

## 6. HAS EUROPEAN SOCIAL DIALOGUE AND SOCIAL LEGISLATION SUPPORTED THE LISBON STRATEGY?

The European social dialogue is acknowledged as an essential component of the European model of society and development. Its status as a building block of economic and social modernisation has been confirmed by the Lisbon Strategy. In other words, the European social dialogues, alongside European social legislation, are regarded as driving forces of successful social reform. According to the European Commission, European social partners are best placed to take up the fundamental challenge of the Lisbon Strategy, in particular in respect of modernisation and management of change.

As the 2010 deadline for completion of the 2000 Lisbon Strategy agenda fast approaches, how much have European social partners and European legislators focussed upon and succeeded in implementing the goal of making the EU 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion'. And how have they responded to the refocussing – in 2005 – of the agenda on partnerships for growth and employment?

The European social dialogue and European social legislation are the two major instruments for introducing social standards in the countries of the European

Union. European social partners are empowered by the EC Treaty to negotiate and conclude agreements on specifically defined social issues at inter-professional as well as sectoral level. At the joint request of the parties, these agreements may subsequently be transposed into European directives. In addition, the European legislator has the capacity to adopt legislative acts on social matters. This chapter sets out to examine to what extent the European social dialogue and European social legislation have contributed – or have failed to contribute – to achieving the objectives of the Lisbon Strategy. In the first two sections, the contribution of the European interprofessional (6.1) and the sectoral (6.2) social dialogue will be considered, while a third section (6.3) will be devoted to the input of the European legislator in social matters. The first point to strike is that the European social partners at interprofessional – albeit less at sectoral level – have indeed been highly active in shaping social Europe along the lines of the Lisbon Strategy. Meanwhile, though the European legislator has contributed some interesting input, social legislation to support the objectives of the Lisbon strategy is in short supply. Furthermore, analysis of the quantity and quality of the legislative acts, on the one hand, and of the negotiated

contributions, on the other, over the past eight years, shows not only a clear imbalance between these two forms of input, but also a distinct shift of responsibility in social fields towards the European social partners and away from the European legislators. To what extent, then, have the former met the expectations placed in them?

### Themes

- 6.1. What has the autonomous interprofessional social dialogue contributed to Lisbon?
- 6.2. The contribution of the European sectoral social dialogue to the Lisbon strategy
- 6.3. European labour law developments over the last ten years
- 6.4. Conclusions

## 6.1. What has the autonomous interprofessional social dialogue contributed to Lisbon?

### Implementation of the two autonomous Work Programmes of the European Social Partners

Only a year before the Heads of State launched the Lisbon Strategy in March 2000, the European interprofessional social partners saw their third framework agreement (following those on parental leave and part-time work) incorporated into Directive 1999/70 on fixed-term work. The provisions of this text are undoubtedly in keeping with the objectives and policy priorities set by Lisbon, as well as with its re-launched version of March 2005 focusing on growth and employment. In June 2000, barely three months after the Strategy was proclaimed, the social partners entered into new negotiations with a view to reaching a framework agreement on the protection of temporary agency workers. Had these negotiations succeeded, the outcome would have again been in accordance with the aims of the Lisbon Strategy. Indeed, the different versions of the proposal for a Directive on this issue contained clear reference to the (re-launched) Lisbon Strategy objectives. However, the failure of these negotiations in 2002, apart from being the first such failure of EU social dialogue negotiations, entailed even more extensive consequences. Given also the prevailing institutional, political, economic and social situation, the need was felt, from within and also as a response to external pressure, to reshape the EU social dialogue, its structures and

processes, as well as the policy-making role that EU social partners were able and wished to play.

The EU social dialogue was at a crossroads and the EU social partners decided in November 2002, through the adoption of their first autonomous multi-annual work programme for 2003-2005, to tread new paths in order to enhance and expand their dialogue, diversify the instruments used, and strengthen the implementation of their joint agreements and other texts. In this context, the effort to contribute to the Lisbon Strategy was one of their leading goals, and the work programme preamble clearly indicates that their decision to group the different actions launched under this work programme according to three priorities – employment, enlargement and mobility – was linked to their wish ‘to make their work programme a useful contribution to the Lisbon Strategy’.

