POTENTIAL REGULATION OF EMPLOYMENT RELATIONS
AND THE EUROPEAN SECTORAL SOCIAL DIALOGUE

Paper presented at the Industrial Relations in Europe Conference, Eurofound, Dublin (Ireland), 10-12 September 2014

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ABSTRACT

Is there potential, at European level, for joint regulation of employment relations? Over the short history of the European integration, European institutions and social partners set up structures where social dialogue takes place, at cross-industry, sector and company level. When compared to collective bargaining bodies in each national system of industrial relations, it is clear that these structures do not have the same role (Marginson & Sisson 2004, Keune & Marginson 2013). However, they formally hold a capacity to define joint rules that can be implemented in the twenty-eight member states. To what extent does this capacity lead to effective regulation of employment relations, or to potential regulation? The paper addresses these questions by the means of close examination of the European sectoral social dialogue. It shows that the potential for regulation at this level does not only depend on institutional settings but, rather, that it largely depends on ‘vertical relations’ between the European-level bodies and national social partners.

INTRODUCTION

The 1991 Social Protocol, annexed to the Maastricht Treaty, granted to the European social partners the right to develop bilateral relations and to conclude agreements at European level. The social partners were entitled to request transposition of their agreements into directives by the Council. In such a case, provisions in agreements become part of Community law, and they are binding for the member states. In parallel, employer and trade union representatives hold the capacity to negotiate bilateral agreements that can be implemented “in accordance with the procedures and practices specific to management and labour and the Member States” (CEC 2003: 7; art.155 TFEU). Beyond agreements as such, social partners acting at the European level can elaborate process-oriented texts or tools that are applicable to their national constituencies without, however, a formal status for implementation. The European social dialogue could, therefore, be considered potentially
able to regulate employment relations at EU level and within the member states (Didry & Mias, 2005; Falkner, 1998).

Since then, some major developments affected the European social dialogue, and particularly at sectoral level. The European sectoral social dialogue (ESSD) grew in importance and vitality over the last 20 years, with the creation of new committees up to forty-three sectors today, where more than 650 joint texts have been concluded at this stage.

Twenty years after the Maastricht Treaty, it is clear that most of the ESSD outcomes consist in soft non-binding texts, such as guidelines or frameworks of actions (Degryse & Pochet, 2011), and in joint opinions addressed to the European Commission (European Commission, 2013). Hence, commentators repeatedly question the legitimacy and efficiency of the European sectoral social dialogue when the ‘shadow of hierarchy’ is absent (Héritier & Lehmkuhl, 2008; Keller, 2008; Smisms, 2008).

Therefore, if the ESSD has the formal capacity, theoretically granted by the Treaty, to produce joint regulation that can possibly be implemented in the member states, does it have the effective capacity to produce norms likely to affect employment relations across the EU? In other words, can the European sectoral social dialogue be a tool for regulation, even of a ‘soft’ nature, of employment relations? If no, why; if yes, in what circumstances and under which conditions?

Previous studies on the implementation of outcomes issued from the European social dialogue looked more specifically at the results of cross-sectoral frameworks agreements. Research results offer a rather mitigated assessment. While agreements contribute to introduce new topics into national policy agendas, implementation remains patchy and piecemeal (Larsen & Andersen, 2007; Prosser, 2012; Visser & Martin, 2008; Welz & Wolf, 2010). As for the sectoral level, the outcomes of the European sectoral social dialogue still remain largely unexplored (Keller & Weber, 2011; Pochet, Peeters, Léonard, & Perin, 2009).

This paper intends to provide a comprehensive analysis of the ESSD regulatory capacity, defined as the capacity to produce rules and norms, even of a soft nature, that affect employment relations within the member states. To this end, the paper looks at the issue of implementation of joint texts from an actor-centred perspective and a bottom-up approach. The approach examines the role that national social partners play in the European social dialogue, and the relationships between domestic and European dynamics, and how these roles and dynamics are likely to lead – or not – to regulation at national level. The paper shows that the ESSD can have a capacity to influence employment relations within member states, but only in some cases, notably when national-level players find an interest and have resources to act at the European level and to use European texts with a view to influence their domestic situation.
The first section of the paper briefly presents the developments of the European social dialogue and its regulatory capacity as it is officially defined, notably in the Treaty. In the 1990s, when the European social dialogue was first developed, its regulatory capacity was thought to be potentially strong (Didry & Mias, 2005; Falkner, 1998).

