the possibility of qualified majority voting introduced under the Single European Act, made it possible subsequently to unfreeze both social dialogue and social policy.

8. Author's emphasis.

9. These articles, which became Articles 138 and 139 in the Treaty of Amsterdam, were to be built into the Treaty on the European Union in 2009 as Articles 152 and 153.

10. The European Parliament's unflagging support for this move is worth stressing.

11. It was 1998, with Tony Blair in office, before the United Kingdom signed the Charter.

## 2. From the 1990s to the present day: The development of European social dialogue

In order to move on to the stage involving bargaining in the European area, it was first necessary for each player to understand the other players' systems and the way professional relations worked in the various member states. This stage was to spawn a common language, an understanding of subsidiarity, that made it possible to establish principles at the European level while allowing member states a major degree of autonomy in their implementation.

The adoption of the Community Charter of the Fundamental Social Rights of Workers and of a Social Action Plan was to impart a fresh boost to the Commission's initiatives in the field of social legislation, long hampered by the unanimous voting rule. The first pieces of social legislation spawned by the programme were now adopted, concerning, among other things, the establishment of an employment contract<sup>12</sup>, maternity leave<sup>13</sup>, the organisation of working time<sup>14</sup> and the protection of young people<sup>15</sup>. The ETUC, which had always wanted social dialogue to have a bargaining side to it, then proposed that the social partners should contribute to the treaty's reform in order to open up a negotiated regulatory area. That was when the employers realised that the neither-nor policy (neither legislation nor negotiation) was a Maginot line and that if they did not want all regulation to be enforced by law, they had no choice but to allow for the creation of a bargaining area at the European level.

### 2.1. A founding agreement on 31 October 1991 and its incorporation into the Maastricht Protocol on Social Policy

**“ ANY AGREEMENT REACHED BY THE SOCIAL PARTNERS CAN BE GRANTED LEGAL ENDORSEMENT *ERGA OMNES* ”**

Thus the second stage in social dialogue came to an end on 31 October 1991 with the adoption of an agreement between the social partners regarding their involvement in Community policy and law. The joint declaration stated that this agreement offers “the heads of state and government a crucial contribution in defining the role that the social partners will be called on to play in the future development of Community social affairs”<sup>16</sup>. In December 1991, the adoption of the Social Protocol of the Maastricht Treaty (by 11 member states, without the United Kingdom) incorporated the social partners' above-mentioned agreement, assigning them a role as players in regulation with an obligation for consultation on the Commission's part and with the ability to suspend legislative initiative for as long as it takes to hold negotiations on any given topic. Moreover, any agreement reached by the social partners can be granted legal endorsement *erga omnes* by the Council on a proposal from the Commission.

This marked a “revolutionary” step in the development of European social dialogue. The social partners decided to structure their dialogue by establishing a permanent Social Dialogue Committee (SDC) in July 1992 to take the place of the steering committee set up previously. The purpose of establishing the SDC was to organise work on identified labour-related issues, to track and assess the results and extensions of that work, to submit the results of social dialogue to the various authorities and to be kept informed on the development of sectoral social dialogue.

12. Directive 91/553.

13. Directive 92/85.

14. Directive 93/104.

15. Directive 94/33.

16. Joint declaration by the social partners following the agreement on 31 October 1991.

## 2.2. 1992/2000: Concrete implementation at the interprofessional and sectoral level

The third stage in European social dialogue unfolds from 1991 to the present day with the concrete implementation of European bargaining.

### 2.2.1. The interprofessional level

Three confederal agreements have been reached to date and have become European law, one on parental leave in 1996<sup>17</sup>, another on part-time work in 1997<sup>18</sup> and a third on fixed-term contracts in 1999. Four independent agreements have been reached: on teleworking in 2002, on stress in 2004, on harassment and violence in the workplace in 2007 and on inclusive labour markets in 2010.

This third stage has met with several failures caused both by the employers' inability to open negotiations (for instance on information and consultation) and by the collapse of negotiations already under way (in particular in connection with part-time work, where talks broke down after discussions lasting more than a year, and in connection with working time on account of the revision of the 1991 directive).