Following the success of the 1<sup>st</sup> work programme, the language of the 2<sup>nd</sup> Work Programme 2006/2008 leaves no doubt about its links to the Lisbon Strategy and, in particular, its refocusing upon growth and employment. In the preamble, the EU social partners ‘reiterate their support for the Lisbon Strategy’ and state that ‘Europe’s weakness in terms of growth and

**Figure 6.1: Implementation of the 1st Work Programme of the European Social Partners 2003-2005**

	Theme/ Calendar	Action taken
Employment	Employment guidelines (2003-2005)	1 <sup>st</sup> joint report presented at the March 2004 Tripartite Social Summit 2 <sup>nd</sup> joint report presented at the March 2005 Tripartite Social Summit
	Lifelong Learning (2003-2005)	Framework of actions for the lifelong development of competences and qualifications (28/02/2002), 1st joint Evaluation report 14/03/2003; 2nd joint Evaluation report 05/03/04; 3rd joint Evaluation report 01/03/05; Evaluation report 2006 (27/04/06)
	Stress at work (2003)	Framework Agreement signed by ETUC-UNICE/UEAPME-CEEP on 8/10/2004
	Gender equality (2003)	Framework of actions signed March 2005
	Restructuring (2003)	Seminars: October 2002/ March and May 2003 EU social partners' text "Orientations for reference in managing change and its social consequences" (16/10/2003)
	Disability (2003)	Joint Declaration of the EU Social Partners for the European Year of People with Disabilities (20/01/2003)
	Young people (2003-2005)	Joint Declaration of the EU Social Partners on the European Youth Pact (01/03/05) + is also taken on board in the ongoing negotiations on a Framework agreement on Inclusive Labour Markets
	Racism (2004)	One joint meeting in 2004; no concrete further joint follow-up since then
	Ageing workforce (2004)	First joint meeting on 14/09/2005 + is also taken on board in the ongoing negotiations on a Framework agreement on Inclusive Labour Markets
	Harassment (2004-2005)	Framework Agreement signed by ETUC-BUSINESSEUROPE-UEAPME-CEEP (27/04/07)
Enlargement	Telework (2003-2005)	Framework agreement signed by ETUC-BUSINESSEUROPE-UEAPME-CEEP (16/07/02)
	Undeclared work (2005)	Joint Seminar 19/09/2005 + is also taken on board in the ongoing negotiations on a Framework agreement on Inclusive Labour Markets
	Industrial relations (2003-2005)	Preparatory Project meeting: 9-10/12/2003; Start-off Conference: 9-10/01/2004 (Ljubljana);
	Social dialogue (2003-2005)	"Enlarged" SDC meetings: 29/01/2003, 01/10/2003, 05/03/2004, as from 05/2004 full member of each meeting
	Restructuring (2003-2004)	-
Mobility	Lifelong learning (seminar 2004/reporting: 2005)	Seminar May 2004
	Implementation of legal acquis (2004)	Two case-study seminars on EWC's (22-23/10/2004; 27-28/10/2004); joint conclusions March 2005
	EU social and employment policies after enlargement (2004)	Forms now part of reporting on employment guidelines and LLL (see above)
Action plan on skills and mobility (2003-2005)		Seminar Commission and Social Partners (13/02/2003 - Brussels); no concrete follow-up foreseen

Source: ETUI (2008).

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employment needs to be addressed in order to face the challenges of demographic change, globalisation and technological innovation'. In their view, 'the European social dialogue work programme for 2003-2005 has successfully contributed to the implementation of this strategy', and this belief was confirmed in their 2005 Joint Declaration on the mid-term review of the Lisbon Strategy. The EU social partners have thus perfectly understood and acted upon one of the main messages of the Strategy; i.e. that the role of and negotiations between social partners was considered to be the most suitable way forward on questions relating to modernisation and management of change, and especially in facing key challenges, such as enhancing skills and qualifications, modernising work organisation, promoting equal opportunities and diversity and developing active ageing policies. Indeed, all these pivotal areas are reflected directly and/or indirectly in the topics for action identified in both work programmes.

The two work programmes were also clear and targeted reactions to the important Commission communications issued in 2002 'The European social dialogue, a force for innovation and change' (European Commission 2002b) and 2004 'Partnership for change in an

enlarged Europe – Enhancing the contribution of European social dialogue' (European Commission 2004). Both communications represented efforts to further strengthen the EU social dialogue, its role and instruments, and their recommendations are clearly also embedded in the Lisbon 'spirit', indicating ways in which the EU social dialogue could provide a productive and value-added contribution to the Lisbon process. For example, the establishment by Lisbon of the new tool of the open method of coordination is explained under a heading entitled 'boosting the social partners' involvement in the different aspects of the Lisbon Strategy' and, in the 2004 Communication, the Commission acknowledges the importance of social dialogue as an indispensable instrument for Europe in successfully facing up to current and future economic challenges and, especially, supporting implementation of the Strategy.