Yet, twenty years later, the European social dialogue outcomes rather consist in soft non-binding texts. The question, then, is twofold: what is the effective impact, if any, of texts signed jointly in ESSD committees in member states? How to explain their impact, or their lack of impact? The second section proposes a conceptual framework to address these questions. Instead of adopting a legal approach in terms of formal status of joint texts issued by ESSD, and ‘top-down’ perspective focused on institutional mechanisms, the paper refers to broader and softer benchmarks, including cognitive and procedural dimensions, to assess the impact of ESSD texts. The focus is then on political processes implying the various players involved, including both the European social partners and their national constituencies.

In the third section, drawing on data provided by case studies conducted in specific sectors (agriculture, commerce, hospital and postal services), the paper analyses the implementation of joint texts and potential impacts that agreements could have in the member states. Research findings show that implementation has cognitive impacts, but can also affect the content of national regulations and practices of the national social partners. In short, even if ESSD agreements are of a ‘soft’ nature, they have some regulatory value. Yet, this is only effective in some cases.

The second part of section three then analyses which processes are conducive to implementation of joint texts and, finally, to some kind of regulation of employment relations in the member states. It highlights how decision processes in European-level committees lead, or not, to texts that are likely to affect national employment relations.

The analysis emphasizes the key role that national and sectoral institutional contexts play in shaping social partner position, role and strategies in the ESSD committees. National employer and trade union representatives who participate in the committees do it with the aim to weight on European decisions and to deal with the national issues through a transnational mode of coordination. The social partners who effectively weight on the final decisions are the ones who possess a strong institutional position in their domestic context. When it comes to implementation, national players who were active in drafting the text and who are able to intervene autonomously on national regulation will effectively implement the European texts.

As a conclusion, research results show that, without the ‘shadow of hierarchy’, the ESSD is able to develop a regulatory capacity. Yet, it strongly depends on processes in which strategies of national social partners play a key role. Beyond the formal institutional background that supports the European social dialogue, relations with national
constituencies are crucial in determining social partner commitment to the European social dialogue and, in turn, implementation of texts.

**EUROPEAN SECTORAL SOCIAL DIALOGUE: REGULATORY CAPACITY, IN PRINCIPLE**

Social partners have been associated to the European decision-making process from the early decades of the European Community. Six informal joint committees were established very soon in sectors affected by the first European regulations and the launch of the European Coal and Steel Community: extractive industries in 1952, agriculture in 1964, road transport in 1965, inland waterways in 1967, railways in 1972, and fishing in 1975 (Dufresne, 2006).

Such bodies played at first a consultative role, but the role and status of committees evolved throughout the integration process, and the number of sectors having their own committee grew (Degryse & Pochet, 2011; Dufresne, 2006), until the broad coverage of manufacturing and service activities with today’s forty-three committees (see the full list of committees on the Commission’s webpages: http://ec.europa.eu/social/main.jsp?catId=480&langId=en).

A major turning point occurred in the 1980s when Jacques Delors, then President of the European Commission, gathered trade unions representatives and employers associations at Val Duchesse in Brussels for conferences aiming at the launch of the European bipartite social dialogue (Degimbe, 1999; Didry & Mias, 2005).

A few years later, the Social Protocol annexed to the Maastricht Treaty, provided that “before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action” (Art. 138 EC). Social dialogue included consultation by the Commission and, besides, a possibility for bipartite negotiation: dialogue between management and labour could “lead to contractual relations, including agreements” (Art. 139EC).¹

Therefore, in the establishment of the European social dialogue as such, social partners formally became neo-corporatist actors in European social politics, and they gained the status of ‘co-legislators’ able to produce their own rules and norms (Didry & Mias, 2005). These could formally have an impact on the Commission’s decision by the means of consultation processes, or they would directly affect member states by implementing texts and transposing them into national-level regulation, either by a Council decision or by the ‘autonomous route’ (Léonard, Erne, Marginson, & Smismans, 2007). Several scholars considered positively the rights that were granted to social partners and thought that procedures and practices would lead to the emergence of a form of Eurocorporatism (Didry & Mias, 2005; Falkner, 1998; Welz, 2008).

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¹ Art. 138 and 139 EC were integrated into the Lisbon Treaty under Art. 154 and 155 TFEU.

According to the provisions of the Treaty, there are four possible procedures that the social partners at EU level can use with a view to reach and implement European texts. Firstly, during a consultation process initiated by the Commission, trade union and employer representatives can decide to deal with the issue at stake by a European agreement rather than by legislation. If an agreement is reached, the European social partners can request the agreement be adopted as a Council Directive. The agreement then becomes part of the Community law, and it is binding for all member states. In such a case, the agreement is said to be ‘Commission-initiated’ and ‘Council-implemented’, in Smismans’ terms (Léonard, Erne, Marginson, & Smismans, 2007; Smismans 2008). Secondly, the European social partners can decide to implement by their own means the agreement resulting from the consultation process; the agreement is then ‘Commission-initiated’ and ‘self-implemented’ (id.). Implementation then rests on a voluntary process that largely depends on the action of national social partners in their own domestic context. Thirdly, European social partners are able to negotiate an agreement outside the framework of the Commission’s consultation process. They are free to enter into negotiations and conclude a ‘self-initiated’ agreement on any matter that they deem appropriate. A given ‘self-initiated’ text, in turn, can be implemented autonomously. And, fourthly, a ‘self-initiated’ text can be transposed into a directive by Council decision (Léonard, Erne, Marginson, & Smismans, 2007; Smismans, 2008).

