



# New structures, forms and processes of governance in European industrial relations



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# Foreword

The European social dialogue process has come a long way since the then European Commission President, Jacques Delors, launched the so-called 'Val Duchesse' process in 1985. In a joint contribution to the 2001 Laeken summit, the European-level social partners set out their vision for the future of social dialogue. Their suggestions include a specific role for the social partners in European governance and, most significantly, the development of a work programme for autonomous social dialogue.

Over the past decade, the European Foundation for the Improvement of Living and Working Conditions has, notably through its European Industrial Relations Observatory (EIRO), been monitoring and assessing developments in European social dialogue as well as between and within trade unions and employer organisations. Foundation research has supported the European social partners in facing the challenges posed by the institutionalisation of social dialogue at European level in an increasingly heterogeneous environment. The Foundation has also reported on the progress made on the development of new industrial relation instruments and the implementation and follow-up of these in the EU Member States.

This study, *New structures, forms and processes of governance in European industrial relations*, looks at recent developments in European industrial relations while also exploring the institutional and legal framework in which the social partners operate. It analyses the processes which take place beyond the institutional settings, with a focus on cross-sector and sectoral social dialogue, autonomous processes as part of the Europeanisation of industrial relations, and some broader governance issues like the Lisbon strategy and the open method of coordination. Furthermore, the report examines the kind of instruments social partners use in practice and highlights the factors that appear to play an important role in favouring or hindering the development of new modes of regulation, such as autonomous or voluntary agreements or the 'new generation texts'. These, in turn, raise new challenges in terms of their implementation and monitoring in the Member States.

Both continuity and change have shaped European industrial relations over the past 20 years. In light of this, and the increasingly complex relationships between European players and their national constituencies, we hope that this up-to-date analysis of the current and new governance structures and forms in European industrial relations will be of benefit to European social partners and policymakers.

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# Introduction

Looking at new structures, forms and processes of governance in European industrial relations involved undertaking a thorough analysis of recent developments in European industrial relations, which are influenced by the development of new governance tools in social dialogue. This report explores the following processes and their interrelationships with one another:

- the open method of coordination – a way of policymaking that does not lead to binding EU legislative measures nor requires Member States to change their law;
- the two types of European social dialogue agreements based on Article 139 (2) of the EC Treaty: (1) agreements to be transposed by Council decision; and (2) voluntary or autonomous agreements between the social partners to be implemented in accordance with the practices and procedures specific to company management and labour and the Member States;
- frameworks of action, guidelines, codes of conduct and policy orientations;
- joint opinions, declarations and practical tools.

The study aims to provide new information on the impact of new governance tools on the different actors of the European system of industrial relations – European institutions, governments and European social partners. Furthermore, it endeavours to:

- promote awareness and understanding of the new forms of governance and their impact on the different levels of industrial relations in the European Union;
- contribute to the ongoing debate on the Europeanisation of industrial relations in the context of the modernisation of employment relations and the evolving role of the social partners in an enlarged EU, especially against the background of the Lisbon agenda;
- contribute to the transparency of the results of new forms of governance in European industrial relations;
- examine the interrelationship between the different levels of industrial relations as well as between different tools of new governance, such as European social dialogue and the open method of coordination.

The following four sets of issues define the scope of this report:

- cross-sector social dialogue;
- sectoral social dialogue;
- autonomous processes and the Europeanisation of industrial relations;
- the question of ‘new modes of governance in industrial relations’.

On each of the four topics, this report presents an analysis of the recent developments, including the institutional framework where relevant. The analysis focuses not only on institutions, documents and structures, but also on underlying processes, the relationship between European processes and EU Member States as well as current challenges. Furthermore, the analysis also covers processes which take place beyond institutional settings in order to avoid a purely ‘top-down’ approach. Such an approach would have focused too strongly on the institutional dimension at EU level while neglecting the vertical dynamics between the national and the European players. Thus, this report also looks at the influence of autonomous processes in the Europeanisation of industrial relations, considering that European industrial relations are based on a broader concept than merely the formal

arenas of social dialogue, which are the cross-sector and the sectoral social dialogue committees. European industrial relations also encompass dynamics initiated across borders by the social partners in the European works councils, as well as in outside formal institutions, for example in meetings, seminars or networks for information exchange.

These various dimensions must be taken into consideration if the ‘new structures, forms and processes of governance in European industrial relations’ are to be comprehensively understood.

### **Methodology**

This report is founded on literature stemming from both academic sources and policy documents of the European institutions and the social partners. In addition, the report includes results from empirical research, and in particular a survey conducted from January to April 2006 specifically for this project. The survey’s objective was to gain insights into current developments, focusing on challenges, positions and strategies of actors and processes at work. The survey had no ambition to be statistically representative; rather, it intended to cover a wide range of viewpoints among actors and experts in European industrial relations.

With the aim of conducting about 50 expert interviews, an initial list of approximately 100 potential respondents was drawn up comprising social partner representatives, members of the European Commission and of governmental bodies, researchers and academics. In all, 48 interviews were conducted, covering the following actors:

- 14 European cross-sector and sectoral employer representatives;
- 14 European cross-sector and sectoral trade union representatives;
- 3 European Commission members;
- 2 members of governmental bodies;
- 15 researchers and academics.

Pierre Tilly and Evelyne Léonard conducted the telephone interviews, in either English or French, depending. They followed a common interview guide structured under four headings: European social dialogue at cross-sector and at sector level; European industrial relations, the open method of coordination and the Lisbon agenda; autonomous processes of Europeanisation of industrial relations; and the notion of governance and its use by the social partners. In line with the overall objective of this research, the focus was on European-level processes, rather than on their impact in the individual Member States. Since the interviews were also intended to concentrate on recent developments, the questions on cross-sector social dialogue covered the period from 2001 (i.e. the year of the Laeken summit), while the questions regarding the sectoral dialogue focus on developments from 1998 (i.e. the year of the institutional establishment of the sectoral committees in their current shape). The interview guide was intentionally wide-ranging and open-ended, so that each respondent had the opportunity to focus on the topics that he or she found the most relevant and on which he or she was the most informed. As a rule of thumb, each interview lasted approximately one hour. Also, many documents, such as social partner publications, joint texts, reports and presentations, were collected at the time of the interviews.

The material collected in the whole series of interviews was analysed thematically. With a view to reflecting the richness of the material collected, many quotations or examples given in the interviews are provided in this report to illustrate or to support the analysis.

This report is based on the literature, the responses from the interviews and the inputs from the two workshops held in the course of this research. The report therefore reflects a wide range of perceptions and individual analyses, rather than drawing upon direct observation of industrial relations processes at work. However, the quality of the information collected and the variety of viewpoints, coupled with the possibility to compare and contrast the diverse positions, afford solid material on which the analyses below are based.

## Key questions

The report sets out by defining the main concepts related to governance in European industrial relations. Subsequently, Chapters 2 and 3 examine the developments in practice within the main institutionalised forms of industrial relations at EU level, namely the European social dialogue at cross-sector and at sector level. The chapters look at the trends prevailing in cross-sector and in sectoral social dialogue since the inclusion of Articles 138 and 139 in the EC Treaty. Moreover, they examine the interaction between the institutional framework and the processes, and highlight their outcomes.

The cross-sector social dialogue is analysed in Chapter 2. In the cross-sector arena, the institutional possibility of concluding autonomous or voluntary agreements raises questions on potential autonomous collective bargaining, or more generally bipartite dialogue, at European level. The autonomous agreements, as well as the 'new generation texts' that set out guidelines and recommendations, raise the question of the legal status of these texts as a contribution to European regulation. Furthermore, such developments run counter to the established bipartite dynamics in European social dialogue, when on the one hand the particular situations of European trade unions and employer organisations make it difficult to build up the common ground necessary to conclude joint texts, while on the other public authorities, or more specifically the European Commission, are not entirely absent from the negotiations. Moreover, autonomous or voluntary agreements and the new generation texts raise questions regarding their regulatory nature within the national context of the EU Member States. Implementing these texts that the European social partners jointly elaborate in cross-sector social dialogue is a pressing question in the current context. This question, in turn, is closely related to the relationship between the European social partners and the national industrial relations structures and dynamics.

Chapter 3 addresses the sectoral social dialogue. Before 1998, sectoral social dialogue committees existed in a different form, but their institutionalisation under the current model has prompted the creation of new committees and the multiplication of sector-level arenas and joint texts. Recent developments are examined both in terms of institutional settings and dynamics. Even though the institutional context is similar for all sectoral social dialogue committees, the diversity of situations across different sectors is striking and needs to be examined more closely. The question of the capacity or potential to implement the joint texts in the variety of national contexts is as crucial for the sectoral social dialogue as it is for the cross-sector social dialogue. The various social dialogue committees take different types of initiatives. However, question marks remain over the practical implications of these initiatives.

Chapter 4 analyses less institutionalised autonomous processes at sector and company level as European industrial relations embrace processes going beyond the formal institutions and relations.

Autonomous processes include both bilateral and unilateral initiatives and activities undertaken by employer organisations, trade unions, company managements and employee representatives. These initiatives and activities are not forms of European social dialogue as such, but they play a role in governance of industrial relations at European level in the context of the changing public and socioeconomic governance. The chapter explores who is involved in such initiatives and activities, which issues they address and to what extent they contribute to the Europeanisation of industrial relations.

Finally, the new structures, forms and processes of governance in European industrial relations cannot be covered without examining some 'horizontal' issues. In particular, the Lisbon strategy and the open method of coordination have provided new settings in terms of European governance that influence aspects of industrial relations at cross-sector, sector and the cross-cutting 'autonomous' level. Chapter 5 explores these relations between the Lisbon strategy, the open method of coordination and European social dialogue.

# Governance and European social dialogue

# 1

This chapter introduces the basic concepts related to governance, paying particular attention to governance as applied in the field of industrial relations. Subsequently, it provides a brief overview of the development of European social dialogue and its current dynamics.

## Concept of governance

Over the last decade, 'governance' has become an increasingly popular concept with many different meanings, referred to in both political discourses and several academic disciplines, such as political sciences and economics.

Political actors refer to governance in an instrumental way to guide reforms of administrative and political institutions, as exemplified in the 'new public management' debate or in the discourse of 'good governance' used by international agencies, such as the World Bank (Guilhot, 2000). The European Commission has applied the concept as part of an attempt to increase the legitimacy of the European institutions. In particular with its White Paper on European governance, the Commission aimed to make European policymaking more participatory and effective (European Commission, 2001).

Academics refer to governance in an analytical way to analyse changes in modes of governing. In general, the concept is used to look at processes and actors that are either part of policymaking or that offer alternative sources of governing, which may be neglected by the traditional focus of political sciences on the core government institutions, such as parliament, executive bodies, administration and political parties. Moreover, the concept has often been used to refer to authoritative decision making beyond the nation-state context, for instance, in relation to international decision-making processes or in the private business sector. But it is equally applied to understand changing modes of public intervention within the state context, or better, to deal with public intervention within a multi-level context (Peters and Pierre, 2001; Schobben, 2000). In general, the 'governance' concept implies the recognition that the state is not the sole authoritative source of regulation, and stresses the multiple interactions between public structures, economic actors and civil society (Crouch, 2005).

The popularity of the concept of governance goes hand in hand with the identification of changes in modes of governing. The concept of 'governance' is often accompanied by the word 'new', as in 'new modes of governance', or simply 'new governance'. The concept usually refers to an increased reliance on policy tools, often those with a 'soft' character which pay particular attention to involving stakeholders or even leaving regulation directly in their hands. Yet identifying 'new modes of governance' is a risky task. Policy modes and tools hardly start from scratch. Moreover, they may be discovered today as 'new' simply because new conceptual lenses are used. One should also be cautious and acknowledge that the emergence of 'new modes of governance' does not necessarily imply the disappearance of 'old modes'. Nevertheless, despite the difficulties in precisely defining 'new modes of governance' and in thereby distinguishing them from 'old modes', academics widely agree that policymaking and administration have changed significantly over the past 15 to 20 years.

'New governance' therefore does not imply that policy instruments are entirely new, but rather that there is a general tendency towards the renewal or adaptation of governance processes as such.

Some common features characterise this tendency. According to Scott and Trubek (2002, pp. 5–6), ‘new governance’ is characterised by:

- an accent on experimentation and knowledge creation, flexibility and revisability of normative and policy standards. Instead of imposing binding norms from above, new governance often relies on softer instruments that can more easily be revised and adapted through a learning process on the part of the actors involved;
- openness to diversity and decentralisation, leaving final policymaking to the lowest possible level, accepting that local solutions are resolved differently, and favouring subsidiarity;
- institutionally, acceptance of the necessity for coordination of action and actors at many levels of government, given the vertical diffusion of the locus of policy determination, such as the interdependence between the European, the national and the local level (Leisink and Hyman, 2005);
- insistence on interaction between government and private actors.

Governance thus refers to a reconfiguration of the role of the state in general, seen as less authoritative, having a less hierarchical position in conducting economic, political and social change within countries. This is associated with processes of decision making and policy implementation involving various actors from multiple arenas, such as trade unions and employer organisations, regions and local authorities, and civil society (Burroni, 2004; de Ruyter, 2004; Lallement, 1999). However, as the power resources of the actors involved in a governance network are often unbalanced, neo-corporatist interventions by public authorities to restore the balance of bargaining power remain crucial if one is to avoid decision-making processes being captured by the most powerful interest group.

From a neo-institutionalist point of view, the notion of governance also refers to the current search in modern societies for new relationships between the market and institutional regulations stemming from interactions among a variety of actors including the state, companies, labour and representative organisations (Hollingsworth and Boyer, 1997). The ‘governance approach’ thus starts from the assumption that governance will occur and then asks how, and through which institutional mechanisms, it occurs in particular settings (Peters, 2000).

### **Views of the social partners**

For actors and scholars of industrial relations, the increasing attention paid to ‘governance’ may appear as reinventing the wheel. Industrial relations have always been characterised by interactions between public and private actors and by a certain withdrawal or restraint of state interference in the realm of socioeconomic governance. Industrial relations are by definition at odds with the identification of ‘the state’ as the only authoritative decision-maker in socioeconomic issues.

Indeed, employers and trade union representatives rarely refer explicitly to the concept of governance. When asked about the concept in our interviews, they generally respond that they find the term too vague or too general, and they regularly counter it with the need for pragmatism in industrial relations. The social partners show reluctance to the concept of governance for mainly two reasons. First, the concept is seen as being too vague without providing any added value. According to one academic, ‘It is a sexy topic for researchers and academics, but social partners

would say “why bother us with this? Let us speak of real issues!” This sentiment is underlined by a trade union representative at sector level, who indicated that ‘it is not a term that we use in our daily work.’

Secondly, some social partners show reluctance to use the governance concept because it is perceived to have particular connotations. For some, the term appears to be ambiguous because it touches on the notion of ‘good governance’ in the context of corporate social responsibility at company level, which in turn is linked to notions of workers’ participation and industrial democracy. At the same time, social partners often perceive the use of the governance concept as an attempt by public authority to intervene in their autonomous sphere of activities. Thus, they consider ‘governance’ as being related to public regulation, and the use of the concept is perceived as a tool of public authorities to regulate industrial relations. As one of the workshop participants from a national employer organisation stated, ‘governance and industrial relations are mutually exclusive. Our system is entirely voluntary.’

This perception of the notion by the social partners is remarkable since for academics and for public authorities, ‘governance’ means precisely a broader recognition of the regulatory features of private actors and a shift away from public authority and the state as the sole source of regulation. Yet from the point of view of the autonomy of the social partners, the sole fact that public authorities and academics show interest in industrial relations under the banner of governance may already be perceived as too much intervention.

### **‘New governance’ in European industrial relations**

If governance is such a vague concept, does reflecting on ‘governance and industrial relations’ provide any added value? In the current European context, it is indeed useful for three reasons.

First, it reveals that changing public governance conditions may support policymakers’ interest in relying on policy instruments which actively involve the social partners or even leave socioeconomic governance entirely in their hands. ‘Governance’ does not necessarily imply that public authority intends to regulate industrial relations; on the contrary, the idea of governance has precisely led to a broader acceptance that regulation may be largely left in the hands of private actors.

Secondly, by looking at industrial relations from a governance perspective, the changing nature of industrial relations can be considered within the broader context of the various modes to regulate today’s socioeconomic changes. This broader context is characterised, in particular, by increased reliance on soft governance instruments, such as the open method of coordination and voluntary agreements, as well as a multiplication of levels of governance, from the local, through regional and national, to the European and international levels. Such a dynamic also gives rise to new aspects of transnational governance.

Thirdly, not only has the broader governance context changed, but the governance instruments of industrial relations themselves have evolved over the past decade. Just as there is a broader governance change towards new softer policy instruments, new techniques and instruments have also emerged within industrial relations. For instance, the Lisbon strategy and the open method of coordination have changed the broader policy context in which social partners play a role, while the



open method of coordination has also been a source of inspiration for new instruments within industrial relations.

This perspective leads to a focus on the new structures, forms and processes of governance which have developed in European industrial relations over the past decade, and which can be placed into a broader perspective of changing governance in the EU.

The aim of this study is not to identify and describe all changes that occur within industrial relations in Europe. The focus lies instead on those activities which have a European dimension, either because they are related to certain aspects of European policymaking or initiatives, or because they have a cross-border dimension. Often these activities have been referred to within the concept of European social dialogue, although the latter has sometimes been limited to those industrial relations initiatives that were most closely related to European policy.

### **European social dialogue**

The concept of European social dialogue covers different realities and is subject to the changing nature of European governance. European social dialogue is the primary vehicle for the joint involvement of the organisations of management and labour in European policymaking; the term is usually used to describe the consultation procedures involving the European social partners.

In its broadest interpretation, the concept of European social dialogue refers to the institutionalised consultation of the social partners by the Commission and other Community institutions, or to tripartite concertation among management, labour and Community institutions. In its more restrictive interpretation, the European social dialogue refers only to bipartite dialogue between and joint action of management and labour.

### **Development of European social dialogue**

In December 2005, a social dialogue summit celebrated the 20th anniversary of its existence. The '20 years' referred back to Jacques Delors's 1985 initiative, which served to stimulate the development of bipartite action between the social partners at the European level in particular. However, the first social partners' activities at European level and involvement in European policy go back to the creation of the European Coal and Steel Community (ECSC). The first sectoral joint committee was set up in 1952 in the mining industry (Pochet, 2005) and the European social dialogue has its origins in the first developments of the ECSC (Gobin, 1997). As early as 1954, the International Metalworkers' Federation (IMF) and the Belgian Trade unionist André Renard had proposed, albeit unsuccessfully, negotiations for a European collective agreement in the steel industry leading to a reduction of working time. Until 1967, the social dialogue in the Community mainly took the form of consultation by way of consultative committees and joint committees. These forerunners were normally of a tripartite nature, bringing together trade union and employer representatives from each Member State as well as representatives from their national administrations. They were assigned the task of assisting the Commission in questions related to the labour market or to particular policy issues. Further joint or bipartite committees, comprising only trade union and employer representatives, were intended to provide a structure for bipartite joint action, but in practice mainly limited their activity to providing joint statements on European issues.

During the 1970s, a series of tripartite conferences was set up with the objective to develop concertation between the Commission, the Council and the social partners on broad macroeconomic and social policy issues. Yet these conferences never really worked (Gorges, 1996), and it was not until the European social dialogue was revived by Jacques Delors that the approach began to bear fruit. The aim was to establish a bipartite dialogue between both sides of industry, in particular at cross-sector level, with the Commission acting as ‘facilitator’. The 1986 Single European Act provided a legal basis for this dialogue in Article 118b: ‘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.’

Initially, this so-called Val Duchesse dialogue did not yield binding agreements, but merely some joint opinions. The real breakthrough for European social dialogue was in effect enabled by the Agreement on Social Policy appended to the Maastricht Treaty in 1992. The Agreement on Social Policy introduced a two-step obligatory consultation of the European social partners by the Commission, as well as the possibility for the social partners to sign binding agreements at European level which could be implemented by a ‘Council decision’. This formal acceptance of social dialogue at EU level incorporated most of the suggestions made by the European social partners, the European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederation of Europe (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), and provided for in their October 1991 agreement (Didry and Mias, 2005). In 1997, the Amsterdam Treaty incorporated the social dialogue procedure into Articles 138 to 139 of the revised Social Chapter of the EC Treaty.

By the end of the 1990s, tripartite concertation was also revived, in particular as a result of the Economic and Monetary Union (EMU), the European Employment Strategy (EES) and the Lisbon strategy. Since then, the European social partner confederations have been regularly consulted on employment issues and economic guidelines through various committees, such as the Social Dialogue Committee, the Standing Committee on Employment, meetings with the Employment Committee as well as with the EU Troika, including the head of state or government representatives of the present and subsequent EU Presidency, the Commission and the EU Council Secretariat.

In 1999, an additional ‘macroeconomic dialogue’ was launched bringing the social partners in contact with the European Central Bank (ECB). In addition, the Lisbon strategy led to the creation of tripartite concertation on social protection via the Social Protection Committee. Finally, the Council Decision of 6 March 2003 formally established the Tripartite Social Summit for Growth and Employment, which institutionalised the informal summits held since December 2000. It was established to reinforce the concertation between the social partners and European institutions on economic and social policy issues, and to enable the social partners to contribute in an integrated way to the different components of the Lisbon strategy. These institutionalised meetings, held at least once a year, which replace the Standing Committee on Employment, bring together the head of state or government of the present and two subsequent Presidencies of the Council and the Commission in order to prepare the spring European Council (European Commission, 2002).

According to the European Commission (2003, p. 5):

European social dialogue is a unique and indispensable component of the European social model, with a clearly defined basis in the EC Treaty. It refers to the discussions, consultations,

negotiations and joint actions undertaken by the social partner organisations representing the two sides of industry (management and labour). At European level, social dialogue takes two main forms – a bipartite dialogue between the European employers and trade union organisations, and a tripartite dialogue involving interaction between the social partners and the public authorities.

**Distinguishing consultation or concertation from bipartite social dialogue**

It is not always easy to distinguish between consultation and ‘concertation’. Both can be pursued within a tripartite relationship, but within bipartite action, the autonomy of the social partners is of paramount importance.