But has all this indeed led to a genuine contribution by the EU social partners to achieving the Lisbon agenda? As is clear from the implementation scoreboards of both the 2003-2005 and the 2006-2008 work programmes (see Figures 6.1 and 6.2), the EU social partners proved able to formalise their commitment in several fields relating directly to the Lisbon Strategy, using,

**Figure 6.2: Implementation of the 2nd Work Programme of the European Social Partners 2006-2008 - Status 12/2008**

Foreseen actions	Actions undertaken
Joint analysis of the key challenges facing Europe's labour markets (...)	<ul style="list-style-type: none"> <li>Joint text signed and presented by the EU cross-sectoral social partners at Tripartite Social Summit of 18 October 2007</li> </ul>
1) joint recommendations to be made to EU and national institutions, 2) define priorities to be included in a framework of actions on employment by the social partners, 3) negotiate an autonomous framework agreement	<ul style="list-style-type: none"> <li>Negotiations on a framework of actions on employment transferred to the next Work Programme 2009-2010</li> <li>Negotiations on an autonomous framework agreement on Inclusive Labour Markets started on 17/10/08; further negotiation rounds are scheduled up till May 2009</li> </ul>
Negotiation of a voluntary framework agreement on harassment and violence in 2006	<ul style="list-style-type: none"> <li>1st joint EU social partners' implementation table 2008 adopted at SDC of 18/6/08</li> <li>ETUC follow-up project started beginning 2008</li> </ul>
Completion of the national studies on economic and social change in the EU 10 + EU 15. Promote and assess the orientations for reference on managing change and its social consequences	<ul style="list-style-type: none"> <li>Joint project "Integrated Programme of the EU Social Dialogue 2006-2008" - Subproject II "Joint Study on restructuring in EU 15 MS - Phase 1 (10 countries)"</li> <li>Synthesis Seminar Brussels - 19-20/06/08 - report available</li> <li>Joint project "Integrated Programme of the EU Social Dialogue 2008-2010" accepted by DG EMPL SD Unit. Of particular relevance is "Subproject II Joint Study on restructuring in EU MS"</li> <li>Forthcoming national seminars and studies for BE, BG, DE, FI, LU, PT &amp; RO - Synthesis Seminar in January 2010</li> <li>Joint project "Integrated Programme of the EU Social Dialogue 2006-2008": Subproject I: "Joint project on Social partners' participation in the European social dialogue: What are Social Partners' needs?" in RO, BG, HR and TR - phase 1</li> </ul>
Capacity building for the social dialogue in the new member states + candidate countries. Enhancing resource centres of employers' associations and trade unions for technical assistance to the 10 new member states	<ul style="list-style-type: none"> <li>Subproject I: "Joint project on Social partners' participation in the European social dialogue: What are Social Partners' needs?" in RO, BG, HR and TR - phase 2"</li> <li>3 national seminars in 2008: HR, BG &amp; RO; seminar TR scheduled February 2009</li> <li>Final Synthesis Seminar scheduled for June 2009</li> <li>Subproject III: "Resource Centres – services and websites" - redesigned ETUC Resource Centre available at: <a href="http://resourcecentre.etuc.org/">http://resourcecentre.etuc.org/</a></li> </ul>
Reporting on the implementation of the telework as well as the work-related stress agreements and on the follow up to the framework of actions on gender equality	<p>Telework:</p> <ul style="list-style-type: none"> <li>Joint EU social partners final implementation report adopted on 28/06/2006</li> <li>Commission own implementation report 2008 (COM (2008) 412 final SEC(2008) 2178 of 02/07/08)</li> </ul> <p>Stress at work:</p> <ul style="list-style-type: none"> <li>See also Benchmarking Working Europe report 2007 and 2008</li> <li>Final joint implementation report of 18/06/08</li> </ul> <p>Gender equality:</p> <ul style="list-style-type: none"> <li>1st joint follow-up report 2006, 2nd joint follow-up report 2007, 3rd joint follow-up report 2008 adopted at SDC of 18/06/08</li> </ul>
Develop common understanding of Social Dialogue instruments	<ul style="list-style-type: none"> <li>Confirmation of the importance of this action in the conclusion of the joint implementation report on Telework and Work-related Stress following the lessons learned in the implementation process. Item carried over into in the 3rd Work Programme 2009-2010</li> </ul>

Source: ETUC and ETUI. To be read in conjunction with Fig.2, Chapter 9.2 of Benchmarking Working Europe 2007 and Fig.2, Chapter 8.2 of Benchmarking Working Europe 2008.

