

# Taking stock of European social dialogue: will it fade away or be transformed?

Christophe Degryse and Stefan Clauwaert

## Introduction

Twenty years ago, in 1991, the European Commission oversaw the establishment of an *ad hoc* group consisting of high-level representatives of European employers' confederations and trade unions. Three bodies were involved - UNICE for the employers (Union of Industrial and Employers' Confederations of Europe, now BusinessEurope), the CEEP for public enterprises (Centre of Employers and Enterprises providing Public services) and the European Trade Union Confederation (ETUC) for the trade unions. They embarked on an undertaking which, when all is said and done, can be summed up in the following question: how can these representative bodies be turned into fully-fledged players in the European process of creating a social area?

Whereas in 1991 the Member States' governments were struggling to produce what became the Maastricht Treaty (entailing, in particular, the decision to launch the euro), this *ad hoc* group spent the entire year considering how best to involve the social partners in European decision-making and how to give them more of a direct input into this process. 'The main focus, for the Community social partners, was to define the role that they were prepared to play in drawing up European social legislation' (Degimbe, 1999: 224).

After almost a full year of bargaining, UNICE, CEEP and the ETUC reached an agreement on 31 October 1991, i.e. just a few weeks before the Maastricht European Council which then delivered the eponymous treaty.

Their agreement concerned proposals for the drafting of Articles 118.4, 118a and 118b of the new Treaty<sup>1</sup>. The idea was to set up a systematic, mandatory mechanism for consulting the social partners on the European Commission's social policy proposals, but also to enable management and labour to negotiate directly among themselves framework agreements based on draft directives put forward by the Commission<sup>2</sup>.

This 'Social Policy Agreement' was then accepted by eleven of the twelve governments<sup>3</sup> and annexed to the Maastricht Treaty. It paved the way towards proper bargaining at European level, both cross-industry and sectoral.

Twenty years later, how should we assess this 'European social dialogue'? That is the question the social partners pondered over for the full year and will be addressed in the first half of this article. Our text is in fact divided into two parts: in the first, we assess long-term trends in the European social dialogue. In the second part, we refer to the key events of the year 2011.

Two parallel assessments were set in train: one was a 'unilateral' process undertaken by the European Trade Union Confederation, through a survey of its membership right across Europe, carried out by the European Social Observatory (OSE, 2011). The other was a 'joint' evaluation conducted by the entire body of social dialogue stakeholders (today BusinessEurope, CEEP, UEAPME – European Association of Craft, Small and Medium-sized Enterprises – and ETUC) (Voss *et al.*, 2011). The outcomes of both reviews find common ground on a number of points but, as we shall read below, on a range of other, sometimes major, points the trade union verdict is more critical than the joint evaluation.

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1. Articles 154 and 155 of the current Treaty on the Functioning of the European Union (TFEU).
  2. 'Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or (...), by a Council decision on a proposal from the Commission (...)' [Article 155.1 and 155.2 (TFEU)].
  3. The UK's conservative government refused at that time to involve the United Kingdom in this Social Policy Agreement. After the power-switch in London in May 1997 (Labour Party victory), the UK decided to opt into the Agreement, which was then incorporated into the social policy chapter of the new Amsterdam Treaty, in 1997.

We shall close this first part by stressing the paradoxes of these twenty years of (European) social dialogue: whereas it was initiated in 1991 to accompany an emerging economic and monetary union, it was re-examined twenty years later, at the height of the euro crisis. With the European Commission now appearing to opt out of social legislation and the Member States losing their faith in the open methods of coordination, the last remaining driver of 'Social Europe' today is social dialogue (Degryse, 2007). Will that too grind to a halt?

In the second part of this chapter we shall look more specifically at the achievements of social dialogue in 2011. As we shall see, it was a year of little activity. There were a few implementation reports (including the European social partners' joint final report on implementation of the 2007 autonomous agreement on harassment and violence at work, and the first annual table on transposition of the 2010 autonomous agreement on inclusive labour markets), and joint conferences were held on flexicurity and climate change. Apart from those, however, the year was mainly devoted to somewhat laboriously preparing the European social dialogue work programme for 2012-2014, as well as to preparing for very tricky negotiations on a review of the Working Time Directive.

This lull in activity can be explained by several factors: the end of the work programme for 2009-2010 (Clauwaert, 2010), the social dialogue appraisal period — as we have just seen — , but also the economic crisis, the euro crisis, and the major upheavals in the arrangements for new European 'economic governance'. And, more mundanely, the political climate was showing little interest in pushing forward collective bargaining, both Europe-wide and within the Member States: this was broadly apparent from the huge number of work-related disputes, strikes and rallies witnessed in almost all of the Member States in 2011.

As our second section will make plain, whereas 2011 was a slow-motion year, 2012 will instead be a testing year. In particular, will the outcomes of two key sets of negotiations — the Working Time Directive and the European social dialogue work programme for 2012-2014 — enable us to answer the question asked in the title of this chapter: will European social dialogue fade away or will it be transformed?

## 1. An appraisal of 20 years of European social dialogue

Since the Social Policy Agreement was incorporated into the Maastricht Treaty in 1991, the social partners ETUC, BusinessEurope, CEEP and UEAPME have been attempting to implement the agreement's provisions, and have embarked on negotiations on various topics. Most of these negotiations have proved successful (see Table 1), but there have likewise been some failures and deadlock.