In 1998, the European Commission decided to formalize and to institutionalize further the formal or informal working groups that existed so far. The Commission established homogenised forms of sectoral social dialogue committees where the social partners were encouraged to sign joint texts (European Commission 1998). Furthermore, the Commission promoted the creation of new committees in sectors that were not covered, which led to the development of committees in a large array of activities. Among the most recent ones are the committees for the graphical industry and for ports, both set up in 2013. In 2014, they cover forty-three sectors (European Commission 2013; see, for an update, http://ec.europa.eu/social/main.jsp?catId=480&langId=en). In terms of outcomes, the committees adopted more than 650 joint texts, including seven agreements implemented by a directive and five by the national customary procedures (European Commission 2014).

Besides agreements, joint texts issued from the European sectoral social dialogue mainly consist in three types of instruments: frameworks of action, guidelines and codes of conduct, and policy orientations. All are labelled ‘new generation texts’ by the Commission and belong to the sub-category of ‘process-oriented texts’. According to the European Commission, these instruments do not entail formal transposition of their provisions in the legal framework of each member state, but rather provide guidelines and orientations to national social partners (European Commission 2004). In other words, frameworks of action, guidelines or codes of conduct rest on a soft non-binding process for implementation (European Commission 2004). The European social partners make recommendations but
have no constraining power towards their national member organizations (Keller, 2003). In order to follow the implementation process, they initiate regular evaluations of the progress made in the member state and organize diverse follow-up procedures such as written surveys, periodic reports or conferences (Pochet, Peeters, et al., 2009).

The prevalence of ‘soft’ texts, combined with limited information on implementation and impact of texts, raises questions on the ability of the ESSD to effectively affect national employment relations (Keller, 2008; Smismans, 2008). Such questions on efficiency and legitimacy are not specific to the sectoral level, and also cover the cross-industry social dialogue (see for instance Prosser, 2012; Welz, 2008).

As for the sectoral-level texts, so far there is little evaluation of the implementation of joint texts. The European social partners themselves face difficulties in getting information from their members about the follow-up of specific texts (Keller & Weber, 2011; Pochet, Peeters, et al., 2009). Previous studies are rather sceptical about implementation of the ESSD process-oriented texts. At first, researchers highlight the difficulty to ‘quantify implementation’ and to monitor the impact of the texts at national level (Weber, 2010). Relying on formal benchmarks such as collective bargaining and coverage rates, they come to the conclusion that soft instruments produce limited results (Keller & Weber, 2011; Weber, 2010).

Similarly, for cross-industry social dialogue, researchers who examine the implementation of agreements on telework and on work-related stress reach mitigated conclusions about their potential impact. Visser and Martin conclude that these agreements contribute to introduce new topics into national policy agendas and to develop social dialogue structures in member states (Visser & Martin, 2008). Prosser is more pessimistic and evaluates the implementation process as ‘patchy’ and ‘piecemeal’, with ‘very modest regulatory value to national system of industrial relations’ (Prosser, 2011, p. 258; 2012, p. 458).

REGULATORY CAPACITY IN PRACTICE: POLITICAL PROCESSES AND MULTI-LEVEL STRATEGIES

Agreements concluded at European level or ‘new generation texts’ do not strictly correspond to what is called ‘a collective agreement’ in the various member states: they do not have a similar legal and constraining status that fits with the institutional specificity of each collective bargaining system. As Marginson and Sisson already noted in 2004, European-level processes should not be assessed against the characteristics of long-established industrial relations practices in national contexts. This also applies to the outcomes of the European social dialogue. Therefore it is not fully legitimate to evaluate the status and the intentions of texts issued from the ESSD against the characteristics and effectiveness that collective agreements have within each industrial relations system.

Rather, one can consider that soft non-binding joint texts are close to ‘new modes of governance’ (Pochet, 2007). In the 1990s, new modes of governance based on soft
instruments such as benchmarking or best practices were developed in order to enhance coordination in areas previously uncovered by the Community method (Borras & Jacobsson, 2004). Studies looking at soft EU instruments mainly refer to their learning potential and procedural impacts. These studies consider the domestic impact in terms of ‘ideational influence’, as well as according to the redistribution of power that they may foster (Knill & Lehmkuhl, 2002; Zeitlin, 2009).

