Cross-industry social dialogue in 2006

2006 was an interesting year for European social dialogue, since it afforded an opportunity to assess not only the overall attitudes of the players involved in European cross-industry dialogue – as evident from the new work programme adopted by the social partners – but also the tools used to conduct the process. 2006 was in fact the year scheduled for an evaluation of the first so-called ‘autonomous’ agreement, signed in 2002 and relating to telework. When that agreement was signed, many questions were asked about the social partners’ chosen method of implementation; some of those questions now have answers. Similarly, as concerns lifelong learning, the social partners launched in 2002 a framework of actions deriving its main activation methods from the open method of coordination (OMC) (1). Here too, 2006 was a year of evaluation. This is therefore a good point in time to begin debating the development of the players and instruments involved in social dialogue. Such a debate may of course appear to be an exercise in nit-picking but is in fact essential, in that it concerns the effectiveness of the outcomes of European social dialogue. As one of our interviewees put it, ‘unless

1 We might briefly recall that the OMC consists in laying down ‘guidelines’ for the EU and its Member States (containing objectives to be met), establishing indicators and evaluation criteria so as to be able to compare best practice (benchmarking), transposing these guidelines into national and regional policies, and lastly undertaking periodical monitoring, evaluation and peer reviews in order to learn lessons. In certain cases, recommendations may be forwarded to countries which have strayed from the objectives set. However, all that the European social dialogue borrows from the OMC is the definition of guidelines, national implementation and evaluation reports.
the European social dialogue texts change the lives of workers and companies in practice, what is the point of carrying on? Thus we see the importance of attempting to analyse the true impact of the various documents.

In addition to these evaluations, the end of 2006 saw a last-minute conclusion of the negotiations concerning an autonomous agreement on harassment and violence at work. This agreement would not be signed officially until 2007, but its content and the conduct of the negotiations are analysed in this volume. In the following pages, then, we shall examine in turn:

1. the social partners’ work programme for 2006-2008;
2. the agreement on harassment and violence at work;
3. the report evaluating the implementation of the autonomous agreement on telework;
4. the final evaluation report on the framework of actions on lifelong learning.

Although it was not an outcome of social dialogue, we shall look in addition at the report by the European employers’ confederation (UNICE) on social aspects of restructuring. This chapter will conclude with an overall review of trends affecting the social dialogue and its players. We shall not look here at sectoral social dialogue, which has made some progress over the past few years and will be analysed in detail in the next edition of Social Developments in the European Union.

1. **Work programme for 2006-2008**

In December 2001 the European social partners announced for the first time their intention to produce independently a multiannual work programme for European cross-industry social dialogue. That was a real innovation at the time: until then the European Commission had taken the lead in drawing up the agenda. Pursuant to the Treaty establishing the European Community, it is in fact the Commission which consults the social partners on topics of its choice, based on its own legislative programme. Thus the decision of the social partners to plan their work
themselves reflected a desire to be autonomous of the Commission’s legislative programme – and of its political and strategic priorities. The first programme covered the period 2003-2005 (see Degryse, 2006: 211-216). Apart from organising joint seminars, studies and reports, it made provision for negotiations on three topics: the social consequences of industrial restructuring (2003), work-related stress (2004) and gender equality (2005). Only work-related stress took the form of an ‘agreement’ in the meaning of Article 139(2) of the EC Treaty.

Preparing the second work programme, for 2006-2008, was no easy matter. It was not finalised until late January 2006 (ETUC, UNICE/UEAPME and CEEP, 2006a). A preliminary draft programme had initially been formulated and put to the Social Dialogue Committee at its meeting on 8 November 2005. The gulf between its content and the proposals discussed internally at the European Trade Union Confederation in June 2005 (ETUC, 2005) was such that the draft soon became a damp squib. Indeed, whereas the ETUC had hoped to see procedural initiatives (clarification and monitoring of social dialogue instruments, a mediation and arbitration system etc.) as well as substantive negotiations (employee mobility, equal opportunities, measures to combat exclusion and poverty, disability, sustainable development, trade union rights etc.), the initial draft of the programme was extremely lacking in ambition. It basically viewed the main purpose of social dialogue as lobbying the European institutions, rather than negotiating reciprocal commitments between employers and employees. The draft likewise focused more on what had already been achieved – evaluating previously adopted joint documents – than on new topics.

That initial draft having rapidly been rejected, the social partners returned to the negotiating table and finally reached a compromise at the Social Dialogue Committee meeting of 25 January 2006. The compromise was a programme covering a three-year period (2006-2008), which was officially unveiled on 23 March 2006 at the tripartite social summit. It contains a joint analysis of the challenges confronting Europe’s labour markets, as well as an undertaking to negotiate a framework of actions on employment and an autonomous framework agreement on either the integration of disadvantaged groups on the labour market or lifelong learning.
Principal instruments of social dialogue: framework agreements and frameworks of actions

The EC Treaty [Article 139(1) and (2)] stipulates that the European social partners may adopt ‘framework agreements’ which are then transposed in the Member States, either via a directive or ‘in accordance with the procedures and practices specific to management and labour and the Member States’: collective agreements, reform of the Labour Code etc. In the latter case, reference is made to ‘autonomous framework agreements’ (a label replacing the term ‘voluntary framework agreement’, preferred by the employers).