Accordingly, the social partners at EU level – ETUC, UNICE/European Association of Craft, Small and Medium-sized Enterprises (UEAPME) and CEEP – underline the particular nature of their bipartite dialogue, and would prefer that the concept of social dialogue be limited to bipartite action alone. This was spelled out in detail in Section 3 of their joint contribution to the Laeken European Council in 2001:

Since 1991, the areas for concertation between the social partners and the European institutions have multiplied. In addition, the term ‘social dialogue’ has progressively been used to designate any type of activity involving the social partners. UNICE/UEAPME, CEEP and ETUC insist on the importance of making a clear distinction between three different types of activities involving the social partners:

- tripartite concertation to designate exchanges between the social partners and European public authorities;
  - consultation of the social partners to designate the activities of advisory committees and official consultation in the spirit of article 137 of the Treaty;
  - social dialogue to designate bipartite work by the social partners, whether or not prompted by the Commission’s official consultations based on article 137 and 138 of the Treaty.
- (ETUC, UNICE/UEAPME and CEEP, 2001, p. 2)

The social partners’ preference to solely reserve the term ‘social dialogue’ for bipartite action is strongly related to their desire to retain the autonomy of industrial relations: a blurring of the concepts risks overlooking the fact that the principle of autonomy is very much at the basis of industrial relations.

This report focuses on bipartite action, i.e. social dialogue as defined by the social partners. It only examines some aspects of consultation and concertation in so far as they affect the context in which bipartite action operates in the EU, such as in the context of the Lisbon strategy.

The Maastricht Agreement on Social Policy and, later, Articles 138 and 139 of the EC Treaty give social dialogue at European level a solid institutional grounding. This goes hand in hand with more autonomy in social dialogue, since these provisions enable the conclusion of autonomous or voluntary agreements and their implementation by means of collective bargaining in the Member States, independent of legislative intervention.

The first section of this chapter examines these developments from a legal institutional perspective, looking successively at the institutional framework, the different routes to more autonomous action, the Commission's role in these routes, the differences between agreements and other types of joint texts, and finally the legal nature of autonomous agreements and 'new generation texts'.

The second section then focuses on the dynamics of cross-sector social dialogue by looking at the actors involved, namely the Commission's position; the role that trade unions and employer organisations are ready to play in such an autonomous dialogue; and the importance of intra-organisational relationships. Moreover, the social partners' strategies and their role in cross-sector social dialogue are crucial to understanding the extent to which they have the capacity to jointly establish the perimeter of their dialogue in terms of the type of rules, from very soft declarations to harder forms of agreements, and in terms of the content of their joint agenda. The relationships between trade unions and employers on the one hand and between each organisation and its national members on the other make it particularly difficult to find common ground for social dialogue. Even if, formally, there may be space for more scope of action, in practice the issues that can be put on the agenda are very limited. With the exception of wages, which clearly remains a matter of national competency, this is not so much due to institutional restrictions as to the game itself.

Finally, a key issue in the debate is the capacity to produce norms that will have an impact on the employment relationships in the Member States, and this in turn raises the issue of implementation. These questions will be examined in the last part of this chapter.

## **Institutional and legal framework**

The EC Treaty provides the basic institutional framework for European social dialogue. While Articles 138 and 139 of the EC Treaty set out the process of consultation and negotiation at European level, further Treaty provisions encourage bipartite social dialogue at several levels as well as autonomous processes of social dialogue, namely:

- the social policy objectives of the Community as formulated in Article 136 include the promotion of 'dialogue between management and labour';
- Article 140 of the EC Treaty provides that 'the Commission is to promote close cooperation between Member States in the social field, particularly in matters relating to the right of association and collective bargaining between employers and workers';
- Article 137(4) of the EC Treaty, which builds on the case law of the European Court of Justice (ECJ) (Case 91/81 *Commission versus Italy* (1982) ECR 723; Case 131/84 *Commission versus Italy* (1985) ECR 3531; Case 143/83 *Commission versus Denmark* (1985) ECR 427), enables the Member States to leave the transposition of directives in the social field to the social partners by way of national collective agreements, taking into account that the Member State ultimately retains responsibility for guaranteeing the objectives established by the directive;

- Article 138(1) of the EC Treaty provides that ‘the Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties’.

The subsequent Treaty articles provide for a two-stage consultation of the social partners by the Commission, with the option for the former to negotiate, in which case their agreement can be implemented in two ways.

Article 138 (2 and 3) of the EC Treaty requires a two-stage consultation of ‘management and labour’, first on the possible direction of Community action, subsequently on the content of the envisaged proposal. The procedure applies to ‘proposals in the social policy field’, which, in practice, refers to legislative proposals (European Commission, 1996 and 1998a). In this case, ‘management and labour’ refer to the European confederations of the social partners, organised either at cross-sector or sector level.

On the occasion of such consultation, management and labour may inform the Commission of their wish to deal with the issue by negotiation, which is made possible by Articles 138(4) and 139 of the EC Treaty. According to the Commission, ‘management and labour’, in this case, are those social partner organisations that agree to negotiate with each other (COM (93) 600 final, point 31). In practice, the principle of ‘mutual recognition’ has mainly led to negotiations between the general cross-sector organisations, namely between ETUC, UNICE and CEEP.

If the social partners do not reach an agreement, the Commission can look into the possibility of proceeding via the normal legislative channel.

If the social partners reach an agreement, there are two ways for it to be implemented (Article 139(2) of the EC Treaty), namely:

- ‘in accordance with the procedures and practices specific to management and labour and the Member States’. This ‘voluntary route’ relies on the different structures of industrial relations within the Member States, and such voluntary agreements are not part of Community law;
- by Council decision on the basis of a proposal by the Commission, which the social partners can request if the terms of the agreement are covered by the Community’s social competencies defined in Article 137 of the EC Treaty.

In this procedure, the European Parliament does not intervene.

If the Council agrees to implement the collective agreement, it will make the provisions of the agreement binding without amending it; the ‘contractual autonomy of the social partners’ is thus respected. The Commission has underlined this autonomy by stating that if the Council decides not to implement the agreement as concluded by the social partners, then the Commission will withdraw its proposal for a decision. The Council retains all political discretion to adopt the decision or not, but its choice is limited to saying yes or no. In the latter case, the Commission might decide to produce a normal legislative proposal (COM (1993) 600 final, points 41 and 42).

By means of implementation via Council decision which, in practice, always takes the form of a directive, the collective agreement will generally be binding in character (*erga omnes* principle) and will become part of Community law (Sciarra, 1996, p. 204).

The procedure under Articles 138–139 of the EC Treaty does not set limits to the autonomous dialogue of the European social partners. Independently of a Commission initiative, the social partners can negotiate on the subjects of their choice and can even sign European agreements on issues which are not covered by the social matters on which the Community has competence. Article 139(1) of the EC Treaty is very clear on this: ‘Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.’ If such autonomous agreements deal only with matters within Community competence, the social partners can even seek implementation of an agreement by Council decision (European Commission, 1998a).

The European institutional framework thus provides for a broad perspective on social dialogue:

- The Community promotes social dialogue at all levels, on the one hand by supporting it as one of its social objectives, and on the other hand by giving itself the task to encourage cooperation between Member States regarding dialogue as well as providing balanced support for dialogue at EU level. In fact, the Charter of Fundamental Rights of the European Union underlines the general promotion of social dialogue, by recognising in its Article 28 that ‘workers and employers, or their respective organisations, have, in accordance with Community law and national laws, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.’ It should be noted, however, that there are important limits to these ‘rights of collective bargaining and action’ due to the particular nature of the Charter (see Ryan, 2003; Smismans, 2004b).
- At European level, dialogue between management and labour can take the form of ‘contractual relations’ or of ‘agreements’ (Article 139(1) EC). Joint texts of the social partners can thus be of a different nature, showing different levels of a binding character and commitment.
- Dialogue and agreements between European social partners can develop autonomously or as a consequence of consultation by the Commission; the agreements can be implemented by Council decision or by the means of collective bargaining.

### **Routes to more autonomous action**

While the Treaty provisions for European social dialogue have not changed since the Amsterdam Treaty, and substantially not since the Agreement on Social Policy appended to the Maastricht Treaty, there are three important developments that have changed practice over recent years (Pochet et al, 2004). First, there is a trend towards more autonomy on the part of the social partners, with the Commission recognising this more autonomous dimension. Secondly, the scope of the European social dialogue has broadened, in particular as it has been linked to the Lisbon agenda. Thirdly, the social partners are increasingly making use of new methods, using soft instruments and their own monitoring systems, partially inspired by the open method of coordination.

The European social partners underlined this trend towards more autonomous action and strengthening interaction with the Lisbon agenda in their joint contribution to the Laeken European Council in 2001. As they are

concerned to play their role to the full in tomorrow's Europe, ETUC, CEEP and UNICE/UEAPME believe it necessary to reaffirm:

- the specific role of the social partners,
- the distinction between bipartite social dialogue and tripartite concertation,
- the need to better articulate tripartite concertation around the different aspects of the Lisbon strategy,
- their wish to develop a work programme for a more autonomous social dialogue.

(ETUC, UNICE/UEAPME and CEEP, 2001, p. 1)

In November 2002, the European social partners adopted their first multi-annual joint work programme for the period 2003 to 2005, an exercise which was later renewed with a new work programme adopted in March 2006 (ETUC, UNICE/UEAPME and CEEP, 2006). With such work programmes, the social partners intend to set their own agenda, rather than merely responding to Commission initiatives.

The trend towards a more autonomous social dialogue is not limited to the level of agenda-setting, but also relates to the type of agreements concluded and the implementation method chosen by the European social partners. Until 1999, all European cross-sector agreements – on parental leave, part-time work and fixed-term contracts – had been initiated through Commission consultation and implemented by Council decision. Since then, no new European agreement has been implemented through Council decision, but examples of more autonomous processes have emerged, such as action programmes on lifelong learning or agreements on telework and stress. All of these have been implemented by means of 'the procedures and practices specific to management and labour and the Member States' (Article 139 EC).

The high-level group on industrial relations and change strongly encouraged the use of new governance methods in its final report:

The Group considers that social partners should explore new ways of negotiating agreements with interesting trade off for both sides. They should, namely, make further use of the Treaty provisions and fully explore the possibility of entering into voluntary framework agreements to be implemented through their own national procedures.

The Group invites the social partners to analyse in detail the limits of the current legal and institutional frameworks for the evolution of bipartite social dialogue.

Within the context of the current discussions on the future of Europe and in particular of possible reforms of the institutional framework (Convention on the future of Europe and IGC 2004), the social partners are invited to bring forward proposals for reform including, if appropriate, proposals to modify the Treaty.

(European Commission, 2002a, p. 6)

Despite the group's encouragement, the European social partners have not put forward proposals to revise the existing institutional framework for social dialogue. Such a revision does not appear to be a priority, and the current framework seems flexible enough to allow experimenting with new instruments.

However, the new developments do give rise to ambiguity and confusion regarding the legal nature and character of the instruments used. Conceptual clarification and legal analysis are therefore required.

**Types of European collective agreements**

In terms of Treaty provisions, four different types of European collective agreements can be distinguished according to the way they have been initiated and implemented (Table 1):

- Commission-initiated and Council-implemented agreements represent the collective agreements in which the intervention of Community institutions is strongest, firstly because the agreement results from an initial Commission consultation, and secondly because the agreement is implemented by Council decision;
- self-initiated and self-implemented agreements rely most on the autonomy of the social partners and are thus on the opposite end of the spectrum of those initiated by the Commission and implemented by the Council. The Community institutions do not formally intervene, neither in setting the agenda nor in the implementation process; informally, though, they may still play a role in creating a supportive environment;
- self-initiated and Council-implemented agreements do not result from Commission consultation but are nevertheless implemented by Council decision;
- Commission-initiated and self-implemented agreements are the result of an initial Commission consultation, but the social partners agreed to implement it by their own means.

**Table 1 Typology of European agreements, by procedure**

		Initiative	
		Commission	Social partners
Implementation	Council	Commission-initiated and Council-implemented ('COCOCA')	Self-initiated and Council-implemented ('SICOCA')
	Social partners	Commission-initiated and self-implemented ('COSICA')	Self-initiated and self-implemented ('SISICA')

The legal debate on the status of European collective agreements has focused on 'Commission-initiated and Council-implemented agreements', since all initial cross-sector agreements had been initiated by Commission consultation and implemented by Council decision. The debate has focused on whether 'implementation by Council decision' meant implementation by a directive or by other instruments, and subsequently on the criteria of representativeness and the control of the Commission and the Council on an agreement before implementing it (for details regarding Commission and Council control, see Smismans, 2004b).

Some discussion is still ongoing about the role to be played by the Commission and the Council, with some authors arguing that the EJC's judgment in the UEAPME case against the parental leave directive has been too intrusive into the autonomy of the social partners (for a summary of the debate, see Smismans, 2004b). Nonetheless, the debate seems to have lost its importance since UEAPME and UNICE reached an agreement that the latter would involve the former in negotiations, and since more recently no European agreement has been implemented by a directive. As a result, the legal debate is also shifting its focus to the recent practice of more autonomous social dialogue.



However, 'more autonomous social dialogue' can mean different things, such as more autonomy in initiating the process of negotiation, or more autonomy in implementing the agreements. In most official documents as well as in discussions between the social partners, the concept of 'autonomous agreements' refers to the implementation method rather than to the way the process is initiated. Two remarks should be made here.

First, from a conceptual point of view, 'autonomous agreements' and 'voluntary agreements' refer to texts that are implemented by the social partners rather than by a directive, thus following the first option of implementation, namely 'the voluntary route' provided in Article 139(2) EC. Originally the concept of 'voluntary agreements' was predominant, yet it has led to some tensions among the social partners, since trade unions were concerned that employer organisations would interpret the term 'voluntary' in a way that would weaken the commitments adopted (Branch, 2005). In its 2004 Communication on social dialogue, the Commission has proposed to use the term 'autonomous agreements' for this 'voluntary route' instead (European Commission, 2004c).

Secondly, it may make sense to limit the concept of autonomous agreements to those implemented by the social partners and to exclude 'self-initiated and Council-implemented agreements' from the concept entirely. Even though such agreements do not result from Commission initiatives, they are much more like 'Commission-initiated and Council-implemented agreements' than the two other types of agreements – Commission-initiated and self-implemented, and self-initiated and self-implemented. In its 1998 Communication on social dialogue, the Commission stated that such agreements between management and labour, which do not result from prior Commission consultation, can also be implemented by Council decision, at least if they deal with issues falling under the Community social competences of Article 137 EC. Until then, the common interpretation appeared to have linked the implementation by Council decision to prior consultation by the Commission. Thus, it has been argued that allowing social partner agreements which were not initiated by a Commission proposal to be implemented by Council decision would imply that social partners can set the agenda for the Community's (social) legislative programme. This in turn would be contrary to the Commission's role in the Community (Betten, 1998; Weiss, 1995). However, if such an agreement is subject to all the controls that the Commission exerts before proposing it to be implemented by Council decision, this does not appear as an infringement on the Commission's role. Moreover, as far as the cross-sector level is concerned, the first 'self-initiated and Council-implemented agreement' has to get signed.

In line with the proposed definition of autonomous agreements, the following section focuses on those agreements that are considered as being truly autonomous, which means 'self-initiated and self-implemented' and 'Commission-initiated and self-implemented' texts.

### **Autonomous agreements and the Commission's role**

The question of whether an autonomous text is the result of an initial consultation by the Commission or results entirely from the social partners' initiative is not an innocent one, however. In its 2004 Communication on social dialogue, the Commission, while 'fully recognising the negotiating autonomy of the social partners', emphasises that

in the specific case of autonomous agreements implemented in accordance with Article 139(2), the Commission has a particular role to play if the agreement was the result of an Article 138 consultation, inter alia because the social partners' decision to negotiate an agreement

temporarily suspends the legislative process at Community level initiated by the Commission in this domain.

(European Commission, 2004c, p. 10)

In other words, the Commission underlines its established right to take initiatives for legislation. Having put regulation into the hands of the social partners as a consequence of consultation, the Commission will nevertheless examine whether or not the autonomous agreement succeeds in meeting the Community's objectives. In relation to 'Commission-initiated and self-implemented' agreements, the Commission argues that it will establish an assessment of the agreement prior to its implementation by the social partners ('ex ante assessment'), as it does for those agreements that are to be implemented by Council decision (Article 139 (2) EC). On this basis, it will inform the European Parliament and the Council and publish the autonomous agreement.

Following the agreement's implementation, the Commission also sees its role in evaluating the outcome of the agreement. It highlights that

upon expiry of the implementation and monitoring period, while giving precedence to the monitoring undertaken by the social partners themselves, the Commission will undertake its own monitoring of the agreement, to assess the extent to which the agreement has contributed to the achievement of the Community's objectives. Should the Commission decide that the agreement does not succeed in meeting the Community's objectives, it will consider the possibility of putting forward, if necessary, a proposal for a legislative act.

(ibid, p. 10)

This role that the Commission assigns to itself raises several questions.

While the Commission may be correct to stress its right to take legislative initiatives, it is doubtful whether, on this basis, it can establish a right to decide on the validity of an autonomous agreement, even if it results from consultation. In fact, by referring to an 'ex ante assessment', the Commission seems to suggest that 'Commission-initiated and self-implemented' agreements first need to pass the Commission's control in order to be valid. Following the assessment, the Commission would inform the Parliament and the Council and publish the agreement, which suggests that the publication is the 'public guarantee' for the validity of the agreement.

While such a 'public guarantee' is entirely justified in the case of agreements implemented by Council directive, where an agreement will be given legislative nature, such a requirement does seem unacceptable for autonomous agreements. These can be considered as 'private contracts' between management and labour which have their own effects, and the Commission's intervention or absence of intervention in checking certain conditions of the agreement do not change the value of the agreement. The publication of the agreement and control by the Commission are not preconditions for the validity of autonomous agreements. Unlike an implementation by Council directive, there is no Treaty provision stating that the Commission should play this role. However, this does not imply that the Commission has no role in controlling autonomous agreements when they result from initial Commission consultation. Its control, though, is not a requirement for an autonomous agreement to be valid; it is instead aimed at preserving the Commission's right of initiative to pursue the Community objectives.

Furthermore, the Commission identifies two different points in time when it would assess an autonomous agreement. The first assessment will take place at the time of signature of the agreement and the second one 'upon the expiry of the implementation and monitoring period'. These two assessments are of a different nature: one is related to the content of the agreement, and the other to its implementation. Both should allow the Commission to decide whether or not the agreement realises the Community objectives as intended at the beginning of the consultation process and whether additional legislative action is needed. In fact, the characteristics of the double assessment are more important than the time at which the assessments take place. The Commission mentions that it 'may exercise its right of initiative at any point, including during the implementation period, should it conclude that either management or labour are delaying the pursuit of Community objectives' (ibid, p. 10).

In addition, the Commission claims its right to control the implementation of 'Commission-initiated and self-implemented agreements' as it does for agreements to be implemented by Council decision. In line with Commission Communications and practice, and confirmed by the EJC's judgment, the Commission controls several aspects regarding this type of autonomous agreement: whether the agreement falls within the scope of the Community's social objectives (Article 137 EC); the representativeness of the signatory parties and the mandate from their members; the legality of the clauses in the agreement in relation to Community law; compatibility with provisions protecting small and medium-sized enterprises (SMEs); subsidiarity and proportionality; the legitimacy of the clauses concerning the role of the non-signatory social partners; and suitability in policy terms.

From the social partners' perspective, it is questionable whether all of these Commission controls are justified for agreements initiated by the Commission and implemented by the social partners. The Commission can use such a comprehensive control mechanism only to determine whether further legislative action is needed, and not in order to establish the agreement's validity. For instance, such an agreement can be entirely valid even if it does not fall within the scope of Article 137 of the EC Treaty. Moreover, it is not the Commission's role to judge autonomous collective agreements if the criteria of subsidiarity and proportionality of Community action have been applied. Indeed, it is a key part of the European social partners' role to decide whether or not they consider a collective agreement at European level appropriate.

Nevertheless, the Commission can use some of these criteria to assess whether additional legislative action is needed, namely: the representativeness of the signatory parties; the legitimacy of the clauses concerning the role of the non-signatory social partners and their members; and the suitability in policy terms. In its 2004 Communication, the Commission provides an additional criterion: 'Where fundamental rights or important political options are at stake, or in situations where the rules must be applied in a uniform fashion in all Member States and coverage must be complete, preference should be given to implementation by Council decision' (ibid, p. 10). Obviously, the Commission cannot decide to implement an agreement by Council decision if the social partners have not made a request to this effect. Yet the Commission can put forward several reasons, such as an argument of fundamental rights, important political options, uniform application and complete coverage, to take a legislative initiative.

Furthermore, the Commission argues that 'autonomous agreements are also not appropriate for the revision of previously existing directives adopted by the Council and European Parliament through

the normal legislative procedure' (ibid, p. 10). This underlines the idea that the Commission would control the legality of the clauses of the agreement in relation to Community law, as it does for implementation by Council directive. However, while autonomous agreements have to respect the minimum standards set by Community law, it is difficult to imagine how the Commission could 'sanction' an autonomous agreement that does not fulfil this condition prior to its implementation.

The European social partners consider the Commission's intervention to be rather intrusive, because the Commission screens the content of their autonomous agreements and assesses the implementation of these agreements. The issue is particularly sensitive as it is very difficult to draw a line between agreements initiated and implemented by the social partners (in which no control would apply) and those initiated by the Commission and implemented by the social partners (with control). The difficulty lies in clearly determining when a collective agreement originates in a Commission consultation since social policies and initiatives for collective agreements normally stem from the overall context, as well as actors testing each other on what is feasible and desirable. Nevertheless, the Commission may argue it made the first move and thus considers itself to be the initiator of the agreement so that it can exercise control over it, whereas the social partners will try to protect their autonomy by arguing that the initiative is theirs. This tension, for instance, emerged from the issue of considering work-related stress as a health and safety matter. Two weeks after the European social partners had adopted their social dialogue work programme for 2003 to 2005, which included negotiations on work-related stress, the Commission initiated what an employer representative called 'a highly unconstructive and inappropriate consultation' on the issue, giving 'a stab in the back of social dialogue'.

### **Autonomous agreements and other types of texts**

Cross-sector bipartite action at European level can take forms other than agreements. Article 139 (1) of the EC Treaty confirms that social dialogue at Community level may lead to 'contractual relations, including agreements'. This suggests that agreements represent only one form of contractual relations in which the European social partners can engage.

In practice, the European social partners have used a variety of instruments in their cross-sector dialogue. About 50 documents have been signed at this level since the start of the Val Duchesse process in 1985 (Pochet, 2005). Their titles vary considerably, from framework agreements to common opinions, declarations, resolutions, proposals, guidelines, recommendations and codes of conduct. The use of specific terms in the titles is not very consistent; indeed, documents with very similar titles often cover different realities in terms of commitments and nature of the content.