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to this end, a wide variety of tools, each possessing their respective strengths and weaknesses. Reference should certainly be made to the two autonomous agreements on work-related stress (2004) and harassment and violence at work (2007), as well as to the framework of actions on gender equality (2005) and the ongoing negotiations on the revision of the Parental leave Directive. All of these relate, both directly and indirectly, to the objectives of improving working conditions and work organisation as well as achieving greater equality and lessening discrimination. Their framework of actions on lifelong learning (2002), and even the autonomous agreement on telework (2002), are clearly linked to, among other things, the important Lisbon objectives of lifelong learning and preparation of the transition to a knowledge-based economy and society.

The reporting exercises on the implementation of the Employment guidelines have proven very valuable in the search for solutions to identified obstacles such as, in particular, the real and effective involvement of the national social partners in these processes. The joint document issued by the European social partners in 2003 entitled 'Orientations for

references in managing change and its social consequences', as well as the numerous studies and capacity-building actions in relation to restructuring, gave these issues a fresh urgency in both new and old member states. Last and certainly not least, the most direct contribution is contained in the 'Joint analysis of the key challenges facing Europe's labour markets' (ETUC *et al.* 2007) which could be described as a tailor-made answer to the Lisbon targets and to enhancing Europe's employment and growth potential. In order to contribute to enhancing both this potential and the impact of the European social dialogue, and as foreseen in the social dialogue work programme 2006-2008, the European social partners undertook a joint analysis of growth, employment, unemployment and productivity, demography, job creation, contractual arrangements, education, training and lifelong learning. This analysis forms a basis for deciding on appropriate joint recommendations to the EU and national institutions, defining priorities to be included in a framework of actions on employment, and negotiating an autonomous framework agreement on either the integration of disadvantaged groups on labour markets or lifelong learning.

As a first conclusion, it could thus be stated that the EU social partners have certainly made every possible attempt to deliver. However, it has also to be admitted – and this is mainly as a result of the use of a wide variety of tools (ranking from simple (separate or joint) declarations of the social partners to negotiated agreements and legislative acts) with their inherent strengths and weaknesses – that the actual implementation action and results are quite variable, firstly because of the tools used, secondly depending on the country considered, and thirdly depending on the actual role and involvement of social partners in the national context and the extent to which they were able to participate in all these processes. The involvement of national actors is indeed essential for the implementation of European social dialogue agreements. Be this as it may, it is extremely difficult, and in many cases premature, to express an opinion as to the real impact this may have had on European citizens' private, family and working lives.

Secondly, the fact should not be overlooked that, alongside these specific actions of their own, the EU social partners have been faced with, and have reacted to, different formal consultations (see previous Benchmarking

reports), as well as legislative initiatives by the Commission (see section 6.3), the debates on which also impinged from time to time on the activities scheduled and the progress made in relation to the two work programmes.

Thirdly, and perhaps just as important as – or even more important than – the actual impact of all this work, it is undeniable that these different actions and their implementation were a crucial catalyst for change in and strengthening of the social dialogue at both European and national levels. The European social partners had, in embarking upon these initiatives, been forced to reconsider and further enhance the EU social dialogue, its role and their involvement in it, the necessary synergies between different levels of social dialogue, its instruments and their implementation, including the considerable and mostly positive spill-over effects for social dialogue partners, structures and activities in both new and old member states.

It is thus apparent, finally, that the EU social partners certainly endeavoured to make a useful contribution and that tangible results have been achieved, which certainly does not mean that all is perfect. The imperfections, however

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are not always attributable to the social partners themselves but in some cases also to the complex political, institutional, social and economic context in which they have and/or are able to operate and cooperate with all the other actors concerned.