From a European policy-making perspective, researchers usually see new modes of governance as strongly dependent on ‘the shadow of hierarchy’, defined as legislative and executive decisions, and effective only when there is a ‘threat’ of legislative decisions (Hérétier & Lehmkuhl, 2008; Hérétier & Rhodes, 2011). In line with this argument, Smismans (2008) considers that agreements of the European social dialogue cannot be reached nor implemented effectively without the intervention of European institutions and the ‘threat’ of potential legislation.

From an industrial relations perspective, questions of legitimacy and efficiency relate to the diversity of collective bargaining systems in Europe, because the implementation of outcomes implies a diversity of statutory status of collective agreements, diverse processes of collective bargaining, and different rates of collective bargaining coverage. Diversified industrial relations do not only lead to a high degree of complexity in tackling issues discussed in the European sectoral committees, they also complicate implementation processes because the notion of agreements has different legal or conventional meanings in different national contexts, and not all sectoral social partners have a similar capacity to act in their respective domestic system. Some scholars then consider that soft agreements cannot guarantee implementation of common minimum standards in the member states (Keller, 2008; Schiek, 2005).

Accordingly, if one takes the nature and requirements of process-oriented texts into account, on the one hand the outcomes of the EESD should not be only appraised according to their strict regulatory impact weighted in the terms used to evaluate ‘traditional’ collective agreements. On the other hand, assessing the impact in terms as general and vague as ‘cognitive processes’ or ‘learning outcome’ raises conceptual and empirical difficulties: how to evaluate any ‘cognitive’ impact or how to measure learning processes, without seeing any vague reference to a subject contained in a given text, by any employer or trade union representative, as the result of the European text? If being too narrow in the criteria used may lead to unjustified critiques that do not reflect the mere complexity and specificity of European-level social dialogue, being too broad bears the risk of insufficient conceptual precision and of seeing causality where there is coincidence only.

It is then relevant, instead, to use a wider notion of implementation of process-oriented texts in terms of influence or impact that they have on initiatives undertaken by the national social partners. Broader and softer benchmarks than transposition into a collective agreement must
be used to assess the impacts of the ESSD texts. This includes cognitive and procedural dimensions. Implementation, in this perspective, does not only cover formal translation and transposition into a given type of domestic text, but other processes that relate to local activities initiated as a consequence of a given text.

This perspective, in turn, requires further conceptualisation of relations between European-level texts and activities undertaken within domestic contexts, in order to understand why trade union and employer associations within member states get committed to implementing a given text, whenever they do it.

When examining the implementation of the European social dialogue agreements, scholars identified complex level linkages between the national structures and the European level, which may then be an obstacle to attempts of European-level regulation (Léonard, 2008; Prosser, 2012; Weber, 2010). Systems of industrial relations differ widely among the 28 member states. Procedural rules, levels of collective bargaining, hierarchies between the different levels, statutory status of collective agreements, and the parties entitled to conclude collective agreements vary from one country to another and, within each country, from one sector to another (Traxler, Blaschke, & Kittel, 2001). Each time that implementing EU agreements or joint texts requires any kind of action from the national constituencies, these characteristics shape different capabilities for the national actors.

In addition, the lack interests of the national social partners in the topics addressed by the texts, as well as their unwillingness to implement the texts at the national level, have also been highlighted as explanatory factors of difficulties in implementation (Kaeding, 2013; Léonard, 2008; Prosser, 2012). Such findings bring into light the complexity and the diversity of aspects that should be taken into account.

Keune and Marginson propose to draw on multi-level governance perspectives to understand the complexity of industrial relations in Europe (Keune & Marginson, 2013). In their view, the emergence of transnational levels in industrial relations provides new opportunities and simultaneously adds new limits and constraints to the national social partners’ scope of action.

The approach can be applied to understand why national trade unions and employer associations participate in the European sectoral social dialogue committees, while they do so on a voluntary basis. In a multi-level environment, opportunities of action are increased, because there is some type ofduplication of fields where players can potentially act. When a given player, either on trade union or on employer side, is regularly limited in the pursuit of his or her own objectives by the domestic institutional context, he or she will tend to look for levels of decisions that could be most responsive to his or her claims (Baumgartner & Jones, 1993; Marks & McAdam, 1996; Pralle, 2003).
Keune and Marginson also consider that complexity of multi-level governance cannot be fully grasped by traditional institutionalist approaches of industrial relations. For them, the vertical dynamics between the European social dialogue and the national level cannot be only considered on a top-down basis: “(…) ESD and ESSD are dependent on the cooperation, preferences and resources of national-level actors that they cannot exercise control over and that will differ substantially across the EU” (Keune & Marginson, 2013, p. 484).