### **Commission typology of European social dialogue instruments**

The Commission has therefore pleaded for more consistency and has provided a typology in its 2004 Communication on partnership for change in an enlarged Europe. It identifies the following four broad categories, each of which contains further sub-divisions (European Commission, 2004c, Annex 2, p. 15):

1. agreements implemented in accordance with Article 139 (2) 'entail the implementation of certain commitments by a given deadline'. They include, on the one hand, agreements implemented by Council decision, and on the other hand, autonomous agreements implemented by the procedures and practices specific to management and labour and the Member States;

2. process-oriented texts consist of a variety of texts, such as frameworks of action, guidelines, codes of conduct and policy orientations, in which the European social partners make recommendations of various kinds to their members for follow-up. These texts ‘are implemented in a more incremental and process-oriented way than agreements’;
3. joint opinions and tools, that cover three types of texts aimed at exchanging information: joint opinions; declarations; tools such as guides and manuals;
4. procedural texts, which lay down the rules for dialogue between the parties (see Table 2).

**Table 2 Outcomes of social dialogue**

Agreements establishing standards	Agreements implemented by Council decision
Article 139(2) of the Treaty	Autonomous agreements
Process-oriented texts	Frameworks of action
	Guidelines and codes of conduct
	Policy orientations
Joint opinions and tools	Joint opinions
	Declarations
	Tools
Procedural texts	Rules of procedure

Source: European Commission, 2004a.

The Commission has also introduced the concept of ‘new generation texts’. These are characterised by a process in which the European social partners make recommendations to their members, who in turn undertake to follow them up at national level. New generation texts include certain provisions on how the social partners will ensure implementation and follow-up at national level. Autonomous agreements and ‘process-oriented texts’ are included within the category of new generation texts. The category of process-oriented texts, in fact, is not an exclusive one, since autonomous agreements also include some process provisions to guarantee their implementation.

The main difference between autonomous agreements and ‘process-oriented texts’ is that agreements are to be implemented and monitored by a given date according to the process provided for in the agreement, whereas recommendations entail a regular reporting and follow-up over a longer period without a specific deadline (European Commission, 2004c).

Pochet (2005) has also established a typology of European social dialogue instruments, which differs to some extent from the Commission’s classification. According to Pochet, the main criteria to distinguish between different types of documents consist of the recipients, the content in terms of commitments, the provisions for implementation and the timeline for implementation. The three latter aspects also determine the degree of constraint.

### **Common positions and mutual undertakings**

Pochet suggests a basic distinction between common positions and mutual undertakings. Common positions are joint documents of the European social partners, mainly for public authorities and the European Commission, with the aim of influencing European policymaking. They correspond to what the Commission calls joint opinions. All other documents can be considered to be mutual

undertakings, which are intended for the social partners and/or for their members. In the category of mutual undertakings, a distinction can be drawn between agreements, recommendations, declarations and tools while considering procedural texts as a particular case.

While many different types of mutual undertakings exist, about 60 per cent of the documents adopted at cross-sector level are common positions or joint opinions, according to Pochet (2005).

### *Agreements*

In general, European collective agreements tend to be framework agreements which do not contain extensive detailed regulatory standards. Yet all agreements set minimum standards for the employment relationship and they include a deadline by which the agreement should be implemented. In the case of implementation by Council decision, the deadline represents a way of sanctioning Member States for not respecting the European text if they do not transpose it by law or collective agreement within the given timeframe. In the case of autonomous agreements, the deadline is given to ensure that the social partners report on their initiatives taken to implement the agreement by that date. In case of non-implementation by the agreed deadline or failure to deliver the reports, the social partners, as contracting parties, could theoretically take legal action against each other on the basis that this would be a breach of a private contract. However, such a conflictual approach may be at odds with European industrial relations traditions and the social partners may be better off defining specific procedures for dispute settlement in the agreement themselves. Given the ambiguous character of European autonomous agreements, such agreements should include particular provisions for the settlement of disputes.

The experience gained in the implementation of the autonomous agreements on telework and on work-related stress will be important. If their implementation proves highly problematic, the alternative might be implementation by Council directive – if the social partners agree – or by direct European legislation if the Commission feels the need for such a procedure. If such a ‘threat’ of legislative intervention has credibility, which means ‘bargaining in shadow of the law’, management may still prefer to negotiate autonomous agreements with more precise provisions on dispute settlement than is the case today.

### *Recommendations*

Recommendations differ from agreements in that they have no precise date by which they have to be implemented. Moreover, rather than laying down substantial minimum standards for employment relations, they provide recommendations to the social partners. However, they do provide a procedure for regular follow-up on the implementation. Both the content of the recommendations and the follow-up procedures can be more or less detailed. Thus, it is possible to distinguish between more comprehensive frameworks of action, less comprehensive but well-defined guidelines or codes of conduct, and more general policy orientations for members, although the line between all of these seems difficult to draw.

In addition, it may not always be straightforward to differentiate between recommendations and autonomous agreements: the distinction between a minimum standard for the employment relationship and a recommendation to member organisations is not clear-cut. Autonomous agreements include recommendations to members in addition to essential standards for the employment relationship, while recommendations may include minimum standards. Furthermore,

recommendations may include more detailed follow-up provisions than an autonomous agreement. Thus, the fixed date for implementation seems to be the only criterion that clearly distinguishes the agreement from the recommendation.

#### *Declarations and tools*

Declarations and tools differ from recommendations in that they do not provide procedures for follow-up. Whereas declarations are addressed to the social partners, the tools such as guides, manuals and research studies are instruments that can be used by the actors involved – trade unionists, employer representatives, workers and employers.

In the same way as it may be difficult to clearly distinguish agreements from recommendations, the line between recommendations and declarations is equally difficult to draw. In fact, the weaker the follow-up provisions in a recommendation, the more it will resemble a declaration.

#### *Procedural texts*

In its typology of European social dialogue instruments, the Commission does not refer to procedural provisions that may be included in agreements and recommendations. In contrast, the Commission denotes texts which have the definition of rules for European social dialogue as their only objective.

#### **Legal character of autonomous agreements and new generation texts**

The legal character of European collective agreements to be implemented ‘in accordance with the procedures and practices specific to management and labour and the Member States’ has only been discussed briefly since the conclusion of the Social Agreement appended to the Maastricht Treaty. This is due to the fact that most observers had serious doubts about whether this option for implementation would ever be used.

In its 1993 Communication on the application of the social policy agreement, the Commission clarified that if the social partners choose this ‘voluntary route’, then the terms of such an agreement ‘will bind their members and will affect only them and only in accordance with the practices and procedures specific to them in their respective Member States’ (COM (93) 600 final, point 37). The national social partner organisations would be responsible for transposing the European collective agreement with the instruments of industrial relations available at the national level. The declaration on Article 139(2) EC appended to the Amsterdam Treaty supports this interpretation by stating: ‘The High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level – referred to in Article 139(2) – will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements.’

As a result, the application of such a European collective agreement will thus strongly differ from country to country (Treu, 1996; Bamber and Cordova, 1993). The application will depend on which basis and to what extent national social partner organisations will feel constrained by the European collective agreement and take action to transpose it. In addition, the instruments of industrial relations and, in particular, the relationship between a collective agreement and its impact on the individual employment contract will differ strongly from one Member State to another. It has therefore been argued that the ‘voluntary implementation route’ would create an unequal situation among the Member States, so that the ‘Community character’ of the agreement could be seriously questioned (Lo Faro, 1999).

As some autonomous agreements have been adopted, the debate on their legal validity has been revived. The implementation difficulties related to autonomous agreement have led to various suggestions for legal or institutional solutions. The first of these seeks to overcome the dependence on national transposition agreements by proposing a form of direct effect of European autonomous collective agreements, taking national differences into account. A second one leaves it open to rely on national transposition agreements while suggesting that the European social partners should provide a basic agreement which sets out the rules for the implementation of European autonomous collective agreements.

Olaf Deinert of Rostock University argues that voluntary agreements can have a direct effect with the advantage that 'further steps at national level are superfluous and therefore a failure by the national social partners to implement the agreement cannot harm the effectiveness of the European agreement' (Deinert, 2003, p. 323). In this case, direct effect refers to the autonomous character of social dialogue. This means that the European collective agreement would affect industrial relations at national level 'as if it had been transposed' within the framework of the Member State's legal context and the national industrial relations traditions. According to Deinert, such a direct effect would only apply when the European social partners declare so in their agreement. His reasoning is based on the argument of collective bargaining being a fundamental right under Community law, which implies that collective agreements are enforceable in principle. In addition, he emphasises that the fundamental right to collective bargaining suggests the possibility of bargaining without state interference, which would imply that the 'voluntary route' of Article 139(2) should be a realistic and effective alternative to the implementation by Council decision.

Two main arguments can be put forward against Deinert's viewpoint. First, among all the different legal effects that can be assigned to collective agreements, the option of 'European collective agreements to be implemented through national transposition measures' does not seem to be in contradiction to the fundamental right to collective bargaining. In such cases, the European collective agreement will depend on whether or not national social partner organisations take initiatives. Secondly, Deinert's claim for direct effect may be far less respectful of national industrial relations traditions than he seems to suggest, and it thus raises important questions of legitimacy.

Even if such a 'direct effect' would happen by way of treating European collective agreements as if they were national ones, this would imply importing into the national system a bargaining level with considerably different features. The legitimating features of the national industrial relations systems may not automatically be able to adequately take this new level into account.

In countries without a legal framework for collective bargaining, some doubt may exist as to the grounds on which these legal provisions would be extendable to European agreements. In the Nordic countries, industrial relations depend less on public intervention and rely more on a large membership base of the social partner organisations, which allows for broad application of the standards set in collective agreements. Difficulties could thus arise to impose European voluntary collective agreements through direct effect on such a system where a strong relationship between membership and representation in collective bargaining exists. Conversely, it may also be problematic to apply European voluntary collective agreements through direct effect in countries where the representativeness and the mandate of the negotiating parties are less established.



As a matter of fact, all but one of the European voluntary agreements adopted to date have underlined that the agreement shall be implemented by the social partner organisations 'in accordance with the procedures and practices specific to management and labour in the Member States' (for example, Article 12 Telework Agreement). In some cases, it was added that existing national collective agreements remain in force until a new one is concluded, such as Article 19(2) of the 1997 Agriculture Agreement, thus stressing the non-self-executing nature of the agreement. However, the recent multi-sector level Agreement on worker's health protection through the good handling and use of crystalline silica and products containing it represents an exception to such a self-implementation procedure, as it intends to create an element of direct effect (see Chapter 4).

An alternative to 'direct effect' which might help to partially resolve the problem of uneven implementation of autonomous agreements is the suggestion that the European social partners would adopt a sort of 'basic agreement for European collective agreements'. The Commission, in its 2004 social dialogue communication, stated that its 'preferred approach would be for the social partners to negotiate their own framework, and it calls on the social partners to consider this possibility'. Such a framework could not only cover autonomous agreements, but also other 'new generation texts', and, to start with, define the use of the different type of texts.

In certain Member States, such as Denmark and Italy, the social partners themselves set the rules of their industrial relations, without having a clear legislative framework. As suggested by Schiek (2005), such a set-up could also be applied at the European level for autonomous agreements. However, even such a set-up would leave important questions unanswered. In any case, the basic agreement would have to take into account Article 139(2) EC's provision that autonomous implementation must be in line with practices and usages of the Member States. It is also questionable to which extent such a basic agreement could define any institutional framework without upsetting national industrial relations traditions. To date, the European social partners do not seem to have reached a stage where they could engage in the formulation of such a basic agreement.

## Dynamics of cross-sector social dialogue

### Main actors

In theory, the European social dialogue is said to have gained a more autonomous dimension. The social partners seem to set their agendas with greater independence and without interference from the Community institutions and, in particular, with the Commission showing greater restraint from taking initiatives than in the past. The Observatoire social européen (OSE) identifies three stages concerning the role played by the Commission in cross-sector dialogue over the past 20 years:

- From 1985 to 1993, the Commission intervened as a mediator and as the central figure through which the social dialogue could exist. During this period, the Commission took the lead in chairing the meetings and drawing up the draft version of joint opinions discussed by the social partners. More particularly, according to Didry and Mias (2005), Jacques Delors played a decisive role in the Val Duchesse process which started in 1985.
- From 1993 onwards, the Maastricht Treaty facilitated the development of autonomous talks. Its main innovation was the launch of negotiations leading to European collective agreements extended *erga omnes* by a directive.

- Since 2002 and following the social partners' joint declaration for the Laeken Council, the dialogue has become more autonomous, with a clear distinction between two poles: the social partners strengthened by the adoption of joint work programmes and the Commission. OSE views the Commission as a partner and not a guardian of European social dialogue here.

The work programmes established by the European social partners are considered as a means to reinforce social dialogue autonomy. The latest one covering the period 2006 to 2008 continues to emphasise the need for more autonomy while also referring to the role of the social partners in the implementation of the Lisbon strategy:

Through this second work programme for 2006–2008, the European Social Partners want to contribute to and promote growth, jobs and the modernisation of the EU social model. ETUC, UNICE/UEAPME and CEEP see this work programme as a means to further reinforcing the social partners' autonomy.

(ETUC, UNICE/UEAPME and CEEP, 2006, p. 2)

However, the interviews with social partner representatives and experts reveal that the dynamics of cross-sector European social dialogue may be far more complex, and that the demand for greater autonomy of the social partners needs to be examined more closely.

The social partners systematically refer to their contribution to the Lisbon agenda, which shows that a strong link exists between the European authorities and social partner initiatives – at least in the texts. Moreover, even considered independently from the Lisbon agenda, the dynamics of bipartite social dialogue show different interests at stake, which makes it unlikely that the Commission can afford to retreat from the scene of European social dialogue.

The interviews also indicate that the Commission is seen to play an important role despite a trend towards more autonomy. The experts interviewed, as well as the social partners, consider that the Commission fulfils an important function in terms of political support, providing the legislative context and resources, even if the social partners are keen to define their own agenda. Therefore, cross-sector social dialogue at EU level is widely seen as involving three partners: trade unions, employer organisations and the European Commission.

Nevertheless, the social partners' discourse on the Commission's role in practice is ambivalent: the former are eager to keep the autonomy of their dialogue, particularly in determining their joint agenda, yet at the same time, they request more support from the Commission. According to one interviewee from the employer's side, 'the Commission is there to support the social partners' autonomy.' Such formal support is present in the texts, particularly in the Commission communications, but the social partners often consider it to be insufficient. The current Commission is said to be less supportive since its political orientation is seen to result in a reduced interest in social dialogue, which in turn would reflect a more fundamental lack of interest in the social dimension of Europe. The lack of support perceived by the interviewees is also related to the enlargement of the EU, as the Commission faces increased difficulties to integrate and balance all national interests. In summary, the autonomy in determining the agenda for social dialogue goes hand in hand with the dependence on the European Commission for the process as such.

There is no consensus among the social partners about what social dialogue actually means, even when only looking at its bipartite dimension. Article 139 EC establishes the possibility of engaging

in contractual relationships, including agreements. However, in practice, employer organisations are reluctant to enter into collective bargaining that leads to regulation which would constrain their affiliates. This position is not new and, according to Marginson and Sisson (2004), employers have consistently been reluctant to negotiate, which the interviewees confirm in their statements. A sector union representative states that 'employers don't want to abandon [bargaining], but they are reluctant', and a researcher stresses the fact that they merely accept to participate in discussions: 'they are ready to talk, but nothing more'. Academics and researchers, as well as employers, largely share this opinion. The employers declare that they are interested in participating but are preoccupied by the desire to avoid unilateral constraining legislative intervention from the Commission as much as possible. Therefore, employers are open to 'dialogue' in the strict sense but are not ready to enter into what their union counterparts call 'real bargaining'.

Overall, social dialogue is a three-partner game where the employers are reluctant to play a very active role, the European Commission does not possess the authority to push them further and the trade unions neither have the resources nor the power to go towards more joint regulation (Marginson and Sisson, 2004). The repeated demand for autonomy from the social partners paradoxically increases the difficulty of bargaining, as the setting is a bipartite dialogue and any active intervention by the Commission may be considered as interference.

Compared to traditional national industrial relations systems, the European social dialogue leaves room for different interpretations of its role and, more particularly, of the type of commitment from each partner. Consequently, the degree to which social dialogue may lead to binding regulation is also arguable. There is no obvious conflict, but there is no consensus either on the nature of European social dialogue. This can vary from 'dialogue', conceived as discussions, exchange of point of views, joint positions, to collective bargaining translated into agreements; mainly trade unions defend the latter point of view. In practice, the power relationship leads to a situation where the degree of involvement in collective bargaining depends on each player's willingness to participate, as trade unions have no means of exerting pressure at European level to force employers to the bargaining table. According to a union representative at sectoral level, 'it is down to the willingness of each participant. If they do not want to participate, [they] will not and that's that.' Nevertheless, employers may choose not to withdraw from bargaining talks and may see a benefit in participating, especially if the talks offer a means to anticipate and avoid unilateral legislative intervention. In short, from the employers' point of view, dialogue is preferable to regulation. Such an interpretation supports Berndt Keller's (2003) view, according to which social dialogue, with autonomous agreements such as the one on telework, has entered a phase characterised as 'bilateral voluntarism'.

### **Representation and mandate of European social partners**

European social dialogue is a complex reality because, even in its bipartite form, it has the shadow of a triangular relationship with the Commission, and because it is a multi-level game between European and national social partners.

The relations between European players and their national member organisations influence the mandate given to UNICE, UEAPME, CEEP and ETUC for dialogue, which also shapes the prospects of implementation of joint texts. The issues of representation and mandates given by national member organisations to the European social partners make it very complex to find common ground for discussions, in terms of both setting the agenda and the chances of achieving an agreement containing binding rules.

The relationships between the European social partners and their national members are a central source of weakness on the trade union and on the employers' side (Marginson and Sisson, 2004). One of the difficulties lies within the fact that, while the leading European and national officials of the social partner organisations generally cooperate relatively well with one another, the communication between the social partners' EU-policy specialists and their rank-and-file is much more problematic (Erne, 2004). The most obvious difficulty, however, comes from the great variety of the level at which the social partners influence policymaking and the underlying logic of this process; this variety is related to the different national situations and also to the different relations between the European and the national levels. European social partners have to cover different countries presenting extremely diverse situations and a wide range of organisations with different 'strategic orientations' (Hyman, 2001), interests and bargaining structures. As highlighted by an academic, 'when you are negotiating at a pan-European level, you negotiate with a huge diversity of interests.'

There is a further structural or organisational difficulty since affiliates in the countries are not necessarily structured at cross-sector level, and may not be able or allowed to participate in collective bargaining. On the employers' side, in particular, some of the members are chambers of commerce, which are not directly involved in social dialogue or collective bargaining. In terms of strategic orientations, the national social partner organisations may be reluctant to shift bargaining competence to the European level, as EU-level negotiations generally follow a different, much more technocratic logic of interactions (Erne, 1997; Dølvik, 2004). The interviews show that the social partners' position is somewhat ambivalent: on the one hand, national social partner organisations wish to remain autonomous from any constraint coming 'from above'; on the other hand, they need some kind of supra-national coordination in a Europeanised context. The interviews indicate that national members are more interested in European issues when they reflect their own domestic agenda. Therefore, it may prove more difficult to win commitment from national members, on both the employer and the union side, than it would be to reach agreement between European social partners. This is also related to European players' difficulties in linking the general issues at European level with the national members' interests. Furthermore, the positions of member organisations vary from one country to another and from one organisation to another; 'organisations may not be seen as homogenous', according to an academic. Enlargement has increased the complexity of social dialogue at EU level because an already highly complex arena has become more heterogeneous.

Furthermore, the weakness of European cross-sector organisations also stems from a lack of resources dedicated to European affairs by their member associations. The interviewees note that keeping an active link with European social dialogue requires time, expertise and resources from national organisations. The example of Slovenia is given where, because of the country's size, 'trade unions cannot be involved everywhere' and just have the capacity to concentrate on domestic agendas. Even in the former EU15 countries with a strong tradition of social dialogue, European issues are not a priority. The national players' lack of resources means that they concentrate their attention and efforts on domestic problems, and are reluctant to or have difficulties in getting involved in 'esoteric' European debates. This weakness of the cross-sector social partners generates demands for more resources for the European social dialogue: the respondents considered funding of projects to be useful but insufficient, due to the fact that it cannot be used to support policies in the long run, and that it does not provide resources considered as crucial, such as expertise, interpretation and translation or infrastructures.

**Reaching common ground for discussion**

The question is how cross-sector social dialogue can work given such conditions. ‘It works when there is a common interest’, as many respondents have noted, that is, when the participants can find common ground for discussions, in terms of both issues to discuss and types of norms that should result from the dialogue. Finding a common interest is, however, a complex exercise which is subject to the following three conditions:

- ‘both sides of industry’ at European level have to agree to engage in discussions on a specific issue, with the support of the European Commission;
- the dialogue must cover a subject, issue or topic that is relevant for all Member States, or at least most of them;
- the subject or topic must be an issue on which national member organisations will accept discussions at European level.

The interviews tend to show that there is generally no major difficulty in launching discussions once a joint decision has been taken regarding the agenda. The obstacles become apparent, however, once social partners need to define the subjects that will be covered, and that might take into account all, or at least most, of the national interests. In setting the agenda, the European organisations have to cope with very diverse national situations, the reluctance of some of their members to accept some type of regulation coming ‘from above’, and even the scepticism of some members on European integration in general. National member organisations, particularly on the employer side, are not willing to accept norms, even of a soft nature, coming from the European level; according to a sector union representative, ‘they want to avoid any pressure coming from the European level.’ National member organisations are also reluctant to let European players discuss topics that are negotiated within national boundaries.

This leads to a kind of ‘subsidiarity’ in the determination of the agenda, to refer to the term used by Guerre (2005). Issues covered in or accessible to cross-sector social dialogue are different from those traditionally discussed in national collective bargaining rounds, and must fulfil the following prerequisites:

- European social dialogue works when there is a consensus between trade unions and employers on the need to regulate a specific issue at European level;
- the topics need to be of interest to all Member States, for both sides, while not being central to the national domestic agendas;
- the agenda must be specific and different from the national domestic agendas;
- they are not highly regulated, either at European level by directives or in the national contexts by law or by collective agreements.

For this reason, as many respondents point out, European social dialogue does not cover the ‘hot topics’ or the ‘hard issues’ such as wages or working time. As emphasised by a trade union representative, ‘There is no real subject of collective bargaining at European level.’ Indeed, topics tend to be more general than those discussed in national social dialogue settings. European social dialogue ‘only happens when there are issues that can lead to a win-win situation’, according to an academic. Telework and work-related stress are good examples of such topics, as is the issue of

harassment and violence at the workplace, which the European social partners picked up to negotiate a voluntary framework agreement in 2006 in the context of their work programme 2006–2008.

### **Outcomes of cross-sector dialogue**

In general, the vitality of European social dialogue is evaluated using the number of regulatory texts produced as the main, and sometimes only, indicator. With such a quantitative indicator, the results are then considered to be limited, since only a small number of binding texts (Keller, 2000) results from European social dialogue and since substantial improvements to pre-existing national regulations are rare (Keller, 2003).

