European cross-industry social dialogue in crisis

Introduction

We shall attempt in this chapter to analyse the main developments in the European cross-industry social dialogue in 2005. We begin by giving our verdict on the 2003-2005 work programme which the social partners set themselves in 2002, before examining the framework of actions on gender equality and the European Commission’s consultation on company restructuring and European Works Councils. Next we turn to the launch of fresh negotiations on the subject of violence and harassment at work, along with the Commission consultation concerning the occupational health and safety directives, and also the joint submissions made by the social partners in 2005. Before closing the chapter we shall take a look at the social partners’ new work programme for 2006-2008.

This overview of European social dialogue, seen from a perspective of the past few years and of European Union (EU) enlargement, reveals a number of what we regard as significant changes: firstly, there has been a gradual transformation in the role of some of the players in this dialogue, with in particular a tendency for the European Commission to take a back seat; secondly, the general political climate has been inauspicious for the development of Europe’s social dimension.

1. Verdict on the 2003-2005 work programme

2005 was the final year of the first work programme jointly adopted by the social partners (for more details see Social Developments in the European Union 2002 and following). This programme covered the
years 2003-2005. Once the framework of actions on gender equality was adopted at the end of that period, in 2005, all the themes on the agenda had been addressed. Some items were still under discussion at the end of 2005.

The 2003-2005 work programme: state of play at 31 December 2005

<table>
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<th>Theme/calendar</th>
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2nd joint report finalised February 2005 and presented at the March 2005 Tripartite Social Summit |
| Lifelong learning (2003-2005) | 1st joint Follow up report 14/03/2003  
2nd joint Follow up report March 2004  
3rd joint Follow up report March 2005  
Overall joint evaluation report adopted by Social Dialogue Committee January 2006 |
Start negotiations: 18/09/2003  
Framework Agreement signed by ETUC-UNICE/UEAPME/CEEP on 8/10/2004  
ETUC Follow up project (start September 2005) |
Start negotiations: 01/12/2003  
Framework of actions signed March 2005 |
EU social partners text “Orientations for reference in managing change and its social consequences” (finalised 16/10/2003); the ETUC Executive only took note of the document. |
### European cross-industry social dialogue in crisis

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<tr>
<td>Harassment (2004-2005)</td>
<td>Issue also identified for eventual future negotiations in Framework agreement on Stress at work 1st Commission consultation on “Violence at work” (including harassment in all its forms) launched 23/12/2004; joint EU social partner seminar on 12/ May 2005, negotiations start 7/2/2006</td>
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<tr>
<td>Telework (2003-2005)</td>
<td>Information exchanges on new developments at each Social Dialogue Committee-meeting; ETUC/ETUI-REHS regular and ongoing own monitoring report</td>
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### ENLARGEMENT

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<td>Industrial relations (2003-2005)</td>
<td>Preparatory Project meeting: 9-10/12/2003; Start-off Conference: 9-10/01/2004 (Ljubljana); Several joint seminars were held in 5 new member states during 2004; next steps for 2005 are to expand the project to the other new member states and a second round of seminars in the “first group of countries” to evaluate the implementation of the adopted action plans</td>
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<td>Social dialogue (2003-2005)</td>
<td>“Enlarged” SDC meetings: 29/01/2003, 01/10/2003, 05/03/2004, as from 05/2004 full member of each meeting</td>
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Lifelong learning (seminar 2004/reporting 2005+)  Seminar May 2004


EU social and employment policies after enlargement (2004-)  Forms now part of reporting on employment guidelines and LLL (see above * and **)

**MOBILITY**

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Overall, therefore, the European social partners completed the programme which they had set themselves in 2002. The main objective of that programme, it will be remembered, was to make them more autonomous of the European Commission’s policy-making agenda when negotiating with their opposite numbers. The programme centred on the Lisbon agenda and on EU enlargement and, as such, represented a compromise between the views of the trade unions, who at that time wished the negotiations to be more binding (above all on restructuring, corporate social responsibility, data protection, etc.), and the views of the employers, who were more in favour of using the instruments provided by the open method of coordination (OMC).