**“INDEPENDENT AGREEMENTS MUST RESULT IN COMPULSORY IMPLEMENTATION”**

An analysis of the transposition of these independent agreements into national law reveals an uneven and occasionally disappointing outcome. The initial idea was that their implementation by legal or contractual means would have equal value by giving all European workers statutory rights. A series of assessments conducted both by the social partners and by the Commission have revealed a very uneven transposition of the independent agreements, and in some countries the social partners have completely ignored them, thus undermining their effectiveness and their legitimacy in terms of legislation (see Table 1 illustrating the transposition status of the 2002 agreement on teleworking)<sup>19</sup>. It is particularly important at this stage for the value of negotiations and of their results to be recognised and to be effective in their implementation, in order to avoid undermining this form of social regulation. It seems obvious that independent agreements must result in compulsory implementation, whether their transposition is effected by legislative or contractual means<sup>20</sup>.

17. This agreement/directive which established a new right in some member states (United Kingdom, Ireland, Belgium, Luxembourg and Greece) was to be revised by the social partners in 2009 in an agreement on 18 June extended by a Council directive on 18 September 2009.

18. This right has improved the circumstances of 6 million workers in the United Kingdom and in Ireland.

19. Report on the implementation of the European social partners' Framework Agreement on Telework, SEC(2008)2178, Commission Staff paper.

20. See EESC Opinion dated 10 September 2014 (SOC/507) issued in compliance with a request from the European Parliament, on the "Structure and organisation of social dialogue in the context of a genuine Economy and Monetary Union (EMU)". This opinion analyses the situation with regard to social dialogue and proposes a series of improvements, particularly in connection with the effectiveness of independent agreements and the organisation of social dialogue.

**TABLE 1** ► Instruments chosen to implement the Framework Agreement on Telework  
**Instruments chosen\***

Instruments chosen*		Countries
Collective agreements at national level	cross-industry	extended by decree/binding <i>erga omnes</i>
		binding on signatory parties and their members
	sectoral	
Agreements by social partners	recommendations to lower bargaining levels	
Guidelines, recommendations	addressed mainly to lower bargaining levels as well as companies and teleworkers	
	addressed mainly to individual companies and teleworkers	
Joint declarations		
Model agreements proposed by social partners		
Legislation	based on agreement between social partners	
	after consultation of social partners	
	no/little involvement of social partners	
no implementation yet/no information		

Notes:

\* This table does not cover sector-specific or regional agreements reported by social partners which relate to a small number of sectors or regions only and which have sometimes been adopted prior to/without any reference to the Framework Agreement (e.g. DE, ES and AT). Furthermore, it does not cover individual company agreements on telework reported by social partners and adopted prior to or as follow-up to the Framework Agreement (e.g. NL, DE and ES). Incomplete or example-based reporting of individual instruments and the difficulty of identifying them in all Member States could distort the overall presentation.

<sup>1</sup> Legal status not fully certain.

<sup>2</sup> Mainly based on literal translation/translation in annex, i.e. little adaptation to national context.

<sup>3</sup> Covers the industry, services, local, regional and national government sectors, is accompanied by guidelines and is supplemented by cross-industry agreement.

<sup>4</sup> Implementation not finalised.

<sup>5</sup> Unilateral instruments, i.e. not jointly adopted.

<sup>6</sup> Partial implementation only.

Source: Report on the implementation of the European social partners' Framework Agreement on Telework, SEC(2008)2178, Commission Staff paper.

## 2.2.2. The sectoral level

Sectoral social bargaining has been a reality for a long time in those sectors that are the concerned by strong Community policies, such as agriculture and agri-food, transport, fishing and the footwear industry. But when interprofessional dialogue was launched in 1985, the development of a sectoral dimension became a priority goal for trade unions in order to allow them to adopt a concrete stance on the handling of such issues as working conditions, training, gender equality, health and safety in the workplace, and above all, economic and

technological change. The greatest difficulty has proven to be the difference in the structuring of the ETUC which covers the professional dimension through its member federations, and of the UNICE which coordinates professional organisations which are independent of it and many of which still refused to get involved in social affairs in the early 1990s.

“SSDCs COVER 145  
MILLION WORKERS IN  
EUROPE”

Despite this, the development of Sectoral Social Dialogue Committees (SSDCs) was to be extremely rapid (*see Table 2*)<sup>21</sup> but it was to force the Commission to adopt the representational criteria proposed by the confederal social partners themselves in order to ensure the trade union and employer players' legitimacy in the various sectors where there was a common will to set up an SSDC. Thus universities systematically conducted studies to assess the representational legitimacy of the trade unions and employers' organisations concerned and their legitimacy to negotiate in each member state and in each sector. These committees currently cover 145 million workers in

Europe and are involved, in particular, in such key sectors as transport, energy, agriculture, the construction industry, trade, fishing, public services, metalworking and education.