It is interesting to note the gradual change in the nature of the texts adopted over the twenty-year period. They moved on from framework agreements converted into directives (in 1995, 1997 and 1999), via 'frameworks of action' that are not legally binding, to so-called 'autonomous' framework agreements, where the national degree of implementation varies considerably from one country to another.

Table 1 Reciprocal undertakings by Europe's cross-industry social partners based on the Maastricht Social Agreement (1991–2011)

Year	Topic	Result	Implementation
1995	Parental leave	Framework agreement	Directive 96/34/EC, 97/75/EC (UK), 2010/18/EU (rev.)
1997	Part-time work	Framework agreement	Directive 97/81/EC, 98/23/EC (UK)
1998	Information-consultation workers	UNICE refusal	–
1999	Fixed-term contracts	Framework agreement	Directive 99/70/EC
2001	Temporary agency work	Negotiations broken off (ETUC)	–
2002	Telework	Framework agreement	Autonomous (national social partners)
2002	Lifelong development of competencies and qualifications	Framework of action	Monitoring reports
2003	Protection of workers' personal data	UNICE refusal	–
2004	Work-related stress	Framework agreement	Autonomous (national social partners)
2005	Gender equality	Framework of action	Monitoring reports
2007	Harassment and violence at work	Framework agreement	Autonomous (national social partners)
2010	Inclusive labour markets	Framework agreement	Autonomous (national social partners)

Source: our compilation.

The framework agreement on inclusive labour markets was signed in 2010, even though the agreement's content and form were much challenged in trade union circles. Following this, the European Trade Union Confederation (ETUC) decided to commission an overall assessment of its membership's views of European cross-industry social dialogue.

The study had three aims: firstly, to draw up both a quantitative and a qualitative assessment of twenty years of European social dialogue (1991-2011); then to survey ETUC members by means of questionnaires and interviews centred mainly on gauging the outcomes of European cross-industry social dialogue; and lastly to envisage possible improvements and plan new ways forward.

This survey was carried out from July 2010 onwards, and was presented to the ETUC membership at a conference held in Brussels on 25 January 2011. It therefore reflects the opinions of most organisations affiliated to the ETUC.

As pointed out in our introduction, another survey was carried out to mark the twentieth anniversary of European social dialogue. This survey, presented in Budapest in May 2011, was coordinated by an expert (Voss *et al.*, 2011) and differs from the OSE survey in that it was a survey carried out jointly by ETUC, BusinessEurope, CEEP and UEAPME. The Voss study examined in addition links between European and national social dialogue, whereas the OSE survey looked only at national arrangements in order to ascertain the extent to which the achievements of European social dialogue have been implemented nationally. We shall analyse below first of all the outcomes of the OSE survey, and then those of the joint evaluation, in an attempt to compare their similarities and differences.

## 1.1 Survey by the European Social Observatory

An electronic questionnaire was sent out on 27 September 2010 to all national organisations affiliated to the European Trade Union Confederation (82 trade unions in 36 European countries) as well as to its 12 European trade federations. The response rate was 47.8%<sup>4</sup>, thus

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4. For more methodological details, see the report available at: [http://www.etuc.org/IMG/pdf/Dialogue\\_social\\_2010\\_Rapport\\_OSE\\_CES\\_EN.pdf](http://www.etuc.org/IMG/pdf/Dialogue_social_2010_Rapport_OSE_CES_EN.pdf).

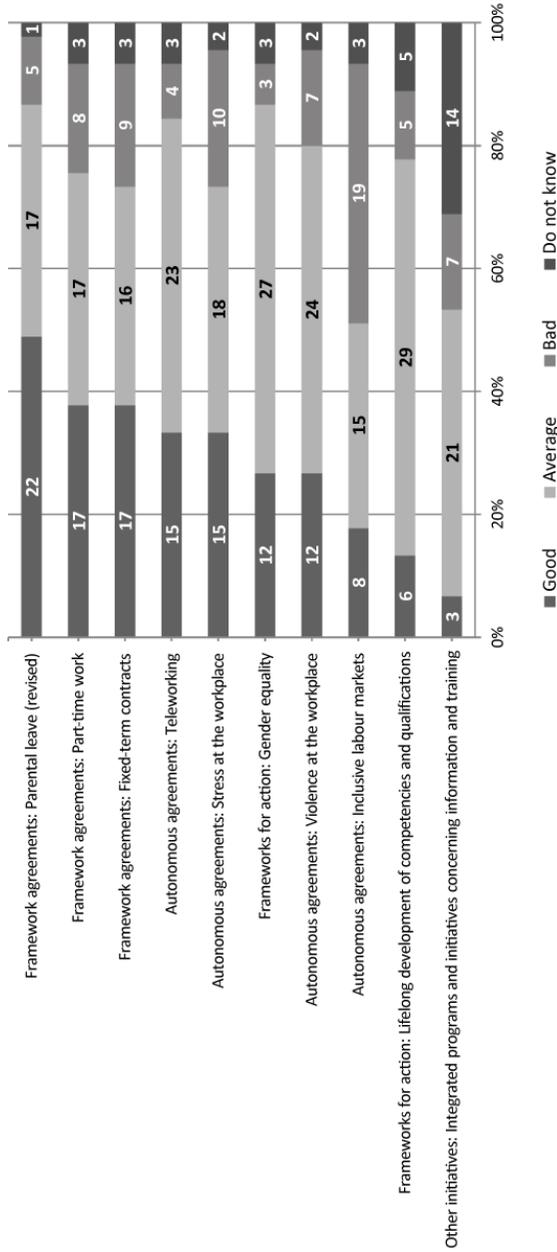
including a large majority of the national trade union confederations but also a number of European and national trade federations. The main lessons learned from this survey can be presented under three sub-headings: a) members' expectations of European social dialogue (ESD), b) an assessment of the current outcomes of ESD, and c) potential scope for improvement.

