

Social Europe: social dialogue at the heart of the debate

At the end of her term of office, the President of the European Commission, Ursula von der Leyen, has called a European social dialogue summit for the end of January 2024, almost 40 years after the Val Duchesse meeting that launched it. This gives us the opportunity, one month after the death of Jacques Delors, who organised the Val Duchesse meetings on 31 January 1985, to revisit the issues at stake in European social dialogue and, more broadly, the possibility of an integrated, multi-level system of industrial relations from a short- and medium-term perspective.

This policy brief is divided into three parts. First, it recalls the objectives, achievements, and limitations of European social dialogue during its formative period and its "golden age" (1985-2007). This period has also witnessed the emergence of other institutions related to collective bargaining.

Secondly, it highlights the main elements of the crisis that has led to a series of deadlocks over the last 15 years.

Finally, it presents recent trends and suggests pathways to reinvigorate cross-industry and sectoral social dialogue in the coming years. This can only be done by trying to rethink the original project and its limits and to include it in an articulated multi-level system.

I • The early days: from optimism to disillusionment

Almost 35 years ago, the Maastricht Treaty, through the adoption of a Social Protocol incorporating the social partners' agreement of 31 October 1991, formalised what was already in the making in the Single Act: an embryo of European social dialogue. The Single Act introduced two major elements: qualified majority voting, including on social matters, and the ability of the European social partners to develop a European social dialogue, including contractual dialogue. Thanks to these two elements, the Commission was able to relaunch a social policy blocked by British vetoes and stimulate social



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dialogue by delegating to the social partners the possibility of negotiating legislative initiatives. In this way, the social dialogue could henceforth have binding repercussions through the implementation of a directive of the agreements between European social partners (then UNICE, now BusinessEurope, the European Trade Union Confederation (ETUC) and CEEP, now SGI-E). This was a major innovation giving social partners the unique capacity to act as co-legislators. The model that inspired the negotiators was the Belgian model (and to a lesser extent the French model), which is not entirely surprising as most of the negotiators were from or inspired by these countries. This way of doing is what it is called implementation by legislation.

The second model for implementing agreements, initially more marginal, was inspired mainly by the German or Scandinavian models, with the autonomy of the social partners from the State and the implementation of the agreement by the signatories themselves. These were known as autonomous agreements.

It was kind of an experiment or an institutional bricolage in the sense that national models were projected and legally consolidated at the European level without the institutions or practices implicit at the national level also being found at the European level (Didry, Mias 2007). To give just one example, the Belgian system relies on the one hand on an institution - the National Labour Council - that supports negotiations and, on the other hand, the automatic, at least at that time, of the *erga omnes* extension of agreements reached by the government. The same applies in France, where the Higher Commission for Collective Bargaining allows national and sectoral agreements to be extended. None of this has been implemented at the European level. We will come back to this later in this article.

However, European employers never considered the construction of a European social dialogue system in a positive light. It was essentially a tactical means of weakening the Commission's legislative initiative and of circumventing the activism of a European Parliament which strongly linked the completion of the internal market to the

development of a social dimension, of an "Espace social Européen (European social area)" in the words of the time (Lapeyre, 2017).

The "social dialogue experimentation" aspect is also illustrated by the fact that between 1993 and 2004, the European Commission published no less than five "communications" on European social dialogue. In these documents the Commission endeavoured to define its strategic vision of the role of the social partners in the "European construction": to develop this social dialogue, make it a force for change, an instrument for development in the countries of Central and Eastern Europe... and which gave its interpretation of this new institution (Degryse 2022, Tricart, 2021).

In the wake of Maastricht, a political agreement was also reached on the creation of European works councils (after the failure of negotiations between the social partners on this subject, which was highly contentious at the time), once again an significant innovation in the information/consultation of workers in transnational groups, and which, according to its promoters, should *ultimately* make it possible to negotiate with the headquarters of multinationals, where strategic decisions are taken.

Finally, the decision to achieve a monetary union by the end of the last century led to a debate on wage coordination with various regional policy initiatives (the Doorn process between the German, Belgian, Luxembourg and Dutch trade unions), sectoral initiatives (metal, textiles, for example) and cross-industry initiatives (ETUC). This was complemented by the so-called Cologne process, which established a "macroeconomic dialogue" on wages and monetary and budgetary policies between the European Central Bank, social partners, and representatives of the Eurogroup, with the participation of the European Commission.