Bargaining has also become a reality at the sectoral level, with agreements on working time in the rail transport, maritime transport and air transport sectors, and soon also in the river transport sector. The social partners have also reached an excellent agreement in the hospital sector on “Prevention from sharp injuries in the hospital and healthcare sector”, which has been endorsed by the Council as a directive. On the other hand, an agreement in the hair-dressing sector on health and safety in the workplace (with particular reference to the chemical products used in the sector) has been frozen by the Council with regard to its legal endorsement because a number of member states, led by the United Kingdom, are opposed to its becoming law.

21. European Commission, SEC(2010)964, Staff working document

**TABLE 2** ► European social dialogue committees

*Cross-industry social dialogue committees*

Organisations representing workers	Organisations representing employers	Date of creation
ETUC Liaison Committee Eurocadres and CEC	BusinessEurope CEEP UEAPME	1992

*Sectoral social dialogue committees*

Sectors	Organisations representing workers	Organisations representing employers	Date of creation
Agriculture	EFFAT	GEOPA/COPA	1999
Audiovisual	UNI-MEI, EFJ, FIA, FIM	EBU, ACT, AER, CEPI, FIAPF	2004
Banking	UNI europa	FBE, ESBG, EACB	1999
Central administrations	TUNED	EUPAN	2010
Chemical industry	EMCEF	ECEG	2004
Civil aviation	ECA, ETF	ACI-Europe, AEA CANSO, ERA, IACA, IAHA	2000
Cleaning industry	UNI europa	EFCI	1999
Commerce	UNI europa	EuroCommerce	1999
Contract catering	EFFAT	FERCO	2007
Construction	EFBWW	FIEC	1999
Education	ETUCE	EFEE	2010
Electricity	EPSU, EMCEF	Eurelectric	2000
Extractive industries (mines)	EMCEF	APEP, Eurocoal, Euromines	2002
Footwear	ETUF:TCL	CEC	1999
Furniture	EFBWW	UEA	2001
Gas	EMCEF, EPSU	Eurogas	2007
Horeca/tourism	EFFAT	Hotrec	1999
Hospitals	EPSU	Hospeem	2006
Inland waterways	ETF	EBU, ESO	1999
Insurance	UNI europa	CEA, BIPAR, ACME	1999
Live performance	EAEA	Pearle	1999
Local and regional governments	EPSU	CEMR	2004
Metal, engineering and technology-based industries	EMF	Ceemet	2010
Paper	EMCEF	CEPI	2010
Personal services	UNI europa	Coiffure EU	1999
Postal services	UNI europa	PostEurop	1999
Private security	UNI europa	CoESS	1999
Professional football	EPFL, ECA	FIFPro	2008
Railways	ETF	CER, EIM	1999
Road transport	ETF	IRU	2000
Sea fisheries	ETF	Europêche/Cogeca	1999
Sea transport	ETF	ECSA	1999
Shipbuilding	EMF	CESA	2003
Steel	EMF	Eurofer	2006
Sugar	EFFAT	CEFS	1999
Tanning and leather	ETUF:TCL	Cotance	2001
Telecoms	UNI europa	ETNO	1999
Temporary agency work	UNI europa	Eurociett	1999
Textiles/clothing	ETUF:TCL	Euratex	1999
Woodworking	EFBWW	CEI-Bois	2000

Source : European Commission, SEC(2010)964, Staff working document

## 2.3. The empowerment of social dialogue, its involvement in governance and the establishment of new spheres of action

Policies on employment and the struggle against social exclusion were to become major issues in the 1990s and the start of the Intergovernmental Conference for the revision of the Maastricht Treaty in 1996 sparked a number of interesting developments. It is worth pointing out that as the IGC prepared to wrap up its work, the political situation had changed both in the United Kingdom and in France, with Tony Blair and Lionel Jospin taking over the premiership in their respective countries. This political development was, on the one hand, to allow the United Kingdom to ratify the Community Charter of the Fundamental Social Rights of Workers and also to adopt the directive on European Works Councils. But on the other hand, the Amsterdam Treaty was to incorporate the Maastricht Social Protocol (adopted up to that point by only 11 out of 12 member states) and a new Employment Title which was to lead, via an advance agreement, to the ratification of the Amsterdam Treaty at the special summit on employment held in Luxembourg on 14 and 15 November 1997.