Thus the years from 2003 to 2005 were devoted in the main to organising joint seminars, studies, reports and discussions. Negotiations as such were held on just three themes: the social consequences of restructuring (2003), stress at work (2004) and gender equality (2005).
What is more, only stress at work took the form of an “agreement” in the meaning of Article 139(2) of the EC Treaty. Since it was an autonomous agreement, the question of how its provisions are to be implemented and monitored remains somewhat open-ended, and it will not be possible to assess the quality of that implementation until 2007. As concerns the social consequences of restructuring, we should point out that the social partners, in a rather confused fashion, adopted a text (entitled “reference guidelines”) which is not legally binding and whose status and scope still remain far from clear. Furthermore, the ETUC Executive Committee merely took note of the existence of this document, by way of a “working basis”, considering that work on this topic was not yet complete. Finally, the third theme, namely gender equality (examined below), took the form of a framework of actions – modelled on the framework of actions for the lifelong development of competencies and qualifications – the instruments for which are borrowed from the open method of coordination: studying good practices; defining and disseminating priorities for joint action.

Assessment criteria

If the overall outcomes of the work programme were to be judged according to the binding nature of the texts adopted, its achievements could be considered rather meagre: not one framework agreement designed to be transposed into legislation, and just one autonomous framework agreement. Equally, if we look at this 2003-2005 programme in the broader context of cross-industry social dialogue since the entry into force of the Maastricht Treaty (1), its outcomes appear even more meagre: not a single binding instrument has been adopted since the conclusion of the legally enforceable framework agreements in 1995 (parental leave), 1997 (part-time work) and 1999 (fixed-term contracts). All of these elements raise questions about the future of negotiated legislation in the European Union. Nevertheless, the question of whether or not the texts adopted have binding effect is not necessarily the only yardstick. European social dialogue should be judged, more specifically, by the verifiable changes which it makes to labour relations.

1 The Treaty which marked the start of contractual relations between the European social partners.
in the workplace. And in this sense, the impact of the new instruments used by the social partners (autonomous agreements and frameworks of actions) has yet to be assessed.

Moreover, an assessment of the recent outcomes of European social dialogue must also take account of other aspects: efforts made to involve the relevant parties in the new EU Member States; extensions to the range of themes covered by this dialogue; and a desire to integrate more closely the European and national levels of dialogue.

2. Framework of actions on gender equality

The cross-industry social partners (ETUC, UNICE/UEAPME and CEEP) adopted a framework of actions on gender equality on 22 March 2005. This joint document was the fruit of negotiations launched in April 2004 and concluded in February 2005 (ETUC, UNICE/UEAPME and CEEP, 2005a). During this period the social partners examined a number of case studies and identified various practical measures and tools worth inserting into their document. Gender equality may seem to be a surprising topic for collective bargaining, in that both the European Union and the Member States have already adopted a substantial body of legislation in this area. In the minds of the social partners, however, the problem lies in implementing this legislation. Therefore the purpose of the text adopted, in their opinion, is to add an extra layer of compulsion. To this end they drew on current practices in various Member States and companies, and selected examples on which they could base their activities throughout Europe.

Four priorities for action were defined by these means and scheduled to be put into practice over a five-year period: addressing gender roles, promoting women in decision-making, supporting work-life balance and tackling the gender pay gap. Identifying these priorities was no easy matter, however, since they and the context surrounding them were not viewed in the same way by both sides of industry. As concerns addressing gender roles, for example, the European Trade Union Confederation (ETUC) would have liked to place more emphasis on the question of gender segregation on the labour market, whereas the Union of Industrial and Employers’ Confederations of Europe
(UNICE) wished to confine the talks to stereotypes. Another subject of divergence was labour flexibility in conjunction with the work-life balance. Whereas the ETUC sought to show that such flexibility needs to be negotiated in terms of both work organisation and working time, UNICE initially refused any explicit reference to such negotiations (and, more generally, to any other collective bargaining). But the principal difference of opinion related to the wage gap between men and women. This theme was a priority for the employee representatives, but the employers refused at first to include it in the framework of actions. More generally, the ETUC attempted in its negotiating stance to keep some coherence between the various priorities for action because, according to an internal document, “tackling the wage gap also means tackling gender segregation, in other words solving the problem of the work-life balance” (2).