In all, cross-sector social dialogue has issued about 50 texts of various kinds. From the participants' point of view, the type of texts that result from social dialogue is determined by a pragmatic position: it depends on the subject at stake and on the dynamics of the exchanges in the social dialogue committees and with the member organisations. An employer representative considers, for instance, that tackling the issue of equal opportunities requires legislative measures, while a topic such as work-related stress should be dealt with through guidelines that favour the development of a given culture in companies. Furthermore, the necessary adaptation to highly diverse national situations requires that the norms determined at European level leave space for adaptation in the different national contexts. This encourages the conclusion of framework texts and codes of conduct rather than agreements that would be analogous to those concluded in the national industrial relations systems. Autonomous agreements are considered by social partners as an important innovation recognising the legitimacy of autonomous dialogue. However, respondents mostly consider that, compared to the efforts needed, the outcomes are limited since only two autonomous agreements have been concluded to date: in 2002, the agreement on telework and in 2004, the agreement on work-related stress.

On the other hand, as noted by Marginson and Sisson (2004), while the results may be considered disappointing when compared to existing national regulation, long-established traditions of hard regulation may not be the most appropriate benchmark. Therefore, European social dialogue must be evaluated differently.

In the interviews, most respondents involved in the cross-sector social dialogue declare themselves to be satisfied with the results, considering the high degree of complexity that they have to deal with. In contrast, disappointment and pessimism prevail when the respondents come from sector social partner organisations or from the academic and research world. They view the cross-sector European social dialogue to be in a period of difficulty, following a period of enthusiasm in the late 1990s. The outcomes are generally believed to be limited or disappointing considering the efforts required to reach a joint text, and the time and energy invested in the process. Outcomes are not only limited in terms of the number of documents produced, but also because most are 'orientation papers' rather than agreements.

The points of view diverge on the nature of the norms produced in European-level agreements: it is clear that they do not possess the same statutory status as national collective agreements might have, and they are widely considered as recommendations rather than binding regulations. Even so, employers tend to consider that these agreements establish sensible norms which need to be

transposed into all national contexts. One respondent on the employer's side supports this view by referring to the agreement on telework which has led British unions and employers at national level to agree on joint guidelines. As such, the telework agreement has led to a renewed initiative at cross-sector level in the British system of industrial relations. Respondents on the employer side generally tend to consider that there is no other possibility: 'As legal requirements are very different from one country to another, we are forced to find something that corresponds to all situations, therefore we are in the realm of the paralegal.'

Despite disappointing outcomes, all interviewees agree on the need to continue with the process:

- a small minority of interviewees see the glass as half full – the process itself is deemed to be the most important part, and the success of European social dialogue should be judged in the light of the process and not only in terms of outcomes. European social dialogue represents an important and, over recent years, increasing process of exchange of information, mutual learning and progressive development. Therefore, outcomes may not be as important as expected, but a lot of work has been done; according to an academic, 'the process can have a value in itself';
- for most interviewees, the glass is half empty, since the lack of concrete outcomes can weaken the social dialogue's credibility in the long run: 'We are really at a point where we should be able to show that something important is happening, otherwise there will be problems of credibility in the long term.' This majority, however, also agrees on the fact that it is necessary to continue dialogue at EU level because 'there is no alternative' and 'it is better than nothing'.

#### **Implementation – a key issue with great uncertainty**

In the workshops, participants raised the issue of implementation of the joint texts into the national contexts as a core problem. As an employer representative stated, 'The most challenging question today is how to implement soft instruments. We are not doing our job properly.' Problems of implementation, however, are not restricted to soft instruments and autonomous agreements; there remain implementation problems related to hard types of regulation as well.

The issue of implementation must be looked at along four distinct lines:

1. Do agreements and joint texts contain any commitment, rule and method for implementation?
2. What are the national formal processes available for implementation or, more precisely, as Keller (2003) suggests, for transposition?
3. How do these texts impact on companies and workers?
4. Does any type of evaluation of results exist?

On the first question, the prevailing feeling is that the outcomes from the European social dialogue do not constitute binding regulations. According to one sector union representative, 'there is a lack of any kind of sanction.' In the so-called 'new generation texts', the social partners are invited to pay more attention to the implementation processes:

The Commission encourages the social partners to improve the clarity of their texts and to include detailed follow-up provisions in their new generation texts.

(European Commission, 2004c, p. 7).

In fact, the framework agreement on telework, concluded on 16 July 2002, already contains clauses on implementation and follow-up:

In the context of article 139 of the Treaty, this European framework agreement shall be implemented by the members of UNICE/UEAPME, CEEP and ETUC (and the liaison committee EUROCADRES/CEC) in accordance with the procedures and practices specific to management and labour in the Member States.

This implementation will be carried out within three years after the date of signature of this agreement.

Member organisations will report on the implementation of this agreement to an ad hoc group set up by the signatory parties, under the responsibility of the social dialogue committee. This ad hoc group will prepare a joint report on the actions of implementation taken. This report will be prepared within four years after the date of signature of this agreement.

In case of questions on the content of this agreement, member organisations involved can separately or jointly refer to the signatory parties.

The signatory parties shall review the agreement five years after the date of signature if requested by one of the signatory parties.

The more recent framework agreement on work-related stress, concluded on 8 October 2004, contains very similar clauses on implementation and follow-up.

As for the second question, although a formal distinction between different types of texts exists, such as declarations, joint opinions, policy orientations, codes of conduct and agreements, the uncertainty regarding their implementation is similar for these different types of documents. In other words, an agreement implemented via a directive, or an agreement implemented by collective bargaining, or frameworks of action, all face an important degree of uncertainty when it comes to their transposition into the national contexts. Enforcement thus depends to a large extent on national domestic dynamics, over which the European social partners have little influence. Again, the difference between hard and soft regulation becomes blurred when looking at the national level.

Beyond the formal transposition of European agreements into texts in the Member States, there is the third question on the actual impact for companies and workers. This is a black box which is not really taken into consideration in the evaluation of implementation processes. According to one interviewee, 'we can only assess the way European social partners are ensuring the transposition of the agreement.' Evaluating implementation processes of European agreements poses a methodological difficulty in terms of collecting data on a representative and objective basis while isolating the impact of a European agreement in companies within the different countries. Thus, the actual impact of the agreements at company level currently remains vague. According to one of the interviewees, the European framework agreements on telework and work-related stress 'are not even translated into all EU languages'.

The fourth question concerns the evaluation of implementation. As provided for in the provisions of the telework agreement, an evaluation of the implementation process is underway four years after the conclusion of the agreement. The evaluation does not aim to assess the impact at company level and on the workers concerned; rather, its objective is to evaluate the processes initiated to transpose



the agreement into the national contexts. The trade unions have already carried out this evaluation while the joint evaluation has yet to be completed; the latter will cover the framework agreements on telework and work-related stress. On 9 November 2005, the European Trade Union Institute for Research, Education, and Health and Safety (ETUI-REHS) published an outline of the findings on the implementation of the 2002 telework agreement (Clauwaert, Düvel and Schömann, 2005). The report indicates that the agreement's implementation, at national inter-professional level, can be considered complete in eight Member States, while negotiations or initiatives are still underway in eight other countries. Nonetheless, the analysis lists a series of difficulties, including:

- the availability of only a limited number of translations of the agreement from the outset;
- no consensus between management and labour within the Member States on the degree of obligation to enforce a 'voluntary' agreement;
- a lack of clear joint interpretation of the agreement, which opens the way to divergent translations into the actual national texts;
- problems due to the social dialogue structures and partners and negotiation calendars prevailing in the Member States;
- telework not being very developed in some countries.

Furthermore, no data are available for five of the new Member States.

Overall, in the interviews, implementation is considered a particularly complex issue, especially for the autonomous or voluntary agreements, since the national affiliates are the key actors in this process. And, as Keller notes, 'European peak associations have no power or authority to enforce compliance of their national member organisations and can, therefore, by no means guarantee binding and effective transposition and implementation by their affiliates' (Keller, 2003, p. 415). Accordingly, effective translation into national rules requires that employers and trade unions in the countries agree to negotiate on the topic of the European text, that they are interested in integrating this debate into their own domestic agendas, preferably at cross-sector level, and that they reach an agreement. All of these aspects constitute a series of conditions that are, of course, not necessarily met in all countries.

As a result, implementation depends on the dynamics of social dialogue at national cross-sector level and can lead to a diversity of national processes 'under' the same EU regulation. There is an institutional dimension to this problem, as implementation differs according to national industrial relations systems, particularly in terms of prevailing bargaining level and coverage rates. There is also a political dimension, as implementation depends on a national legislative process or on the readiness of national member organisations to negotiate on the issue. In its 2004 Communication on partnership for change in an enlarged Europe, the Commission also acknowledges this political dimension:

In practice, the impact of the social partners' texts will depend largely on both the political will of the national affiliates to implement the text, as well as their technical capacities to do so, including their representativeness. Data on the coverage rates of collective agreements in the Member States, particularly after enlargement, suggest that effective implementation may be problematic in numerous Member States.

(European Commission, 2004c, p. 6)

A technical-legal dimension also comes into play as soon as a text concluded at European level is transposed into a national agreement. Its status in practical terms and its impact depend on the legal status of collective agreements in a given country.

All of these dimensions create a great deal of uncertainty in terms of implementation and risk of significant national divergence when taking the specifics of national dynamics into account. For example, according to interviews, the implementation of the agreements on telework and work-related stress is part of the ongoing tripartite national concertation rounds in Ireland. In the case of Slovenia, one interviewee stated that the agreement on work-related stress has not been implemented because employers refuse to sign a national agreement on this topic. These two examples show, at the very least, that there is a need for accurate data on the situation in each country, preferably with a capacity to identify the dynamics at play that will or will not lead to implementation of the agreement in each national industrial relations context.

Implementation is a delicate question, notably because there are methodological difficulties to clearly identify the status of the norms in each country, but at the same time it is a crucial challenge for the credibility and legitimacy of European social dialogue in the long run. Social dialogue ‘would gain more support if there were concrete results on the ground’, according to a sector union respondent.

Obviously, there is a need for further research on this issue in order to identify the different implementation processes and the regulatory status of the texts in each country. Moreover, conducting country studies could lead to a better understanding of how and why national affiliates respond to European-level agreements; this should be complemented by company case studies which highlight the agreement’s impact on the organisations and workers.

## **Challenges and future perspectives**

In summary, compared to traditional national industrial relations, European cross-sector social dialogue has particular and combined features that reflect specific dynamics, namely:

- different topics covered than those dealt with at national level, since there is a degree of subsidiarity;
- the involvement of three participants, with different roles than those played by national-level actors – European-level actors do not have the same role in defining regulations through collective bargaining as national actors, and they do not have the same means of action;
- increasing autonomy of social dialogue while requiring continuous support from the European Commission;
- the process also requires intra-organisational negotiation in order to secure the support of national members and ensure follow-up in the countries;
- the power relationships at play between European players and within each organisation generate difficulties in negotiating binding rules on key issues of employment relationships.

Overall, the interviews yield very convergent points of view. By now, cross-sector social dialogue has a solid institutional grounding while also undergoing a period of uncertainty. Most respondents are pessimistic when they consider the outcomes compared to the efforts needed to reach a joint text.

Others considering the complexity of the processes at play and the recent changes in methods, such as the use of the joint work programmes, are more optimistic.

In the current situation, the solid institutional framework contrasts with the rather unpredictable processes at play. The processes remain contingent on the fact that there is no consensus between employers and unions on the type of regulation that social dialogue should produce. This generates reluctance to enter into bargaining on key issues of employment relationships and creates much intra-organisational negotiation. In this context, cross-sector social dialogue faces difficulties in finding a balance able to support the common interest, with topics that are general enough to be relevant for all or most of the EU countries, topics that are not a crucial issue in national bargaining agendas, but that are, at the same time, sufficiently interesting for national members to secure their support and implementation at national level.

As some interviewees stated, 'it has not reached the point where it would be a self-sustaining process', and 'this means that we are still very far from a consensus on a European collective agreement which is valid for all sectors at national level, and that the approach on the best way to deal with social affairs still lies within the social partners'.

There is also a striking contrast between recognised legitimacy of the necessity of social dialogue at EU level and the significant uncertainty as to its practical implications, which may impede legitimacy in the long run.

All interviewees consider European social dialogue to be necessary, as 'there is no alternative'. It represents a key dimension of social Europe and 'might become an important pillar of European governance', according to one academic respondent. Social dialogue is a way for the EU institutions to gain broad support for their policies. The process as such is therefore important, as emphasised by an academic: 'Insisting on the processes is grasping at straws. But it is probably better to have it than not to have it.' Social dialogue is also important for political reasons: in addition to being a source of exchange between employer and union interests, it expresses the need for concerted regulation of employment relations in the context of the European social model. Moreover, it is generally important that social partners play a role in European integration.

The issues raised concerning cross-sector social dialogue also apply to sectoral social dialogue in terms of the legal and institutional framework, the actors involved and the processes at work.

A first group of issues are of an institutional and legal nature. From such a perspective, the creation of the current sectoral dialogue committees in 1998 raises questions about their role and their scope for regulation. This chapter thus aims to determine their role in terms of consultation and in terms of collective bargaining. The institutional articulation between the sector and cross-sector level can also be questioned, in particular when compared with national systems of industrial relations. The cross-sector arenas and the sectoral committees operate in parallel, but the space between the two levels is not empty, as can be seen in the recent adoption of a multi-sector agreement on crystalline silica. This agreement raises challenging institutional questions, not only because it has been concluded elsewhere than in the existing cross-sector and sector arenas, but also because it includes innovative features in terms of application, implementation and follow-up. The first section of this chapter examines these issues.

In parallel with the analysis conducted for the cross-sector social dialogue, the second part of this chapter focuses on the dynamics of the sectoral social dialogue by looking at the actors involved, their relationships and the outcomes of these interactions: Who are the actors involved and what is their conception of 'social dialogue'? Which kind of relationships prevail between the European sectoral social dialogue committees and national structures? Considering the relationships between 'both sides of industry', as well as the relationships between the European social partners and their national affiliates, to what extent do the European sectoral committees have the possibility to find or to build a common ground for dialogue? In addition, the literature and the interviews show that the sectoral social dialogue committees function differently from one sector to another. It is thus useful to examine the reasons why the different committees exhibit different dynamics.

Finally, the issue of implementation of the European sector texts in the Member States is a key challenge which is also looked at in this chapter. It closes then with remarks on current challenges and perspectives for the future.

## **Institutional and legal framework**

### **Sectoral dialogue committees**

Since the beginning of the European Community, the Commission has supported the creation of joint committees bringing together management and labour in particular sectors of the economy, with the first sector-level joint committee dating back to 1952 in the mining industry (Pochet 2005). The aim was 'no less than to contribute to the construction of a European system of industrial relations and foster free collective bargaining' (European Commission, 1995), but the outcomes fell far short of this objective. Although 26 sector-specific joint committees, informal working parties or non-structured discussion groups adopted more than 100 joint texts, real sectoral agreements were not signed and the joint opinions remained of a very general and vague nature (European Commission, 1995). Rather than being a forum for bipartite dialogue, the joint committees functioned, at best, as a consultation structure for the Commission, especially for the directorates dealing with specific sector policies, such as agriculture.

By the mid-1990s problems of over-institutionalisation, excessively high costs and difficulties in identifying the representative organisations within the sectors led the Commission to consult the

social partners on the future direction of sectoral social dialogue (European Commission, 1996). The social partners recognised the problems of the established structures but stressed their interest in continuing such a dialogue (European Commission, 1998b). As a result of this consultation, the Commission adopted a decision on sectoral social dialogue committees in 1998 (ibid). This decision put an end to the joint committees and informal working parties which had developed in an ad hoc way and instead provided a general framework for sectoral social dialogue committees. The main difference between the old joint committees and the sectoral dialogue committees is that the latter can only be composed of sectoral social partner organisations organised at the European instead of the national level. The sectoral dialogue committees should meet at least once a year and, together with the Commission, they were to establish their own rules of procedure. Following the 1998 decision, more than 30 committees were set up at the joint request of the social partners in the different various sectors; nine of these sectoral committees replace former joint committees and 11 of these replace former informal working parties. Today, a total of 33 sectoral social dialogue committees exist, with the creation of two committees in 2006 – one in the steel industry in June and one in the hospital sector in September (for a complete list of sectoral social dialogue committees, see [www.europa.eu.int/comm/employment\\_social/social\\_dialogue/](http://www.europa.eu.int/comm/employment_social/social_dialogue/)).

In 2002, the Commission argued that these sectoral social dialogue committees should focus their activities on dialogue and negotiation only rather than on consultation (European Commission, 2002b, point 2.3.2). However, while ‘mutual undertakings’ have gained in importance within the committees’ activities, the majority of documents adopted are still ‘common positions’ intended mainly for the European institutions (Pochet, 2005).

As for the members of the committees, the representativeness problem is more acute at sector level than at cross-sector level. It has increased with enlargement, since most of the new Member States lack representative structures at the sector level.

In 1993, the Commission specified three criteria of representativeness determining whether a particular organisation may participate in European social dialogue. Notably, an organisation has to:

- be cross-sector, or relate to specific sectors or categories and be organised at European level;
- consist of organisations which are themselves an integral and recognised part of Member States’ social partner structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible;
- have adequate structures to ensure the effective participation in the consultation process.

(European Commission, 1993).

These criteria have also been defined for the consultation process under Article 138 of the EC Treaty. In the decision on the UEAPME case, the EJC has provided more detailed criteria to assess the representativeness of negotiating parties of agreements to be implemented by Council directive. The EJC introduced the concept of ‘sufficient collective representativeness’ ‘in relation to the content of the agreement’. It would be wrong to assume that representation in the sectoral dialogue committee is sufficient for an organisation to be automatically considered representative for an agreement to be implemented by Council directive.

**Articles 138–139 of the EC Treaty and sectoral committees**

Like cross-sector dialogue, sectoral dialogue is structured by the procedure of Articles 138 and 139 of the EC Treaty. The 1998 Commission decision did not clarify the relation between the sectoral dialogue committees and Articles 138-139 on social dialogue procedure, and there is need for further clarification.

Most of the European social partner organisations that are consulted under the two-stage consultation procedure of Article 138 EC are sector organisations. This consultation takes place outside the sectoral dialogue committees and may explain why the Commission argued in 2002 that the sectoral dialogue committees should focus on bipartite action rather than issuing common positions, although it should be noted that consultation under Article 138 EC applies only to social policy initiatives of the sector in question.

As is the case of the cross-sector dialogue, sector organisations can decide, on the occasion of a consultation under Article 138, to inform the Commission that they would like to deal with the issue by negotiation. Whether the Commission suspends its legislative action to allow negotiation between the social partner organisations ‘representing certain occupational categories or sectors’ will have to be examined on a case-by-case basis with particular regard to the nature and scope of the proposal and the potential impact of any agreement (COM (93) 600 final, point 30). Nevertheless, such sector collective agreements can also be implemented by Council decision (COM (98) 322 final, point 5.3).

Article 139(1) leaves room for autonomous agreements also at sector level, be it in the form of ‘self-initiated and self-implemented agreements’ or as ‘Commission-initiated and self-implemented agreements’.

How do sector agreements under Articles 138–139 EC relate to the structure of the sectoral social dialogue committees? The modest experience of sectoral agreements over the past few years has highlighted different possible relationships between the procedure of Articles 138–139 and the committees. The agreement on working time in the sea transport sector was prepared within the sectoral joint committee, which was recognised as ‘the appropriate place to continue the discussion and look for an agreement’ (*European Social Dialogue Newsletter*, June 1998, p. 16). The agreement on working time in the civil aviation sector was reached independently of any sectoral committee while opening the door to the establishment of such a committee (*European Social Dialogue Newsletter*, Special Edition May 2000, ‘Highlights 1999’, p. 6).

Sectoral dialogue committees can also be involved in following up sector agreements. The first agreement in the agricultural sector, for instance, entrusts the committee with the task of evaluating the application of the agreement in the Member States every two years (*European Social Dialogue Newsletter*, June 1998, p. 13).

Although sector collective agreements can, in principle, be signed outside established committees, the social partners consulted under Article 138 EC and which intend to negotiate will most probably do so using the infrastructure of the sectoral committee. On the other hand, the committees also provide an infrastructure for action beyond the procedure of Articles 138–139.

### **Sectoral committees and cross-sector social dialogue**

The European institutional framework does not set out rules for the relationship between the cross-sector and sector dialogue. Both the Commission and the social partners appear to favour interaction between these two levels, but an institutional void currently persists around this issue. At national level, cross-sector and sector bargaining can be linked either by legislation or by a basic institutional framework set out by the social partners. At European level, it seems difficult for the Community institutions to define such a framework since the Community has no legislative power in this sense. In matters of collective bargaining, Article 140 EC allows the Commission only to encourage cooperation between the Member States and it is not part of the legislative competences provided in Article 137. Therefore, only the Treaty could establish an institutional framework for the relationship between cross-sector and sector dialogue at European level. Nonetheless, the European social partners may prefer to define the institutional framework themselves rather than leaving this to public regulation. This could be done by a sort of basic agreement among the European social partners (see Chapter 2), which is unlikely to happen. For the employer organisations, this would most likely mean accepting the development of a 'real' European industrial relations system – a development which they have often resisted in the past. The most realistic option seems, therefore, to be limited for the moment to ad hoc solutions, in which cross-sector agreements set out rules for the relationship with the sector dialogue where this is assumed to be useful.

A step further would be the signing of multi-sector agreements. Articles 138–139 EC do not contain any provisions which would impede such multi-sector agreements; Article 139 (1) EC leaves room for cross-sector, sector and multi-sector agreements. Furthermore, there is no legal obstruction to implement such an agreement by Council decision, assuming that the agreement would pass the test of representativeness as well as the Commission assessment. As argued above, there is no requirement that agreements would be signed within the European social dialogue committee (for cross-sector agreements) or within the sectoral social dialogue committees (for sector agreements). In other words, agreements under Article 138–139 EC can be signed outside these structures. However, the current institutional structuring in different sectoral committees may not particularly encourage agreements to be signed at multi-sector level. One of the more striking elements to come out of the interviews was that each sectoral committee works independently from the others, with little or no influence from one sector to another. A structure which would improve exchanges of information across sectors may therefore be helpful, in order to learn best practice from other sectors and to see whether multi-sector initiatives are possible in a European context.