From this perspective, the implementation of a given text issued from the European sectoral social dialogue should not be seen as a descending process whereby national-level constituencies just adopt or reject the content of the text, and transpose it or not within their own institutional structure. Instead, it must be considered as a process in which national-level players and European players interact and, in these interactions, each player’s interests, preferences and resources intervene.

Implementation, in this view, is defined as initiatives undertaken by the national social partners as a consequence of a given text discussed at European level. And one can suppose that implementation takes place when national players see an interest in the text and have the capacity, in terms of resources and strength, to act in their domestic context in relation with this text. This, in turn, depends on the interest that they have in the specific topic covered by the text. Understanding implementation requires, therefore, looking at ‘upstream’ processes whereby national constituencies give a mandate to European social partners to discuss that specific topic in the European sectoral social dialogue committee.

In this perspective, the regulatory capacity of the European sectoral social dialogue depends on the involvement of national social partners in the ESD and the strategies that these and the European players develop when interacting at both levels. The European social partners form their respective delegation in the committees from designated national member organizations.

Elaborating and implementing joint texts imply, therefore, negotiation processes that take place not only between trade unions and employer associations in the European committee, but also among trade unions and among employer associations from different member states. In such processes, the European Secretariats mainly play a role of coordination and information towards their affiliates (Pochet, Peeters, et al., 2009).
**IMPACT OF EUROPEAN TEXTS IN DOMESTIC CONTEXTS: HOW AND WHY?**

**METHODOLOGY**

Empirical research results presented here stem from two different studies conducted from 2008 to 2014. One was completed on behalf of the European Foundation for the Improvement of Living and Working Conditions, Dublin, in cooperation with Philippe Pochet and Anne Peeters (Pochet, Léonard, Perin, & Peeters, 2009). The second one took place as a Ph.D. research conducted by Emmanuelle Perin (Perin, 2014). Data from the two studies are re-interpreted here along the analytical framework presented above.

The objective here is to examine closely sectoral cases, with the aim of understanding dynamics at play when the national social partners interact on the European and domestic levels and, finally, how these dynamics lead, or do not lead, to implementation at national level.

To this end, four sectors were selected because they are highly contrasted in terms of ownership, socio-economic issues, degree of Europeanization, and level of internationalization. Accordingly, selected case studies were conducted in the sectoral committees of agriculture, commerce, hospitals and postal services. The analysis focuses on specific texts categorized by the European Commission as process-oriented texts (European Commission, 2004). This category includes frameworks of actions, guidelines and policy orientations implemented in a “more incremental and process-oriented way than agreements” (European Commission, 2004). Therefore, they all rely on a similar mode of implementation that involves regular evaluations of the progress made in the different national contexts.

Over a six-year period, eighty-eight in-depth interviews in total were conducted with officials from European trade unions and employer associations, the European Commission and respondents from national organizations in eighteen countries (Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Spain, Sweden, the Netherlands and United Kingdom). The rationale for selecting these countries was to include a variety of regimes of industrial relations and institutions as reflected into the political system.

Substantial analysis of documentary data complemented the interviews. Documents analysed include minutes of sectoral social dialogue committees meetings, implementation follow-up reports, and internal documents of national social partners. Non-participant observations of the meetings of the committees of the hospital and agriculture sectors were also carried out.

Cases mentioned here, referring in each case to the implementation of a given sectoral text in a given country, should not be considered statistically representative; they are meant, instead, to illustrate and support the analysis of processes that are conducive to some type of regulation, even of a soft nature, within member states.
**IMPLEMENTATION AND IMPACT OF TEXTS IN MEMBER STATES**

In line with the conceptual discussion presented above, implementation is considered effective when national actors fulfil the requirements comprised in the European text by establishing new structures, developing new practices or organising dissemination activities.

The interviews with European and national actors, analysis of European federation follow-up reports and internal documents of the national social partners indicate that trade unions and employer associations in agriculture, commerce, hospital and postal services in the member states undertake different types of action as an outcome of a joint text signed at European level.

At first, process-oriented texts and, more particularly, policy orientations and guidelines aim at promoting and raising awareness about common standards and principles. In the context of theses texts, national social partners are mainly expected to inform their members about the existence and content of each text.

In the four sectors examined, the national sector-level organizations translated the joint texts into their national language, organized information campaigns, conducted studies and even monitored the follow-up at company level.