Content of the framework of actions

The framework of actions takes the form of a reciprocal commitment by the social partners based on a joint analysis of priorities for action and of good practices. The range of actions contained in this text goes beyond what is strictly speaking the social partners’ field of responsibility and action: over and above the world of business, there are actions linked to the world of education, education authorities, parents, public authorities, nursery schools, social security systems, etc. Like the framework of actions on competencies and qualifications, the working method followed here borrows from the open method of coordination as applied to the social dialogue. The idea was to lay down “guidelines” at European level (the four priorities), adding to these the good practices identified as such, involving the various stakeholders in their implementation, in particular the national players (companies, public authorities, education authorities, etc.), and making provision for annual assessment reports possibly leading to an update of the priorities identified.

2  ETUC Executive Committee, Brussels, 15-16 March 2005, agenda item 7b.
The framework of actions has the following structure:

1. Social partners’ approach;
2. Challenges;
3. Priorities for action
   a) addressing gender roles;
   b) promoting women in decision-making;
   c) supporting work-life balance;
   d) tackling the gender pay gap;
4. Actions and follow-up.

Part 1 describes the common ground defined by the social partners for negotiation with respect to general principles. As stated above, the compromises reached between the European employers and employees can be found here.

Part 2, relating to challenges, draws a direct link with the Lisbon strategy. The main issues covered are numerical targets for the participation of women in the labour market, for employment rates and for narrowing the pay gap between men and women. The social partners assess the successes and failures so far in these areas, primarily on the basis of the Commission’s 2004 report on gender equality. They conclude that the female workforce is a key resource that tends to be under-utilised or undervalued, that anti-discrimination legislation exists but in itself does not bring about gender equality, and lastly that the social partners are determined to live up to their own responsibilities. To this end they “undertake to encourage social partners at all levels and in all EU countries to step up their involvement in devising and implementing integrated strategies in favour of occupational gender equality”, and to do so over the next five years (ETUC, UNICE/UEAPME and CEEP, 2005a: 4).

Part 3 contains the substantive part of the social partners’ reciprocal commitment. Sixty or so practical measures are set out below the four above-mentioned headings. There are too many to list them all, so we shall confine ourselves to showing only the chapter headings (see Box).
Key elements of the framework of actions on gender equality (2005)

1. Addressing gender roles
   - Non-gender biased education in schools, universities, non-stereotyped careers advice services;
   - attract young women into technical and scientific professions;
   - recruitment and retention of women and men in sectors and occupations where they are underrepresented better career opportunities for women;
   - promote equal opportunities for all employees throughout the employment relationship;
   - promoting entrepreneurship as a career option for both women and men;
   - competence development for adults to allow evolve in their careers throughout life.

2. Promoting women in decision-making
   - Competence-based gender neutral recruitment in enterprises;
   - retaining women in enterprises, to avoid loss of competence;
   - encouraging career development of both women and men;
   - promoting female entrepreneurship;
   - promoting women’s role in the social dialogue at all levels.

3. Supporting work-life balance
   - Flexible working arrangements that can be taken up on a voluntary basis by both women and men, designed in a way that does not undermine their long term participation and position on the labour market;
   - more balanced take-up of possibilities to ease work-life balance;
   - help increase the availability of accessible and affordable child care facilities of good quality and seeking innovative ways of providing essential private household or caring services.
4. Tackling the gender pay gap

- Informing about existing legislation on equal pay and giving guidance on how to help closing the gender pay gap at different levels;
- developing clear up to date statistics to enable social partners to analyse and understand the complex causes of pay differentials;
- ensuring that pay systems, are transparent and gender neutral and paying attention to the possible discriminatory effects of secondary elements of pay.

Source: ETUC, UNICE/UEAPME and CEEP (2005a).

Finally, Part 4 of the agreement concerns actions and follow-up. The text’s signatories undertake to promote the framework of actions in the Member States at all appropriate levels, and to transmit the document to all relevant players at European and national levels, including EU sectoral social partners, EU and national public authorities etc. As with the framework of actions on competencies and qualifications, they will draw up – for four years (until 2009) – annual reports on the actions carried out in the Member States on the basis of the joint text. The European Social Dialogue Committee will then be entrusted with the preparation of the overall European report. After four annual reports, the European social partners will evaluate the impact on both companies and workers. Then, if necessary, they will update the priorities and/or assess whether or not additional action is required.