a) What should be the main aims of social dialogue at European level? According to the survey's findings, the main goal of ESD should be ensuring that European policies incorporate trade union priorities. This aim should be pursued through involvement in European processes with a view to safeguarding the working environment. It is primarily a matter of improving employees' working conditions and combating the risk of social dumping between Member States. Members believe that, to achieve these goals, the priorities are to make sure the trade union movement's voice is heard in major European institutional settings, and to flesh out a bargaining strategy with the employers' organisations on social policy issues. Wherever necessary, this strategy should be backed up by efforts to mobilise and challenge members. As for outcomes, the ESD should aim for a European social policy that reflects the trade union view, as well as for the drawing up of social standards by means of a European collective bargaining system.

b) How should ESD, its tools and its content be assessed after twenty years? According to the survey's findings, the verdict is very mixed. Generally speaking, the quality of the instruments currently available to the European social dialogue - framework agreements, autonomous agreements, frameworks of action, tools and guidance - is deemed, at best, to be 'average'. The tools obtaining the best scores are framework agreements, whether converted into directives or autonomous, even though fewer than one in every two respondents regards their content as 'good'. Next, a long way behind, come tools and good practice guidelines, joint positions and good practice recommendations or codes. When it comes to assessing implementation of these various mechanisms, the survey reveals considerable dissatisfaction among members. More than 80% of them in fact believe that implementation of - any of - the ESD instruments is either 'partial' or 'insufficient'.

In order to fine-tune the analysis, the questionnaire asked respondents to rank the joint documents adopted since 1995 (Figure 1), in line with how each respondent assesses their quality of content.

Figure 1 'How do you evaluate the content of these European social dialogue achievements?'



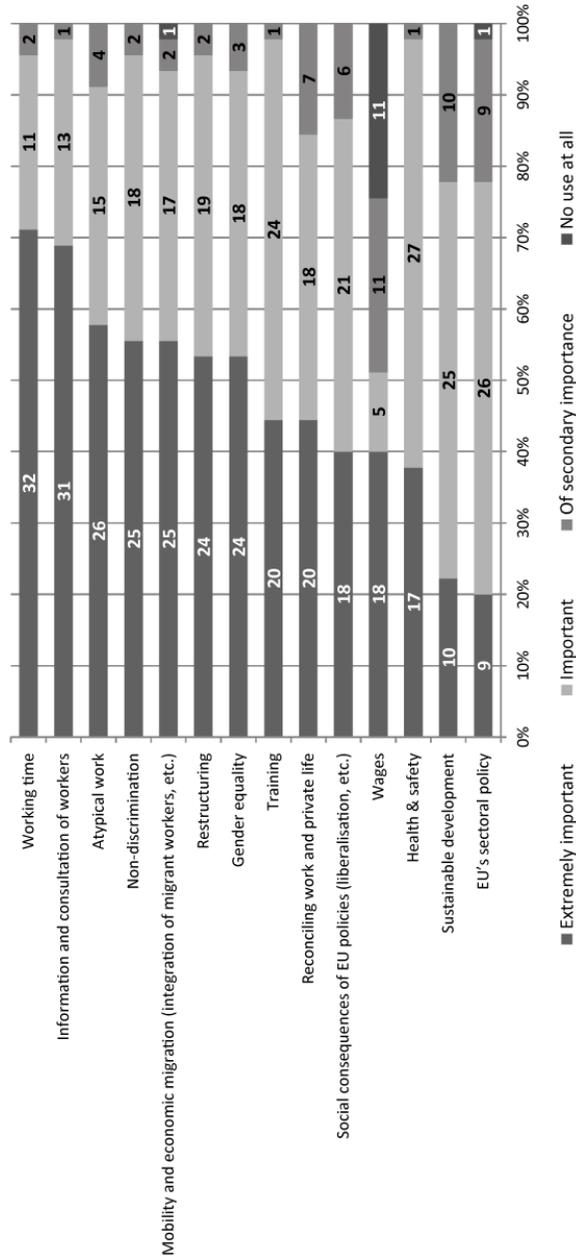
It emerges from the overall ranking that the 'best' texts are the oldest ones (parental leave, 1995; part-time work, 1997; temporary contracts, 1999; etc.). What is more, since then the quality of content has been declining in an almost identical fashion chronologically.

Furthermore, none of the joint documents received a majority of wholly favourable opinions. Finally, and surprisingly, similar discontent is expressed about the degree of implementation of these same texts. It is amazing in particular that, even though the three framework agreements converted into directives are the ones regarded as the most successfully implemented group, a majority of respondents nevertheless does not believe them to have been fully implemented (even though these agreements have been transformed into directives and should therefore apply in full to everyone). Another noteworthy element is that this question on implementation is the one that drew the most 'don't know' responses: this can perhaps be interpreted as indicating some flaws in monitoring the national implementation of European social dialogue mechanisms.