- In Germany, the ‘Code of conduct on ethical cross-border recruitment and retention in the hospital sector’ adopted in 2008, led the trade unions to organize information campaigns as well as dissemination activities via their websites and newsletters, to inform their affiliates about their rights in terms of recruitment. Besides, in the same country one trade union organization provides individual advice to foreign workers and thus ensures that transparent information about recruitment is given (interviews with German trade union organization in health sector, national internal documents, 2012).

- Following the 2005 ‘Joint Statement of the EU social partners in the postal sector on CSR’, Poste Italiane adopted, with the trade unions, a protocol of understanding on corporate responsibility. The objective was to inform and involve employees in social responsibility initiatives (interviews with Italian officials from social partners organizations in postal services, 2009).

- In the commerce sector, following the 2003 ‘Statement of Eurocommerce and Uni-Europa Commerce on Corporate Social Responsibility’, the Italian employers association reported to have prepared a guide in order to encourage companies to use CSR good practices (European sectoral federations internal documents, 2009).

Such dissemination activities mainly affect the national actors on a cognitive level, in the sense that trade unionists and employers progressively adopt new ways of thinking and new ideas on employment issues.
Beyond dissemination activities, European joint texts can lead national constituencies to develop new practices or norms. Such practices are developed either by the means of joint or by unilateral actions, and sometimes they can be integrated into a collective agreement.

- In agriculture, the ‘European agreement on vocational training’ of 2002 aims at harmonizing national vocational training systems with a view to facilitate worker mobility. One of the provisions of the agreement recommends that national social partners develop measures about validation of skills acquired by vocational training. In this framework, the Swedish social partners in the sector entered into negotiation and reached an agreement intending to develop a system for validation of vocational skills, and they initiated the ‘Green card’, a specific skills passport for jobs in agriculture (interview with Swedish social partners, EU and national internal documents, 2012).

- In the hospital sector, the ‘Code of conduct on ethical cross-border recruitment and retention in the hospital sector’, signed in 2008, led the Dutch social partners to jointly set up a blacklist identifying recruitment agencies that do not respect the ethical principles promoted by the code (interview with the Dutch national social partners of the hospital sector, EU and national internal documents, 2011).

- An official from the Portuguese Post reported a third example. The ‘Joint statement of the EU social partners in the postal sector on CSR’ of 2005 was followed by a series of seminars dedicated to exchange of good practices. Such activities encouraged actors to build sustained relationships with other European partners. For instance, the Portuguese Post developed a plan on ‘equal opportunities’ directly inspired by a practice presented by the French La Poste (interviews with Portuguese officials from the postal services sector, 2009).

In addition, the empirical research highlighted other types of actions undertaken by the national social partners in the framework of the European joint texts. Such actions cannot be considered as implementation as such, because they do not appear to be sufficient compared to the recommendations contained in the joint texts. It is however relevant to mention them. On one hand, in some cases, national actors use a given European text as a lobbying tool, in an attempt to put pressure on their national authorities.

- For instance, social partners in the Latvian health sector reported that they use the principles promoted by the 2008 code of conduct on recruitment to legitimize their demand for better funding of public health (Interviews with Latvian social partners in health sector, 2011).

On the other hand, European agreements are used to initiate collaboration or exchange programmes among national actors.

- As an example, in agriculture, AGRITRANS is a joint project that gathers trade unions from nine countries with the aim to exchange information and good practices
Empirical data thus show that soft joint texts have an impact on the national context. They do not only have cognitive impact. Instead, they affect the content of national regulations and practices of the national social partners. Yet, if this indicates that the ESSD soft agreements have some regulatory value, these findings are only effective in some cases. The question, then, is what processes can lead to effective implementation.

**Political processes and multi-level strategies at play**

Why do sector-level trade unions and employers associations in the member states get committed to implementing a given text issued from the European social dialogue, especially when this text has no constraining power? One needs to examine players’ interests, resources and capacity, and their interactions with their European representatives, to understand the multi-level process that is at play.

A first sub-question here is the following: to what extent does the European social dialogue provide opportunities for national-level and for European-level social partners?

Referring to quantitative analysis on the topics covered by the joint texts and the content of committees work programmes, Pochet shows that social partners discuss subjects connected to European policies and transnational issues going beyond the national players’ scope of action (Pochet, Peeters, et al., 2009).

The first and main motivation expressed by respondents for being interested in the work done in their European sectoral social dialogue committee is indeed a will to influence the European decision-making process and to avoid any initiative from the Commission or the Council that could exert negative influence on their members. In addition, participants in committees are conscious that some issues require transnational coordination to be dealt with. These trade union and employer representatives therefore consider the European social dialogue a tool potentially useful to deal with challenges related to internationalization or to the European integration.