In addition to framework agreements, the social partners devised a new type of instrument in 2002: the ‘framework of actions’. No provision is made for these in the Treaty; they derive from the open method of coordination and their main difference from framework agreements is that they are not binding. The scope and content of a ‘framework of actions’ may be open to varying interpretations by the employers and trade unions (as in the case of the framework of actions on employment, to be negotiated in the 2006-2008 work programme).

The programme for 2006-2008 also makes provision for studies on restructuring in the EU (2), capacity building for social dialogue in the new Member States and candidate countries, and the development of a common understanding of the instruments of social dialogue. The programme almost failed to hold out any hope of a framework agreement, but the ETUC made this a precondition for its adoption. Thus there is an undertaking to negotiate such an agreement by 2008, but its subject matter has not been finalised.

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2 The previous work programme arranged for joint studies on restructuring in the new Member States. These studies resulted in the publication of the summary report entitled ‘Study on restructuring in new Member States’ (ARITAKE-WILD, 2006). The new work programme therefore relates to the ‘old’ Member States.
1.1 Content of the 2006-2008 work programme

The social dialogue work programme for 2006-2008 is explicitly centred on the Lisbon Strategy (3). Although the European Union deemed the mid-term review of that Strategy disappointing, to put it mildly, the social partners wish to make their own contribution to it. They undertake to carry out a joint analysis of the key challenges facing Europe’s labour markets, looking at issues such as:

- macro-economic and labour market policies;
- demographic change, active ageing, youth integration, mobility and migration;
- lifelong learning, competitiveness, innovation and the integration of disadvantaged groups on the labour market;
- the balance between flexibility and security;
- undeclared work.

These joint analyses, conducted by a working group of the Social Dialogue Committee set up on 28 June 2006 (4), will serve as a basis for the adoption of joint recommendations to be made to EU and national institutions, but also for the negotiation of reciprocal commitments (a framework of actions on employment and an autonomous framework agreement on either the integration of disadvantaged groups on the labour market or lifelong learning). Also in the context of this work programme they embarked on – and have concluded – the negotiation of an autonomous framework agreement on harassment and violence (see below). Finally, the social partners undertake to:

- complete the national studies on economic and social change and on that basis promote and assess the ‘reference guidelines’ on managing change and its social consequences (this is a document adopted on

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3 Aimed at turning Europe into the most competitive knowledge-based economy in the world, capable of sustainable economic growth, with more and better jobs and greater social cohesion.

4 This working group was replaced in December 2006 by a ‘drafting group’, scheduled to meet during the first quarter of 2007.
16 October 2003 containing guidance and good practice for managing restructuring in a socially acceptable manner, but which has not been formally adopted by the ETUC Executive Committee – see section 5 below), as well as the joint lessons learned on European works councils (adopted on 7 April 2005);

- continue their work of capacity building for the social dialogue in the new Member States, extend it to candidate countries, and examine how to strengthen the employers’ and trade union resource centres (these centres provide technical assistance to the social partners in EU countries);

- report on the implementation of the ‘telework’ and ‘work-related stress’ agreements (adopted on 16 July 2002 and 8 October 2004 respectively) and on the follow-up to the framework of actions on gender equality (22 March 2005) \(^5\).

Basing themselves on these reports, the social partners undertake to further develop their common understanding of these instruments and how they can have a positive impact at the various levels of social dialogue. At the request of the ETUC, this work programme does not constitute an exhaustive list. The social partners may in principle decide to update it as time goes by; nor does it in any sense prejudge whatever formal consultations the Commission may open on European social initiatives.

1.2 A partial assessment

Over the past ten years, the social dialogue has tended to generate an increasing number of joint initiatives (agreements, frameworks of actions, joint analyses, joint recommendations, national studies, seminars, implementation reports, initiatives to assist the development of social dialogue etc.). There has in addition been an expansion in the range of topics covered (gender equality, stress, harassment and violence, etc.).

\(^5\) A report was drawn up on the implementation of the ‘stress’ agreement in 2006 (ETUC, UNICE/UEAPME and CEEP, 2006b). As for the framework of actions on gender equality, its first follow-up report was adopted by the Social Dialogue Committee at its meeting on 7 November 2006. It is to be published in 2007.
What is also noticeable is a decline in – or even the demise of – framework agreements transformed into directives, coupled with the affirmation by players in the social dialogue of a desire for autonomy. Yet that autonomy still appears somewhat formal: the work programme is entirely inspired by the strategic priorities of the EU. At this stage, it is hard to identify precisely what new room for manoeuvre this autonomy has created.

As concerns the new instruments devised since the early years of this decade (frameworks of actions and autonomous agreements), the 2006-2008 work programme identifies a need to develop a common understanding of them. Thus the social partners are still at the stage of needing to agree on the precise scope of documents which they have negotiated and adopted. The adoption of the implementation report on telework (see below) testifies to this desire for clarification.

Even though the trade union side very much wants to tackle more substantive issues by means of more binding instruments, there is nothing pushing the cross-industry social dialogue in that direction at present. Having published an interesting communication in 2004 on clarifying the fruits of social dialogue (CEC, 2004), the Commission appears to have listened to the criticism from UNICE, which accused it of being ‘excessively administrative and interventionist’ (UNICE, 2004: 1). Since then, the Barroso Commission has withdrawn to the sidelines, not so much out of a desire to respect the autonomy of the social partners as due to its political priorities: economic competitiveness is now at the top of its agenda.