This key aspect of the survey (declining quality of content and imperfect implementation of joint documents) could be prompted by a variety of factors, which were not specifically raised in the questionnaire. But some respondents provided partial explanations when asked for their own comments. They referred to governments which lack any interest in national-level social dialogue, national employers' associations that are reluctant to implement a text negotiated at European level, and grassroots organisations' inadequate knowledge (or even ignorance) of European texts. All of these factors escaped the notice of Europe's social partners.

c) Finally, as concerns the overall momentum of ESD, the survey reveals a virtually unanimous attachment of trade union organisations to the very principle of social dialogue at European level: almost 90% of respondents believe that ESD is beneficial to workers. Indeed, action must therefore be taken at European level, even though the partners, the employers, are perceived as the major obstacle to social dialogue. With respect to the ETUC's role, the view of respondents is that, although it struggles to impose its own agenda, it does nevertheless devote sufficient priority to social dialogue. Lastly, as for the European Commission, more than one in five respondents believes that it is not playing enough of a role in developing ESD.

Figure 2 'What do you think are the most important issues to be dealt with through ESD?'



A list of topics to be dealt with in ESD was then put to the trade union confederations and they were asked to rank them in order of priority. It emerged that working time, and employee information and consultation, are the top two subjects to be handled at European level. Next come the following topics: non-standard work, non-discrimination, integration of migrant workers, social effects of restructuring, gender equality and training. A third category is work/life balance, the social consequences of Union policies, remuneration, and health and safety. Bringing up the rear, surprisingly, is the issue of sustainable development and EU sectoral policies.

### **How can European social dialogue be improved?**

It emerges from the questionnaire responses that the main factors fuelling ESD are political support (from the European Parliament, the Member States' governments, etc.), the 'shadow of the law'<sup>5</sup> and social dynamism, but also the quality of the negotiators, and the unity and coherence of national and European trade union strategies. Next, albeit less strikingly, come the more or less positive stance of the employers, policy-making that is independent of the European institutions (e.g. by adopting an autonomous bargaining agenda), the building of a climate of trust, and the proactive approach of the Commission.

The first step towards improving the European social dialogue would be to consolidate a joint policy vision among national trade union organisations, but also to strengthen the Commission's role and obtain more outspoken support from the European Parliament. It is worth noting that, although there is ample evidence of improvement factors relating to a strategy hinging mainly around social dynamism or confrontation ('red lines', breakdowns in negotiation, mobilisation and strikes), these do not feature among the priority factors.

What this survey reveals, on the whole, is that in spite of growing dissatisfaction with the quality of social dialogue instruments and their implementation, an overwhelming majority of ETUC members still has faith in the relevance of this European-level social dialogue, and in what it can contribute in practice to improving the living and working

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5. In other words, the threat of fully-fledged legislation if social partner negotiations proved unsuccessful.

conditions of European employees. ESD is thus perceived as a significant process, which must be preserved and enhanced. The majority therefore believes that priority must be attributed to ways of improving cross-industry social dialogue, but also to other consultation bodies, e.g. forums for coordination of collective bargaining, European sectoral social dialogue, national social dialogue and European works councils.

## 1.2 Joint survey by BusinessEurope, CEEP, UEAPME and ETUC<sup>6</sup>

The report coordinated by Eckhard Voss (Voss *et al.*, 2011) was a study carried out jointly by ETUC, BusinessEurope, CEEP and UEAPME. Its findings therefore reflect a point of compromise, or of consensus, between the social partners' varied assessments of ESD (whereas the OSE survey reflects only the trade union viewpoint). What is more, this study pays more attention to the momentum of national-level social dialogue, making it particularly informative to read these two reports in parallel with one another.

The report is based on telephone interviews conducted during the first quarter of 2011 with all the organisations affiliated to the European social partners in the 27 EU Member States and the two candidate countries, Turkey and Croatia. 86 of the total 169 affiliated bodies took part in the survey (a participation rate of around 51%). The overall conclusions of this survey can be summed up in the following way.

The ESD stakeholders (trade unions, private employers, public employers, SMEs) believe that, thanks to cross-industry social dialogue, it becomes possible to engage in drawing up European policies (especially through consultations) and to contribute added value to the national social partners. This 'constitutes a great success'.

Mentioned among the tangible achievements of ESD are the headway made in terms of social and working life in Europe, and in particular the firming-up of national social dialogue in countries where the social partners do not currently play a significant role. On the other hand,

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6. The survey, as well as other documents presented at the Budapest conference, are available at: <http://resourcecentre.etuc.org/EU-SD-Joint-Project-88.html>.

however, joint texts issued at European level prove to be better implemented where the national social partners have already adopted joint initiatives in this area. Achievements are much more meagre when that is not the case.

When it comes to assessing the tangible outcomes of ESD, some quite different appraisals come to light. The main issue relates to the more, or less, binding nature of documents adopted jointly by the social partners. Both sides of industry express a positive verdict on the implementation of autonomous framework agreements (which was not really the case in the OSE report). Nonetheless, opinions differ when it is a matter of assessing less binding instruments, such as frameworks of action. According to the report's authors, these discrepancies arise more because of distinctions in national circumstances rather than because of the split between workers and employers. From this point of view, the problem would appear to be not so much conflict between the social partners as a common, shared concern about the actual progress accomplished in certain EU countries.