The implementation of the Open Method of Coordination (OMC) completed the Union's tools for moving forward with a common approach without the need to legislate. Unfortunately, this method became almost the Commission's sole way of operating, leaving member states, via a mutual monitoring system, with the task of achieving goals set in common. Much as the OMC is useful in connection with certain convergence policies or issues that do not lend themselves to legislation, it has still led to a weakening of genuine Community policy. This is not really surprising in this recent era of deregulation, where even existing Community legislation is being called into question through the REFIT programme, which is designed – under the pretext of simplification and of rationalisation – to undermine social health and safety regulations which businesses, especially small and medium enterprises, consider to be excessively stringent. The chief strategy put forward by employers' organisations is self-regulation, which would allow businesses to be judge and jury without any binding constraints. Today we can plainly see the result of the codes of good conduct and of the self-regulation of salaries and bonuses for company directors!

But getting back to the 1990s, the need to integrate economic, employment and social policies rapidly became an issue in view of the broadly inconsistent approaches between the various economic and finance ministers' councils on the one hand, and the employment and social affairs ministers' councils on the other, with the latter often coming across as the poor relations by comparison with their finance minister colleagues.

**“ THE UNION  
RECOGNISES AND  
PROMOTES THE ROLE OF  
THE SOCIAL PARTNERS AT  
ITS LEVEL ”**

This situation was to prompt the social partners to adopt a contribution for submission to the heads of state and government's meeting in Laeken in December 2001. The contribution addressed the issue of the social partners' specific role in European governance and of the coordination of tripartite dialogue on the Lisbon Strategy adopted by the heads of state and government. The social partners noted that the Standing Committee on Employment (SCE) of which they were members failed to reflect the need for consistency and synergy among the different processes in which they were involved, and thus they proposed to replace the SCE by a tripartite consultative forum for growth and employment to meet in conjunction with the European Councils held in the spring (such council meetings being devoted to economic and employment-related issues). This was to gradually take shape before Article 152 in the Treaty on the Functioning of the EU adopted in Lisbon and in force since December 2009 institutionalised the principle: “The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue”.

The social partners' contribution to the Laeken European Council also contains another very important proposal, namely the adoption of “a working programme for more independent social dialogue” and it adds that

“while decided on and implemented in full autonomy, the social partners will ensure that their working programme makes a useful contribution to the European strategy for growth and employment as well as to the preparation of the European Union’s enlargement.”<sup>22</sup>.

**“ A WORKING PROGRAMME FOR MORE INDEPENDENT SOCIAL DIALOGUE”**

And lastly, there was another important element in the contribution with a view to the EU’s major enlargement with countries which, while democratic in name, had no history or experience of social relations: “The European social partners draw the European public authorities’ attention to the urgent need to develop, with the European social partners’ aid, a fully-fledged integrated programme of technical assistance for the social partners in the candidate countries in order to facilitate the development of strong, independent trade union and employers’ organisations capable of participating in full in European social dialogue as soon as their countries join the European Union”.

The first independent working programme was to be adopted on 28 November 2002 for the period stretching from 2003 to 2005. Other programmes followed for 2006/8, for 2009/11 and for 2012/14. This latter programme is now coming to an end with an update of the European social partners’ joint analysis of the challenges currently facing the European labour markets. The social partners have begun to draft the next working programme but it will unquestionably be pegged to the Commission’s new guidelines.

Getting back to the governance of the EU and to consultation with the social partners, it is worth mentioning an important document drafted in the context of social dialogue and submitted to the tripartite social summit in October 2013, making it possible to improve the social partners’ consultation processes at both the national and European levels. This joint declaration<sup>23</sup> calls chiefly for an improvement in the processes for consulting with the social partners adopted at both the national and European levels by governments, the Commission, the Council and the European Parliament in a timely and significant manner in connection with all policies having a direct or indirect impact on employment and on the labour market. It also dwells on the importance of social dialogue as a crucial factor in the European social model, on the independence of the social partners and on their involvement in the definition of new indicators.

## 2.4. The transnational dimension of social dialogue at company level

After more than 20 years and after Commissioner Vredeling’s first attempt, back in 1980, to establish transnational information and consultation rights for workers in multinational companies and to hamper employers’ lobbies (the US Chamber of Commerce, the European Round Table [associations of Europe’s leading businesses]...), the Commission tabled a new proposal in 1993.