2. Agreement on harassment and violence at work

Harassment and violence in the workplace is a subject on which there is a high degree of consensus between European employers’ organisations and trade unions (6). This consensus rests on the principle that mutual

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6 We would recall the signature in 1995, at sectoral level, of the ‘EuroCommerce and EURO-FIET statement on combating violence in commerce’ (9 March 1995). Commerce is a sector particularly vulnerable to violence in the workplace, but it is mostly a matter of so-called ‘external’ violence (crime, theft, hold-ups etc).
respect and the dignity of employees are social values and also necessary economic conditions for the smooth operation and productivity of companies. So, in the name of employee well-being and competitiveness, labour and management share the belief that joint measures are needed to counter harassment and violence.

A recent study by the International Labour Office (ILO) reveals that new forms of violence have arisen in the workplace (Chappell and Di Martino, 2006; see also ILO, 2004). This study shows in particular that pressure, harassment and intimidation at work are very widespread in the EU 15. In Germany, for instance, the number of workers who are victims of ‘mobbing’ (psychological violence often involving a group of workers targeting a colleague) is estimated at more than 800,000. In Spain, 22% of civil servants are thought to fall prey to mobbing. In France, there is a growing number of assaults on transport sector workers, including taxi drivers. According to Maria Helena André, the principal ETUC negotiator for the European social dialogue, this phenomenon is especially significant because we are witnessing an increase in instances of harassment and violence due, in her opinion, to ‘the worsening of working conditions and the workplace environment’ (ETUC, 2006: 11).

The purpose of the European negotiations was to determine a Community context for combating such phenomena. The 2003-2005 work programme included the holding of a joint seminar on harassment at work, possibly with a view to an autonomous framework agreement. In spite of this, the Commission opened an initial round of social partner consultations on this topic on 17 January 2005, thereby placing the negotiation of the agreement into the framework of the procedures laid down by the Treaty. The social partners held their joint seminar in Brussels on 12 May 2005. Their aim was to examine together the ways in which violence at work is handled in national practice, and to decide whether or not there was a basis for tackling the problem at European level (for more details on this preliminary phase, see Degryse, 2006).

2.1 Starting positions

The ETUC expressed a preference for joint action at European level to complement existing collective agreements, legislation and national
regulations. It insisted from the outset on the definition of ‘violence’ to be used: physical violence, bullying and/or psychological abuse, and sexual harassment. Violence in the workplace, according to the ETUC, is connected with aspects of work organisation – colleagues or superiors –, the working environment and the type of work performed, but it can also be external and come from clients, visitors to the company etc. (particularly in certain sectors such as Horeca, transport, public administration and commerce). While insisting on preventive measures, the trade unions wanted the question of violence at work to be linked to health and safety legislation, as well as to gender equality and anti-discrimination legislation. After all, the commonest victims of harassment and violence are specific groups: women, young people, immigrants etc.

UNICE, for its part, did not see the point of drawing up specific European legislation in this field. Workplace violence, in its opinion, is connected not with health and safety but with human resource management, an area over which the EU has no authority. Furthermore, the employers believed the scope and diversity of European and national legal systems to be adequate to cover the issue of violence at work, either directly or indirectly (7). They nevertheless thought that it might be useful to discuss with the trade unions the various forms of violence at work, their sources and frequency, but also false accusations and how to deal with them.

2.2 The negotiations

Thus it was that, armed with a consensus on the need to combat violence at work but divided on the legal bases and instruments to be used, the social partners decided in late 2005 to embark on negotiations with a view to an autonomous framework agreement. The talks began on 7 February 2006. It took about ten meetings, between then and December, to reach a compromise. On the whole, the content of the agreement poses no problem to either side, apart from one specific point: ‘external’ violence, i.e. perpetrated outside of the workplace or by third parties (clients of the company etc.). The ETUC’s negotiating mandate was absolutely clear in this regard: there would be no agreement at all unless external violence was covered. UNICE found itself in exactly the opposite situation: the employers categorically refused to include external violence in a cross-industry agreement, believing that this matter could if necessary be dealt with at sectoral level, as was the case in the commerce sector in 1995.

Each side was under strict instructions, and the negotiating sessions ground to a complete halt at the meeting on 25-27 October. The most likely scenario throughout the month of November and into early December was outright failure. But such a prospect was equally unsatisfactory for the ETUC negotiators and for those of UNICE, neither side wanting to scupper the agreement on this one point. So they returned to their respective bodies – the Executive Committee and the Committee of Presidents – to report back on the situation and investigate a possible change of mandate. That was not granted, but the negotiators were allowed a broader margin of interpretation. Contrary to all expectations, a sufficiently vague form of words was found in mid-December, on which all parties finally managed to agree: ‘Where appropriate, the provisions of this chapter can be applied to deal with cases of external violence’. One of our interviewees believes that drafting the text in English (the working language having previously been French) made it possible to avoid being too precise. How then will ‘where appropriate’ be translated into other languages?