- In the hospital sector, albeit public health remains mainly rooted in the national welfare systems, health policies are increasingly Europeanized and challenged by trends associated with internationalization. In such a context, the code of conduct on transnational recruitment aims at dealing with the increasing mobility of healthcare staff and related problems such as staff shortage, the recognition of qualifications and working conditions of foreign workers. According to the respondents, issues related
to transnational recruitment are present in each European country and request therefore a European answer. A Swedish trade unionist made the following statement: “it is a big issue for all the countries (…) because either you come from a country who recruits people from other countries or you come from a country who delivers staff to another country… so we are all affected” (Interview, Kommunal, November 2011).

A Dutch social partner in the hospital sector has a similar point of view: “there was a lot of fuss in our media about immigration and healthcare workers from abroad. (...) So it was really lightened and not only on the ethical parts but also about the labour market, about dumping, about lowering labour conditions (…) We are a very small country. What Germany and the United Kingdom are doing is affected us, so it was very important to go together and to reach an agreement” (Interview, FNV, October 2011).

Data show that national trade union and employer representatives find reasons to act at the European level according to their national objectives and interests.

Yet, there are significant differences in participation from one member state to another. Such difference can be explained, at first, according to the strategies developed by the national actors towards the European social dialogue. In some cases, national sector-level organizations consider the European social dialogue as a superfluous level of decision-making because the issues that are dealt with do not fit with their national strategies, or because they consider the domestic level as relevant to answer such challenges. In such cases, national organizations are not involved or have a limited participation in the ESSD committees.

- For instance, according to the French and Belgian trade unions in the hospital sector, the existing regulations set superior standards that the provisions recommended at the EU level.
- In addition, they consider that transnational recruitment is not a solution to the shortage of staff and they prefer to deal with it through negotiations on employment conditions within their own domestic context (interview with Belgian and French trade unions in the hospital sector, 2011).

Furthermore, being involved in European-level decision-making requires resources, people and expertise (Beyers & Kerremans, 2012; Kluver, 2012, 2013).

From the analysis of internal documents such as meeting minutes, it is possible to identify which organizations participate regularly in the ESSD committee meetings, and to set up their profile according to their domestic institutional position and resources.

In order to try to capture the institutional position of the social partners, several dimensions are taken into account: main level of collective bargaining, coverage rates of agreements, role played by the sectoral social partners in collective bargaining and in public policy-making.
(Traxler, 2007, 2009). In parallel, organisation density and the total number of members provide an estimate of organizational resources (Traxler, 2007, 2009).

Empirical findings suggest that the key players in the committees are representatives of significant organizations that possess high resources but also a strong position within their national industrial relations system. Such actors are closely involved in decision-making processes by participating in plenary meetings, working groups, drafting groups or steering committees of the sectoral social dialogue. They bring their national inputs and develop projects for the European social dialogue. As an outcome of their participation, when a joint text is reached, its content reflects these actors’ concerns and interests.

When it comes to implementation, the national trade unions and employer associations who influenced the drafting of the texts are then more likely to undertake initiatives to fulfil the European requirements.

- As a example, a representative from a Belgian employer organization in agriculture recognized that the European agreement on vocational training provides a useful tool for workers as well as for farmers: “in the agreement of 2002, we developed systems for validation of vocational skills and developed common assessment systems across Europe (...) so we can give a common certification to the workers which facilitate and enhance the mobility” (translation from French, Interview Boerenbond, October 2011).

Yet, implementation of a given text also relies on the scope for action of the national social partners in their own domestic context. National sector-level trade union and employer representatives who are finally able to fully implement the text are the ones who possess a regulatory capacity within their domestic system of industrial relations, and specifically on the issue covered by the text in question.

- For instance, the ‘agreement on vocational training in agriculture’ of 2002 recommends that national actors develop new measures to improve worker mobility. Such measures concern the validation of vocational skills, but also the involvement of social partners in skill assessment and in the organization of training. The role of trade unions and employer associations in defining and organizing vocational training highly vary from one country to another. While in Germany, Sweden and Belgium, the social partners conclude agreements and participate in joint committees in this field, in Spain or in Ireland, they rather play a consultative role (Winterton, 2006). Their institutional ability to intervene on vocational training issues constrains their room for manoeuvre when they are supposed to implement an agreement stemming from the European sectoral social dialogue.

- In Belgium, trade unions and employer representatives in agriculture are institutionally involved in a bipartite structure in charge of defining and organizing vocational training. They are therefore able to develop skills assessments according to
the European recommendations (Interview with Belgian social partners’ organizations, internal EU and national documents, 2011, 2012).

- Likewise, in Denmark, the same European agreement led social partners to set up joint professional commissions to define and update systems of reference for vocational training diplomas (Interview with a Danish trade union, internal EU documents, 2012).