3. Company restructuring and European Works Councils

There was a revival of interest in the debate about restructuring in 2005, owing to external factors such as the opening of the textiles sector to competition, the forthcoming liberalisation of the sugar sector, and also the more political debate about outsourcing and what is sometimes referred to as Europe’s “industrial decline”. These factors led the European Commission to adopt, on 31 March 2005, a Communication regarding restructuring and employment. This public document likewise constitutes the second phase of its consultation of the social partners on company restructuring and European Works Councils, under Article 138 of the EC Treaty (CEC, 2005). The Commission carries out a 14-
European cross-industry social dialogue in crisis

Social Developments in the European Union 2005 221

page analysis of restructuring, describing it as a “permanent reshaping of the fabric of production under the effect of numerous factors” (CEC, 2005: 3) (single market, international economic liberalisation, technological innovation, etc.). It has no intention of attempting to curb this phenomenon, which it regards as indispensable to the survival and development of businesses. What is more important is to “to accompany these changes in such a way as to ensure that their effects on employment and working conditions are at short-lived and limited as possible” (CEC, 2005: 3). Some parts of the Commission’s analysis make for interesting reading, especially when it notes that the costs and benefits of market opening (the benefits are deemed to be greater than the costs, according to unspecified “empirical studies”) are not evenly distributed in time or space, and that there is a “mismatch” (CEC, 2005: 5) between the types of costs and benefits. For this reason, among others, the Commission proposes the development of a Community capacity to intervene in a crisis and the establishment of a growth adjustment fund.

While recalling that restructuring is largely managed at sub-European level (national, regional and local), the Commission considers that the EU can nonetheless play a part by stepping up its coordination of European policies (cohesion, industry, competition, etc.), and by reforming the European employment strategy as well as the Community’s financial instruments (e.g. the role of the Structural Funds at times of crisis). The Commission likewise invites the European social partners, above all at sectoral level, to do more to anticipate structural change and to become involved in informing and alerting public authorities at all levels. Furthermore, for the first time ever the Commission uses a (public) Communication to launch a second phase of social partner consultations, this time on restructuring and on European Works Councils.

As concerns company restructuring, readers will remember that the Commission launched an initial round of consultations in 2002 (see Degryse, 2002). That resulted in 2003 in the joint definition by the social partners of a set of “reference guidelines”, i.e. a document setting out major strategies and good practices for handling restructuring in a socially responsible manner (see Degryse, 2003). The status of that document was uncertain and it was never formally adopted by the
ETUC Executive Committee. Now the Commission wishes to embark on a new phase aiming “to ensure that these guidelines are put into practice and developed further” and, in particular, to “encourage the adoption of these guidelines” (CEC, 2005: 11).

With respect to European Works Councils, the Commission initiated the first consultation in 2004, to which the social partners responded (see Degryse, 2004). Following on from that, the two sides of industry held some joint seminars with a view to conducting case studies and establishing some principles or guidelines based on those studies. Here too, the Commission calls on the social partners to promote “best practice in the way that European works councils operate, with a view to making them more effective, more especially as regards their role as agents for change” (CEC, 2005: 11).

Reactions of the social partners

The ETUC Executive Committee reacted to the Communication and to the Commission’s twofold consultation at its meeting on 14-15 June 2005 (ETUC, 2005a). Whereas on the whole it is pleased to see a reopening of the debate about restructuring and its social consequences, the Committee is more critical as to the procedure. In its opinion, the Commission was not really “consulting” the social partners about a legislative initiative but merely encouraging them to adopt a joint text on restructuring and to promote best practices in respect of Works Councils. The consultations should be based on a “proposal”, pursuant to Article 138 of the EC Treaty, but the Commission had not made any suggestions for revising the directive – even though it admitted that only 45% of the companies covered by the directive have established a European Works Council. In this context the ETUC recalls its longstanding demand that the present European Works Councils Directive be revised.

UNICE, for its part, was glad to see restructuring recognised as a process of adaptation to change which should not be impeded or prevented. It does not support the proposed creation of a Community capacity to intervene in a crisis, and expresses strong reservations as to

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3 The ETUC’s demands concerning the content of this revision are described in detail in Social Developments 2004.
the added value of a new forum on restructuring. With regard to the twofold consultation, the employers still believe, as they did in 2003 and 2004, that this is “neither desirable, nor necessary” (UNICE, 2005a). According to UNICE, the “reference guidelines” for managing the social consequences of restructuring are adequate in themselves, as are the “lessons learned on European Works Councils” (see below). In other words, Europe’s employers believe that they have done what is required of them on this front.