Be that as it may, the agreement was finalised on 14 December 2006. Following approval by the relevant bodies, it was to be officially signed in March 2007 despite a lack of support from the German confederation.
The DGB thought the compromise less ambitious than the existing directives and too remote from the negotiating mandate. (Let us not forget that the DGB - for the same reasons - also withheld its backing from the agreement on work-related stress, concluded in 2004).

2.3 Content of the agreement

The introduction to the agreement states that all the signatories condemn all forms of harassment and violence. Those forms may be physical, psychological and/or sexual; they may be one-off incidents or more systematic patterns of behaviour. Incidences may occur amongst colleagues, between superiors and subordinates or be caused by third parties such as clients, customers, patients, etc. The stated aim of the agreement is two-fold: first, to increase awareness and understanding of this phenomenon among employers, workers and their representatives; second, to provide those same parties with an action-oriented framework to identify, prevent and manage problems of harassment and violence at work.

The text goes on to describe harassment and violence in two states (facts and effects). A distinction is drawn between harassment (repeated and deliberate abuse, threats and/or humiliation in circumstances relating to work) and violence (assault in circumstances relating to work). The second part of the description concerns the purpose or effect of harassment and violence: violating a worker's dignity, affecting his/her health and/or creating a hostile work environment.

The agreement then examines methods of preventing, identifying and managing these problems. Reference is made to raising awareness and appropriate training of managers and workers, a clear company statement outlining that harassment and violence will not be tolerated, and specifying procedures to be followed where cases do nevertheless arise (in particular the appointment of a contact person to give advice and assistance). The employers and employees also agreed suitable procedures, which will include but not be confined to the following:

- proceeding with discretion to protect the dignity and privacy of all;
- no information to be disclosed to parties not involved in the case;
- complaints to be investigated and dealt with without undue delay;
- all parties involved to get an impartial hearing and fair treatment;
- complaints should be backed up by detailed information;
- false accusations should not be tolerated and may result in disciplinary action
- external assistance may help.

If it is established that harassment and violence has occurred, ‘appropriate’ measures will be taken in relation to the perpetrator. This may include disciplinary action up to and including dismissal. The victim will receive support and, if necessary, help with reintegration. These procedures will be periodically reviewed and monitored to ensure that they are effective. Finally, ‘where appropriate’ (see above), the provisions of this chapter may be applied to deal with cases of external violence.

2.4 Implementation and follow-up

The implementation and follow-up provisions contained in the agreement are as follows:

- in the context of Article 139 of the Treaty, the agreement will be implemented in accordance with the procedures and practices specific to management and labour in the Member States (and in the countries of the European Economic Area: Norway, Iceland, Switzerland and Liechtenstein). The countries applying for EU accession (Turkey, Croatia and Macedonia) are also invited to implement the agreement;

- the timeframe for implementation of the agreement is three years after the date of its signature (2010). Organisations affiliated to the European social partners will report on the implementation of this agreement to the Social Dialogue Committee. During the first three years, the Social Dialogue Committee will prepare and adopt a yearly table summarising the ongoing implementation of the agreement;

- a full report on the implementation actions taken will be prepared and adopted by the Social Dialogue Committee during the fourth year (in 2011);

- after 2012, the signatory parties may review the agreement at any time, if requested by one of them;
- in case of questions at national level on the content of the agreement, member organisations of the ETUC, UNICE or the other signatories may jointly or separately refer to the signatory parties, who will jointly or separately reply;

- when implementing the agreement, the national organisations will avoid placing ‘unnecessary burdens’ on SMEs.

The agreement concludes with a non-regression clause stating that implementation of the agreement does not constitute valid grounds to reduce the general level of protection afforded to workers in the field of the agreement. Nor does it prejudice the right of social partners to conclude, at any level, agreements adapting and/or complementing this agreement in a manner which will take note of the specific (e.g. sectoral) needs of the social partners concerned.

2.5 A partial assessment

We shall attempt below to carry out a partial assessment in respect of a) the procedure whereby the agreement was negotiated, b) the choice of instrument used and c) the content of the agreement itself.

a) Concerning the negotiating procedure, the main question relates to the role that the Commission chose to play in this regard. Let us not forget first of all that the social partners’ 2003-2005 work programme included the holding of a joint seminar on harassment at work with a view to a possible autonomous agreement. This topic, therefore, was one which the two sides of industry were preparing to address autonomously. The Commission, pre-empting the start of those talks, initiated a preliminary round of formal consultations on this very same topic on 17 January 2005. Presumably, by so doing, the Commission wished to bring these negotiations into the realm of the procedures laid down by the Treaty - which is indeed what then happened. But these procedures imply that the Commission must have in reserve a Community action plan on the topic in case the negotiations are unsuccessful. However, when in November 2006 it became plain that the negotiations were about to break down, the Commission - according to our information - had no alternative plan. So what was the reason for the formal consultation in January 2005? One cynical answer
to this question would be that the social partners were, indirectly, giving
the Commission an opportunity to launch a (rare) initiative in the field
of social affairs without risking anything politically. This was the second
time that a Commission ‘consultation’ had not been accompanied by a
Community action plan (the first being the consultation in 2005 on
restructuring and European works councils; see on this subject Degryse,
2006). When the guardian of the Treaties takes liberties with the
provisions of those Treaties, it serves to weaken the European social
dialogue which, as several authors have shown, needs to take place ‘in
the shadow of the law’ if it is to be fully effective.