The way in which this legislation was drafted shows that it is possible to create a European regulatory framework with the social partners for its principal drafters. An attempt at negotiation ran aground over this issue under the weight of major differences with the employers, but the talks were not futile because several aspects “prenegotiated” by the social partners were to be built into the drafting of the legislative proposal. In particular, lawmakers have allowed a great deal of room, ahead of negotiations proper, for the establishment of European works councils (EWC) before the enforced implementation of any criteria contained in the appendix to the directive. This has allowed the EWCs a very dynamic application and a very rapid start, well linked to the different situations in different companies and to industrial relations practice in the different member states. The European Trade Union Institute (ETUI) database currently lists 1,070 European Works Committees in 987 multinational companies.

22. Common contribution from the social partners on 13 December 2001, submitted to the European Council meeting in Laeken on 14 and 15 December 2001.

23. Joint declaration by the European social partners on the social partners’ involvement in European economic governance, dated 24 October 2013.

It is also interesting to mention the creation of the European company statute. In March 2014 the ETUI database listed 2,125 companies with a European company statute. This statute, established by a Community regulation dated 8 October 2001, is completed by a directive issued on the same date allowing workers to be represented in supervisory councils or management boards and, above all, creating procedures for information and consultation. The reality is somewhat disappointing, with only 51 European companies providing for information/consultation right and 54 establishing rights of information, consultation and participation.

In a globalised economy, it is important to highlight the fact that the EWCs have served as a fulcrum for extension towards committees in global groups and for social dialogue extended from Europe towards the world at large. In 2012 the IRES registered 115 international framework agreements (IFA) concluded, in particular, by 27 French businesses and 21 German businesses, and out of the 111 European framework agreements (EFA), fully 47 concerned French businesses.

In July 2008 the Commission published a working document on “the role of transnational company agreements in the context of increasing international integration”<sup>24</sup> in which it noted “147 joint transnational texts in 89 companies; most of these have been concluded since 2000, and 88 of which have been concluded in 42 companies, most of them very large, focused on or developed on the European area”. These agreements are estimated to cover some 7.5 million workers worldwide. The question raised by the Commission, with the EP’s and EESC’s support, could be summed up in an examination “of the proposals with the European social partners, with a view to drawing up a legislative framework on a voluntary basis”. The trade unions, with the ETUC, were fully in favour; the employers with BusinessEurope, on the other hand, were completely opposed! The debate is now being pursued, in particular within the EP.

## 2.5. The social partners and the struggle against social exclusion

The ETUC has been involved since the early 1990s in joint actions with NGOs in the struggle against social exclusion and poverty, with initiatives for assisting the homeless (the IGLOO initiative with the European federation of national associations working with homeless people), with the European Anti-Poverty Network (EAPN) and then with the platform of social NGOs, in particular with regard to the Charter of Fundamental Rights. It also works with the European Disability Forum in connection, in particular, with access to jobs. The employers got organised in 1995, not through the UNICE but first, responding to an appeal from the Commission president, through a commitment on the part of some twenty large companies, which formed a group known as “European Business Against Social Exclusion”. This was later to become CSR-Europe. In the context of social dialogue, an agreement was reached in March 2010 on “inclusive labour markets”, highlighting the European social partners’ shared determination to work together on the issue of social inclusion.

## 2.6. The crisis and the backslide in interprofessional social dialogue in a context of weaker collective bargaining at the national level

**“ WE ARE LIVING THROUGH A VERY PROPITIOUS TIME FOR ALL THOSE EAGER TO DEMOLISH RIGHTS ”**

We are currently living through a very propitious time for all those eager to demolish rights, hiding behind such good intentions as access to jobs for the sidelined, the fluidity of the labour market, administrative simplification, and “better regulation” as it is known in Brussels. We are witnessing a weakening of rights and a deregulation of working time. Opportunities for working overtime are being extended, as in Lithuania, while overtime rates are being slashed, as in Portugal; reference periods are being extended, as in Poland or in Romania; it is becoming easier to lay people off, as in Slovakia, in the United Kingdom, in Portugal, in Spain, in Bulgaria and in Estonia; trade union action and

24. Commission staff working document SEC(2008)2155.

representation are being undermined, as are tripartite bodies; and the negotiation of minimum wages is being called into question.