### **Between sector and cross-sector level: the multi-sector agreement**

Despite the current institutional framework, a first multi-sector agreement has emerged recently. The 'Agreement on workers' health protection through the good handling use of crystalline silica and products containing it' was signed on 25 April 2006. The agreement is innovative for several reasons. It is a multi-sector agreement, which has been signed by trade union and employer representatives from 17 organisations in a variety of sectors, including glass fibre, concrete, foundries, metal, ceramics and cement. On the day of signature, Commissioner Špidla noted that 'this is the first time an agreement covering several sectors has been negotiated by the social partners through their own procedures' (European Commission, 2006). Accordingly, the agreement does not correspond to the established institutional arenas for social dialogue, having been negotiated and concluded neither within a sector committee nor at cross-sector level. Besides reflecting an innovative initiative in the context of Article 139 of the EC Treaty, it is also a sign of a new institutional multi-sector arena which

is linked by a common interest in the protection of health risks associated to the use of crystalline silica. The agreement is an autonomous agreement and will be implemented by the social partners. Also regarding implementation, the agreement is innovative since it provides for strong follow-up and implementation procedures; it also appears to inaugurate a form of ‘direct effect’ as it will be implemented without the need for transposition agreements at national level.

More than other autonomous European agreements, the agreement on crystalline silica provides strong procedures for monitoring and follow-up as well as some attempts to identify for whom it is intended and a procedure for dispute settlement. In this sense, the agreement is more ‘binding’ and committing than other autonomous agreements adopted until now. Most notably, the agreement bypasses the need for national transposition in terms of national collective agreements or national law. In doing so, it creates a direct interaction between a monitoring and reporting system at company level and a controlling body, called ‘the Council’, set up at European level. The precise procedures and structures for monitoring and reporting are defined under Articles 6, 7 and 8 of the agreement. Articles 6 and 7 describe the obligations and controlling system at the company level, while Article 7(4) and Article 8 link this controlling system to the monitoring system at European level. The agreement is binding for the signatory parties and defines rules for individual members ‘directly or indirectly represented by the Parties’ (Article 3). There is no need of a transposition either into national collective agreements or national law and the application is under the responsibility of the European structures instead of being left to the mediation of national member organisations. The ‘Council’ provided for by Article 8 of the agreement is exclusively entitled with the role of ensuring the application of the agreement’s provisions and solving problems of interpretation (Article 14(2)).

The agreement will have a ‘direct effect’ in the sense that the signatory parties clearly intend to create provisions which directly apply to employers and employees without having the need for transposition by national collective agreements or national law. On the other hand, the agreement does not have a ‘direct effect’ in terms of creating rights and obligations for all employers and employees which could be sanctioned before the national court, as would be the case with an agreement implemented by Council directive.

Two important restrictions differentiate the crystalline silica agreement from those agreements implemented by Council directive.

First, as the agreement emphasises, its provisions do not apply to all employers and employees but only to those ‘directly or indirectly represented’. Yet this provision raises important questions as the agreement does not clearly determine what is meant by ‘directly or indirectly represented’. In terms of national industrial relations systems, ‘direct representation’ could mean that both employer and employee are part of a national employer organisation and trade union, respectively, which in turn are members of the European confederations that have signed the agreement. ‘Indirect representation’ may imply that an employee, who is not a member of a signatory trade union but who works for an employer who is part of a signatory employer organisation, can rely on the agreement. The question is whether the effect of European collective agreements can be built on such an assumption. In some Member States, such a rule of indirect application exists, either through legislation or institutional regulation by the social partners. In other Member States, however, this is not the case. It is doubtful whether a European collective agreement can impose such a rule on Member States which do not already have an analogous regulation in place at national level – moreover, even if a



Member State applies the rule of indirect representation, on what basis could it be claimed that the same rule applies to European agreements?

Secondly, the agreement's provisions are ambiguous as to the extent they will be binding for Member States and thus allow for sanctioning mechanisms to take effect. On the one hand, the agreement stipulates in Article 14, paragraph 2 that:

Any claims and disputes in relation to the interpretation and application of this Agreement shall be exclusively handled by the Council and shall, because of the unique nature of the Agreement, not be subject to jurisdiction by the local national courts.

On the other hand, it immediately adds that:

Any other claims and disputes in relation to this Agreement shall be submitted to the law and jurisdiction of the country of residence of the defendant(s), at the competent local court of residence of the defendant(s).

What are 'any other claims and disputes', other than those regarding 'interpretation and application'? All disputes are also disputes on how the agreement is interpreted and applied. If employees consider that the agreement is not correctly applied, can they go to court? Apparently not, given that disputes on application are the exclusive domain of the Council set up by the agreement. Moreover, even if the employee decides to complain to that Council, the agreement does not provide a particular procedure for that. The agreement has set up this Council and attributed 'exclusive competence' to it in matters of interpretation and application, but it does not set out the rules defining how such dispute settlement would work. The lack of a defined mechanism for sanctions obviously reduces the extent to which the agreement will be binding at national and company level.

Furthermore, there is the question about this particular agreement's implications for the nature of autonomous agreements at European level. The agreement does not create a direct effect *erga omnes* as an implementation by Council directive would do, and the signatory parties are obviously aware of this difference. Moreover, the emergence of this agreement does not imply that a general rule now applies of all European autonomous agreements having a sort of direct effect, without the need for transposition by national collective agreement or national law. Each European autonomous agreement still has to identify its intended effects. In addition, if an agreement makes clear that there is no need for national transposition measures, the question remains as to whether such an agreement would respect the diversity of national traditions of industrial relations. As argued above, the idea of being 'indirectly represented' may not fit with the tradition of certain Member States. A solution to that problem might be provided by Deinert (2003) regarding the cross-sector dialogue, namely that in each Member State the European collective agreement would take effect as though it were a national collective agreement. It is not clear whether the European social partners intended to generate such an effect with the crystalline silica case in hand. The particular nature of the crystalline silica agreement should also be taken into account and what it actually intends to regulate. Its objective is to encourage good practices that reduce risks related to the presence of crystalline silica in the workplace. Before reaching hasty conclusions that the crystalline silica agreement would open the way for a new area in European industrial relations, where binding autonomous agreements with direct effect would set minimum standards for employment relations, the following two aspects have to be considered:

- the agreement deals with an issue of occupational health and safety, which is traditionally a domain where management and labour reach agreement on much easier;
- the agreement actually encourages good practices and establishes reporting procedures on whether companies are making an effort in this direction; it deals with procedures rather than with substantial provisions. Moreover, it does not set a date by which a certain substantial target needs to be reached and only asks for a gradual reduction of exposure to crystalline silica. Therefore, in line with the Commission typology, this multi-sector agreement is more like a recommendation than an agreement, by recommending good practices and outlining follow-up procedures.

This has two important implications:

- The question of being directly or indirectly represented becomes less important, at least on the employee side, since the agreement sets up procedural and controlling mechanisms, rather than providing individual rights for the employee or substantial standards for the employment relationship. Its aim is to introduce good practices at company level; all employees will benefit from introducing good practices, independently of their employment contract, and independently of whether or not they have a relationship with the signing trade union. Given that the agreement concerns a workplace issue rather than aspects of the employment contract, the problem of a European agreement with direct effect being too intrusive into the national traditions regarding 'indirect representation' is less pronounced.
- A private dispute settlement and reporting system as set up with the Council may be more appropriate to agreements that regulate the introduction of mechanisms than in cases where an agreement aims to establish substantial rights related to the employment contract. In the latter case, the courts may be preferable for dispute settlement.

In all, the crystalline silica agreement represents an important innovation and its detailed provisions on reporting and European-level control are likely to make this instrument more effective than other autonomous agreements. Yet, as to its content, it looks more like a recommendation with a strong follow-up procedure – including European private dispute settlement – than like an agreement with binding substantial provisions that can be invoked in court.

## Dynamics of sectoral social dialogue

### Different notions of dialogue

Beyond the institutional framework, the way sectoral social dialogue committees function in practice should be examined. The interviews and the analysis focused on more recent developments, in particular post-1998, with the creation of the new sectoral dialogue committees; this, however, builds on a tradition of committees that predates 1998.

The members of the sectoral committees clearly define social dialogue at this level as bipartite, while tripartite industrial relations are viewed as a matter for cross-sector organisations. However, as for cross-sector dialogue, the social partners and the European Commission maintain a relationship of strong interdependence. The Commission's intervention is needed to support the dialogue while not intervening in the agenda. The interviews with the European social partners show no convergence of opinions on the degree of satisfaction about the Commission's role in the committees. The points of view vary from great satisfaction to disappointment. Nevertheless, the common denominator is the

frequent demand for more efforts of the Commission to support meetings, provide expertise, supply a secretariat for the committees and more generally, to back the social dimension of the European integration. In any case, interviewees believed the European Commission's role to be essential, bringing necessary support to the social dialogue. According to a sector union representative, 'The European Commission is the one that plays a hyphenating role between the social partners.' Another trade union respondent stated: 'Without the support of the Commission, there would not be any European social dialogue. Where the Commission is playing an active role, the social dialogue works better.'

As with the cross-sector level, the notion of 'dialogue' may be interpreted differently. There is 'a game within the game' (Reynaud, 1989), as the various actors have different opinions and strategies about the extent to which social dialogue should, or should not, lead to collective agreements or to any kind of binding regulation. In some sectors, employer organisations are reluctant to engage in collective bargaining due to the fact that their organisation has been created for other purposes, such as commercial policies or lobbying. Bargaining and social dialogue may not figure in their brief at all. Some employer organisations use this argument to maintain the committees in a role of dialogue rather than that of regulation; for example, as two French-speaking respondents of employer organisations stated:

We are a lobbying organisation, at 98 per cent, or even at 100 per cent. We do not negotiate agreements. This has been a choice we made. We never negotiate for the sector. We carry out studies, lobbying, draw up reports and we disseminate information, a lot of information, but that is all. We cannot commit our members to collective bargaining.

The European social dialogue committee for the sugar industry provides an interesting example of a committee with active relationships between 'both sides of industry'. At the same time, the employers clearly position themselves in attributing a limited ambition to the European social dialogue in comparison with national industrial relations. The committee started its activities in 1969 and is considered by the employer body CEFS (Comité européen des Fabricants de Sucre) to be very active. However, a joint document published by CEFS and the trade union federation EFFAT (European Federation of Food, Agriculture and Tourism) emphasises their guiding principle for dialogue. They follow

a constant rule: 'exchanges and consultation on all subjects of common interest.' The European social dialogue does not replace the national dialogue but complements it. Since 1969 the social dialogue in the sugar sector has been based on the same rule:

- Exchange of views and concerted action on all subjects of common interest.
- Negotiation remains a matter of national competence.

(CEFS and EFFAT, 2004, p. 7)

Accordingly, the degree of commitment in the various committees, particularly on the employers' side, depends on the position taken by the social partners, if it is one of exchanging views rather than reaching agreement on regulation. This varies from sector to sector. Most of the sector committees merely exchange information while some of the committees are involved in consultation by the European Commission, and others take decisions for joint action or negotiate joint texts which in some cases can be binding arrangements.

The extent to which dialogue remains mere discussion or consists of bargaining varies from one sector to another. However, collective bargaining rarely leads to binding clauses, according to Pochet's analyses (2005) of the 353 texts adopted by the sectoral committees since 1978. Pochet distinguishes between different types of documents: agreements negotiated autonomously by the social partners according to Article 139 EC; joint recommendations to national member organisations, including indications on a follow-up procedure; declarations 'of intent' with no explicit follow-up procedure; tools such as studies, handbooks or databases; internal procedural rules set up by the members of the committee; and finally, common positions aimed at the European institutions. This distinction is slightly different from the one outlined by Commission in its 2004 Communication on partnership for change. Pochet observes that only a slim proportion of the texts consist of agreements:

An analysis of all 353 documents reveals that a large majority of them – 216 (60%) – are common positions. Next come declarations – 46 – and then, in turn, tools, recommendations, internal rules and lastly agreements (5). (...) Therefore, if we interpret the social dialogue restrictively as the negotiation of binding agreements, 'agreements' constitute fewer than 2% of all texts.

(Pochet, 2005, p. 321)

### **Representation and mandate of European sectoral social partners**

The relationships between the European social partners and the national players in the sectors of activity are key in terms of finding common ground for discussions at European level and the challenges faced to implement the texts in the Member States. At sector level, the issue is particularly complex, especially since EU enlargement.

The notion of 'sector-level industrial relations' does not correspond to the same reality in all European countries, and the delimitation of a sector may not be as simple as it seems. Keller has already noted that 'there is no exact official definition of which criteria constitute a "sector"' (Keller, 2003, p. 420). He gives the example of the transport sector, which covers very diverse activities, such as civil aviation, road transport, railways and maritime transport. The NACE classification is generally used to delineate the activity in economical terms. Even so, the reality of one sector in each of the Member States, particularly in terms of perimeter for industrial relations, may vary from the economic standard. With EU enlargement, the variety of sectoral industrial relations structures and actors across the Member States has further increased.

While sector-level collective bargaining tends to play a central role in national systems of industrial relations in the 'old' EU15, by contrast it is very weak, or simply absent, in most new Member States (Schulten, 2005; Visser in European Commission, 2004a). In several countries, the sector level is not, and sometimes has never been, a significant level of collective bargaining. The UK situation is given here as an example, which represents an exception within the former EU15 countries while illustrating the general conditions of sectoral social dialogue in the new Member States. As highlighted by a respondent from the union side, 'in some countries, the question is simply whether or not there is any kind of social dialogue. (...) Generally speaking, this is more difficult in new Member States.' Such circumstances generate an institutional difficulty, as there is no arena equivalent to the European one to discuss with, or to ensure implementation.

National member organisations are not necessarily structured at sector level and, if they are, they do not necessarily correspond to the perimeter of the sector as it is defined in the EU committee. On the

employers' side in particular, national members can be employer associations or single employers. In some countries they can be very fragmented. Léonard, Rochet and Vandebussche (2006) show these disparities looking at the road transport sector in the new Member States: on the trade union side, the number of national organisations which play a role in collective bargaining and are affiliated to a European organisation varies from zero in Latvia to 12 in Poland; on the employers' side, it varies from one in Latvia or in Lithuania to seven in Malta. Among all these organisations, only one – an employer organisation in Estonia – comprehensively covers the whole of the economic sector, as defined by the European-level players.

The European social partners also acknowledge that, in some countries, there is a 'lack of counterparts'. This is particularly the case in the new Member States, as stated by an employer representative: 'It is difficult to identify and regroup the employers in these countries.'

Conversely, a sector union representative emphasises that 'European social partners are not of the same nature as national organisations' since they do not fulfil the same bargaining role and do not use the same means of action. National organisations not always have the capacity nor the power to negotiate. One interviewee referred to the health sector, where a cross-national association of hospitals exists, which strictly speaking is not an employer organisation and has no capacity to negotiate.

Enlargement has made things still more complex, with more heterogeneity, but also with weaker organisations at sector level in the new Member States. It has furthermore diversified the national members' interests and priorities.

Consequently, the membership structure is very complex in some sectors, and debates on the representativeness of the European sectoral social partners in the committees are not closed. Several examples of this situation can be found in the public services sector. In the healthcare sector, for instance, 'it is a challenge to identify who are the employers and who are the unions', thus an 'informal committee' was present and 'only when issues of representativeness were solved, a formal committee was set up'.

The question of the relationships with the national member organisations goes beyond mere representation and also concerns the mandate that the affiliates are prepared to give to the European organisations. According to the interviews, European affairs are sometimes perceived by local participants as being far from their day-to-day concerns. For national members the pressure of domestic issues is more important than the interest in European developments. Some national organisations regard the discussions at European level as too abstract, 'too far from the ground' and therefore not very interesting. National organisations focus on domestic issues, which is partly determined by the resources they have available, as noted by a national employers' respondent: 'The majority of our activity is taking place at national level. We don't have the resources to give European issues the interest they deserve.' This point of view is shared by the union side; a sector union representative noted: 'The resources are too scarce for members in the new Member States to become interested in those very esoteric European debates.' In some cases, a more fundamental political position against European integration can lead to resistance, as 'there are different ways of looking at Europeanisation'.

As a result, the question arises as to whether national member organisations are interested at all in the European social dialogue. Such an assumption would be an overstatement of the current situation. Nonetheless, it is important to bear in mind the significant share of intra-organisational negotiation in European social dialogue, at both sector and cross-sector level. According to an employer respondent, 'Social dialogue is long and difficult. (...) It mostly requires internal work in each of the structures. One needs to find a subject on which one can potentially agree, at the same time, within organisations and between organisations.'

### **Reaching common interest for discussion topics**

Finding common ground in the sectoral social dialogue committees constitutes the same multi-dimensional challenge as for the cross-sector social dialogue: the topics on the agenda must meet the interest of 'both sides of industry'; they must also be relevant to all or most of the countries while not being central on the national members' agenda; and at the same time they need to be accepted by the members on both the union and the employers' side. Here again the difficulty in finding common ground is twofold: unions and employers have to agree on a common agenda, i.e. on issues that they both accept to discuss and the type of outcome that they want to reach, be they agreements, joint opinions or codes of conduct. Moreover, the European organisations also have to find common ground that is relevant for their members in the different countries.

Determining a common interest seems to be easier than at cross-sector level because one sector covers a more homogenous area. Accordingly, compared to cross-sector dialogue, the topics of sectoral social dialogue seem to be more focused on workers' and companies' interests; as noted by an academic, 'there are better chances than at cross-sector level, because it is easier to come to a common definition of the situation.' In addition, companies and the lowest level of the hierarchy of bargaining levels also seem to benefit from a more direct relationship.

Nevertheless, the diversity of national situations, organisational structures and strategies makes it difficult to define common positions even within each European organisation. According to a respondent from a sector employer organisation, 'on the employers' side we encounter the same problem of coordination and of achieving a common opinion: this is specific to the numerous employers and the European diversity.'

Although finding common ground for discussion is easier in sectoral dialogue committees than in cross-sector dialogue settings, the same logic of 'subsidiarity' applies regarding the choice of topics. Issues covered by the European sector dialogue must, at the same time, be relevant for the various Member States and not be central to the national agendas, as emphasised by a sector union respondent: 'The notion of subsidiarity is important. I need to repeat constantly to our members: "Do not bring to the European level the problems that you haven't been able to solve in your country."'

Consequently, several union respondents regret that the issues for discussion in the committees are not the core issues of the employment relationships: 'they are not the hot topics'. The issues on the agenda of the sectoral dialogue committees are considered as important and ambitious on the employer side, although some union respondents judge them as too soft. The interviewees have mentioned several issues figuring currently on the committees' agenda; for example, health and safety issues are present in the discussions in several sectoral committees, such as sugar. Restructuring or more general questions on the management of change in the sector as a whole

across Europe are likely to be of interest for the European sectoral committees, but not all of the committees are willing or ready to cope with this subject matter. Some committees show an interest in employment, either in sectors that are expanding, such as commerce, or in those under threat, such as sugar. In the former case, the objective is to promote employment and to stimulate training; in the latter, the preoccupation is to successfully manage the expected downsizing in the industry due to European legislation and increasing international competition. Corporate social responsibility (CSR) also figures on the agenda of some committees and has been the object of a code of conduct in the sugar industry, for example. In the telecommunications sectoral dialogue committee, the unions claim to have tried to discuss CSR, but the committee did not reach consensus to put it on the agenda. Several sector committees are also trying to deal with the issue of migrant workers, without achieving any concrete results up to now. This is the case, for instance, in commerce. In all committees, wages are beyond the scope of discussion as they are not part of EU-level competencies and are regulated at national level; in general, employers will not discuss wage issues in these committees. Nevertheless, some attempts have been seen to put the topic of low wages on the agenda – to date, only the trade unions have been pushing for this issue to be discussed. At its 2004 congress, the European Public Service Union (EPSU), for instance, committed itself to include low pay in its collective bargaining policies.

According to Pochet's quantitative analysis of texts issued by the sectoral dialogue committees, three topics rank first in terms of numbers of joint texts, relating to economic and/or social policies, social dialogue and working conditions; the latter is also covered in procedural texts.

In any case, as in cross-sector social dialogue, the sectoral committees engage in integrative rather than distributive bargaining. Employers in particular insist on the importance of finding common solutions rather than negotiating in the strict sense, as underlined by a sector employer respondent:

In fact, what needs to be understood in the European process of social dialogue is that things can work if there is a bilateral respect of the parties and if we all understand that social dialogue is not about winning the game, but both parties gaining substantial progress in the work environment. Sometimes, it happens that we do not agree on particular issues, which is to be expected given the fact we represent different interests. This has happened in the past and surely it will happen again in the future, but social dialogue is a combination of two key factors: mutual understanding and leaving the door open for a common solution to be found.

### **Sector dynamics shaping processes and outcomes**

The number of sectoral committees can be taken as an indicator of the growing importance of this level of social dialogue in European industrial relations, and their increase in numbers since the 1998 reform from 20 to more than 30 in 2006 can be seen as a sign of vitality. However, the various committees do not function in the same way. Looking at the outcomes shows great diversity between the sectors: while the shipbuilding industry only agreed one document, the social partners in telecommunications agreed 34 texts (Pochet, 2005). According to Pochet, this difference is related to the socioeconomic situation of each sector:

Most of the 'agreements' have been signed in sectors which are tied to European policies (transport; agriculture has signed quasi-agreements). Sectors in which the national industries have been deregulated (telecoms, postal services, electricity, etc.), where there is both competition and interconnection, are the ones where there have been most 'recommendations' (not codes of conduct). Traditional sectors (banking, insurance) are in search of a European goal. Sectors that are 'in decline' (textiles, footwear, sugar, etc.) and highly exposed to international competition are the ones where the largest number of codes of conduct has been signed. Sectors aiming to raise their profile (private security, cleaning industry, etc.) and achieve European 'quality labels' are striving towards codes of conduct not based on the ILO standards (ethics, for instance). Finally, the commerce sector is experimenting with a variety of instruments in its desire to give greater prominence to its specific needs.

(Pochet, 2005, p. 330)

This analysis is consistent with the studies conducted by the Observatoire social européen (OSE, 2004), which developed a typology in which sectors are differentiated according to two variables: the dependence of the given sector on European policies and its exposure to international competition. Keller (2003 and 2005) adopts a similar position when he observes that, historically, the constitution of the joint committees and the informal working groups since the 1960s were linked to specific EU policies, such as for the transport and agriculture sectors. At a later stage, the internationalisation of markets, liberalisation, deregulation and privatisation influenced sectoral dialogue committees such as postal services or telecommunications.

The interviews support these observations. However, most explanations given attribute the main drivers of the existence and the vitality of the committees to external variables, without considering the internal dynamics of the sectors and the committee. Jacobi and Kirton-Darling (2005) add an interesting dimension to the analysis when they note that a higher degree of Europeanisation of a given industry favours a capacity to find a common interest: 'In Europeanised industries, trade unions and employers have a common interest in generating industrial policies which safeguard the future' (Jacobi and Kirton-Darling, 2005, p. 337).