b) Concerning the choice of instrument, i.e. an autonomous agreement,
we find ourselves here with an arrangement that is less binding than a
framework agreement intended to have legal force (transformed into a
directive), but more binding than a mere ‘framework of actions’ (linked
to the open method of coordination). The choice of this instrument can
no doubt be explained by the fact that certain countries have already
adopted specific legislation on violence at work; others cover this issue
in non-specific legal texts (criminal law, civil law, legislation on health
and safety in the workplace, non-discrimination); still others have
collective agreements or regulations on the topic. Presumably it was not
a matter of priority to add a European directive on this subject, but
rather to contribute to identifying, preventing and managing the pheno-
menon in practice, in the workplace. From this point of view, the choice
of an autonomous agreement would appear justifiable in this particular
instance.

c) Finally, concerning the content of the agreement itself, this posed
hardly any problems apart from the question of external violence. The
social partners agreed on the definitions of harassment and of violence,
on refusing to tolerate such phenomena, and on the procedures to be
implemented - including in SMEs - to prevent, identify and manage the
problems arising from them. External violence is included too, but in a
sufficiently vague form to make a compromise achievable. Everything
will no doubt depend on the (re-)interpretation given to this paragraph
when it is translated into the various EU languages. The implementation
and follow-up provisions, for their part, are absolutely identical to those
laid down in the ‘work-related stress’ agreement of 2004. Last of all, we
cannot fail to mention the fact that Europe’s most powerful trade union confederation, the DGB, refrained from backing the final compromise because of its lack of ambition. The real impact of this document on the situation of employees in the workplace will need to be assessed four years from now.

3. First joint report on implementation of the ‘telework’ agreement

The development of information technology and networks (e-mail, videoconferencing, internet telephony etc.) has had a considerable impact on the labour market. The number of teleworkers in Europe is estimated to have risen from 4.5 million in 2002 to almost 15 million today (8). This trend poses a number of questions: what is being done about teleworkers’ working conditions and health and safety standards? Who is responsible for providing, installing and maintaining equipment? And so on. To try and find a joint answer to these questions, the European social partners began in October 2001 to negotiate a framework agreement on telework. The agreement was signed on 16 July 2002, and its content is generally regarded as impressive. Indeed, the text sets out the parties’ rights and obligations as concerns data protection, respect for the privacy of the teleworker, equipment (provision, installation, maintenance and technical support), communication costs, health and safety, organisation of work, training, and also teleworkers’ collective rights.

Above and beyond its content, however, the very nature of the ‘telework’ agreement began to raise questions as from 2002. Owing to pressure from UNICE, this is not in fact a classic *erga omnes* agreement, transformed by the European institutions into a binding directive subject to legal scrutiny. Rather, it was the first ‘voluntary’ agreement in accordance with the social provisions of the Treaty. As stated above, framework agreements signed by the European social partners may be

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8 Although telework is more widespread in some sectors, such as telecommunications, 6% of all European workers are believed to telework for at least 10% of their working time.
implemented 'either in accordance with the procedures and practices specific to management and labour and the Member States or, [...] at the joint request of the signatory parties, by a Council decision on a proposal from the Commission' (Article 139(2) EC). After three framework agreements had been implemented by decisions of the Council (on parental leave in 1995, on part-time work in 1997, and on fixed-term work in 1999) (9), the method chosen for the telework agreement was 'procedures and practices specific to management and labour and the Member States'. In other words, implementation of the text is a matter for the member organisations of UNICE, ETUC, CEEP and UEAPME. The unknown quantity was whether the provisions of the agreement would be observed, monitored and followed up in the same way in all Member States, and for all workers. The national social partners do of course bear the main responsibility for proper enforcement of such measures, yet they are not as strong or as representative in all countries (especially in the new Member States, where trade union membership rates are still low and where in some cases the employers’ organisations are very fragmented).

At the meeting of the Social Dialogue Committee on 28 June 2006, the social partners adopted their first report on the implementation of the ‘telework’ agreement. The report was presented to Commissioner Špidla on 11 October (ETUC, UNICE/UEAPME and CEEP, 2006c). Although everyone was delighted that virtually all the Member States (apart from Cyprus, Slovakia, Estonia and Lithuania), as well as Iceland and Norway, had implemented the agreement in accordance with their respective traditions, several questions remained unanswered. For instance, in Belgium the European agreement has been transformed

into a collective agreement (No. 85), signed on 9 November 2005. It lays down the principles governing telework in Belgium, spelling out the voluntary nature of the agreement and the fact that a written contract is required. Other provisions cover working conditions and aspects relating to work organisation, equipment, data protection, health and safety, training, collective rights etc. Seven other countries likewise chose to go down the road of national and sectoral collective agreements: France, Italy, Luxembourg, Greece, Iceland, Denmark and Sweden. Certain countries chose to bring in the agreement by means of legal texts. This was the case above all in eastern European countries – the Czech Republic, Hungary and Poland - where new provisions were introduced into the Labour Code. Finally, in other countries (United Kingdom, Ireland, Norway, Latvia), the European agreement was transposed by means of 'guides', 'guidelines' or 'codes of conduct'. It should be noted that this follow-up report relates only to the method of transposition selected at national level, and not to the quality or effectiveness of implementation of the provisions contained in the agreement.