- In other countries, respondents see the regulatory power of public authorities in the field of vocational training as a major limit to implementation, because social partners then have little or no say in the domain. Trade union and employer representatives in such a context consider that their national government is often reluctant to support implementation.

- This is the case for instance, in Latvia, for the sector of hospitals. The government remained indifferent to the 2008 code of conduct, and social partners’ attempts to foster governmental action on migration and funding issues in health sector did not get any positive response.

The impact of the ESSD in member states thus depends on the strategies, interests and resources of sector-level social partners from the different countries. When the national actors participate to the meetings of ESSD committees, they are able to weight on the content of the texts, which then reflects their own national interests and challenges. When national sector-level trade unions and employer associations consider that the European social dialogue can be a potential tool able to strengthen their action in their domestic context, they implement the joint texts issued from the ESSD, and they undertake actions at the domestic level.

In such a perspective, implementation cannot be considered as a one-way movement. It is rather the outcome of the multi-level strategy of the national actors. Yet, beyond the interests of trade unions and employer associations, it is also a question of resources and capacity. Participating in the ESSD committees requires that national sector-level organizations have important resources – in terms of people, language and finance – and a strong institutional position at the national level. Furthermore, implementing a given text strongly depends on the ability of national sector-level social partners to undertake action autonomously in the field covered by the joint texts. Consequently, if the European social dialogue grants new opportunities to the national actors, only national players who already possess capabilities in their industrial relation system can effectively use them.

The impact of texts issued from the European sectoral social dialogue, in this view, results from a complex process in which national sector-level social partners see an interest in the topic covered by the text, have an interest and resources to get committed with their European counterparts in discussions that lead to the signature of a text on this topic in the European committee and, finally, have a capacity to act in the field covered by the text, and an interest to act, within their own domestic context.
CONCLUSION

Developments of the European social dialogue in the 1990s formally granted to European social partners a capacity to regulate employment relations. More than twenty years later, the outcomes of the European sectoral social dialogue mainly consist in soft non-binding instruments. Therefore, does the ESSD affect employment relations across the EU? Are the European social partners able to play the role of ‘co-regulators’?

Even without the ‘shadow of hierarchy’, the ESSD joint texts can have an impact at national level in some cases. Process-oriented texts are likely to affect not only the ideas of national actors but also the content of their practices and find a type of transposition into national regulation. European recommendations contained in texts issued from the ESSD can foster national sector-level social partners to introduce new topics in their own bargaining agenda or to develop and reinforce existing practices in their domestic context.

Yet, the impact of ESSD mainly depends on processes wherein strategies, interests and capacities of national social partners play an important role. The European texts only affect national employment relations when sector-level social partners within member states are willing and able to coordinate at EU level.

Active participants in the ESSD consider that the European social dialogue offers a new scope for action and is a relevant tool to deal with transnational issues. For them, the domestic level appears irrelevant to deal with interconnected issues, and the European coordination is then seen as a possible solution. Yet, some national actors remain reluctant to participate in the European social dialogue and find no interest to coordinate because the issues discussed do no fit with their own domestic problems. In such cases, sector-level trade unions and employer associations in member states do not get involved in the committees and, as a result, they do not dedicate time and resources to implement the European texts.

It is therefore important to take multi-level strategies of national social partners into account to fully understand the impact of the European sectoral social dialogue on employment relations within member states.

Beyond actors’ interests, how the European sectoral social dialogue functions strongly depends on national structures of industrial relations.

Firstly, in terms of participation and commitment in the ESSD, each national sector-level organization that is recognized as member of European social partners associations is potentially able to get involved in decision-making process, but in practice its expertise, experience of collective bargaining and resources are important conditions to be able to weight on the process. When one looks at the profile of participants who are involved in committees, only representatives from significant national organizations – in terms of resources, capacity and institutional role – play a key role in decision-making. As a result,
the content of the joint texts concluded at European level reflects, at least partly, their domestic preoccupations.

Secondly, implementation is effective when national social partners have the ability to intervene autonomously on the national regulation that is covered by a given European text. Therefore, national industrial relations that support the autonomy of action of the social partners, such as the Scandinavian countries or Germany, will ease the implementation process. When involvement of the national public authorities is required, implementation is constrained.

Hence, the regulatory potential of the European sectoral social dialogue is strongly linked to the regulatory ability of the national actors and to their interactions with the European sphere.

The European social dialogue, in itself, does not grant new rights or new opportunities for action to national trade unions and employer associations. It can act with some regulatory capacity only when, and if, European players and their national constituencies see it as opening scope to defend their own interests and strategies and if they have, in turn, a capacity and the resources to make use of its outcomes in their domestic context.

REFERENCES