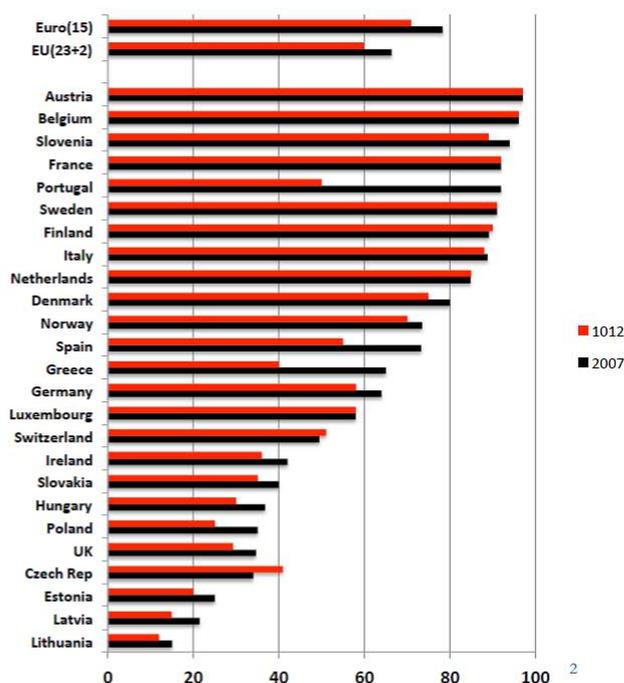
And finally, in this connection, it is worth pointing to a remarkable development in Germany, where the appearance of an enforced minimum wage is a fully-fledged revolution, which unfortunately shows that salary negotiations have proven incapable of covering this grey area of underpaid and underprotected employment spawned by the Hartz reforms. In short, inequality and job insecurity has made inroads on every front.

Measures which might be explained in cyclical terms in this crisis situation are in effect a radical, permanent and deliberate development in the context of rights, but also a weakening of collective bargaining and of the extensions of collective agreements' coverage (see Figure 1)<sup>25</sup>. This virtually universal weakening of collective bargaining at the national level is also a factor in the weakening of European social dialogue, in association with disengagement on the European Commission's part over the past 10 years and with a lack of interest on European employers' part in engaging in better quality social dialogue.

**FIGURE 1** ► Bargaining coverage in EU 2007-2012 (ICTWSS database - AIAS)

What is the situation in the EU? Social dialogue is in retreat following the crisis, with the decline concentrated in the euro periphery. Less coverage, lower bargaining levels and less coordination were meant to bring relief in the short-term, but longer-term impacts on productivity are doubtful.

1. **2007-2012: 11 million workers less covered in EU, from 118.5 to 107.6 million, out of (unchanged) total of 179 million employed workers.**
2. **Coverage rate falls from 66 to 60%**
3. **Very large variation, from near 100% in Austria to 12% in Lithuania; variation has increased in past 10 years (CV from .404 to .490, ending converging trend)**
4. **Largest recent fall in bargaining coverage in Portugal, Spain, Greece, Ireland; erosion even before 2007 in Germany, UK, CEE**
5. **Sharper decline in private sector**
6. **Proximate causes: govt. policy (extension, mediation), shift from sector to company bargaining; withdrawal employers' organisation, union decline**



Source: Bargaining coverage in EU 2007-2012, ICTWSS database, Amsterdam Institute for Advanced Labor Studies (AIAS).

It is extremely worrying to note that attacks on social dialogue in several countries particularly hard hit by the crisis (Greece, Portugal, Italy, Spain, etc.) have come from the very "Troika" tasked with tracking those countries and, in particular, from the European Commission, calling into question both the freedom to negotiate and labour law. The only recourse that these countries' trade unions have had has been to the International Labour Organisation (ILO) on the basis of conventions signed and ratified by their countries. Thus the ILO has become the defender of the European social model due to culpable defaulting on the European Commission's part.

25. Bargaining coverage in EU 2007-2012, ICTWSS database, Amsterdam Institute for Advanced Labor Studies (AIAS).

One can also see the crisis widening the north/south and east/west divide between our member states. The most dramatic aspect is unquestionably unemployment and the economic migration that it is triggering in the member states in a critical condition, whose young graduates are migrating to countries in need of qualified and skilled workers. This situation is helping to undermine those member states' ability to stage an economic comeback.