As for future perspectives, it is already clear that the EU social partners intend to continue contributing to both the Lisbon as well as Post-Lisbon agendas. They will do this, firstly, by seeking successful conclusion of the currently ongoing negotiations on an autonomous framework agreement on inclusive labour markets as well as the scheduled discussions on a framework of actions on employment. Secondly, they will pursue the continued

and new actions identified in their 3rd Work Programme for the years 2009-2010. Indeed, and apart from dealing with some 'leftovers' from the 2nd work programme, they here commit themselves, among other things, to jointly monitor the implementation of the common principles of flexicurity (in particular, the role and involvement of social partners in this process) and even, based on their above-described experiences and results, to issue 'a joint recommendation aimed at contributing to the definition of the Post-2010 Lisbon'. What is more, this new work programme deliberately covers a two-year period only, 'so as to be synchronised with the Growth and Jobs strategy'.

## 6.2. The contribution of the European sectoral social dialogue to the Lisbon Strategy

### Lifelong learning and action on skills at the centre of the European sectoral social dialogue

The sectors facing rapid change, or labour shortages and new skill needs, have addressed key issues of the Lisbon Strategy (Figure 6.3), but implementation varies from sector to sector.

The Commission has stressed the importance of promoting the quality of industrial relations in the framework of the implementation of the Lisbon Strategy. In the Communication of 2002 (European Commission 2002b) it continued to argue that the sectoral social dialogue is ‘the proper level for discussion on many issues linked to employment, working conditions, vocational training, industrial change, the knowledge society, demographic patterns, enlargement and globalisation’. At the same time, it proposed to pursue the creation of new committees, to encourage the cooperation between sectors, to gear the activities of the sectoral social dialogue committees to dialogue and negotiation only and to reinforce the role of the Liaison Forum as the preferred arena for information and general consultation. Finally, the Commission announced its firm intention ‘to give priority support to committees whose work culminates in practical results representing their contribution to the implementation and monitoring of the Lisbon

Strategy’. In the social policy Agenda 2000–2005 (European Commission 2000) the Commission planned to review the social dialogue structures at the cross-industry level and at the sectoral level.

The sectoral social dialogue is organised in the 1998 Communication ‘Adapting and promoting the social dialogue at the Community level’ (European Commission 1998). The Commission laid down provisions concerning the establishment, representativeness and operation of new sectoral committees for consultation, joint initiatives and negotiation. In 2008, 36 sectoral social dialogue committees were formally recognised and two others are still awaiting recognition. The outcomes of the sectoral social dialogue are better understanding and consensus-building, a better capacity to promote the sectoral interest and the capacity to act together in an autonomous way.

The sectoral level seemed to be the most appropriate level to address the key issues of the Lisbon Strategy. Indeed, there exist numerous joint positions on topics like lifelong learning or vocational training. These topics are at the heart of many sectors’ concerns, especially during the so-called years of maturity 2002–2004