In this respect, the report's authors do stress how relevant the national social dialogue situation is to the successful implementation of ESD: 'While social dialogue in some countries is rooted firmly in the fabric of economic, social and labour market policy making, in other countries a serious lack of acceptance, trust and seriousness has been reported that are undermining and hindering the possibility to implement EU level social dialogue properly' (Voss *et al.*, 2011: 47). It becomes clear from this statement that the function of ESD cannot, and should not, be to make up for the shortcomings of national social dialogue. That nevertheless raises the question of the role of ESD as defined in the Treaty on the Functioning of the EU. It is a matter of striking a good balance and the right interplay between the two processes, European and national: this is necessary in order to avoid a sort of 'dualisation' of social dialogue, whereby certain countries would make relevant, effective use of it whilst others treated it as a purely formal, pointless process.

The survey reveals in addition that assessing the quality of social dialogue depend largely on the benchmarks chosen: 'For those who assess the performance of social dialogue in the light of ultimate goals such as creation of unified social standards at European level, the results of social dialogue are not impressive. For those who evaluate the

outcomes of social dialogue in terms of participation, joint understanding and the potential to influence social Europe, the outcomes are quite remarkable' (Voss *et al.*, 2011: 47-48).

These distinctions in assessment benchmarks might likewise explain why some social dialogue participants prefer to negotiate joint instruments that are not very binding (joint studies, common positions, etc.) whereas others consider it crucial to target ESD at practical outcomes leading to a real improvement in living and working conditions. But, the authors believe, the survey reveals that specific conclusions cannot always be drawn about the preference granted to binding, or non-binding, instruments based on whether a social partner belongs to the employer or trade union side.

Be that as it may, 'While trade unions in particular are interested in concrete outcomes of social dialogue that contribute to reducing inequalities and strengthening standards of working and living in Europe, employers' representatives have stressed the need to respect diversity and are much more in favour of developing common principles (e.g. flexicurity) rather than defining certain minimum standards of social Europe' (Voss *et al.*, 2011: 48).

Let us now close this rapid overview of the joint survey by pointing out the main proposals for improving the performance of European social dialogue as suggested by the European social partners. These proposals partially tally with those raised in the OSE study:

- a better linkage between cross-sectoral and sectoral social dialogue;
- improving the dissemination of concrete outcomes at the European as well as national level;
- developing a joint understanding of the role and specific nature of the different types of instruments that have been applied and tested during the last 15 years;
- improving the transparency of mechanisms, procedures and decision taking in the context of European social dialogue for national member organisations;

- strengthening the capacity as well as competence of European social dialogue structures and institutions;
- continuing the support for mutual learning and exchange of experience;
- taking into account the specific needs of certain groups of national social partners (e.g. in the public sector, SMEs, etc.).

Readers will not be surprised to learn that, all in all, the unilateral trade union survey is more critical than the joint assessment, since the latter emerges from the search for a reconciliation of viewpoints. Nonetheless, the attitude shared by all the stakeholders is that, over and above its strengths and weaknesses, ESD must be pursued and improved.

In the second section of our contribution, below, we shall examine how the social partners have attempted in practice to pursue (and improve?) their European social dialogue during the course of 2011.

## **2. European social dialogue activity in 2011**

While the two studies on self-evaluation and self-reflection of the European social dialogue (ESD) formed the pivotal area of work of the joint European social partners during 2011, other 'more content related' actions were also undertaken in 2011. These actions could indeed be described as quite meagre as they consist mainly of joint reports on the implementation of autonomous framework agreements on harassment and violence at work (2007) and on inclusive labour markets (2010) and the holding of conferences such as the ones in the context of the joint projects on flexicurity and climate change. Indeed, the more important discussions amongst the European social partners in 2011 fell outside of the scope of implementation of the 2009-2010 work programme: they consisted of the start of consultations on a review of the Working Time Directive 2003/88/EC and the negotiations on a new joint work programme for the period 2012-2014. Since both processes began only at the very end of 2011, they were both at a very early stage at the time of writing this article.

We shall nevertheless begin below by describing the state of play in these two most important - albeit least advanced - rounds of negotiation, since in some ways they illustrate the main outcomes of the appraisals described in the first part of this chapter. Thereafter we shall take a look at other joint activities that took place in 2011.

## 2.1 Start of negotiations on a review of the Working Time Directive (WTD)

The Commission's initial proposal dated from 2004 (European Commission, 2004). Despite two readings and a conciliation process, the Council and the Parliament concluded in April 2009 that they could not reach agreement on the proposal. After having conducted in-depth impact assessments and implementation reports<sup>7</sup>, the Commission launched in 2010 the two-track consultation process as foreseen in Article 154 TFEU with the European social partners, in particular to test their readiness to 'take over the file' and start negotiations on a framework agreement to be implemented by a Directive thereby revising – at least partially – the existing Directive 2008/33/EC<sup>8</sup>.

It was however not until 14 November 2011 that the ETUC, BusinessEurope, UEAPME and CEEP, after lengthy and regular internal consultations as well as both formal and informal contacts between the employers' side and ETUC representatives to test the ground for starting such potential successful negotiations, informed the Commission that they would indeed start such sensitive negotiations. At the time of writing this article, a first phase of bargaining had taken place on 8 December, which was limited to an initial, brief exchange of views. A second phase was scheduled for 10 February 2012. The exchanges at the first meeting confirmed that the negotiations will prove to be very tough and difficult, in particular as the respective opening positions, especially comparing those of ETUC with BusinessEurope, are so divergent.