Lessons learned on European Works Councils

On 7 April 2005 the social partners adopted a joint document entitled “Lessons learned on European Works Councils”. For the record, the European Works Councils Directive, adopted by the Council in 1994 (4), made provision for its content to be revised after ten years. To this end, the Commission launched the first phase of social partner consultations in April 2004 (see Degryse, 2004). The two sides of industry decided to hold two joint seminars in September and October 2004 with a view to carrying out nine case studies. Around 750 transnational companies and groups have so far established a European Works Council or similar body, representing approximately 45% of all such companies and groups of companies, or 70% of the workers potentially affected. The “lessons learned” by the social partners from the case studies can be summarised as follows (extracts):

1. EWCs can help management and workers to build a corporate culture and adapt to change in fast-evolving transnational companies or groups, when changes concern the group’s strategy and affect sites in several countries;

2. The establishment of a climate of mutual trust between management and workers’ representatives in the EWC is important for a good functioning of this body;

3. The ability to understand complex issues discussed in the EWC determines the quality in communication. Investing in language as well as technical/content training helps to optimise the functioning of the EWC and to reduce overall functioning costs;

4. Directive 94/45/EC on the establishment of a European Works Council in Community-scale undertakings and Community-scale groups of undertakings (Council of the European Union, 1994). It aims in particular to improve information flows between the company’s workers and management, to enable the workforce to be consulted on cross-border matters affecting the group, and to develop entrepreneurship in transnational undertakings.
4. Finding ways of reconciling different national industrial relations practices, occupational traditions and addressing an increasingly diverse workforce is a constant challenge;

5. The case studies demonstrated that ensuring a real sense of ownership of the EWC by the whole workforce was a considerable challenge. However, the practical issues to be addressed varied depending on the structure of the company, the range of its activities, its geographical coverage and possible numeric dominance of the workforce of some countries, the existence of a restricted steering committee, the dissemination of EWC activities, the possible role of European sectoral federations or other external experts, etc.;

6. Some companies have anticipated the enlargement of their EWC and do not seem to have encountered insurmountable difficulties in identifying worker representatives from those countries;

7. A complexity encountered by both management and worker representatives is to organise meaningful information and/or consultation without creating undue delays and uncertainties. Tensions can also arise from the fact that even if some decisions on the strategy of the group are taken at European level, managing its social consequences remains local and governed by national rules;

8. Case studies underlined that the good functioning of EWCs is a learning and evolving process through fine-tuning over the years (ETUC, UNICE/UEAPME and CEEP, 2005b).

4. Violence at work

The 2003-2005 work programme included the holding of a joint seminar on harassment at work with a view to perhaps reaching an autonomous agreement. When, on 17 January 2005, the Commission launched its first round of social partner consultations on this topic, the social partners informed the Commission of their intention to hold a seminar about it. The seminar took place in Brussels on 12 May 2005. The two sides of industry set out to examine together the ways in which the issue of violence at work is handled in national practice, and to decide whether or not there were sufficient grounds for tackling this problem at European level. A number of differences emerged from the very start of their discussions. Some countries have adopted legislation specifically on violence at work, while others deal with the matter by means of non-specific legal texts (criminal law, civil law, legislation on health and safety in the workplace); others still have collective agreements on this subject
European cross-industry social dialogue in crisis

and/or regulations and codes of conduct. One subject of debate was even how to define violence at work. Together, the two sides identified three categories: physical violence, mobbing and/or bullying, and sexual harassment. These different forms of violence may originate within the company (from colleagues or superiors) or outside of it (customers, visitors, etc.). The victims most commonly belong to specific groups: women, young workers, staff in uniform and immigrants. Certain sectors of the economy are more at risk than others: hotel and catering, transport, public administration and defence.

Reactions of the social partners

It seems obvious to the ETUC that joint action at European level can complement what is done nationally. Given the complexity of this matter, the trade union confederation argues strongly for its own definition of “violence” and for the need to find specific solutions for each category. It believes that violence in the workplace is linked to aspects of work organisation, the working environment and the type of work done. The ETUC sets great store by preventive measures to identify the primary causes of violence, and wishes to see the issue of violence at work linked to legislation not only on health and safety but also on combating discrimination.