A partial assessment

Entrusting the national social partners with responsibility for implementing the ‘telework’ agreement has led to three main methods of transposition at national level: collective agreements, legal texts and codes of conduct (the fourth scenario being no transposition at all, as has happened in four countries). Whereas the desire to respect the Member States’ national traditions and practices may be welcomed, assurances are needed that, whatever those traditions may be, the provisions of the agreement are fully complied with in all Member States and for all workers. Differences in the method of achieving objectives are all very well, but the objectives themselves must be the same. And there can be no denying that one of the three methods of transposition provides no such formal guarantee. Over and above the great difficulty, if not the impossibility, of ensuring that a code of conduct or guide is complied with, such an instrument cannot be enforced by the courts. Thus the application of the agreement does not have the same legal force everywhere. Given that the implementation of the agreement’s provisions has not been evaluated, it is too soon to
assess the true impact of the agreement on the situation of teleworkers in Europe. In any event, several questions still remain open-ended; they will in principle be examined under the European social partners’ work programme for 2006-2008. That will be a particularly useful investigation, in that other autonomous agreements have been signed in the meantime: in 2004 on work-related stress, in 2006 on the protection of workers exposed to crystalline silica, and in 2007 on violence at work.

4. Final evaluation report on the lifelong development of competencies and qualifications

The choice of lifelong learning as a topic is linked to the fact that 80 million people in Europe are regarded as being low-skilled. Besides, companies fear that owing to population ageing they will be confronted with a skills shortage in the future. Skills enhancement is therefore in the interest of both employers and employees. The social partners decided in 2002, at the request of the Council and Commission, to broach this issue experimentally in the social dialogue, and, for the first time, to do so via the open method of coordination. Thus the cross-industry social partners adopted in 2002 a ‘framework of actions for the lifelong development of competencies and qualifications’. The document sets out guidelines addressed to companies and to the national social partners, in an effort to help them incorporate four priorities defined at European level into their national practices:

- identify and anticipate the competencies and the qualifications needed at enterprise level (human resources, social dialogue, management, individual development plans etc.) and at national and/or sectoral level;

- recognise and validate competencies and qualifications (improving transparency and transferability, both for the employee and for the enterprise, in order to facilitate geographical and occupational mobility and to increase the efficiency of labour markets);

- informing, supporting and providing guidance to support employees and enterprises in their choices of learning lifelong, opportunities for career evaluation, learning possibilities etc.;
- mobilising resources at the level of public authorities, enterprises and employees (via company and personal taxation, and the European Structural Funds).

The framework of actions is not a binding text, but rather an invitation to abide by the same referents throughout the EU. The social partners nevertheless decided that the actual scope of the document would be analysed in four evaluation reports, for the purpose of assessing follow-up procedures between 2003 and 2006 (informing the relevant players at European and national level, initiatives taken in this context etc.). The fourth report (2006) is intended in addition to gauge the impact of the framework of actions on companies and on employees, so as to update the priorities where appropriate.

This fourth and final report, written in January 2006, was presented on 19 May to the troika of Education Ministers and to the European Commissioner responsible for Education (10). Its 128 pages review the actions carried out in 21 Member States (the 25 minus Malta, Latvia, Estonia and Slovakia), as well as making an overall evaluation of the main trends (ETUC, UNICE/UEAPME and CEEP, 2006d). In the report, the social partners study the impact of some 350 initiatives conducted at national level, 108 of them geared to identifying skills requirements, 89 to finding ways of validating competencies, 53 to informing and guiding companies and workers, and 100 to mobilising resources. More than 70 of the initiatives analysed relate to examples of corporate good practice and 280 concern social partner initiatives at sectoral or national level.

A partial assessment

One of the benefits customarily associated with using the open method of coordination in the social dialogue is that it strengthens the links between the European and national, sectoral and cross-industry levels. Thus the Commission notes in its Industrial Relations in Europe report for 2006 (CEC, 2006: 111) that ‘strengthening the links with other levels of social dialogue, mainly national and sectoral, but also in companies’

should make it possible to ensure ‘proper implementation of the so-called ‘new generation texts’, i.e. instruments used by social partners which they undertake to follow-up themselves, rather than relying on the EU institutions and Member States’.

In principle, frameworks of actions involve all the players in an exercise they have jointly framed at European level. Exchanging information, experiences and ‘innovative’ practices can in fact contribute to shared learning - especially, no doubt, in the new Member States which generally speaking have less experience of bipartite social dialogue. It would appear, however, that to view all these initiatives as outcomes of the framework of actions would be going too far (11). So it would seem hard to assess the precise impact of this exercise in all the different countries. Would there have been fewer initiatives if the European text had not existed? Finally, this method is very procedural (framework of actions, guidelines, evaluation reports etc.) and demonstrative (reporting back to the European institutions on the social partners’ commitment to make their contribution to pursuing the Lisbon objectives). Whether or not its added value is truly substantial or else hypothetical is another matter.