Other characteristics of the sector also come into play, such as its economic structure, trends in the sector, liberalisation of the sector's activities, type of employment and developments in employment. Social dialogue seems to function better in sectors with a strong product-market integration, such as in the electricity and sugar industries. Greater diversity in terms of company size makes it more difficult to find a common interest among both large multinationals and SMEs. Increased competition between the companies represented in the committee can also impede a common position on the employers' side. According to the trade unions, for instance, difficulties currently arise in the telecommunications sectoral committee due to individual companies aiming to use any competitive advantage they can in a highly competitive market.

Furthermore, the geographic and economic perimeter of the sector seems to influence the committees' activity, since the existence of European market space makes it more relevant for the parties to try to find common solutions at a European level. In agriculture, for instance, members of the committee from both sides consider that they are increasingly facing a European market in their sector of activity, while in telecommunications or electricity, the context extends beyond Europe. Such structural differences between the sectors are reflected in the parties' composition: for example, the employer



organisation Eurelectric unites around 30 members of the Organisation for Economic Cooperation and Development (OECD).

The dynamics at work within the committees are important, particularly the membership characteristics of sector unions and employers' organisations. These relate to the representativeness of the organisations, the structure of national affiliates, the role of national affiliates in their countries, the interest of national affiliates in European issues and the relationships between European organisations and their national affiliates. Committees are seen to function more easily if representativeness of the members is not an issue. In general, these are committees where organisations on both sides are clearly identified, are not challenged on their representativeness and have national member associations that are themselves representative and play a role in collective bargaining in the countries. In particular on the employers' side, this requires national members that are active as employers or employer organisations in playing a role in collective bargaining. Health services represent a counter-example, as some of the affiliates are hospitals that do not necessarily act as employers within the countries.

At last, the aspects that are specific to the dynamics within the committee should also be considered, including past experience, respective strategies of the participants, resources of each party, relationships and degree of trust between the members, and support given by the European Commission.

In total, three types of conditions must be fulfilled to create positive dynamics within sectoral dialogue committees and to guarantee effective outcomes:

- Common interests between employers and trade unions at European level will stimulate dialogue, which can be related to European policies for the sector, as in agriculture or sugar. In such cases, social dialogue can be a means to adapt to the policies, to lobby the European authorities, or else to try to avoid unilateral legislative intervention by proposing joint regulation. The common interest can also emerge from European-wide product or service markets, a cross-national labour market, a key role played by European companies, or economic and social challenges faced by economic integration and enlargement, as is the case in commerce.
- European social dialogue requires organisational capacity on the part of trade unions and employers, especially in terms of representativeness and of their mandates. If, for instance, an employer organisation has been established for the purpose of lobbying and commercial affairs rather than collective bargaining, and represents national member associations with the same status, then this can hinder the negotiation of agreements, since such an organisation has no mandate to negotiate on behalf of its members.
- The organisational strategies and the dynamics within each committee play a role. If, for instance, one partner is reluctant to play the game of dialogue as such, it is likely that no important text will come out of the committee's meetings.

At this stage, these are mainly hypotheses, and further research into the dynamics of the sectoral committees would be useful to understand the differences. This would, among others, contribute to evaluating how the different committees function in ways which go beyond the sole criteria of the number of texts produced. Outcomes of the sectoral dialogue committees are not limited to texts, and several respondents have stressed the fact that the vitality of social dialogue cannot be evaluated only

by taking into consideration the number of texts produced and *a fortiori* the number of agreements. According to a European Commission respondent, 'In social dialogue, there is what one sees, and there is what one does not see, and what one does not see is more important than what one sees.'

### Implementation of texts

With regard to the implementation of texts at sector level, the same questions arise as in the context of the cross-sector social dialogue: Do agreements and joint texts contain any commitment, rule and method for implementation? What are the national formal processes available for implementation? How do these texts impact on companies and workers? Does any type of evaluation of results or feedback on implementation in the Member States exist?

According to the OSE study in 2004, the extent to which the texts produced by the sectoral committees contain rules for implementation and follow-up takes very diverse forms, ranging from a simple declaration of intent to the establishment of specific structures (Pochet et al, 2004). Some of the texts also include joint evaluation reports and timelines for implementation.

The interviews indicate that implementation of the different types of texts, be they agreements or process-oriented texts, strongly depends on national players and thus on the dynamics of industrial relations in the Member States. According to one sector union representative, 'to bring the agreement's results to the people, this can be done only by national members.' European sector agreements have generated bargaining at national level in a number of cases; for example, the European agreement on vocational training in the agriculture sector, which was concluded in December 2002, initiated bargaining in several countries.

Once more, the question arises about the degree of constraint European social partners can exert on their national members. Due to the different industrial relations structures in the Member States, the degree of implementation can vary from one country to another. The documents issued by the sectoral committees imply that national member organisations negotiate the implementation in the country. Not all national members, however, are able to assume this role; some may have no bargaining capacity or no bargaining power on the issues concerned, or some may not be willing to adopt this role.

The social partners also acknowledge this difficulty, as one sectoral employer representative stated:

In our experience, social dialogue and joint agreements which are reached at European level are the free expression of an effort to find a common understanding between social partners, but it also needs national-level approval which is not automatic and depends mostly on the national relationship between management and labour organisations.

In its texts, the Commission formally differentiates agreements from process-oriented texts, notably because they imply different types of implementation processes. However, in practice, the uncertainty surrounding the implementation of agreements is not necessarily lower than for other types of texts, as implementation ultimately depends on national industrial relations dynamics. According to a sector employer respondent, 'there are agreements that must be implemented by social partners themselves. Therefore they are rather recommendations than real agreements.'

As for the third question concerning the impact on companies and workers, the interviewees unanimously considered this an important issue. To evaluate each committee's efficiency, it is

essential to examine the impact on companies and workers instead of solely looking at the committee's dynamics and outcomes. It should be noted, though, that the evaluation procedures generally focus on the mechanisms ensuring the follow-up in the Member States, and not on the impact as such. Moreover, these evaluations differ across sectors. The interviews revealed that either the European social partners have no information on implementation or they have data on the mechanisms set up to ensure follow-up. The sugar industry and commerce provide two examples of evaluation processes.

- In the sugar industry, a code of conduct on 'Corporate social responsibility in the European sugar industry' was concluded in February 2003 between CEFS and EFFAT. This code sets up standards in eight fields, such as human rights, education or vocational and lifelong learning. The code includes a joint assessment in the form of an annual report, prepared on the basis of data collected by the European social partners. It came into effect on 1 January 2004 and had to be translated into the various European languages by the national delegations. The follow-up mainly consists of collecting and disseminating examples of good practice in each of the eight fields (CEFS and EFFAT, 2004).
- In commerce, EuroCommerce and UNI-Europa Commerce have conducted a joint evaluation of the implementation of 'European social dialogue texts at national and company level'. The annual evaluation concerns five texts, and is conducted by means of a questionnaire sent to the national member organisations. In fact, the data collected hardly go beyond determining the degree of awareness among part of the members, who received a questionnaire to evaluate five key joint texts. Some 27 organisations/companies replied to the questionnaire with an overall positive outcome: 100 per cent of the survey respondents are aware of the existence of joint texts and consider those to be relevant and useful. Both EuroCommerce and UNI-Europa Commerce members do their best to further raise awareness of European-level joint texts and attempt to reinforce the role of European social dialogue in the sector (extracted from a 2006 PowerPoint presentation by EuroCommerce and UNI-Europa Commerce). The evaluation also comprises examples of good practice.

All the interviewees agree that there is a need for a better follow-up of implementation.

### **Challenges and future perspectives**

The different sectoral dialogue committees and the cross-sector social dialogue show some common features, namely: the topics for discussion are delimited by an explicit or implicit notion of subsidiarity; formally, two actors are involved but in practice the committees need strong support from the Commission; dialogue is a question of integrative rather than distributive bargaining; there is a need for intra-organisational negotiations, but the links to national members and companies are closer than in the cross-sector social dialogue.

The rapid multiplication of European sectoral dialogue committees is assessed positively, since it indicates that there is an interest in European social dialogue at sector level. Beyond this broad indicator, in the interviews the degree of satisfaction on the functioning of sectoral social dialogue varies according to the respondents' position and expectations, with contrasting statements from employer and union respondents. The employers are satisfied with the current extent of dialogue at EU level and do not see a problem with the relatively low number of agreements, as the dialogue itself is important. On the other hand, the trade unions show willingness to go further.

Overall, the most striking observation at sector level is the significant heterogeneity across sectors. Each sector has its own dynamics and works independently from the others. The points of view differ depending on the sectors taken into consideration and there are obviously committees that function better than others; 'some sectors are very active'. The outcomes reflect these differences, as Pochet (2005) shows in his analysis of the documents produced by the sectoral committees. Even if the vitality of the committees cannot be judged solely on the basis of the number of documents produced, this clearly reflects differentiated dynamics in the various sectors.

The dynamics of the sectoral dialogue committees could be differentiated between a 'modest road' and an 'ambitious road'. The former is limited to the exchange of information on general issues, leading, in some cases, to joint statements or declarations, without including binding elements for the parties, nor any specific method for implementation and follow-up. In the latter case, the topics for discussion are more focused and lead to negotiation, potentially ending in a collective agreement including binding commitments for the parties, with a method for implementation and a programme for evaluation.

The differences between the types of text produced, however, become blurred when it comes to implementation. The Commission acknowledged this fact following its distinction between the different categories of texts:

It should be stressed, however, that the purpose here is not to suggest that joint texts with more general statements concerning follow-up are necessarily less effective than those with more precise provisions. Indeed, it could well be the case that sectors with relatively vague commitments end up following up their texts effectively. Equally, experience shows that it is not because monitoring commitments have been included that they have necessarily been followed up in practice.

(European Commission, 2004a, p. 92)

The different dynamics from one sectoral committee to another can be explained by the characteristics of each sector and the relationships between the partners, but they also remain because the contacts between sectors are limited (Pochet et al, 2004). Contacts between sectors primarily take place in the Liaison Forum, which was mentioned by several respondents on the employers' side, but mainly as a formal device with no significant impact in practice.

Similarly, cross-sector and sectoral social dialogues run in parallel, with no direct articulation between the two levels. This is due to the fact that they are parallel processes in the institutional settings, and that European cross-sector social partners are not primarily constituted as confederations of sectors or industries. Their first constituencies are the national cross-sector organisations, not sector federations, which contributes to the weak links between inter-professional and sector processes at EU level. The April 2006 agreement on crystalline silica, however, innovates since it is, as a multi-sector agreement, in between the two levels.

In terms of challenges, several respondents have mentioned current trends that are perceived as creating increased obstacles or difficulties to sectoral social dialogue; for instance, an increasing number of employers tend to prefer company-level bargaining or no bargaining at all. In the telecommunications sector, the unions consider that 'in the last five years, the commitment of employers has changed. They don't want to act together as a group of employers any more because

the telecommunications market has become highly competitive'. The prevailing economic context can cause difficulties in dialogue; according to a sector union representative, 'considering the current economic difficulties in Europe today, we have moved backwards.'

If the sector dialogue is considered as a key level of industrial relations for the EU and the Member States, it faces a double challenge, notably the weakness of this level in most new Member States and a trend towards decentralisation of collective bargaining in the EU15 countries.

However, whatever the difficulties are, and independently of the various degrees of satisfaction expressed, all interviewees consider that sectoral social dialogue has to go on. Just as in cross-sector dialogue, the processes are at an early stage, even in the long-established sector structures, in particular when taking into account the high degree of complexity involved. According to a sector union representative, 'You have to give it a chance. Frankly, sometimes we ask ourselves whether it is useful. But politically it is important for us to keep the European social dialogue going, because there is no alternative to have a social dimension at European level.'

The European sectoral social dialogue also appears to be a progressive learning process through which, if there is an interest from national members, they can learn from each other and from one country to another. As such, it requires time and continuity.

# Autonomous processes and Europeanisation of industrial relations

Beyond the formal institutions and processes of social dialogue at the cross-sector and sector levels, autonomous processes that involve both bilateral and unilateral initiatives and activities by employer organisations, trade unions, company managements and employee representatives are contributing to the Europeanisation of industrial relations. These autonomous developments are being prompted by the consequences for labour market actors of ever closer European integration. The scope of these autonomous processes can be pan-European or cross-border, involving labour market actors in some, but not all, countries, or within specific European regions. They primarily involve developments at the sector and company levels and include activities such as cross-border information exchange and learning as well as cross-border comparisons and ‘context setting’ in national and local collective negotiations. Autonomous processes also involve cross-border forms of mobilisation and action, which lie beyond the scope of this report’s analysis.

A striking feature of these autonomous processes in the Europeanisation of industrial relations is the asymmetry in focus in the predominant level of activity for employers and trade unions (Marginson and Sisson, 2004; Marginson and Schulten, 1999). For employers, although employer organisations do engage in cross-border information exchange and learning at sector level, the primary focus is at multinational company (MNC) level. At this level, employers use systems to systematically monitor workforce costs and performance in local operations in order to compare these across borders and deploy the results in local and national negotiations. For trade unions, the primary focus has been at sector level coming in the shape of initiatives aimed at sharing bargaining information across borders and ultimately at coordinating bargaining agenda and outcomes. In some companies and sectors, trade unions are responding to the articulation of local negotiations by MNCs, but to date these responses have not been widespread.

At company level, European Works Councils (EWCs) – a formal structure for social dialogue within MNCs in Europe – have given rise to developments not anticipated by the 1994 EWCs directive (Directive 94/95/EC). These include their mobilisation for context-setting activity around local negotiations by management and by trade unions, and the emergence of negotiating activity as seen by the small but growing number of EWCs which have concluded joint texts and framework agreements (EWCB, 2005).

Reflecting these developments, this chapter is structured around three main sections. The first considers cross-border activity at sector level, with a particular focus on trade union initiatives towards cross-border bargaining coordination. Cross-border information exchange by employer organisations is also touched on. The second addresses cross-border activity at company level, and focuses on cross-border context setting and pattern bargaining by management in MNCs. Trade union responses are also considered, as is the mobilisation of EWCs by both sides. The third section examines joint texts and framework agreements concluded through EWCs. The survey with key national and European-level actors addressed only the issues covered by the first and, to a lesser extent, the third of these sections.

## Cross-border activity at sector level

### Trade union cross-border bargaining coordination activity

Prompted by fears that the intensification of regime competition under the Economic and Monetary Union, and more recently as a result of the EU's eastern enlargement, will trigger a downward spiral in wages and conditions as national negotiators seek to secure settlements which enhance competitiveness, trade unions have launched initiatives aimed at coordinating the agenda and outcomes of national negotiations at sector level. The aim is to 'link them [national bargaining systems] so as to limit national competition on pay and labour cost developments' (Schulten, 2003, p. 113). Coordinated bargaining promises the establishment of guidelines and standards that will help prevent undercutting while leaving national (sector) negotiators scope to tailor outcomes to their own situations.

These initiatives are unilateral, driven forward by trade unions alone. Reflecting their clear preference for further decentralisation of collective bargaining towards the company level, employer organisations are generally opposed to any European-level coordination of negotiations.

Trade union coordination initiatives comprise both 'top-down' and 'bottom-up' developments arising from the activities of the European trade union industry federations (EIFs) and 'interregional' developments involving unions from two or more neighbouring countries, respectively.

At interregional level, the earliest and most influential development was the cross-sector 'Doorn' initiative, which brought together trade union confederations and major sector unions from the Benelux countries and Germany, and more recently France. At a meeting in the Dutch town of Doorn in 1998, a declaration was adopted committing the unions to a bargaining coordination rule under which negotiators should aim for settlements consistent with the increase in the cost of living plus the increase in labour productivity. At subsequent annual meetings, the unions have extended their agenda to elaborate common policies aimed at establishing common (minimum) standards on non-pay-related matters, beginning in 2002 with lifelong learning (Schulten, 2003). In between annual meetings, a small working group of experts meets to facilitate information exchange and push forward policy decisions. This information exchange forms the input to a database which enables settlements to be monitored against the bargaining coordination rule and to assess progress on non-wage qualitative issues. These features of the Doorn initiative are evident in some of the sector-based coordination initiatives, both interregional and European-wide in nature. Sector-based interregional developments are concentrated in metalworking and construction, and have largely focused on two regions within the EU, Germany and its neighbours, particularly the Benelux countries, and the Nordic area (Marginson, 2005; Schulten, 2003).

At EU level, the initiatives of the European Metalworkers' Federation (EMF) are the longest established, the most developed and widely regarded as the pacesetter. Its core features involve a wage bargaining coordination rule – under which wage settlements should be consistent with increases in the cost of living and a share in productivity gains – a working time charter, an electronic database for recording and monitoring settlements, peer review of outcomes and strategic direction from a small steering group. Differences as well as similarities exist among European industry federations (EIFs) in sectors where coordination activity is underway. Some – such as UNI-Europa Finance and EPSU – are in their early stages, while others are more firmly established, including EMF, the European Federation of Building and Woodworkers (EFBWW) and the European

Committee of Food, Catering and Allied Workers' Unions within the International Union of Food, Agricultural, Hotel and Restaurant Workers (ECF-IUF). The formal status of initiatives varies. While those in manufacturing are inclusive of affiliates across the EU, UNI-Europa Finance's initiative is voluntary: participation is through a supplement to the affiliation fee and not all affiliates have signed up.

Several other EIFs in manufacturing have worked out settlement coordination rules which resemble EMF's formula – although those established by the European Mine, Chemical and Energy Workers' Federation (EMCEF) refer only to matching inflation. Other EIFs, including EFBWW, UNI-Europa Finance and the European Federation of Journalists (EFJ), have not adopted a specific formula. EPSU has formulated a common objective to improve the position of low-paid workers. EFBWW is pursuing an alternative 'bottom-up' approach, aimed at protecting national collective agreements from the effects of the cross-border movements of labour which characterise the construction industry, for example, through bilateral, cross-border trade union agreements to organise and assist posted workers. At the same time, EFBWW's approach also aims to establish common reference standards for key non-wage-related matters (Erne, 2004).

The capacity to implement initiatives and monitor outcomes also varies. Reviewing the situation in 2000, Hoffmann and Mermet (2001) noted the absence of structures to support bargaining coordination in many EIFs. In this respect there has been little subsequent change. There are also differences in the extent of information collection on bargaining matters and its dissemination. In some instances, such as publishing, this takes the form of issue-specific comparative surveys. At the other end of the spectrum are those EIFs, including EMF, ECF-IUF and UNI-Europa Graphical, which have developed website databases of the contents of collective agreements and key wage and working time parameters. These are available to union representatives across the sector, and provide the basis for a systematic review of outcomes against settlement coordination rules and other agreed targets. The bargaining coordination initiatives in the manufacturing sectors concerned involve a somewhat tougher form of self-regulation than in other sectors.

Straddling the EU-level sector initiatives is ETUC's cross-sector bargaining coordination activity. ETUC adopted its own European guidelines for coordinating collective bargaining in December 2000. Similar to those adopted under the Doorn declaration and by EMF, they call for wage settlements equivalent to the cost of living increases along with a proportion of productivity gains sufficient to redress the declining share of wages in gross domestic product (GDP). The remainder of the productivity margin should be used for (quantifiable) improvements in qualitative aspects of work. Subsequently, ETUC has added substantive aims to narrow the gender wage gap and reduce numbers of low-paid workers. Progress is reviewed in an annual benchmarking exercise of settlement outcomes and economic data. The most recent of these suggests a mixed picture:

most European countries conform to the ETUC guideline to the extent that, on average, over the four-year period, wage growth compensates for inflation, with the exception of Germany, where real wage growth is negative over this period. However, real wage growth remains clearly below productivity growth in most countries.

(Keune, 2006, p. 11)

Several problems have arisen in the elaboration and implementation of these various bargaining coordination initiatives (Marginson, 2005; Schulten, 2003). Some relate to securing consensus on the



standards to be targeted, an example being EMF's working time charter. Others concern the interpretation of qualitative improvements, which are either non-measurable, such as improved rights and facilities for lay representatives, or whose effect is uncertain, such as entitlement to partial pre-retirement where take-up is difficult to predict.

Difficulties also arise from the different bargaining systems found across Europe. In the case of two-tier bargaining over pay, as found in Italy and Denmark, for example, the value of the overall settlement in a sector will not become clear until after a series of company-level negotiations have been concluded. More fundamental is the issue of vertical coordination, and in particular how far pay bargaining at company level results in outcomes that are consistent with the terms of higher-level agreements. The issue is becoming more pressing as the scope for company-level negotiation within sector agreements is progressively opening up. Equally fundamental is the question of how best to mesh systems where bargaining is single-employer-based with sector-level coordination premised on multi-employer agreements. Initiatives differ as to whether they are single or double-tier in the bargaining levels concerned. Most are single-tier, focusing on national sector-level negotiations. In these instances, key company settlements are monitored in countries, such as the UK, where company-level bargaining prevails. UNI-Europa Finance's initiative, however, is double-tier, involving the company as well as the sector level: through links with EWCs, it incorporates the major multinational groups within its collective agreements database. EFBWW's initiative also encompasses the companies involved in 'multi-country' construction projects, such as the trans-Alpine tunnels, within its coordination activity (Erne, 2004).

EU enlargement has exacerbated the last of these problems in particular. Multi-employer, sector-based collective bargaining is no longer the quasi-uniform pattern across Member States. Six of the eight new central eastern European Member States have, like the exceptional case of the UK, bargaining arrangements which, if they exist at all, are single-employer based. Only Slovenia, and to a lesser extent, Slovakia, have sector-based bargaining arrangements (Kohl and Platzer, 2004). The necessity of synchronising company and sector-based bargaining systems has become all the more pressing.

Further difficulties stem from differential engagement with initiatives by unions from different countries. Reflecting the concentration of interregional networks in two regions, unions from the Nordic and Germanic (Germany, Austria and Benelux) areas have tended to drive forward European-level sector initiatives. This, argues Dufresne (2002), has influenced the forms of coordination envisaged: wage norms in the mould of Keynesian trade union practice and multilateral benchmarking by union experts, as practised in the Germanic and Nordic countries. The unions from southern Europe, including France, which are less engaged, advocate a different idea of coordination based on realising common qualitative goals. Those from Ireland and the UK remain relatively detached. Moreover, until recently, concrete actions taken by unions in support of industrial disputes in another country had been confined to instances between Germany and Benelux, and between the Nordic countries and Germany (Schulten, 2003). The year 2005, however, saw cross-border action between the Irish, British and French seafarers' unions in the Irish Ferries case.