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7. All studies and reports can be consulted at: <http://ec.europa.eu/social/main.jsp?catId=706 &langId=en&intPageId=205>

8. The Commission consultation documents consist in particular of: 'Reviewing the Working Time Directive' (first-phase consultation and second-phase consultation of the social partners at European level) (European Commission, 2010a and b).

ETUC declared itself ready to enter into negotiations based on the following four main objectives:

- a comprehensive revision of the WTD serving the health and safety of workers;
- the end or phasing-out of the individual opt-out in the near future;
- keeping the status quo concerning reference periods;
- and ensuring compliance of the ECJ judgments on on-call time and compensatory rest (ETUC, 2011b).

BusinessEurope's 'shopping list' is however much shorter: a revision of the Directive should be restricted to addressing the problems raised by the jurisprudence of the European Court of Justice on the issues of on-call time and paid annual leave/sick leave. As for the opt-out from the maximum 48-hour working week, this must be maintained as a permanent provision of the Directive (BusinessEurope, 2011a).

UEAPME and CEEP's views largely coincide with BusinessEurope's demand for a less comprehensive revision and for encompassing the issues of on call and paid annual leave. UEAPME however puts additional focus on greater flexibility through further extension of the reference period (UEAPME, 2011), while CEEP raises the major concern that on any of the topics mentioned above the needs of public employers must be duly taken into account (CEEP, 2011).

We shall therefore need to wait and see, and carry out a 'rain check' on this issue in the 2012 edition of 'Social Developments in the EU'.

## 2.2 Negotiations on a new European Social Partners' Work Programme 2012-2014

As already mentioned, at the time of writing this article, these negotiations had also just started, with a first meeting held on 16 December and two further meetings scheduled for 12 and 26 January 2012, in order to be able, following internal consultation and adoption, to determine the content of what is to become the 4<sup>th</sup> European social

partners' work programme to the Tripartite Social Summit scheduled for 1 March 2012.

During the first exchanges, there seemed to be consensus, despite different approaches, on the following issues to be dealt with under the new work programme: 1) employment (with a particular focus on youth (un)employment), 2) continuing the discussions on a better understanding of the European social dialogue instruments and their implementation (as a follow up to the joint study – see above) and 3) continuing in an even more intensified way (joint) capacity building activities, as strong national social dialogue partners and structures are crucial for the impact of the results of the European social dialogue. There was however no clear indication yet how, and via which concrete instruments and actions, the respective European social dialogue thought this would best be dealt with.

As highlighted throughout the second part of this article, other issues which will certainly be brought to the table are climate change and flexicurity, but it is so far unclear whether and how they will actually be dealt with under the new work programme.

Once again it was clear that ETUC was aiming for a more 'comprehensive' work programme than the employers' side. The latter opted instead for a 'less is more and more is less' approach, although both sides agreed on the principle of the need for a realistic work programme, in a sense of being able to conduct envisaged activities in the given reference period of two years and to ensure that 'quality came before quantity'.

### 2.3 Final joint report on implementation of the framework agreement on harassment and violence at work

Implementation had to be carried out within three years of the date of signature of the agreement, i.e. by April 2010. As foreseen in the framework agreement, the members of the Social Dialogue Committee decided at its meeting on 23 February 2011 to set up an *ad hoc* group entrusted with preparing the final report on implementation of the agreement on harassment and violence at work. This *ad hoc* group met on 24 May 2011. By 27 October 2011, when the report was adopted by the Social Dialogue Committee, joint national implementation reports

had been received from 14 EU Member States and EEA countries. Final joint reports had not yet been received from Belgium, Bulgaria, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia and Spain.

The joint report (ETUC *et al.*, 2011a) provides a comprehensive overview of how, at both European and national level, members of the signatory parties disseminated, explained and transposed the European framework agreement in their European and national context between 2007 and 2010.

In 18 countries, the framework agreement has been implemented through agreements between national social partners. As well as overarching agreements, this has also included jointly agreed guidance, declarations/statements and integration of elements of the framework agreement into existing social partner agreements. In four countries the framework agreement was implemented through sectoral social partner agreements with the following sectors covered: hospitals, university level education and training schools, transport, metal, construction and chemicals industries, pharmacists, taxis, retail, banking and hotel and restaurant. Since the framework agreement fits in a larger framework of existing national and EU legislation (e.g. directives on non-discrimination and health and safety at work), in a number of countries (10) implementing measures have focused on assessing and in some cases fine-tuning existing regulations in line with the framework agreement. In 11 countries complementary measures were taken, including research, training, communication activities and events. For a more detailed overview, see Tables 2 and 3.

Implementation of the framework agreement demonstrates that it has provided clear added value for social partners in dealing with this important topic; however there were some challenges in doing so. In some cases these related to the national framework and context in which the agreement was implemented, such as the strength or rather weakness of social dialogue structures and processes within the national context, or how to tailor implementation of the framework agreement to the national context because of existing regulatory and conventional frameworks. In other cases challenges were related more to the actual topic of harassment and violence at the workplace and this mainly because of a lack of awareness or information on the topic.