5. UNICE report on social partners’ activities on restructuring and managing change

There has been a recent revival of interest in the debate about restructuring in Europe (on this subject, see the chapter by Marie-Ange Moreau in this volume). In 2002, an initial round of social partner consultations was launched by the Commission: it resulted in 2003 in the drawing up of a set of joint ‘reference guidelines’ by the social partners, i.e. a document setting out guidance, factors of success and good practice to be used in managing the social consequences of company restructuring (for the content, see Degryse, 2003). The document was not formally adopted by the ETUC Executive Committee, however, and so cannot be regarded as a joint text - still less as an

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11 For example, one ‘national’ player we interviewed explained that what they did, when drafting the reports, was to see which of the initiatives taken (in any case) could be ‘tied into’ to the European guidelines.
agreement between the social partners. Consequently its status remains uncertain, to say the least.

In March 2005, the Commission adopted a communication on restructuring and employment, which also constituted the second phase of its social partner consultation on company restructuring and European works councils, pursuant to Article 138 of the TEC (CEC, 2005). The communication calls on the European social partners - particularly at sectoral level - to examine the issue of anticipating structural change, and to play a part in informing and warning the public authorities at all levels. In addition, it encourages the social partners to adopt the ‘reference guidelines’ (CEC, 2005: 12). The ETUC Executive Committee immediately levelled criticism at this communication because, contrary to the stipulations of the Treaty, the Commission was not in fact ‘consulting’ the social partners on a legislative initiative; it was merely encouraging them to adopt a document they had drawn up themselves and to promote best practice. The Commission’s initiative enabled UNICE, for its part, to believe that its duty had been done in terms of managing the social consequences of restructuring. The reference guidelines, in its opinion, were a satisfactory instrument (UNICE, 2005).

Thus, on 23 March 2006, UNICE alone adopted a report on managing change. The report makes explicit reference to the 2003 document not adopted by the ETUC Executive Committee, and to the joint ‘lessons learned’ on European works councils in 2005 (12) (ETUC, UNICE/UEAPME and CEEP, 2005). According to the European employers, ‘Even if these two joint texts do not contain specific follow-up provisions, their adoption by UNICE and its member federations included a commitment to promote them across the European Union. The purpose of the present report is to show how the factors for success identified were integrated in the social partners’ activities at European, national, sectoral or company level. UNICE believes that the Work Programme of the European Social Dialogue 2006-2008 offers an

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12 The social partners adopted on 7 April 2005 a joint document entitled ‘Lessons learned on European Works Councils’ (see Degryse, 2006).
opportunity for ETUC and its members to join in this exercise of identification of good social partners’ practices for change management and for promotion of the joint European social partners’ texts’ (UNICE, 2006: 3).

This report also constitute a partial response from the employers to the Commission’s second consultation. UNICE states that, ‘The aim of the present report is to show how social partners at national, regional, sectoral and company level have made use of the key success factors identified in these two texts. Almost thirty good practice examples in twenty-three countries have been selected amongst the most relevant social partners’ initiatives. These examples illustrate:

- how social partners have raised awareness of the European social dialogue texts at national, sectoral and company levels, and

- how they have promoted the key success factors identified through different initiatives. Social partners’ actions aiming at explaining the reasons for change and enhancing its acceptance, at managing change processes and their social consequences as well as at developing the employability of workers are described.

[…] The report demonstrates the commitment of UNICE and its member federations to promote the results of the European Social Dialogue across the European Union’ (UNICE, 2006: 2).

A partial assessment

We therefore find ourselves in the odd situation where the employers’ side is calling on its trade union counterparts to participate in implementing and following up a document on restructuring to which it alone has signed up. It is an odd situation, but also an uncomfortable one for the ETUC which, in the absence of any initiative from the Commission, has no means whatsoever of engaging the employers in more substantive negotiations. The case of restructuring is symptomatic of the fragile balance between the players in the social dialogue: the Commission stops playing the role assigned to it by the Treaties, and the equilibrium of the social dialogue is destroyed. In this instance, the weakness in the social dialogue has been caused by the Commission’s dereliction of its duties.
Conclusion

2006 has given us an opportunity to step back a little and examine the recent outcomes of cross-industry social dialogue: work programmes, autonomous agreements, the open method of coordination etc. We have attempted in this chapter to make a partial assessment of each of the live issues arising in 2006. On this basis, we shall now try to produce a more general appraisal of European cross-industry social dialogue. Our appraisal encompasses five elements: the overall political climate in which the dialogue takes place; the role of the Commission and autonomy of the social partners; progress made in the subject areas concerned; the instruments selected; and, last of all, the initial practical effects of enlargement.

1) As far as the overall political climate is concerned, it is no longer favourable either to the development of a dynamic social dialogue or to the production of collective agreements - or even to the output of social legislation in general. Now that the political priority is corporate competitiveness in connection with the economic part of the Lisbon Strategy, it has to be admitted that social legislation is regarded as a hindrance, a cost, a burden, and no longer as a complement to the expansion of the internal market (the debate about the revision of the ‘working time’ directive is symptomatic in this regard – see the contribution by Laurent Vogel in this volume). Whereas the European institutions originally sought to encourage social dialogue as an alternative to social legislation at a time when the British Conservatives were blocking all legislative initiatives, nowadays the institutions seem not to want to promote either the one or the other. Of course, some will say, in view of enlargement it is advisable first of all to consolidate the existing directives before proposing new ones. But within the Commission it is becoming increasingly apparent that the opponents of legislation have rushed into the breach. As one of our interviewees put it, ‘[the Commission] has nothing left up its sleeve!’ in the field of social affairs. And when it does propose initiatives, they tend to be one-sided preliminary compromises, close to the employers’ position, devised in the name of European competitiveness. This general environment has a detrimental effect on social dialogue: given that the ‘shadow of the law’ is absent, the employers’ side ‘is sitting pretty’, according to one of our
interviewees. There is no pressure at all on UNICE. The agreement on violence was essentially concluded, on the employers’ side, thanks to a few individuals without whom, probably, no compromise would have been reached. There can be no certainty that these circumstances – the presence of those individuals – will last. Let us not forget that the ETUC had to insist that the negotiation of at least one framework agreement (over three years) be included in the new work programme.