Yet the most important problem confronting these bargaining coordination initiatives is enforceability. The initiatives are essentially voluntary in nature: 'Compliance is largely dependent on [trade unions'] voluntary commitment to adhere to agreed positions' (Schulten, 2003, p. 131). The settlement of coordination rules and the adoption of common standards carry moral force only, and

while benchmarking and peer review processes can reveal the extent to which implementation has been achieved across countries, they cannot enforce it. Even under EMF's initiative, which is widely regarded as the most advanced, the evidence indicates that national parameters are important primarily in the bargaining strategies and decisions of its national affiliates. Nonetheless, EMF believes that its bargaining coordination initiative has established that 'no negotiations are a national issue alone, but that all have implications beyond national borders' (Schulten, 2003, p. 124). Reviewing wage developments in the metalworking sector in France, Germany and Italy between 1999 and 2003, Erne (2004) reports that while the unions' Keynesian economists and bargaining experts in the three countries clearly embraced the 'European conceptual framework' that was strongly influenced by the EMF guideline, the unions' wage negotiators, at times, conceded settlements that failed to meet the guideline due to intense pressure from employers and governments in their countries.

The interviews with key actors suggest that in the light of experience – including the problems outlined above – the more ambitious expectations of trade union cross-border bargaining coordination initiatives are being scaled down. Coordination guidelines on wage bargaining, in particular, had not led to the desired results, and several respondents were sceptical about the possibility of their ever doing so. Guidelines were increasingly being seen as political signals aimed at informing trade union bargaining priorities, and the focus is greater on cross-border exchange of information on bargaining outcomes and the bargaining context. EIFs are also looking to place specific bargaining objectives, which are considered realisable, on the agenda of national negotiations.

Respondents cited several types of reason, both endogenous and exogenous to the coordination initiatives, for the scaling down in ambitions. First, the process of coordinated wage bargaining was seen as having had unrealistic ambitions. Wage guidelines such as EMF's were said to have had 'few concrete impacts' (Belgian union official), and to have been undermined by 'concession' agreements which, in some key instances, did not even match inflation. It was recognised that national circumstances meant that unions sometimes had to conclude agreements without being able to follow the European guidelines. Second, it was observed that unions in some countries do not actively support wage coordination initiatives. In this respect, union representatives of the Nordic countries expressed reservations. Third, the effects of long-term developments in collective bargaining systems were seen as generating greater obstacles. According to a union respondent,

It is difficult to imagine that transnational collective bargaining can ever become a reality. The current trends towards more flexibility and the greater decentralisation of collective bargaining are in sharp contrast to this idea.

Fourth, the prevailing economic context of low economic growth and high unemployment across much of the Eurozone underlined the perceived need for wage restraint, which constituted a harsh environment for wage coordination guidelines aimed at securing a share of productivity gains. Fifth, although the convergence of national economic conditions that had – to some extent – resulted from the creation of the Eurozone potentially created favourable conditions for wage coordination, these had been more than offset by the effects of EU enlargement, which had resulted in greater diversity among Member States. In the face of such increased diversity, an Estonian researcher asked, 'What do you coordinate if the wages and incomes are three or five times different?'

Attention was drawn by respondents to extensive information exchange activity involving not only trade unions, but also employer organisations. According to a researcher,

There is now a much more realistic and modest process among trade unions. Before it was about big plans, big initiatives. Now there has been a shift and the accent is on the practical steps. Now, it is first of all an exchange of information.

The development of information exchange has involved a range of different mechanisms, including the use of the internet for posting documents and collective agreements, news and reports, and creating bargaining databases; structured use of email for circulation of bargaining-relevant information; and meetings and seminars for affiliates. Exchanging information is also a strategic means to augment the capacity of national and local union organisations. National unions, in the new Member States in particular, were said to be interested in the support they could receive from European federations to strengthen their role and impact. Indeed, EU enlargement was said to have stimulated the demand for information exchange because of the increased heterogeneity and diversity of collective bargaining systems, and the unfamiliarity of unions based in 'old' Europe with practice in the new Member States and vice versa.

Exchange of information reflects 'bottom-up' demands and involves a process of mutual influence and learning which contributes to building the capacity of national and local, as well as European, organisations. 'The background is that our members see the need... We are doing something collectively, but it is to support local action,' according to a sector union respondent. One outcome is improved awareness of the 'best practices' that employers exchange, as one researcher asserts:

[National] unions simply need to know what has been agreed in other countries. For instance, employers refer to the [2004] Siemens agreement in Germany; then it is important for unions to know what exactly has been concluded.

These processes of information exchange were considered by several respondents as a first step towards more effective coordination.

### **Employer activity**

Employer organisations are largely opposed to the prospect of sector-based cross-border coordination of collective bargaining. It is viewed as favouring a centralisation, which runs directly counter to the further decentralisation that employers are pressing for. Trade union initiatives towards cross-border bargaining coordination have, however, prompted some response by employer organisations in the shape of the extension and streamlining of systems for exchanging bargaining information (Marginson et al, 2003). For example, EMF's wage bargaining coordination initiative prompted the Council of European Employers of the Metal, Engineering and Technology-based Industries (CEEMET, formerly WEM) to step up its long-established system of information exchange. In the face of the close cooperation between metalworking unions in Belgium, the Netherlands and the North Rhine-Westphalia region of Germany, the Belgium metalworking employers have regular meetings and contact with their Dutch – although not their German – counterparts. Economic or competitive contingencies can also prompt employer organisations towards engaging in more systematic exchanges of information across borders. For example, the perceived necessity, in the context of EMU, of reducing the cost base of Italian banks towards the Eurozone average led Italian banking employers to establish an annual benchmarking of salaries, labour costs and job classifications in other EU countries, and to initiate comparative projects with counterparts in other countries.

The interviews with key actors confirmed that employer organisations continue to have little interest in cross-border bargaining coordination, as highlighted by one national employer organisation respondent: 'It is not something that we embrace with open arms (...). [Our organisation] is very reluctant to be more than just an observer of any kind of autonomous coordination of collective bargaining.'

But they also indicated extensive activity in terms of information exchange by national and European employer organisations. As with trade unions, this activity embraced a diversity of tools which, in addition, included compilation of practical guides for affiliates. Such activity has a considerably wider range than that of collective bargaining matters and has been given recent impetus by the EU's enlargement. For example, both EuroCommerce and the European Banking Federation organised round tables with local employer organisations in all of the new Member States in the period leading up to their accession to the EU. More generally, and according to a sector employer respondent, employer organisations have provided support for affiliates in the new Member States, 'in order to contribute to the development of social dialogue in these countries. (...) Because it is in the employers' interest that the state does not solve the problem on its own. It is in the employers' interest in these countries that they learn to organise, to negotiate and so on.'

In the bargaining arena, although there is no attempt at any kind of formal coordination, it was said that national positions are increasingly informed by the context of what is occurring in other countries. Employer organisations would contact their partners in other countries when formulating proposals, as stated by a national employer organisation respondent: 'We are creating, little by little, an information network so that we don't act on a particular issue without knowing what other countries are doing.' Trade union respondents pointed to the seeming effectiveness of employers' information exchange networks. The 2004 Siemens agreement with IG-Metall, which, in certain conditions, extended working hours at two sites in Germany, was said to have been picked up on quickly by metalworking employers in other countries, including Belgium and Italy, leading them to press for similar concessions.

Overall, while trade union aspirations towards cross-border coordination of bargaining outcomes have been scaled back and the emphasis has shifted towards information exchange, among employer organisations the emphasis remains firmly on negotiating at national and local levels, but on a basis which seems now also to be contextualised by cross-border exchange of information.

### **Cross-border pattern bargaining and context setting in companies**

A European cross-border dimension to company-level bargaining within multinational companies (MNCs) is ever more apparent, reflecting three related developments. First, there is the dismantling of trade borders within the EU, increasing market integration which, following recent enlargement, now reaches across 30 European Economic Area countries – and the creation of the Eurozone. This has led to intensified competition and the rationalisation and restructuring of European industry. Secondly, there is the growing scale and internationalisation of companies, reflecting an acceleration of cross-border merger and acquisition activity that occurred in the late 1990s and again since 2004 (UNCTAD, 2000, 2005). There is a marked regional – intra-European – pattern to this development. MNCs are increasingly organising their production and market servicing on a pan-European basis, with international management organisation and structures being correspondingly strengthened (Edwards, 2004). The third development relates to the institutions of collective bargaining: the relative decline of sector-level bargaining and growing scope for company-level negotiation, and

accompanying pressure from employers to re-orientate the bargaining agenda towards market-led considerations of competitiveness and adaptability (Schulten, 2002).

In this evolving context, the management of MNCs has clearly been the driving force behind a Europeanisation of the bargaining agenda and outcomes. MNCs have increasingly sought to bring international comparisons to bear within domestic negotiations, aiming to secure equivalent bargaining outcomes at sites in different countries. Trade union concerns over the downward pressure on employment terms and conditions arising from management's cross-border concerns are evident, but so far, their capacity to respond to such management comparisons has been limited. Although trade unions are formally employee information and consultation structures, the arrival of EWCs potentially offers unions a platform to strengthen cross-border information exchange and cooperation in local company bargaining. Additionally, EWCs support the management of a transnational structure in employee representation, through which unions can reinforce their message about the context in which local negotiations occur.

The processes involved can and do extend beyond Europe, to the global operations of multinational companies. This is more evident in some sectors, such as pharmaceuticals, than in others. Nonetheless, the regional dimension to the operations and organisation of many MNCs (Rugman, 2005) means that the extent and intensity of such comparison-drawing across the European operations of companies has a distinctive dynamic (Marginson, 2000).

Management's activity derives from its broader interest in cross-border benchmarking of practices and performance so as to continually enhance the competitiveness of operations. This benchmarking process has two aspects: one is the diffusion of those working practices which are deemed to be examples of 'best' practice; the second is the deployment of coercive comparisons of performance across sites in local negotiations over working practices and conditions. Increasingly, MNCs have put in place management systems to diffuse best examples of employment practice across sites in different European countries (Edwards et al, 1999). Such systems include regular meetings of production and personnel managers from sites in different countries, the rotation of managerial staff from one site to another, both to champion the diffusion of particular initiatives and to learn about others, and the compilation of best practice manuals. The approach is frequently 'menu driven': local management are expected to choose from a range of best practices according to local production requirements, workforce circumstances and constraints deriving from labour laws and national collective agreements.

The diffusion of best practice is reinforced by the second aspect, which emanates from the systems of performance control utilised within major MNCs. International management has the capacity to compare the performance of workforces from sites across Europe, and beyond, across a range of productivity and labour-related indicators (Marginson, 2000). The results of these 'coercive comparisons' are deployed by international management to place pressure on local management to secure cost and flexibility concessions from the workforce in local negotiations over working practices and conditions. Where sites are deemed to be performing poorly, local negotiations take place under threat of loss of production mandates, disinvestment and ultimately shutting down of operations. Conversely, better-performing sites are 'rewarded' with new investment and fresh production mandates. The effects vary: in some situations deployment of coercive comparisons can result in a series of matching concessions across borders in which the substantive bargaining outcome at

different locations is similar. Hancké (2000) provides a striking example of a cross-border round of concession bargaining at General Motors (GM) Europe over working time arrangements, involving company sites in Germany, Belgium, Spain and the UK, though his pessimistic conclusions about the feasibility of European collective action have meanwhile been confounded by several transnational days of action of the European GM workers. In other situations, the effect is primarily one of 'context setting' in which local negotiators are well aware of the results of cross-border comparisons, but in which a range of substantive outcomes is possible – so long as these are consistent with maintaining, or improving, the competitive position of the site within the MNC's production network (Arrowsmith and Marginson, 2006).

Differences are evident between and within sectors in the extent to which coercive cross-border comparisons are drawn and deployed by management in local negotiations. In a study of collective negotiations in 10 MNCs based in four different EU countries in the automotive and banking sectors, Arrowsmith and Marginson (2006) find that management cross-border coordination of local negotiations is much more developed in the automotive sector than in banking. At the same time, they also identify a variation between companies within the two sectors. Differences between sectors could be attributed to relative exposure to international competition and the extent to which production or service provision is integrated across borders. Within sectors, differences could be linked to several influences, including the degree and nature of internationalisation of operations (in some banks, for example, back-office operations have been centralised across borders); and the degree of diversity of the products and production systems across operations and ownership, where the scale and symbolism of home-based operations served to weaken cross-border comparisons.

The study also found that trade union efforts at cross-border networking and benchmarking within MNCs were generally less developed than those of management. This was due to resource constraints, lack of a central 'authority', divisions wrought by multi-unionism and the effects of inter-plant competition. Even so, sector and company differences were apparent. The mobilisation and deployment of cross-border comparisons by local union negotiators was evident at several of the automotive MNCs, but at none of the banks, which is attributable to differences in the nature and strength of union organisation in the two sectors. Moreover, the deployment of cross-border comparisons was attenuated among the automotive MNCs where home-country operations had a dominant position in the European market.

EU enlargement has extended the boundaries for the exercise of coercive comparisons by management, as MNCs have opened up and acquired operations in the new Member States. Correspondingly, it has enhanced the challenge facing trade unions. Again, sector and company contingencies are important. In sectors characterised by international integration of production, efficiency-seeking foreign direct investment into the central and eastern European new Member States has prompted the restructuring of pan-European production networks (Meardi et al, 2005). The gap in labour costs between sites in the new Member States and those in western Europe, in a context where productivity levels are often now similar (ibid, 2005), has – under the exercise of coercive comparisons – become a source of pressure for changes to working practices on an enhanced scale at established sites in western Europe. Examples include the highly publicised concession agreements concluded in 2004 at sites belonging to Bosch in France and Siemens in Germany in the face of threats to relocate production eastwards.

Potentially, EWCs offer a new focal point for context-setting activity around local negotiations by both management and trade unions. Hancké (2000) contends that EWCs have been largely ineffective as a mechanism facilitating the coordination of union bargaining positions across countries. Even where unions are well organised and have cross-border links, as in car manufacturing, the inter-plant competition that production and investment decisions are structured around would seem to promote local site egoism among union representatives on the EWC. In contrast, Lecher et al (2001), Erne (2004) and Marginson et al (2004) identify circumstances under which EWCs can promote exchange of information and coordination of bargaining positions among (union) representatives. Two circumstances seem crucial: international integration of operations under the direction of a single European management structure, and strongly organised sites linked through a functioning international trade union network.

Arrowsmith and Marginson's (2006) study identified three instances where EWCs, all in the automotive sector, were being mobilised by one or both parties towards setting the context for local negotiations. In one case, context-setting activity was primarily engaged in by the employee side, which was undertaking regular surveys on aspects of working conditions in order to make comparative data available for local union and works council negotiators. The EWC employee side also facilitated exchanges of information on developments in local negotiations. In the second case, management utilised the EWC to reinforce its message about comparative costs and performance at sites across Europe, with the aim of reinforcing the context for local negotiations at larger and higher-cost sites located in two countries. In the third case, both sides pursued activities to set the context for local negotiations. Employee representatives were well aware of the ongoing comparisons of costs, performance and practices that management compiled across its European operations – and that 'Europe' was an ever-present factor in local negotiations. At the same time, the employee representatives – supported by the main national trade unions – regularly undertook their own surveys of working conditions, an activity which management was well aware of.

Overall, management remains the driving force behind the emergence of a cross-border European dimension to company bargaining. Trade union responses have tended to be confined to sectors, such as automotive, where they are strongly organised both locally and at European level. In such sectors, too, there are some signs that EWCs are being mobilised by both parties in setting the context for local negotiations.

### **EWC joint texts and framework agreements**

Recent years have seen a relatively small, but growing, number of multinational companies negotiating agreements or joint texts with representatives of their workforce at transnational level. There is both a European and a global dimension to this process: some of these texts cover the European operations of companies, while others extend to cover their worldwide activities. In the European context, these joint texts have primarily been concluded with EWCs and have been described as the 'tip of an iceberg of negotiating activity in EWCs' (EWCB, 2005, p. 7) – an activity that also embraces the context setting for local negotiations considered above.

This section reviews the numbers of joint texts, connections between European-level and global developments, the topics addressed, the regulatory nature of joint texts, the motives of the parties to engage in European-level negotiations and recent controversy arising as a result of EWCs becoming the employee-side signatory to international agreements.

Reflecting their status as structures established for the purposes of transnational employee information and consultation, very few of the agreements establishing EWCs anticipate any negotiating role for these bodies. A review in 2000 of the provisions of some 450 agreements found that just 2 per cent of agreements concluded under Article 13, and 5 per cent of those concluded under Article 6, specified the possibility of a negotiating role for the EWC (Carley and Marginson, 2000). Yet in practice a growing, if rather limited, number of EWCs have engaged in negotiations resulting in the adoption of a joint text or agreement. A 2001 report identified 17 joint texts concluded by, or within the context of, EWCs in nine MNCs (Carley, 2001). By early 2005, these figures had increased to 46 such joint texts concluded in 32 companies (EWCB, 2005). New agreements during the course of 2005 brought the total up to 53 joint texts in 32 companies.

The practice of negotiating such agreements is by no means limited to those few EWCs with express provisions to do so. A 2003–2004 survey of 39 multinational companies undertaken by ORC management consultants found that 14 companies had concluded some kind of joint text through their EWC. In none of these 14 companies did the EWC agreement anticipate any negotiating role (ORC, 2004). The practice of negotiation does, however, appear to be concentrated among a small group of companies only: some 31 of 53 joint texts are accounted for by 10 MNCs.

In addition, recent years have also seen the negotiation of a growing number of global agreements. A few of these are between world works councils and companies, such as those concluded at DaimlerChrysler, SKF and Volkswagen AG (VW). Numerically more important are ‘international framework agreements’ (IFAs) concluded between international trade union federations and MNCs addressing basic labour rights and core labour standards, concluded in the context of debates and actions on CSR. Estimates suggest that IFAs have been concluded with about 50 multinational companies (Hammer, 2005).

In one-third of these cases, ‘global’ and ‘European’ agreements coincide – EWCs are co-signatories with international trade union federations to 16 agreements. In a further three cases, the EWC is the sole signatory – Ford, Lyonnaise des Eaux and Vivendi. Elsewhere, as in Arcelor’s 2005 global agreement, the signatories are international trade union federations – International Metalworkers’ Federation (IMF) and EMF at Arcelor – but the EWC has a specified role in the implementation and monitoring of the agreement’s provisions.

The topics addressed by EWC joint texts can be grouped under four broad headings:

- CSR, covering basic labour rights and core labour standards. An important aspect of these agreements is that their application reaches up the supply chain, aimed at ensuring adherence to core labour standards by supplier companies. One recent article on IFAs regards this as an essential feature of any such agreement (Hammer, 2005);
- elaboration of key principles which underpin company employment and personnel policies;
- business restructuring and its effects are the central theme of 12 of the 53 joint texts, among which two sub-types of texts might be identified: statements of general principle as to how restructurings should be handled (e.g. Axa’s 2005 agreement; Deutsche Bank’s 1998 text); and framework agreements relating to the handling of specific restructuring decisions, e.g. GM Europe (four occasions), Ford (two occasions) and Danone (biscuits division);



- specific aspects of company policy, of which the most common are health and safety and data protection, privacy and e-communication.

Some agreements cover more than one of these headings. In particular, several agreements addressing core labour standards also elaborate key principles underpinning company employment and personnel policies, for example in Air France, Lyonnaise des Eaux and Vivendi.

EWC joint texts and framework agreements vary in the ‘softness’ or ‘hardness’ of the voluntary regulation which they introduce – in other words, the extent to which they are intended to be binding on the signatory parties and on management and employee representatives within the different operations of the company across Europe. As with the sectoral social dialogue, the nomenclature of a text is not a good guide to its regulatory nature. Some so-called ‘agreements’ are little different in their regulatory nature to other texts titled ‘joint declarations’ or ‘charters’.

Examining the provisions of agreements, however, it is possible to distinguish four main types of regulation according to the extent to which agreements or texts are intended to be binding on the national and local operations of the company (Carley, 2001):

- elaboration of general principles for company policy which do not necessarily imply any specific actions, e.g. Suez and Vivendi charters;
- agreements which commit the signatory parties to specific actions, e.g. the establishment of a health and safety observatory in the ENI Group;
- voluntary frameworks inciting actions by management and employee representatives at lower levels in the organisation, but which they are not required to comply with, e.g. Danone (training), Philip Morris (smoking guidelines);
- obligatory frameworks which require actions by the parties at lower levels within the company, but where national and local-level discretion on implementation can vary, e.g. GM Europe and Ford restructuring framework agreements.

Among agreements dealing with particular topics, there are variations in the nature of the regulation provided. For example, the provisions of some agreements on core labour standards are advisory, while others are mandatory. An important factor lying behind this difference is the nature and extent of any monitoring of implementation provided for. Agreements mapping out general principles for the handling of restructuring also vary as to whether they are advisory (Deutsche Bank) or mandatory (Axa), whereas those agreements addressing specific restructuring processes tend to be mandatory.

Discerning the motives of the parties for concluding agreements is difficult, given that most of the available evidence rests on analysis of their contents. However, findings from interviews conducted with management and trade union actors involved in the negotiations of specific texts (*European Works Councils Bulletin*, various issues; Arrowsmith and Marginson, 2006) suggest three main sources of motivation on the part of either management or employee (most often trade union) representatives. The first stems from management concerns to secure legitimacy for pan-European company policies on employment and personnel matters. In companies that are elaborating and implementing common, cross-border policies or policy guidelines across their European operations, management may see advantages in reaching an agreed statement through the EWC in terms of the

additional legitimacy that employee representatives' consent or approval can bring. The second also relates to management, and involves minimising the transaction costs potentially entailed in a series of parallel local negotiations. The conclusion of a common European frame in negotiation with employee representatives at the EWC can avoid the transactions costs, in terms of management time and resources, involved in a series of local negotiations each searching for a solution to a common problem – not to mention the setting of unfortunate precedents by one or more local negotiations. This is particularly relevant on 'new' issues which are not currently the subject of local agreements, such as privacy and e-communication. Considerations of transaction costs are also relevant to cross-border restructurings, where securing agreement on a set of principles for handling a restructuring at European level can speed up the series of local negotiations that will nonetheless have to take place. Third are instances where management is pressurised into a European-level negotiation by a demonstrable employee-side capacity to coordinate local negotiations, and if necessary cross-border forms of action. Such capacity builds on a strong cross-border network, effectively resourced by relevant national trade unions working in cooperation with the relevant European industry federation, such as in Ford and GM Europe. In practice, two or even all three of these motivations may come into play in the decision to negotiate any given agreement.