**Figure 6.3: Contribution of some SSD Committees to the implementation of the Lisbon strategy 2005-2008**

Issue	Activities	Actions and documents
Attractiveness and competitiveness	Building and construction	Joint Statement on Young People of 04.03.2008
	Furniture	Work Programme 2008 and Joint Declaration on Training and Education/Perception of Young People on working in the furniture industry of 02.10.2007.
Demographic change	Agriculture	Work Programme 2008
	Building and construction	Work Programme 2008 – 2011
	Shipbuilding	External report 2007 – Demographic change and skills requirements.
	Sea transport	Joint labour-management declaration on apprenticeship of 13.11.2000
Lisbon Agenda Management and anticipation of new skill needs	Banking	Work Programme 2006
	Agriculture	Report of the conference “Employment and sustainable development – for a new European Common Agriculture Policy” of 12 and 13.11.2007
	Agriculture	Meeting of the Working Group of the sectoral social dialogue Committee of 28.02.2008
	Electricity	Joint statement on the future skills needs in the European electricity sector of 22.06.2004
	Extractive industry	Joint position on Energy policy and the future of the extractive industry: inseparable linked of 12.12.2007
	Extractive industry	Position paper of the sectoral social dialogue Committee on EU Commission’s climate package of 23.01.2008
	Postal services	Joint declaration on training and skills development in the postal sector of 22.06.2006
Mobility	Shipbuilding	Work Programme 2007 – 2008
Quality of work	Shipbuilding	2008 IKEI consultancy group report on emerging skills and competences in the European shipbuilding and ship repair sector.
	Building and construction	Work Programme 2008 –2011
Restructuring	Agriculture	Work Programme 2008
	Building and construction	Work Programme 2008 – 2011
	Sugar	Corporate Social Responsibility Code of Conduct of the European Sugar Industry of 7.02.2003
Training and lifelong learning	Agriculture	European agreement on vocational training in agriculture of 5.12..2002
	Banking	EU bank social partners joint declaration on lifelong learning in the banking sector of 31.03.2003
	Chemical	Joint position paper on education, vocational training and lifelong learning in the European chemical industry of 10.09.2004
	Commerce	Social partners sign letter of intent - BeQuaWe European Certified Training of 26.11.2006
	Electricity	Joint statement of Eurelectric, EMCEF and EPSU and final report on the study on life-long learning in the electricity sector of 12.06.2003
	Extractive industry	Position of the European social partners, sectoral committee mines on training and continuing training of 01.04.2003
	HORECA/Tourism	Joint recommendations by EFFAT and HOTREC. Guidelines for training and development, especially in SMEs of 11.06.2004
	Live performance	Common declaration on continuing training of 27.05.2000
	Personal services	Declaration on the conclusions of the evolution of professional hairdresser training in Europe of 21.09.2005
	Road transport	IRU and ETF joint recommendations on employment and training in logistics of 31.03.2006
Sea transport	Seafarer training and recruitment in Europe. An ETF/ECSA contribution of 1.02.2000	
Sugar	Joint labour-management declaration on apprenticeship of 13.11.2000	

Data source: database OSE (2008).

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(Pochet *et al.* forthcoming). Some issues, such as adaptation to change and restructuring, are rarely addressed in the joint texts, but are on the agenda of the working programmes of an increasing number of committees. In many industrial sectors, with the growing fear of future labour shortages, lifelong learning has gained in importance at European sectoral level (European Foundation for the Improvement of Living and Working Conditions 2007b). All these issues are at the heart of the Lisbon Strategy and represent consensual areas of discussion for sectoral social partners.

The most interesting progress is found in sectors subject to rapid change, such as the chemical industry, telecommunications, electricity, the building and wood sector, the postal sector, shipbuilding, sugar, and the textile industries. All these sectors are facing the effects of globalisation and need to adapt to the changes. Vocational training, lifelong learning and innovation are issues included in the work programmes of these sectors. One significant example is the chemical industry where, as a follow-up to the REACH programme, a joint position on skills, vocational training and lifelong learning has been published. In the

electricity sector, EURELECTRIC, EPSU and EMCEF issued joint declarations on future needs in training and especially lifelong learning. Some sectors facing a major labour shortage – like the building and wood sector – plan to place lifelong learning, vocational training and measures to attract new skills at the top of their agendas. In these sectors, the link with the company level is important.

Nevertheless, the areas of ongoing negotiation are not reflected in the joint documents of most sectors. In some cases, the sectoral social dialogue committees set up working groups on specific issues, like skills and adaptation to change. The main activity is exchange of best practices between countries. This is true of both the postal sector and the sugar sector where important developments have been made thanks to the activity of working groups.

Finally, follow-ups and implementation are quite variable. Especially with regard to the issues related to the Lisbon Strategy, the most common follow-up is the exchange of best practices inside working groups set up by the sectoral social dialogue committees. These exchanges are disseminated through conferences

and websites. Some national social partners maintain a distance from this kind of action. In some sectors, the prevalence of SMEs, or large numbers of restructurings entailing job losses, may explain the difficulty of implementing the actions recommended at the European level. Some sectors, what is more, remain totally remote from the challenges of the Lisbon Strategy, for instance the hotels and restaurants sector.

## 6.3. European labour law developments over the last ten years

### What is the link with the Lisbon Strategy?

Consideration of the legislative activities of the EU since the year 2000 in the field of labour law (excluding the area of health and safety) inevitably leads to the conclusion that these have been far from dynamic. In the space of nine years, only nine new Directives have seen the light of day (Figure 6.4) and one further proposal is currently pending. Two of the new Directives, insofar as they are the result of the European Sectoral social dialogue, are attributable to the efforts of the European social partners and hence not an initiative of the European legislator as such; three are equal treatment Directives and four can be classified under the heading of corporate governance.