Table 2 **Implementation instrument - National social partner agreement**

Country	Overarching agreement	Joint guidance	Joint declaration / statement	Integration into existing agreement
Austria		X	X	
Cyprus			X	
Czech Republic				
Denmark	X	X		X (state sector, regions and municipalities)
France	X			
Ireland		X		
Italy				X
Latvia	X			
Luxembourg	X			
Netherlands	X			
Norway	X	X		
Poland			X	
Slovenia		X		
Spain				X
Sweden	X		X	
UK		X		

Source: ETUC *et al.* (2011a).

Table 3 **Implementation instrument**

Country	Sectoral social partner agreements	Company level collective agreement	Assessment of national legislation	Complementary activities
Austria				X
Belgium			X	
Czech Republic	X	X	X	X
Denmark			X	X
Finland			X	X
Germany		X		
Iceland			X	
Ireland			X	X
Italy		X		
Latvia			X	X
Netherlands	X		X	X
Poland			X	
Portugal	X			X
Slovenia			X	X
Spain	X			
Sweden				X

Source: ETUC *et al.* (2011a).

Nevertheless, the European social partners consider that the framework agreement has brought real added value in terms of raising awareness on the issue of harassment and violence at the workplace and has provided a framework for action by social partners. Moreover they also recognise that implementation of the framework agreement has also taught lessons in relation to EU social dialogue in general. They, and their members, 'acknowledge that there are gaps in the reporting of implementation of the agreement, as a number of countries have not yet submitted joint implementation reports'. Furthermore, 'they plan to address this through the future joint project on the resource centre of the European social dialogue' and 'ensuring a better implementation of autonomous social dialogue instruments will also be considered in the context of the next EU Social Dialogue work programme'. Surely this is an important conclusion, given also the outcomes of the two 'self-evaluation studies' described in the first part of this article.

## 2.4 First joint table on implementation of the framework agreement on inclusive labour markets

As foreseen in the framework agreement, which has to be implemented by 25 March 2013, the European social partners must, during the first three years after the signature of the agreement (2011-2013), submit to the Social Dialogue Committee a yearly table summarising the ongoing implementation of the framework agreement. At the Social Dialogue Committee meeting of 15 June 2011, the first implementation table was adopted (ETUC *et al.*, 2011b)<sup>9</sup>. It gives however a rather patchy overview for various reasons. Firstly because of the limited number of joint national reports received. Out of 31 concerned EU/EEA member states and candidate countries (when the agreement was concluded only Croatia and Turkey), only 15 reports were received, nine of which were from 'old' Member States, five from 'new' Member States and one from an EEA member state and no report from a candidate country. In addition only the European cross-industry social partners provided input on their respective dissemination and implementation activities; thus so far no report has been received from any of the European sectoral

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9. The table is available at: <http://resourcecentre.etuc.org/Agreements-57.html>. One can also find there the text of the framework agreement in different languages.

social partners. Secondly, it also shows that in many countries, national social partners are still at an initial stage of the implementation process, i.e. translating the framework agreement into their respective national language(s) and/or undertaking dissemination action in order to raise awareness to lower level bargaining actors on the agreement's existence and content. And thirdly, for those countries that actually do report on concrete implementation results and activities, it is still unclear whether these are indeed triggered by the European framework agreement or might have been taken anyway in the framework of ongoing and foreseen active labour market policies in the different countries, in particular given the current economic crisis.

So it is still rather early to draw any real conclusions on the impact of this autonomous framework agreement, and one will have to await at least the second implementation report to have a more tangible overview. But as for the final report on the harassment and violence framework agreement (see above), the European cross-industry social partners acknowledge the urgent need to address this lack of reporting: concrete action in the form of capacity building seminars in different countries is already scheduled to take place during the first half of 2012.

## 2.5 Joint conference on flexicurity

It should firstly be recalled that in the context of their joint work programme 2009 – 2010, the European social partners committed themselves to 'jointly monitor the implementation of the common principles of flexicurity, notably to evaluate the role and involvement of the social partners in the process and to draw joint lessons' (ETUC *et al.*, 2009). Between 2010 and 2011, ETUC, BusinessEurope, UEAPME and CEEP then undertook a joint study designed to assess implementation of the common principles of flexicurity<sup>10</sup> and the role of social partners in the process. This study covers 29 countries, all 27 EU Member States and candidate countries Croatia and Turkey. The results of the study as well as of the findings of four so-called cluster seminars

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10. <http://resourcecentre.etuc.org/Flexicurity-87.html>.

held between November 2010 and February 2011<sup>11</sup> were presented at an EU-wide seminar held in Brussels on 31 March – 1 April 2011 (ETUC *et al.*, 2011c)<sup>12</sup>.

If the discussions at both the cluster meetings and the closing conference tell us anything, it is that there is still a very wide divergence of views on the concept of flexicurity and the importance and impact it could and should have for the efficient functioning of national labour markets. This cleavage and the difficulty of finding a common message on this issue is also quite clear when comparing for example the titles of the separate (!) press releases issued by ETUC and BusinessEurope following the closing conference. Whereas ETUC speaks of ‘Flexicurity or how theory is not applied in practice’ (ETUC, 2011a), BusinessEurope considers that ‘flexicurity works in good and bad weather’ (BusinessEurope, 2011b). It thus remains to be seen now – also given the renewed interest shown by the European Commission concerning the flexicurity debate in its flagship initiative on a new agenda for new skills and jobs (European Commission, 2010c) – how the European social partners intend to continue to tackle the issue in their European social dialogue. No doubt the issue will in any case be brought to the table by the employers’ side in the negotiations on the new work programme 2012-2014.