The employers, for their part, see no point in any specific European legislation being drafted in this field. They believe that the European and the Member States’ legal systems are already sufficiently extensive and diverse to be able to cope, either directly or indirectly, with the issue of violence at work. Another major difference of approach between the employers and employees is that, according to the former, violence at work pertains not to health and safety but to human resource management: an area over which the EU has no competence. They nevertheless think that it might be useful to have talks with the trade unions about the different forms and sources of violence, and how commonly it occurs, but also about false accusations and how to deal with them (after all, this was one of the themes included in the 2003-2005 work programme).

UNICE and the ETUC therefore decided to ask their respective decision-making bodies to grant them a mandate so as to embark on negotiations before the end of 2005 with a view to reaching an agreement on the basis
of Article 139(2) of the Treaty (a framework agreement for transposition into legislation or an autonomous agreement). The ETUC mandate was approved at the Executive Committee meeting on 19-20 October 2005. The negotiations are scheduled to begin in 2006.

5. Consultation on the health and safety directives

On 1 April 2005 the Commission launched a first phase of consultation of the social partners on simplification of the European legislation concerning health and safety at work. It asked the following questions:

- [Should there be] a single report for all existing directives in the field of health and safety at work, or specific reports for each directive, but subject to the same periodicity?

- How often should national reports to the Commission be prepared and submitted – every five years or every six years?

- Should this exercise cover all existing health and safety at work directives, or should it be confined to those which already prescribe an obligation to report to the Commission?

- What measures should be taken to ensure that the social partners contribute to uniform and equivalent national reports?

Was this “just” a technical exercise aimed at streamlining the output of European documents, or was it an attempt to relax the constraints associated with the provisions of these directives, in keeping with the “better regulation” initiative of the Barroso Commission? The debate immediately came to revolve around this question, perceived differently by employers and employees.

Reactions of the social partners

Whilst UNICE backs the Commission’s proposal to align the frequency of follow-up reporting, it cannot accept the idea of harmonising the social partners’ reports. The employers stress in particular that “what is mostly needed is a genuine simplification of the complex regulatory environment for companies, alongside a true commitment to better regulation” (5). The ETUC, on

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5 Unice@news, July 2005, page 9.
the other hand, favours the idea of streamlining the reports, which “is the result of a very different line of thinking to that expressed in the majority of calls for legislative simplification or for better regulation” (ETUC, 2005b: 2). The trade union confederation denounces the fact that health and safety measures are explicitly regarded as burdens and costs for businesses; in its own opinion the reports resulting from implementation of the directives are part of a prevention strategy which necessitates regular and detailed monitoring of the situation in Europe. Moreover, the ETUC fears that, in the name of fighting bureaucracy and red-tape, the Commission may take issue with certain Member States for going beyond the minimum provisions enshrined in the directives. The ETUC likewise calls on the Commission to step up the resources earmarked for drafting its own synthesis reports on the application of the health and safety directives: “so far huge backlogs have built up, and some of the reports drawn up have only provided a very superficial overview” (ETUC, 2005b: 4). The Commission is also urged to refer to the reports on pregnant workers, and on the health and safety of temporary workers and workers on fixed-term contracts.

6. Other joint activities

Among the other activities carried out jointly by the social partners in 2005 it is worth mentioning:

- the joint declaration on the mid-term review of the Lisbon strategy (15 March 2005), which mainly contains a joint interpretation of the concept of “competitiveness in a sound macro-economic environment”: innovation, employability, social protection, environmental policies, a supportive public environment and sound macro-economic policies (ETUC, UNICE/UEAPME and CEEP, 2005c);

- the adoption of the third follow-up report on the Framework of actions for the lifelong development of competencies and qualifications (22 March 2005), whose main innovation is the inclusion of initiatives in this field taken by social partners in the new Member States (ETUC, UNICE/UEAPME and CEEP, 2005d);
- the adoption of the second joint report on social partner actions for the implementation of the employment guidelines in Member States (22 March 2005), which describes the key actions of the social partners in four areas (increasing adaptability of workers and enterprises, activation policies under the heading “making work a real option for all”, investing in human capital, and better governance) (ETUC, UNICE/UEAPME and CEEP, 2005e);
- the joint contribution on the EU youth initiative (22 March 2005), in which the social partners stress the importance of an “intergenerational approach” to labour markets, i.e. to develop active ageing strategies while at the same time helping young people to enter the labour market (ETUC, UNICE/UEAPME and CEEP, 2005f).