No real new moves have been observed on the legislative front since 2005, with the exception of the long-awaited – it was six years in the making! – Directive on temporary agency work, which is likely to come into force in the spring of 2009, after which the member states will have three years to transpose its provisions into national law. As mentioned earlier, the European social partners were not successful in reaching an agreement on this issue and, until recently, no real attention had been paid to this dossier by the European Commission. This Directive gives European agency workers a genuine prospect of being – in principle – treated equally to other workers in the company. Never-

theless, it has to be pointed out that this principle presents a loophole by offering the possibility of derogation on the principle of equal pay and on all aspects of equal treatment under certain conditions, as well as the possibility of exclusion from occupational social security schemes. It must be concluded, accordingly, that even if something is at long last stirring on the social law front, the quality of the new provisions leaves much to be desired.

For 2009 no proposal is to be found in the European Commission's work programme. This means that for four years there has been a nearly total standstill with regard to new legislation. On the

other hand, these years have seen some activity in relation to already existing Directives (see Figure 6.5), whether in the form of recasting, amendment, codification or revision (three such processes have been concluded, while a further three proposals and one revision are pending; see Figure 6.4). In relation to the revision of the working time directive, it is clear that the reopening of an existing piece of social legislation has led to a downgrading of social standards rather than their maintenance or enhancement.

Can the legislative activities described really be said to serve the aims of the Lisbon Strategy? With regard to the

labour law field, two ideas of the strategy can be put to the test, namely, the idea of 'improving quality and productivity at work' and Employment Guideline 18 which relates to 'better reconciliation of work and private life'. As pointed out above, the legislative activities seen as a whole have certainly not achieved progress in these areas, but then, in all likelihood, they were not embarked upon for this purpose. And there are indeed other examples which very clearly run counter to the above mentioned ideas, the best illustration here being the revision of the working time Directive. The revised text as it currently stands – after a compromise was finally found in the Council during summer 2008 – in no way serves

**Figure 6.4: Labour law\* – new legislation 2000-2009**

Subject	Year
Dir 2000/79/EC - Working time of mobile workers in civil aviation	2000
Dir 2000/78/EC - Equal treatment in employment	
Dir 2001/86/EC - Involvement of employees in European Company	2001
Dir 2002/14/EC - Information and consultation	2002
Dir 2002/72/EC - Employee involvement ECS	
Dir 2003/72/EC - Involvement of employees in European Cooperate Society	2003
Dir 2004/113/EC - Equal treatment of men and women access/supply of goods and services	2004
Dir 2005/47/EC - Working conditions on the railways	2005
no legislation	2006
no legislation	2007
Proposal Dir - Equal treatment religion/belief/disability/age/sexual orientation	2008
Dir 2008/104/EC - Temporary agency work	
no new proposals	2009

Data source: ETUI (12/2008). Note: \* labour law (excluding health and safety)

## 6.3. European labour law developments over the last ten years

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to improve the working conditions of Europeans but, on the contrary, actually signifies a deterioration, insofar as it retains the opt-out and deletes the possibility of safeguards through collective agreements. By accepting the possibility of long working hours in Europe the revision surely does not further implementation of employment guideline 18 or the better reconciliation of work and family life.

Better reconciliation might in the future be possible as a result of changes now under discussion on maternity and parental leave. The European Commission has made proposals on maternity leave which would increase the minimum period of leave from 14 to 18 weeks and recommend paying women 100% of their salary but with a possibility for member states to set a ceiling at the level of sick pay. The proposal also includes stronger protection against dismissal and a right to return to the same job or an equivalent one after maternity leave.

Finally, the introduction of a right to ask the employer for flexible working patterns after the end of maternity leave is envisaged, although the employer would have the right to refuse this request. In September the European social partners launched negotiations on parental leave with a view to revising the existing Directive on the topic, which represented,

when first issued, a transposition of the first agreement concluded by the European social partners. It is once again setting a precedent, insofar as it is now the first agreement which the social partners are attempting to revise jointly.

The European Commission aimed in the green paper on modernising labour law (European Commission 2006a) to support the Lisbon Strategy for growth with more and better jobs. In this respect, a number of proposals have now been devised, albeit not in the sense of upgrading an existing piece of social legislation but rather in terms of making existing social and labour standards more

flexible. As the purpose of social legislation is to protect workers against the unfavourable balance of power with employers and not principally to boost growth, proposed changes to labour legislation are certainly not an appropriate place in which to conduct action designed to follow up this idea in relation to Europe.