In 1998, the European Commission also reorganised and better structured the sectoral social dialogue, which was in turn to develop (Dufresne et al, 2005, Pochet, 2005).

These various developments sketched out here very briefly suggested that there was a

window of opportunity to develop a European multi-level industrial relations articulated system vertically between companies and regional, national, and European levels, as well as horizontally around the various sites of multinational companies (Margisson, Sisson 2006, Keune, Margisson, 2013).

As we know, this did not materialize. On the one hand, because of the lack of will on the part of the employers represented by BusinessEurope to build something stable and with cumulative effects. On the other hand, due to a withdrawal of the Commission to a role of broker, neutral intermediary instead of its previous role of active supportive agent.

This does not mean that nothing has happened. Autonomous agreements between social partners developed from 2000, addressing new and important subjects (teleworking, violence, and stress at work, etc.). Sectoral social dialogue has also developed - with no less than 45 European sectoral social dialogue committees to date - and many new sectors started to have substantial exchanges, even negotiating binding agreements¹. Workplace democracy was strengthened by workers participation in the European Company (2002) and the revision of the European Works Council Directive (2009). However, nothing truly articulated has emerged and the political momentum gradually evaporated.

II • From disillusionment to deadlock

Under the Barroso Commissions 1 (2004-2009) and especially 2 (2009-2014), particularly during the 2008-2013 financial and euro crisis, trade unions were marginalised, collective bargaining was questioned, and minimum wages and processes for extending collective bargaining coverage were seen as rigidities that needed to be removed. In addition, the financial crisis was also used by the Troika and others to question the usefulness of national social consultation and collective bargaining institutions and the respective actors, particularly trade

unions (Degryse et al, 2013). These years have been marked by declining trade union membership and collective bargaining coverage in general. Moreover, due to particularly low collective bargaining coverage in Central and Eastern European countries, the enlargements have also resulted in weakening European social dialogue and reinforcing intra-European differences between countries where workers are largely covered by collective bargaining and those where less than 50% of workers are, especially in all Central and Eastern European countries (Keune, 2015).

As a result, the “autonomous” social dialogue that had developed at the European level in the 2000s - whose agreements were to be implemented by social partners themselves at the national level - structurally faced challenge in its national implementation, which became highly uneven across countries.

During this period, the publicly stated goal of employers became to deregulate at the national level to maintain competitiveness in the face of international competition, particularly from China (Degryse, Pochet, 2017).

European cross-industry social dialogue has taken a break since 2007.

On the one hand, it now seems impossible to negotiate new binding agreements. The recent failure to renegotiate a 2002 agreement on teleworking due to the withdrawal of management, which refused to accept a right to disconnect, even though it seemed a relatively easy subject, is emblematic of a crisis that has become structural.

On the other hand, after the agreement on telework in 2002, the content of autonomous agreements became increasingly vague. The latter are less and less interesting qualitatively and their implementation at the national level remains random and very uneven, if not non-existent, which raises a problem of the credibility of the social partners in their ability to respect their agreements.

¹ According to the Commission's accounting, there are 8 agreements transformed into directives and 13 autonomous agreements.

Furthermore, agreements to create and develop European works councils seem to have reached a plateau (around a thousand companies) and have progressed very slowly over the last 15 years.

Sectoral social dialogue, which seemed more promising (Degryse, Pochet, 2011), is also entering a crisis, particularly following the Commission's refusal to forward to the Council agreements negotiated in the hairdressing sector in 2012 and the public administration sector in 2015. A central argument used by the Commission is that the focus should be on essentials and not on managing the details. This will culminate in the Court of Justice's ruling on the agreement on information/consultation of employees that the Commission refuses to transmit to the Council (EPSU ruling, 2021). The Court of Justice did not recognise the specific nature of social dialogue procedures and issued an opinion in terms of the general principles of the Commission's absolute autonomy (Borelli, Dorssemont, 2021, Carré, Steiert, 2023). This was a radical turning point in the sense that, from the perspective of those involved in the 1992 agreement, it was clearly about opening up the capacity of co-legislators and enriching traditional democracy with social democracy. The bureaucratic interpretation of the Commission and the Court of Justice's defence of the EU's traditional mode of operation also provided an opportunity, albeit in a very different climate from the Delors commissions, to revisit the limits of Maastricht.