7. The 2006-2008 work programme

Before concluding this chapter, we should just mention the European social partners’ second work programme for 2006-2008. This programme was not finalised until the end of January 2006, and it needs to be adopted formally ahead of the Tripartite Social Summit on 23 March 2006.

At its meeting on 14-15 June 2005, the ETUC Executive Committee adopted proposals for a programme stretching from 2006 to 2010, pointing out from the start that “the period covered in this proposed joint work programme (…) is longer than the current one (ed.: 2003-2005). This is being proposed on the basis that the employers’ side agrees that this programme is flexible and non-exhaustive. Should this not be the case, we will revert to a shorter time period” (ETUC, 2005c: 1). Over and above the initiatives from the 2003-2005 not yet fully implemented (continuing work on the ageing workforce, young people, racism, harassment and violence, undeclared work and restructuring), the ETUC Executive Committee proposed launching the following new initiatives:

- enhancing the quality of the European social dialogue, which mainly entails: clarification of social dialogue instruments; interpretation and monitoring instruments; mediation/conciliation/arbitration systems, including access of EU social partners to the
European Court of Justice; transnational consultation and collective bargaining processes;

- annual reporting, including the idea of drawing up one overall report covering all employment-related subjects handled by the social partners (employment guidelines, lifelong learning, gender equality, etc.), as well as reports on the implementation of framework agreements (telework, stress at work, harassment/violence);

- evaluation of former framework agreements (parental leave, part-time work and fixed-term work)

- joint social partner contributions to a series of new themes, including: flexi-security, innovation, worker mobility, equality, combating exclusion and poverty, follow-up to the 2003 joint social partner declaration on the European Day of Disabled People.

In addition, the Executive Committee wonders whether or not to include the following themes in the new work programme: sustainable development, trade union rights (especially in SMEs), “atypical work”, protection of employee data, the external dimension of employment, social policy and decent work, financial participation of workers and, lastly, supplementary pensions.

An initial “joint draft” of a social partner work programme for the period 2006-2008 was drawn up in November 2005 and submitted to the Social Dialogue Committee at its meeting on 8 November 2005, but the text left a good deal to be desired. It became immediately obvious – from the period covered – that the ETUC’s proposal had not been endorsed by the employers. This two-page draft consisted in the main of:

- joint recommendations to be forwarded to the European institutions concerning macro-economic and labour market policies, demographic change and undeclared work;

- a framework of actions on employment, including flexi-security, productivity and innovation, mobility and migration, life-long learning, active ageing and the integration of young people;
- the updating of studies on economic and social change in the enlarged Europe, particularly with the aim of rethinking the reference guidelines on managing change and its social consequences;

- the continuation of actions already underway: assistance for the development of social dialogue in the new Member States, follow-up reports on agreements already negotiated, and the development of a “mutual understanding” of the new instruments of European social dialogue.

This draft was less substantial than the 2003-2005 programme. It held out no hope of any new framework agreements, the only reciprocal commitment being to prepare a framework of actions on employment. The document had very limited aspirations and in essence took the stance that the purpose of social dialogue was to lobby the European institutions and make recommendations to them, rather than to serve as a forum for negotiating reciprocal commitments. The programme also focused more on what had already been achieved – evaluating the scope of the joint texts previously adopted – than on new themes. These weaknesses made the draft text unacceptable to the trade union side, which explains why, at the end of 2005, there was still no work programme covering the period from 2005 onwards.

The compromise eventually reached in January 2006 opens the door to negotiations on a new autonomous framework agreement, relating either to the integration of disadvantaged groups on the labour market or to lifelong education and training. We shall look in more detail at the content of this work programme in the next edition of Social Developments in the European Union.