The communication on the follow-up of 2007 European Commission (2007) missed out the opportunity to come up with any concrete proposals, but did put the future of labour law in Europe on the flexicurity agenda. Social legislation in Europe can only lose out if it is

viewed in a flexicurity context and is not accorded its proper place and value (ETUC and ETUI-REHS 2008a).

It can be concluded from this examination of legislation in the social field that the Lisbon Strategy did not have its strongest or most supportive agent in the European legislator. From the perspective of the best possible protection of workers' rights, there are some severely counterproductive tendencies accompanied by a small spark of hope.

**Figure 6.5: Labour law – amendments and revisions, 2000-2009**

Subject	Year	Method
Dir 2000/34/EC - Working time	2000	Amendment
Dir 2001/23/EC - Transfer of undertakings	2001	Consolidation (Dir. 77/187/EC and Dir. 98/50/EC)
Dir 2002/74/EC - Protection of employees in insolvency	2002	Amendment (Dir. 80/987/EEC)
Dir 2002/73/EC - Equal treatment		Amendment
Dir 2003/88/EC - Working time	2003	Codification
Dir 2006/54/EC - Equal treatment of men and women in employment	2006	Recast (Dir. 76/207/EEC; 86/378/EEC; 75/117/EEC; 97/80/EC)
Dir 2002/23/EC - Transfer of undertaking	2007	Codification
Proposal Dir - Information and consulting employees in EWC		Recast (Dir. 94/45/EC)
Dir 2008/94/EC - Insolvency of the employer	2008	Codification
Proposal Dir - Safety and Health of pregnant workers/recently given birth/Breastfeeding		Amendment (Dir. 92/85/EEC)
Proposal Dir - Equal treatment of men and women self-employed		Repeal (Dir. 86/613/EEC)
Dir 2003/88/EC - Working time	2009	Revision?

Data source: ETUI (12/2008).

## 6.4. Conclusions

### European social dialogue: a major contribution to the Lisbon Strategy

The European Union faces change on an unprecedented scale. The purpose of the 2000 Lisbon Strategy was to mobilise all forces to respond to the challenges represented by this change in order to make the European Union 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion'. In 2005 a review of the Lisbon strategy led to the emphasis being placed on growth, innovation and employment and to encouraging a strengthening of social cohesion. To underpin implementation of the Lisbon agenda, great emphasis has been placed on the important role that social partners have to play in managing social and economic change. Indeed, social dialogue is seen as the driving force behind the successful economic and social reforms required for attainment of the strategic goals set in Lisbon.

Over the last eight years, European social dialogue, both interprofessional and sectoral, has been the focus of considerable attention on the part of academics, the European institutions and also practitioners. As a result of the implementation of the Lisbon strategy, this dialogue has become more diversified and broader in

scope. Efforts have been made to increase capacity-building of the social partners, especially in the new member states. Greater autonomy, as well as better control over the processes of monitoring and implementation of the outcome of the European interprofessional and sectoral social dialogue, have been achieved. Major contributions have been made in the framing of regulations covering non-standard employment, working conditions, gender equality and lifelong learning. A new era was reached with the successive autonomous work programmes (2003-2005, 2006-2008 and 2009-2010) adopted and implemented by the European social partners at interprofessional level. However, European social partners are still subject to much criticism as regards their capacity to come up with more binding instruments. The grounds for such criticism are evidently represented in part by the incomplete legal framework of articles 138-2 and 139 of the European treaty that fails to provide a complete system of industrial relations at European level.

In addition, great hopes and major efforts – at least on the part of the trade union movement in Europe – have been made to support the

adoption of new pieces of European legislation on social issues such as temporary agency work and to revise existing European social directives such as the 1993 (amended in 2000) directive on working time or the 1994 directive on European works councils. However, over the last eight years most legislative initiatives have been far from meeting the basic expectation that they should enhance existing working conditions and improve implementation of workers' rights. Their shortcomings are attributable, for the most part, to heavy lobbying of the European institutions in the context of widespread determination to deregulate and flexibilise labour law.

All in all, this chapter shows that European social partners, especially at the interprofessional level, have clearly put a great deal of effort into contributing to implementation of the revamped Lisbon Strategy. However, it remains difficult – and indeed would be somewhat premature – to assess the impact of their activities on the outcome.