The idea of a multi-level system therefore seems to be a thing of the past (Pochet, Degryse, 2016). We are faced with a disarticulation of industrial relations. But is this still the case today?

III • From impasse to reconstruction

In recent years, however, we have observed various attempts at reorganization, strengthening and integration of the multi-level industrial relations system in the EU.

First, this concerns the extension of collective bargaining coverage at the national level. The directive on adequate minimum wages (2022), which was radically opposed by

employers, not only deals with the minimum wage but also requires Member States with collective bargaining coverage below 80% to establish an action plan to promote collective bargaining, plays a crucial role in this respect. Even if achieving the 80% target in most Member States may be doubtful, it clearly emphasizes EU's commitment to collective bargaining as a mechanism for regulating the labour market. There is no miracle way of achieving this.

Therefore, it is necessary to consider national mechanisms to extend coverage. There are not many of them.

One can play on the density of employers' organisations, which in many countries is higher than the density of trade unions, but sectoral employers' organisations are particularly weak in Eastern and Central Europe. There is also a phenomenon of exit from sectoral employers' organisations, especially in Germany. As for the trade unions, although in some countries their density remains high, the general trend is towards a loss of members or, at best, a certain stabilisation. This important process of strengthening the players will therefore take time.

Another solution consists of strengthening sectoral bargaining and the possibility of *erga omnes* extensions. However, this is not as simple and there are certain technical problems to solve (for example in Germany: both parties must request it, which *de facto* gives employers a veto, cf. Hassel, 2023).

The general *erga omnes* extension also brings the government into the game *de facto* and may be seen as problematic in some countries.

Be that as it may, we cannot avoid a serious discussion on increasing the coverage rate. This will require structural changes in many countries, and many years of work to see how this can be achieved.

This approach is complemented by the adoption of guidelines on the application of EU competition law to collective agreements on working conditions for self-employed workers (2022), which aim to extend collective bargaining to this group of workers, which is virtually not covered today.

Similarly, the revised Posting of Workers Directive (2018) expands the possibilities for posted workers to be covered by collective agreements.

Finally, several new or proposed policies aim to strengthen social dialogue and the voice of workers in multinationals and to improve how they treat workers in their value chains as well as their social and environmental responsibilities. The ongoing revision of the European Works Council's (EWC) Directive to strengthen the information and consultation rights of EWCs (2023) should lead to a partial revision. Another initiative is the directive on corporate sustainability due diligence (2023), which aims to encourage companies operating in a single market to contribute to respect for human rights and the environment in their own activities and value chains. The Commission's proposal for a regulation to ban products manufactured with the use of forced labour, including child labour, in the internal market (2022) is closely linked to this proposal. Finally, the directive on corporate sustainability reporting (2023) requires companies to present more detailed reports on social and environmental issues. There is potentially a horizontal linkage here between different subjects related to multinational companies.

These different policies aim to (i) extend collective bargaining, (ii) improve national and European social dialogue and (iii) enhance the voice of workers in multinational companies, as well as the social and environmental responsibilities of multinational companies. They can serve as a basis for establishing a more articulated system of multi-level industrial relations in the EU.

However, the failure at the end of 2023 of the cross-industry agreement on teleworking and the right to disconnect is a failure whose effects cannot be underestimated. Similarly, following the EPSU case, it is no longer clear what can be expected from sectoral agreements.

However, the Recommendation on strengthening social dialogue in the European Union (2023) presents a series of interesting measures to support social dialogue at national and European levels. It also addresses the multi-level nature of industrial

relations in the EU by aiming to better articulate the European and national levels and to achieve better implementation of European agreements at the national level.

IV • Outline for the future

We find ourselves in a situation where the functioning of European social dialogue is the main problem. It is necessary to consider how to revive on the one hand and, on the other, how to articulate it with the new national and European dynamics that we have just described.

On the one hand, we need to improve the content of the four-yearly work programmes and link them more closely to current event. We also need to launch genuine negotiations at both cross-industry and sectoral levels: on the right to lifelong vocational training; on gender equality at the company level; on managing change and restructuring in a low-carbon economy, etc.