## 2.6 Joint action on climate change

Whereas the work programme 2009-2010 also foresaw that the European social partners would work on ‘the development of a joint approach to the social and employment aspects and consequences of climate change policies with a view to maximising opportunities and minimising negative effects and to identify possible joint actions’ (ETUC *et al.*, 2009), they undertook between 2010 and 2011 an exploratory joint study to better understand the impact of climate change adjustment policies on labour markets and to assess what role the social partners at national level have or could have in this respect. This study set out to help European social partners to: 1) assess the

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11. Each of these cluster meetings involved 7-8 countries, mixing together geographically disparate countries of different sizes and with different industrial relations systems. All documents related to these meetings can be found at: <http://resourcecentre.etuc.org/Flexicurity-87.html>.

12. The conference notes are also available at <http://resourcecentre.etuc.org/Flexicurity-87.html>.

impact of climate change mitigation and adaptation policies (e.g. environmental sustainability, energy efficiency, reducing emissions) on labour market policies in Europe, 2) assess the impact on future skills needs and 3) identify and discuss any present or future actions and / or ways in which social partners can work, separately or jointly, to better address climate change mitigation and adaptation policies and their impact on employment and skills.

Following a first EU-level seminar, held in Brussels on 29 June 2010 and where national social partner organisations from four countries (Belgium, Germany, Spain, and UK) were able to present their different approaches to the issue and give examples of initiatives implemented and / or planned, a final EU-level seminar was held, also in Brussels, on 1-2 March 2011 where the final findings of the exploratory study were presented and discussed by national social partner representatives coming from 27 EU countries (ETUC *et al.*, 2011d)<sup>13</sup>. Following the final conference there was a shared consensus to continue to work on this important issue within the framework of the European social dialogue; however it still unclear how and using which – more targeted - approach. Climate change will thus be another issue on the table during the negotiations on the new work programme for 2012-2014.

## Conclusions

2011 marked a turning point for European social dialogue. The assessments of twenty years of ESD do of course indicate the attachment of all stakeholders to this process, but they also reveal differences of opinion, or even divergences in the appraisal of its fundamental purposes, its content and the implementation of its outcomes. Furthermore, two major new sets of negotiations were launched between the social partners in 2011: on the review of the Working Time Directive and on a new autonomous Work Programme for the period 2012-2014. Both bargaining phases were proving highly sensitive at the very start of 2012.

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13. All documents related to both the first and final synthesis seminar are available at: <http://resourcecentre.etuc.org/Climate-Change-86.html>.

Reading the two studies taking stock of twenty years of ESD proves especially instructive from two additional perspectives: firstly, there is growing trade union discontent with the content and implementation of texts adopted jointly; secondly, the importance of national structures for social dialogue must be registered if ESD is to have true added value.

The joint survey headed up by Voss makes plain that it is in the Member States where the social partners are well organised and influential, and where robust national institutions exist for social dialogue, that ESD outcomes can be best utilised. In countries with weaker stakeholders and structures, ESD triggers processes that are merely formalistic or even unproductive. ESD in itself, therefore, cannot strengthen a defective national social dialogue; it is of virtually no use at all. If European social dialogue is to operate to the full, therefore, the EU and its Member States must support not only ESD itself but also the national players and structures pursuing social coordination.

All of which means that now, on the twentieth anniversary of European social dialogue, a key paradox is evident: having been launched in 1991 to accompany an emerging economic and monetary union, the ESD now - in 2011 and at the height of the euro crisis - appears to be receiving virtually no more input from the European Commission. Instead, ESD is now lagging behind as a result of what could best be described as the employers' attitude of reluctance, as we have seen in the second section of this chapter.

2011 did indeed prove to be a rather meagre year, whereby the more 'content-oriented' issues identified in the work programme 2009-2010 were basically just dealt with in the form of reporting exercises, (joint) projects and conferences. In addition, two other major issues, i.e. the revision of the WTD and the elaboration of a 4<sup>th</sup> joint work programme, only started late in 2011 and without any clear indication of whether and how successful they will be, once finalised in 2012, in particular the negotiations on revising the WTD. In that sense there may not be much to celebrate about the twentieth anniversary of the European social dialogue, perhaps apart from the fact that a serious self-evaluation was indeed made. But the actual result will need to be awaited!

Nationally, too, 2011 was a year that saw the European institutions, headed up by the Commission and the European Central Bank, call into question the autonomy of collective bargaining in several countries. At the very start of 2011, former ETUC General Secretary John Monks sent a vitriolic letter to the European Commission, attacking its 'policy of detailed interference in labour markets [which] tramples all over pious Commission statements about the autonomy of the social partners, the importance of social dialogue and the specific exclusion in the EU treaties of a European competence on pay'<sup>14</sup>. To put it even more succinctly: European social dialogue arose with the euro in 1991; might it be killed off because of the euro in 2011?

ESD can help to establish a balance between the European and national reforms made necessary by the euro crisis. Twenty years ago, the Social Policy Agreement reflected 'a consensus between Member States and between European-level social partners to make social dialogue a key instrument, if not the number-one instrument, for regulating social and employment affairs in the European Union' (Mückenberger *et al.*, 1996). It is quite legitimate to wonder whether, in 2011, this belief was still uppermost in the minds of everyone involved.

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