### 3. Prospects for a boost to European social dialogue in the new phase of the European Union: Problems raised and proposals

“THERE WILL BE A  
SUMMIT ON SOCIAL DIALOGUE  
IN MARCH 2015”

The crisis in the real economy is continuing to have a horribly powerful impact on employment and social policies. Driven by its President Jean-Claude Juncker, the new European Commission can foster a new dynamic for growth and employment. Its proposals are pointing in the right direction, even if the overall amount of investment involved is still too little compared to what would really be necessary. The EU is going to have to involve the social partners more than ever before in this new phase designed to impart a fresh boost to its economy. Jean-Claude Juncker has decided to convene a summit on social dialogue for March 2015. A summit of this kind has not been held for fully 10 years!

What proposals can we put forward for imparting a fresh boost to social dialogue, and for strengthening that dialogue in the future?

#### 3.1. Consolidating the achievements of social dialogue and bolstering the effectiveness of the enforcement of independent agreements

The social partners should take a fresh look at the 31 October 1991 agreement to deepen the current modalities for implementing independent agreements. They should devise new rules for ensuring the effective implementation of their European agreements, involving not only the European organisations that are signatory to those agreements but also their statutory members.

One solution might be to create a legal framework for this kind of agreement. The legal framework could be managed by the social partners in an independent body capable of arbitration and of conciliation (*see point 3.2*). The legal framework could make it possible to ensure that an agreement enters into force in every country after a given time period. One might envisage the following draft text: “The European social partners ensure the implementation of a European agreement through a joint assessment and/or an assessment by the Commission. This assessment shall ensure that national transpositions cover all workers or that the national social partners have, by agreement, put in place the measures required to ensure that at any time it is possible to allow all workers to benefit from the results required by the European agreement. In the event of problems, the European social partners may call on the Commission, in the three years following the assessment, for an extension by directive of the agreement concerned, for implementation in those countries where the social partners have failed to incorporate the European agreement”.

### 3.2. Towards an organised independence of social dialogue's functioning: A European secretariat for social dialogue?

Interprofessional and sectoral social dialogue functions with the EU's technical and financial support for, among other things, interpretation and the provision of funds for travel, board and lodging for employer and trade union participants. The climate today tends to lean towards cuts in the Commission's resources in terms of funding and of staff support for tracking all of the interprofessional and sectoral social dialogue committees' meetings and activities. There is a need to make social dialogue independent and permanent, to follow up on the agreements and documents that it spawns and to offer arbitration and common interpretation capability if needed, to develop specific joint training for the social partners in new member states and also to forge a fully-fledged European culture governing social relations.

This operation cannot boil down to merely "outsourcing" the administrative and organisational handling of social dialogue. The social partners have always forcefully defended social dialogue's independence at both the national and European levels. Would it not be appropriate in this new phase to envisage setting up an independent structure, such as a European social dialogue secretariat, funded by the EU? A body of this nature could manage the development and functioning of interprofessional and professional social dialogue. It could also become the forum for interpreting and arbitrating European agreements and a tool for the development of the social dialogue culture at the European level through joint training<sup>26</sup>.

### 3.3. The "euro", a driving force behind social dialogue

**“ THE EURO AREA COULD  
PLAY A DYNAMIC ROLE AS  
A DRIVING FORCE ”**

The EU's rapid enlargement – perfectly legitimate from a political standpoint – has of course led to a period of time necessary for the integration of the Community's social acquis, and that period is by no means over yet for new member states developing their political and social democracy and coping with their structural backwardness. This is particularly true with regard to social dialogue, where the management of change and adjustment in the economic and social spheres requires properly organised social partners capable of negotiating at the company, regional, sectoral and interprofessional levels. President Juncker has decided to appoint a vice-president with responsibility both for the euro and for social dialogue. This is unquestionably an important move in order to ensure better governance by building the social partners into the process, but it can also provide an opportunity for imparting a fresh boost to social dialogue in the "euro" area so as to create an area of consistency and of common economic and social management. The euro area could play a dynamic role as a driving force and would prevent the kind of stagnation that might damage legislative and contractual social policy.

In view of the repercussions of growing north/south and east/west inequality, an observatory run by the social partners could be set up in connection with a range of issues such as employment, salaries and cross-border mobility in order to monitor that inequality and to counter it in those spheres.