One significant difference between international framework agreements on core labour standards, which cover the global operations of MNCs and European-level joint texts concluded through EWCs, is the employee-side negotiating agent. In the case of IFAs, it is in almost all cases an international trade union federation, usually global and in some cases regional as well (*European Works Councils Bulletin*, various issues). In the case of European-level joint texts, and the handful concluded by world works councils, the negotiating agent is the EWC employee side, an elected body of all employees, and not a trade union organisation. In practice, the distinction is not always clear cut. As noted earlier, EWCs are also a signatory to around one-third of IFAs. European industry federations have also played a role in the negotiation of some, but by no means a majority of, European-level joint texts. So, too, have national trade unions in some cases, either from the country in which a company is headquartered and/or from those countries where a company has its major operations.

The European Commission's proposal for a measure to give legal underpinning to transnational collective agreements, where the parties so wish, has brought this topic to the fore as well as the more general issue of the bargaining role of EWCs, if indeed there is any. Trade union concerns over the emerging negotiating role of EWCs are underlined by a resolution adopted by ETUC in December 2005. While underlining the need for such a legislative measure, the ETUC resolution called for the right to sign transnational agreements to be confined to trade unions. In ETUC's view, EWCs 'are not appropriate bodies for negotiations given the current state of legislation' (Hall, 2006). Employers, for their part, see no need for such a measure (de Buck, 2006).

Different opinions between employers and trade unions came to light in the interviews with key actors. A sector-level employer respondent argued:

'As for multinational agreements, I am also very doubtful since in many European countries there is still a strong national collective agreement system (...). EWCs are a place for information and consultation and not for bargaining as it would alter its natural function and lead to a big confusion between national and European level.'

A union respondent commented that negotiations through EWCs raised questions of bargaining mandate as well as signatory rights: it requires that national or local organisations accept that the members of EWCs are mandated to negotiate for their constituencies from the different countries involved. In practice, negotiations over restructurings at GM and Ford Europe have involved such mandating procedures, as has the negotiation of framework agreements on aspects of company policy at General Electric Advanced Materials (EWCB, 2005). Other union respondents commented that, even so, the implementation and enforcement of such agreements was hampered by the absence of a legal framework: 'There is no effective bargaining power in the transnational activity by multinational groups. If an agreement is concluded anyway, it will have no legal value and there would thus be no prospect of sanctions and no recourse if the employer concerned failed to implement or respect it.'

### **Impact of autonomous processes on European industrial relations**

Autonomous processes are contributing to the Europeanisation of industrial relations. They also reflect the growing cross-border interdependence of employer organisations, trade unions and the various 'national' operations of MNCs and therefore management policy and practice and employee interests in these companies. These autonomous processes involve a range of cross-border and European-level initiatives and activities, including information exchange; monitoring; mutual learning; cross-border comparisons; context setting and attempts at bargaining coordination; and also agreement making at European company level.

The activities and initiatives involved are both unilateral and bilateral. They reflect actors' responses to the new challenges and possibilities arising from ever-deeper market integration, market enlargement across the European economic space and the closer economic integration which the creation of the Eurozone has prompted. These responses have a 'trial and error' character, as actors search for appropriate strategies and tools to address the consequences of growing interdependence. They represent 'bottom-up' counterparts to the 'top-down' Europeanisation which is occurring through the formal institutions of social dialogue, and the interaction between the two dynamics has outcomes that are not easily predictable.

At present, a range of trajectories remains possible, reflecting interactions between different autonomous initiatives as well as those with formal developments, and also the choices made by the actors.

While bilateral activity is evident in the conclusion of EWC joint texts and framework agreements, unilateral activity is most apparent in the cross-border 'context-setting' activity and in attempts to coordinate agenda and outcomes which surround local and national collective bargaining to the extent that employers, both individual MNCs and sector associations, and trade unions are engaging in information exchange and other limited forms of cross-border coordination. The intention in turn seems primarily to be to strengthen one side's position in comparison with the other, rather than to develop a cross-border or European-level dialogue between each other. In this context, and in the face of transnational decisions by employers, forms of cross-border mobilisation and action by trade unions and EWCs – of which there are growing reports – represent a particular instance of one side seeking to demonstrate its cross-border strength in relation to the other.

There are nonetheless some striking parallels in the tools that both employers and trade unions are deploying in their respective activities; tools which bear a strong resemblance to those associated with the 'open method of coordination'. These include the use of targets and benchmarks, for example,

in the bargaining coordination rules adopted by several EIFs and specific bargaining objectives such as those specified in EMF's working time charter, as well as the procedures used by MNCs to identify 'best' working practices across their operations. Information exchange is becoming more systematic, involving periodic surveys of national affiliates and/or the compilation and continual updating of electronic databases at European level – a development that occurs among employer organisations and trade unions as well as within MNCs and is, to a limited extent, emulated by a few EWCs. These information exchange systems provide the basis for transparent monitoring of developments, cross-border comparisons and peer review. Such features are prominent in the management systems of MNCs, but can also be found in trade union cross-border bargaining coordination initiatives. One key difference between the activity of employer organisations and trade unions and that of individual MNCs is that the practice of information exchange and the results of cross-border comparison and peer review are enforceable within individual companies but not within associational structures comprised of sovereign national affiliates.

Given the use of a wide range of information, learning and comparison tools in a cross-border context by both employers and trade unions, there is scope for developing a better understanding of which tools are the most used and why. There is also scope for mutual learning across sectors and companies, and also between employers and trade unions, about experiences in the use of different tools. Such reflective activity has a potentially useful role to play in informing the actors regarding choices about future policy directions in a European context of growing cross-border interdependency.



# New instruments and the broader governance perspective

A thorough analysis of ‘new structures, forms and processes of governance in European industrial relations’ should include research on the relationships between European industrial relations and key dimensions of European governance established by the Lisbon strategy and the open method of coordination.

The workshops and interviews in this study showed that these issues have been debated extensively already and that they do not constitute fundamental concerns for the social partners. Yet, the Lisbon strategy and the open method of coordination provide governance settings that are linked to social dialogue in the broad sense. They also affect cross-sector and sectoral social dialogue as well as autonomous processes and the Europeanisation of industrial relations. This chapter briefly examines the relationships between the social partners, the Lisbon strategy and the open method of coordination.

## Lisbon strategy and open method of coordination

Since 2000, the Lisbon strategy has set out the broad directions of the European socioeconomic governance in an attempt to make Europe the most competitive and knowledge-based economy in the world. One of the main instruments of the Lisbon strategy is the open method of coordination (OMC), already experimented with since 1997 in the European Employment Strategy (EES).

OMC is a public policy instrument inspired by what were originally private governance tools, such as exchanges of information and benchmarking. This process of policymaking aims to spread best practices and achieve greater convergence towards the main EU objectives. The exchange of information, benchmarking and OMC are tools that find their origin in management techniques and private governance. More recently, these tools have inspired public governance as well as industrial relations:

- the exchange of information aims to create a network of the actors involved in policymaking in order to create learning processes among them by the mere exchange of information;
- benchmarking goes one step further as it implies the identification of a ‘bench to reach’, a best or preferred practice that the actors concerned are encouraged to follow;
- the OMC goes even further since it institutionalises these soft-law instruments in an interactive process which increases its potential impact despite its non-binding legislative character. Its potential influence is further strengthened by the involvement of high-level political actors in the process, through the Council of the European Union, which contrasts with most benchmarking procedures that are limited to the administrative level. This makes the OMC a particular technique of European policymaking, although its characteristics vary according to the policy field in which it is applied. The method is applied to different policy areas that are relevant to the Lisbon strategy, such as macroeconomic policy, employment policy, single market regulation, social inclusion and pension reform.

## Social partner involvement

The social partners are involved in and are related to the Lisbon strategy and the OMC in different ways.

First, in forums for concertation, the European social partners interact with the European public authorities in relation to the definition of the broad policy directions of socioeconomic governance. This happens, for instance, through the Tripartite Social Summit preceding the Spring Council meeting, or through macroeconomic dialogue.

Secondly, the social partners are also involved at several levels of the OMC. While important differences prevail according to the policy sector in which the OMC is applied, three main levels of social partner involvement can be determined, namely:

- at European level in the drafting of guidelines;
- at national level in the drafting of national action plans (NAPs);
- in the implementation of the policy set out in the guidelines.

Obviously, since the OMC is a cyclical process, these three levels are strongly interrelated.

The third level of analysis relates to the implementation of both the guidelines and the Lisbon strategy more broadly. The social partners, both at European and national level, have their own instruments for bipartite undertakings. These instruments may contribute to the objectives set out in the Lisbon strategy and in the guidelines of the OMC. On the one hand, the extent to which interaction takes place between the instruments, tools and agendas of the social partners should be reviewed, while those of the European institutions as set out in the Lisbon strategy and the OMC should also be considered.

Most research has focused on how the social partners are involved in the OMC, in particular in the drafting of NAPs for employment (see Cressey et al, 2007; Baradel and Welz, 2005; Homs et al, 2005; Smismans 2004a). This corresponds to the second level of analysis identified above, rather than the third level, which would start from the social partners' activities, linked to or independent of the Lisbon strategy.

In the interviews for this study, the question on social partner involvement in the Lisbon strategy received more interest from academics and researchers than from employer organisations and trade unions. From an academic point of view, some respondents consider that there is a lack of dialogue concerning the definition of the strategy. The process is viewed as a very 'top-down' approach, led by the Commission and the Council at European level, and by governments in each EU Member State.

In terms of social partner participation in the process, academics tend to insist on the need for more involvement. However, this view is not necessarily supported by the social partners. The main fact is that the Lisbon strategy and the OMC have not been 'appropriated' by the social partners, except for the European-level elite dealing with these aspects. As resources are limited, national social partners do not see enough added value in the Lisbon strategy to spend their time on it. It is a question of awareness of and interest in the Lisbon strategy as well as of available resources among the social partners. While this may explain limited engagement in the drafting of guidelines and bureaucratic process of the OMC, this does not imply that there is no relationship between the Lisbon strategy and the social partners' activities.

For example, the European cross-sector social partners support the Lisbon strategy and they have included it again in their work programme for 2006 to 2008:

UNICE/UEAPME, CEEP, ETUC (and the liaison committee EUROCADRES/CEC) reiterate their support for the Lisbon strategy aimed at turning Europe into the most competitive, knowledge-based economy in the world, capable of sustainable economic growth, with more and better jobs and greater social cohesion.

(ETUC, UNICE/UEAPME and CEEP, 2006, p. 2)

Nevertheless, beyond such general declarations, the picture is more mixed. The work programme of the European social partners for 2006–2008 does not contain very defined projects that would be clearly related to the Lisbon agenda, except two points among the list of actions planned: for example, where social partners commit themselves to define priorities to be included in a framework of actions on employment, and where they state that they will ‘negotiate an autonomous framework agreement on either the integration of disadvantaged groups on the labour market or lifelong learning. In order to define their respective mandates, they will explore different possibilities’ (ibid, p. 2).

Taking the programme of the European social partners into account, the question arises as to whether there is an element of insincerity in the declarations of the social partners regarding their interest in the Lisbon strategy. In this respect, there are two conflicting aspects to consider.

First, the Lisbon strategy is seen as a complex mix of ‘neo-liberal’ and ‘social-democratic’ solutions, with different Member States interpreting the strategy according to their own preferences. The different interpretations that can be drawn from the priorities and objectives of the Lisbon strategy also imply that the social partners will not declare their undivided interest in the strategy, and that the two sides of industry will prefer different aspects of it. For example, according to a sectoral trade union respondent, ‘Employers are using Lisbon more and more, with the competitiveness dimension. We would like to use it as well, but with a different focus.’ From the point of view of European trade union representatives, a certain amount of divergence exists in the Lisbon strategy between liberalisation and the social dimension, and the current Commission is judged by some respondents as being more interested in the ‘market side’ of the agenda and less interested in the social dimension.

Secondly, the social partners develop their own activities at both European and national levels. Thus, the Lisbon strategy may also be perceived as an attempt to define their agenda in a ‘top-down’ approach, which would encroach on their autonomy.

In terms of content, issues contained in the Lisbon strategy are covered in the social dialogue at cross-sector and sector levels. Nevertheless, there is no causality between the agenda and the social dialogue processes in the sense that the first would unilaterally and directly influence the latter. According to an employer representative at sector level, ‘We know what the Lisbon agenda contains and we refer to it; but on the contrary, we would not take the agenda and ask ourselves how to implement it.’

In other words, aspects of the Lisbon strategy are reflected in the European bipartite dialogue, but not necessarily because of the strategy as such. Several examples exist in different sectors, as highlighted by a sector union representative: ‘Some of the issues are discussed in the committees, such as the employment of older workers, equality or younger workers, but not because of the Lisbon strategy.’ Moreover, the sectoral committee in the electricity industry, for example, has started discussions on the ageing workforce and on the need for the sector to attract a younger, qualified workforce. The reason given in the interviews for such an interest is, first and foremost, that the



sector faces these challenges which both employers and trade unions consider sufficiently important to deal with together.

Overall, European social dialogue and the participation of social partners in the Lisbon strategy are fundamentally different processes. The former may fit in with the institutional framework provided by the EC Treaty and is favoured by the Commission's support and it is clearly led by the autonomy of the social partners. On the other hand, the latter is of a political nature, led by European authorities, with weak social partner involvement, and weak links between European organisations and their national members.

### **OMC-like techniques in European social dialogue**

With regard to the OMC, the social partners can be involved in different ways. Moreover, social partners can use an 'OMC-like' technique of benchmarking and reviewing as an instrument independent of European policies. There are, in fact, several levels at which social partners can use 'OMC-like' instruments:

- 'New generation texts', such as autonomous agreements or recommendations, make use of regular follow-up provisions. The first application of an OMC-like procedure in a social dialogue setting was in the form of the 2002 framework of actions on the lifelong development of competencies and qualifications, which identified certain priorities in this field towards which the social partners undertook to work at national level and to report annually on the progress made.
- Some sectoral dialogue committees use OMC-like instruments, as is the case, for example, in the implementation of codes of conduct, such as in the sugar industry.
- At a more encompassing level, OMC-like instruments are used by the European social partners to make a regular report on their involvement in the EES.

Benchmarking and regular reviewing and reporting can be carried out through the common initiative of management and labour, but it can also be used separately by both sides of industry.

The interviews illustrated that there is considerable consensus among the social partners on the usefulness of benchmarks and guidelines adopted at European level, since they leave room for flexibility and adaptation at national or local level. All respondents consider it important for representatives at local level to have the possibility to adapt guidelines to their own situation. This in turn generates difficult trade-offs that must be found between, on the one hand, 'norms' that are common to all the countries and include some kind of enforcement to ensure implementation, and on the other hand, the need for adaptation to diverse national realities and respecting Member State's autonomy.

However, one researcher notes that one of the main difficulties related to benchmarking and OMC-like procedures is the lack of resources: 'The key question is "how much of your capacity should one put into these processes?" ... considering that ETUC and UNICE have very little resources.'

Finally, it is worth noting that the social partners rarely refer to the concept of OMC in their discourse, despite the increasing use of such instruments.

In fact, the OMC seems to have become too popular in academic circles. Nevertheless, the concept often leads to more confusion than clarification. There is an important difference, for instance, in the OMC used as a public policy instrument and 'OMC-like' procedures used for benchmarking and reporting in industrial relations, not least because the former builds on the political institutions and the political weight of decision-makers.



# Conclusions

Since the signing of the Treaty of Rome, social partners have been involved, to varying degrees, in the process of European integration (Didry and Mias, 2005). Both continuity and change in European industrial relations shape the most recent period since processes at play, actors, relationships between the European and national level and dynamics in the various social dialogue committees are not rigidly determined. They imply power relationships, be they bipartite or tripartite, and complex exchanges between European players and their national constituencies that make the processes evolve, sometimes with progress and ease, sometimes with obstacles and difficulty.

This report looks at recent developments in bipartite European industrial relations and on cross-border initiatives, with a focus on cross-sector social dialogue, sectoral social dialogue, autonomous processes as part of the Europeanisation of industrial relations and some broader governance issues like the Lisbon strategy and the open method of coordination. Developments in all of these areas have influenced the instruments of industrial relations at sectoral, national and European level.

At cross-sector level, beyond institutional rules, the social partners' strategies and role are key in understanding to what extent they have the capacity to jointly establish the perimeter of their dialogue, in terms of the type of rules, from very soft declarations to harder forms of agreements, and in terms of the content of their joint agenda. The specific relationships between trade unions and employers on the one hand, and between each EU-level organisation and its national affiliates on the other, make it particularly difficult to find common ground for social dialogue. Even if the institutional set-up allows for larger scope of action, in practice the range of issues that can be put on the agenda is very limited. This is not due to formal restrictions – except on the question of wages that remains a matter of national competency – but because of the nature of the game. To implement the different types of text remains a key issue, with a high degree of uncertainty regarding the transposition and concrete impacts in the Member States. The interviewees' statements thus tend to highlight a contrast between, on the one hand, a clearly defined institutional framework and the recognised legitimacy of social dialogue and, on the other hand, the difficulty of building up a consensus on important aspects of the employment relationships and the uncertainty surrounding the practical implications. The latter may impede legitimacy in the longer term.

The sectoral social dialogue displays common features with the cross-sector level, but the most striking observation is the variety between the different sectoral social dialogue committees. Differences between social dialogue committees can be attributed to the context of each sector, and notably to the importance of European policies for the sector. Other dimensions may also create these differences, such as the relationships between the European social partners and their national affiliates. The committees have a wide variety of structures, roles, ideologies and strategies, which leads to variations in the relationships between European and national structures from one country to another. Finally, the committees develop their own dynamics, related, for instance, to the degree of experience and trust among the participants. As is the case for cross-sector social dialogue, enlargement has made the situation more complex, with increased heterogeneity; in general, sector structures and players are weaker in most of the new Member States, which creates new difficulties and challenges for the European organisations. The different sectoral committees run in parallel and there seems to be little exchange of information or experience across sectors. The recent agreement on crystalline silica, which was concluded in April 2006, represents an exception since participants from diverse committees were included in the negotiation process, resulting in the first multi-sector agreement.

Beyond the formal institutions and processes of social dialogue at the cross-sector and sector levels, several factors contribute to the Europeanisation of industrial relations, such as autonomous processes involving both bilateral and unilateral initiatives and activities by employer organisations, trade unions, company managements and employee representatives. These processes reflect the growing cross-border interdependence of employer organisations, trade unions and the various 'national' operations of multinational companies; therefore, management policy and practice as well as employee interests in these companies also shape industrial relations processes at European level. Operations of multinational establishments involve a range of cross-border and European-level initiatives and activities, including information exchange; monitoring; mutual learning; cross-border comparisons; context setting and attempts at bargaining coordination; and agreement making at European company level. The activities and initiatives involved are both unilateral and bilateral. They reflect the actors' responses to the new challenges and possibilities arising from an ever deeper market integration, market enlargement across the European economic space and the closer economic integration which the creation of the Eurozone has set in motion. These responses have a 'trial and error' character, as actors search for appropriate strategies and tools to address the consequences of growing interdependence. They represent 'bottom-up' counterparts to the 'top-down' Europeanisation which is occurring through the formal institutions of social dialogue.

The report shows that the institutionalisation of the European social dialogue over the past 20 years since the start of the Val Duchesse process in 1985 has proceeded hand in hand with developments between and within trade unions and employer organisations; both have been initiating diverse tools and processes with their members. The modes of regulation have also developed towards autonomous or voluntary agreements or the 'new generation texts' that raise new challenges regarding implementation of these texts and follow-up in the Member States. Then, there are developments relating to the diversity of dynamics in cross-sector social dialogue, in the formal sectoral social dialogue committees and within sectors and companies across borders. The last part of this report examines these changes in the light of broader developments in European governance, such as the Lisbon strategy and the open method of coordination.

At this point, it is worth recapitulating perspectives that will serve for further research.

The first one concerns the important issue of implementation of the texts resulting from European social dialogue, both at cross-sector and at sector level. There is clearly a need for systematic data on the transposition of the different types of texts with regard to agreements, process-oriented texts, recommendations and tools. Are they being transposed in the Member States? By which actors? How and with what regulatory status? Beyond formal transposition, the dynamics at play in the Member States also need to be examined in order to better understand when national or sector social partners implement, or indeed do not implement, the outcomes of the European social dialogue. What is their degree of awareness of the existence and content of those texts? Do they have an interest in them and to what extent? How do the national players' awareness, strategies and relationships translate into some kind of appropriation or absence of appropriation in the different Member States, and why? In terms of implementation, there is also a need for more systematic information on the evaluations already conducted, or currently underway, on the initiative of the European social partners at cross-sector and at sector level. This could also lead to consideration of the methods for follow-up and to the dissemination of cases of implementation that would contribute to an exchange of experiences on evaluation and follow-up.

The analysis of the sectoral social dialogue yields a second research issue on the reasons why the different sectoral social dialogue committees follow different paths. Given the differences between the various committees, there is scope for developing a better understanding of the dynamics at play in the sectors and in the corresponding committees. There is a need to look more closely at a set of dimensions, such as socioeconomic characteristics of the sector, links with European policies, relationships between the European social dialogue committees and the national sector, if any, structures and actors, and the dynamics at play within the committees. This would contribute to a better understanding of the processes, as well as enabling the dissemination of information and, in particular, to a better circulation of information across the diverse committees.

As for autonomous processes and the Europeanisation of industrial relations, there is clearly a need for more systematic data in order to better understand the variety of tools developed and the diverse initiatives undertaken on both the employer and the union side. As noted, there is scope for mutual learning across sectors and companies, and also between employers and trade unions, about experiences in the use of different tools. Such reflective activity has a potentially useful role to play in informing the actors' choices about future policy directions in a European context of growing cross-border interdependency.

Finally, the development of European institutions and rules, in connection with the increased diversity and complexity of European industrial relations since enlargement, raises questions about the articulation between the European and the national levels. In order to reduce the complexity and also to better understand the European-level processes as such, more systematic data is required on the relationships between European and national structures. One dimension of this issue concerns the relationships between the national affiliates of European trade unions and employer organisations and developments at EU level, viewed from a 'bottom-up' perspective: To which extent are national players aware of the European social dialogue, and what is their degree of interest in European affairs? Which positions and strategies do they take on these subjects, and what resources do they have or not have for European issues? What kind of relationships do national players have with the European social partners?

This last point also hints at one of the most important practical implications of the report for European public policy. If the legitimacy of European social dialogue and the role of autonomous processes in Europeanisation of industrial relations are to be improved, top-down approaches which focus too strongly on institutional and technical dimensions at the EU level and neglect vertical and horizontal dynamics between the national and the European players have to be avoided. The future of all forms of social dialogue at EU level is above all dependent on the social partners' capacity to increase the articulation between their EU level organisations and their rank-and-file at the national, local and company levels. This, however, does not imply that the community institutions have no role to play in this process. It only means that the most effective way by which the Commission could fulfil its task of promoting the horizontal dialogue between management and labour at EU level is to provide balanced support for the vertical dialogue between their organisations at EU and national levels.



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