2) With regard to the Commission’s evolving role and the autonomy of the social partners, the players have been visibly distancing themselves from one another. Although the Commission is to a certain extent exercising its role as facilitator of the social dialogue, it no longer has any meaningful input. At the very most, in our opinion, the Commission uses social dialogue as a talking-point to mask its own indigence in the field of social affairs. The social partners quite naturally wish to be more ‘autonomous’ of the Commission and to set their own negotiating agenda. But such autonomy in respect of planning must not cause the Commission to take a back seat in negotiations on the topics addressed. We should remember that the Treaty stipulates: ‘the Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties’ (Article 138(1) EC). But nowadays, some observers believe, the Commission ‘no longer has any impact on the substance of negotiations; it is totally out of the loop’.

3) It follows from the above that the topics addressed in the social dialogue are increasingly peripheral. Whereas in the 1990s, various aspects of labour market flexibility were dealt with in a win-win perspective (part-time work, fixed-term contracts etc.), the topics now being addressed (stress, violence etc.) – regardless of their intrinsic interest and topicality – seem to be out of sync with the social issues of specific concern in Europe, such as ‘flexicurity’, restructuring and relocation. And when more substantive topics are indeed broached, such as restructuring, the results of the talks are so lacking in ambition that the ETUC’s affiliates pour scorn on them.

4) Not since 1999 has European social dialogue produced a framework agreement that has been extended erga omnes. This phenomenon is
connected with the previous points: an overall climate unfavourable to a strengthening of social legislation, a balance of power unfavourable to the trade union side, a retreat by the Commission, and so the list goes on. Much use is now being made of the new instruments of social dialogue (especially autonomous agreements and the open method of coordination), but confusion still remains as to their true scope, not least from a legal point of view. Does an autonomous agreement form part of the *acquis communautaire*? How would the European Court of Justice rule if a national court were to consult it about compliance with the provisions of such an agreement? The question as to the scope of autonomous agreements and frameworks of actions also arises in practice, of course: what is the state of play concerning their implementation and follow-up, not in terms of transposition procedures but as regards compliance with their provisions? Do Europe’s employees benefit on a daily basis from the joint texts on lifelong learning, stress, gender equality, and harassment and violence? The ETUC in particular is wondering whether, if no tangible benefits are achieved for employees, there is any point in continuing. Why carry on negotiating documents which do not even go as far as the ‘joint opinions’ of the 1980s?

5) The negotiations on the ‘harassment’ agreement are the first ones in which the social partners from the new Member States have been fully involved. Enlargement would seem at first sight to have had two effects: firstly, negotiations among 25 (or 27) countries are more cumbersome and more complex to conduct; secondly, the trade union partners from some of the new countries (e.g. Poland and Hungary) have brought a fresh impetus. On the former aspect, negotiations with 25 participants are quite a different matter from negotiations with 12 or 15, where everyone knows each other and where it is possible to work in a well-established spirit - even tradition - of negotiation. With 25 parties, it is no longer possible to go into the details of an agreement, so that the agreement itself can do no more than set out a general framework. As concerns the working method, there is less negotiation in the true sense of the term, and more presentation of respective positions. There is no longer a select forum where issues and problems can be discussed down to the last detail. ‘It is more a matter of role-play’, one witness told us, and that applies in respect of both the opposite side and his/her
own troops. What is lacking is an impartial third party, the role previously played by the European Commission. It would surely be useful in this regard to consider once again the possibility of setting up a permanent secretariat for European social dialogue, along the lines of the Belgian National Labour Council (CNT), to act as arbiter and notary, keeping a record of agreements.

With respect to the impact of enlargement on the social partners themselves, it seems in particular that UNICE is less well organised than the ETUC vis-à-vis its new members. While UNICE’s new members are still somewhat passive, if not dominated by the old members, the new ETUC affiliates are active, feeding in their expertise, insisting on high-quality, ambitious texts, demanding procedures for implementation and follow-up in their countries, etc. Thus the Polish, Hungarian and Baltic trade union movements have thrown themselves into the negotiations with enthusiasm. This is the first agreement where enlargement has really brought something new to the negotiations. Conversely, European social dialogue can lay the foundations for developing and strengthening bipartite social dialogue in the new Member States, by means of autonomous agreements and the open method of coordination.

We should mention, in closing this chapter, that even though European social dialogue is in crisis, it is nevertheless the source of all the major social initiatives of the past few years. The Barroso Commission appears to have downed tools on social legislation; the Member States no longer have faith in the open methods of coordination launched in the wake of the Lisbon Strategy, which have certainly not proved their worth. If social dialogue were to cease, in a context such as this, Social Europe would undoubtedly lose the only driving-force it still has left.

References