26. In its opinions published on 24 November 1994, on 29 January 1997 and, most recently, on 10 September 2014, the European Economic and Social Committee (EESC) had already hinted at the idea of an independent European secretariat. In its most recent opinion, the EESC writes that "deepening this empowerment might prompt the social partners, if they so wish, to experiment with the establishment of a permanent secretariat for social dialogue with a bipartisan composition".

### 3.4. Diversifying results, controlling and managing the transition towards a low-carbon economy that generates jobs, and supporting international framework agreements

Social dialogue has developed in an interprofessional and sectoral sense (not to mention at the level of transnational businesses, as we have seen), but its role could expand even further in this European area, for instance in connection with geoeconomic border areas (EURES is an example already involving the social partners at cross-border level<sup>27</sup>). The ETUC already organises 45 interregional trade union committees (CISR) which comprise affiliated national confederations' regional trade union organisations. There is a clear need to "coordinate collective bargaining at the level of the cross-border enterprises, knowing that the bulk of the work in that field lies in guaranteeing on the one hand that all workers are covered by the national collective agreement in the sector concerned, and on the other that the said collective agreement is correctly applied"<sup>28</sup>.

One might also question the absence, in the various social dialogue bodies, of cooperatives and mutual enterprises operating in the business sector (other than the banking and finance industry). A place in interprofessional social dialogue could be offered in the business sector to manufacturing cooperatives organised at the European level.

Corporate Social Responsibility (CSR) is an important issue even if it is taken on board very unevenly by the social partners at the national level. The directive "regarding disclosure of non-financial and diversity information"<sup>29</sup> dated 15 November 2014 offers new opportunities of which the social partners are going to have make use, in particular at the cross-border business level.

Sustainable development in the context of the transition towards a low-carbon economy is going to become an increasingly important issue in social dialogue in an effort to "ensure that the environmental issue creates jobs"<sup>30</sup>.

And lastly, the development of European Works Councils has opened up a new area for social dialogue also at the global level. In the context of globalisation, European social dialogue can become a factor for regulation and for the promotion of our European social model's values: cohesion, economic and social progress, social justice and solidarity. So the EWCs have to carry on playing a driving role at the global level and the European Commission must propose an optional legal framework for international framework agreements (IFA) which would make it possible to provide the IFAs with the means for consolidation.

### 3.5. Social and civil dialogue need to complement each other better

**“ PEG SOCIAL ISSUES TO SOCIETAL ISSUES.”**

Our society has become more complex, and social and environmental issues have become more interdependent between the world inside and outside the company: the territorial dimension is becoming part and parcel of businesses' development; we are transiting towards a low-carbon economy; sustainable development policies involve public and community players; the long-term unemployed are being reintegrated, in particular through the establishment of tutoring involving company workers and the world of associations struggling for reintegration through economic measures; there is corporate social responsibility, in particular with regard to subcontracting businesses in developing countries... Social dialogue must create common working platforms linking the world inside and outside the company in an effort to peg social issues to societal issues.

27. Founded in 1993, EURES was set up to provide information, advice and recruitment/job placement services for workers and employers in border regions; it can count on a network of more than 850 advisers.

28. ETUC, *Development of the role of the IRTUCs in strengthening cross border cooperation in the field of collective bargaining*, 21 October 2011.

## CONCLUSION

**“GIVE THE EUROPEAN SOCIAL MODEL’S VALUES OF SOCIAL JUSTICE AND SOLIDARITY A PLACE ON THE WORLD’S STAGE”**

Thirty years on from the first Val Duchesse meeting, the situation for social dialogue is far from desperate. The new Commission and its new president appear to be more aware of the importance of the social dimension of this new phase bent on imparting a fresh thrust to the European Union, just as the member states – especially those in the euro area – have understood the importance of the single currency’s economic governance and of the dramatic social repercussions of the crisis. The forthcoming European summit on social dialogue scheduled by President Juncker for March this year is going to be crucial in order to launch a new dynamic and to put forward new initiatives on the Commission’s part, but it is the social partners themselves who are going to determine the future of social dialogue through the quality of the content in their next working programme for 2015/17 and through their ability to commit to binding agreements. The quality of European social dialogue will also develop at the sectoral and multinational business levels in order to give the European social model’s values of social justice and solidarity a place on the world’s stage.

29. 2014/95/UE Official Journal of the European Union.

30. Interview with sociologist Dominique Méda in the 14/15 December 2014 issue of Paris daily *Le Monde*.

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