Conclusions

The title of this chapter draws attention to the fact that the European social dialogue is in a state of crisis. This judgment may without doubt appear overly pessimistic, given the significant progress made over the past few years: increased autonomy of the social partners, their desire to devise multi-annual work programmes, a gradual broadening of social dialogue activities and a diversification of the instruments in use – all of this despite a difficult context (EU enlargement, economic stagnation and persistently high unemployment).
There has indeed been a proliferation of initiatives and an assertion of autonomy. Nevertheless, it is justifiable to ponder on the current weaknesses of the European cross-industry social dialogue in terms of the quality of its outcomes and the instruments used. Since the entry into force of the Maastricht Treaty, the social partners have been partly responsible for devising a common bedrock of social regulations. After an initial, relatively promising start-up phase (the framework agreements on parental leave, fixed-term employment and part-time work), the wheels of the social dialogue seem gradually to have ground to a halt, on account of the increasingly restrictive attitude of the employers. On the one hand, the subject matter and content of the texts adopted reflect a less ambitious approach, with the exception of the autonomous agreement on telework – although the practical implementation of that agreement has yet to be assessed, in 2006. On the other hand, many questions can be asked about the true import of the joint documents drawn up in recent years.

The prime purpose of EU social policy is to define a common bedrock of regulations aimed at preventing competitive mechanisms within the internal market from eroding working conditions, which would ultimately mean that not companies but Member States were in competition with one another. If this is the case, and if social dialogue forms part of this vision of social policy, then it might be expected to produce texts which are mandatory and apply *erga omnes*. Yet, owing to pressure from the employers, it would appear that social dialogue is now headed more in the direction of defining standards which are not legally binding and are enforced differently from country to country, and even within one and the same country.

How can this state of affairs be explained? Two factors may well be responsible: first, a change in the role of the protagonists (and hence in the alliances between them); second, and more generally, a certain crisis of legitimacy in the European Union. The two factors are without doubt interconnected.

Concerning the role of the protagonists, one illustration of our case would be the issue of the social consequences of restructuring and European Works Councils. As we have seen, the European Commission has not exercised the role of initiative expected of it under
the Treaties. Indeed, the Treaties stipulate that the Commission must play an active part in European social dialogue: it must put forward proposals for action in the social policy field and consult the social partners on the thrust and content of these proposals, while allowing them the possibility of negotiating the content themselves. That has not been the case in this instance. Rather than signalling a Community initiative, the Commission has simply said that it will “follow the work of the social partners and will look at the progress made between now and the 2006 Tripartite Social Summit” (CEC, 2005: 11). Many observers have long emphasised the importance of the “shadow of the law” (see in particular Dølvik, 1999) in advancing the social dialogue and especially in energising the employers, whose reluctance to engage in social dialogue can only be overcome by using the threat of legislation. This shadow is now gradually disappearing, with two consequences: the ETUC is losing its traditional ally, the European Commission; and UNICE, freed from the threat of legislation, can take refuge in a social dialogue which is more or less confined to going over old ground. As for the Council of the EU, even though it asserts that “the social partners share responsibility for finding a balance between flexibility and security in employment and making it possible for enterprises to be adaptable” (Council of the European Union, 2002: 7), it is evidently incapable of stepping in when the two sides of industry fail to reach agreement (on temporary agency work, the organisation of working time, etc.). With the European Commission in retreat, the employers holding back and the Council paralysed, the dynamic envisaged in the Social Policy Agreement of the Maastricht Treaty has been seriously undermined. The ETUC, by contrast, argues in favour of a fully-fledged system of European collective bargaining capable of regulating European integration from a social policy perspective.

With respect to the European Union’s crisis of legitimacy, the most obvious manifestation of which in 2005 was the French and then the Dutch rejection of the draft constitutional Treaty, it engenders a political climate which is less and less propitious for the laying down of standards – including social standards. “Excessive regulation” seems to be under fire from all sides nowadays, even within the Commission, which launched its “better regulation” initiative in September 2005. Streamlining regulation may well be useful, but this initiative clumsily
fuels criticism of European bureaucracy. The danger, as pointed out above, is that measures aimed for example at ensuring employees’ health and safety in the workplace may ultimately be regarded as burdens and costs weighing down on companies.

This combination of changes in the role of the protagonists and a crisis of legitimacy make for a difficult climate. If the European social dialogue is to remain a key instrument of European integration and its social regulation, it must without any doubt rediscover the spirit of the Maastricht Social Policy Agreement.

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