It is first about addressing the limits that were not structurally resolved 40 years ago.

As far as legislation is concerned, this means clarifying the position of employers and the Commission. This goes far beyond BusinessEurope, which has become a conservative lobby. Still, as this organisation is central, without a clear message of support for this path we will remain in the current impasse. However, this seems unlikely, without the threat of swift legislation if negotiations fail.

This could take the form of a formal commitment by the Commission to present a proposal in the event of failure. This makes sense even from an initial autonomous commitment on the part of the social partners. Indeed, by entering negotiations, both parties recognise that the subject is important, that it must be regulated and that this must be done at the European level. The failure of the negotiations does not affect this and, thus gives the Commission the legitimacy to act. This could be done in a similar way to what happens when a European petition reaches one million signatures or when the EP asks the Commission to act. Ideally, the automaticity would be desirable, but it seems out of reach.

What is important here is to restore a balance between the actors and to have an active role for the Commission that does not depend on more or less favourable political circumstances.

The other key point is the transmission of agreements to the Council. Here too, creative solutions can be found. For example: if the signatories represent at least a given percentage of companies and workers, the Commission will automatically transmit to the Council (subject to the usual legal checks). This is subject to controversy, and it should be up to the actors to find a solution that is not a technocratic one, as proposed by the Commission in its 2023 communication (legal and technical assistance).

Finally, for the implementation of autonomous agreements, we could also imagine a creative solution whereby, after a certain period, if the agreement does not cover at least a given percentage of workers, one of the two parties could request an *erga omnes* extension. This would require a reform of the Treaty introducing an automatic extension clause for European agreements after a certain number of years, defined in the agreement, of transposition by the national social partners. The logic here would be not to allow fragmentation of the internal market where some are protected, and others are not.

The other aspect is sectoral social dialogue. To negotiate, it is necessary to have different interests that are likely to lead to an exchange, a compromise, which builds a common interest. This is generally easier at the sectoral level where there are issues specific to the sector. Take, for example, the current negotiations in the gas sector between IndustriAll, EPSU and employers on a just transition in this sector. Since gas is a transitional energy and the existing infrastructure can be used for hydrogen transport, there is a common interest between the two parties.

But what seems more important is to know how to succeed in linking a new national dynamic which would result essentially, but not exclusively, from the effects of the directive on the minimum wage with European sectoral negotiations, because that is the centre of a multi-level system. While the

cross-industry level provides the framework, the sectoral level provides the substance in different sectoral realities.

This calls for greater coordination between sectors and across sectors, at least on the issues that could serve as a basis for this coordination. I can think of three: skills and training, the new challenges of artificial intelligence and the consequences of climate change, which are, from my point of view, a priority. Especially since this is an essential theme, as seen in the previous section, of discussion and *reporting* at the level of multinational companies.

We are not starting from scratch here; if we look at the EP resolution (2023) on climate and employment, some of the elements are already there. It stresses “*the importance of the Member States in promoting sectoral social dialogue and collective bargaining, especially in newly emerging green industries*”. It also notes that “*the Minimum Wage Directive represents a great opportunity to strengthen collective bargaining on wage-setting and the presence of the social partners in emerging sectors*”. The EP resolution also calls for “*the adoption of just transition plans to be negotiated by the social partners at sectoral and company level, particularly those affected by the green transition*”. It also stresses that “*these plans should ensure that companies’ operations and value chains reflect the Green Deal objectives and should also specify the accompanying social measures aimed at promoting employment and quality jobs, including addressing strategic jobs and skills planning and related training policies*”.

This would enable the various actions to be articulated in a controlled and fair change plan, with specific actions and modalities according to levels and sectors. In short, to relaunch social dialogue with ambitious and realistic objectives and to resolve the problems that have arisen over decades of initial tinkering. We need to think about a European system of industrial relations that makes sense of the many changes that have been made without an overall plan.

This ambitious but realistic programme cannot be achieved all at once. The Social Dialogue Summit could be the first building block. The La Hulpe meeting convened by

the Belgian Presidency of the EU Council in mid-April to reflect on the social challenges of the next five years is a second opportunity. The European elections and the debates that will emerge on the future of Europe are a third. However, this can only happen if the specificity and uniqueness of social dialogue are recognized. ●

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