European social dialogue: modest achievements in a climate of conflict

Longer working hours, more flexible work schedules, restructuring, outsourcing: much of the debate around industrial relations in 2004 was controversial. None of the major European Union (EU) countries – Germany, France, Italy, the United Kingdom – was immune to trade union discontent or even anger. Several trials of strength took place, mostly on issues raised by the employers’ organisations (working time, but other bones of contention included co-determination and the welfare state). Thus the European social dialogue was played out in a general climate of national tensions, against a backdrop consisting of EU enlargement, the renewal of the European Parliament and the installation of the new Barroso Commission.

In the following paragraphs we shall begin by describing and assessing the autonomous agreement on work-related stress, concluded in 2004. We shall then review the follow-up to two earlier agreements: one on telework (ETUC, UNICE/UEAPME and CEEP, 2002) and the other on the framework of actions for the lifelong development of competencies and qualifications (ETUC, UNICE and CEEP, 2002). We shall look at the consultations of the social partners launched by the European Commission in 2004 (on the Working Time and Works Council Directives, on musculoskeletal disorders and on reducing exposure to substances that cause cancer). We shall also take stock briefly of developments in the sectoral social dialogue in 2004, especially the establishment of three new sectoral social dialogue committees. Last of all, we shall examine the communication from the Commission on the future of the European social dialogue, as well as the reactions it has provoked from the social partners.
1. Autonomous agreement on work-related stress

Stress at work featured on the social partners’ work programme for 2003-2005, but that did not prevent the European Commission from seizing the initiative and opening a preliminary round of consultations on this matter back in December 2002. The social partners responded by informing the Commission of their intention to hold a seminar on this topic, supposed in principle to lead to the start of autonomous negotiations aimed at an agreement on work-related stress. These negotiations began on 18 September 2003 (for more details on this preliminary round, see Degryse 2004). It took just over eight months for an agreement to be reached, on 27 May 2004. This agreement was adopted unanimously by Europe’s employers, grouped together in the Union of Industrial and Employers’ Confederations of Europe (UNICE), despite strong objections from the Italian employers, and by a qualified majority by the European Trade Union Confederation (ETUC), with votes against from the DGB (Germany), AKAVA (Finland) and AC (Denmark). It was officially signed on 8 October 2004.

1.1 Issues at stake in the negotiations

According to figures supplied by the Commission, more than 40 million people were affected by work-related stress in the Europe of Fifteen. One person in four complained of stress. This generated costs of some €20 billion per year. These figures alone lead one to believe that it is in the interest of employers’ organisations and trade unions alike to hold negotiations on this matter since, on the one hand, it is related to the quality of work and, on the other, it impacts on economic performance because absenteeism caused by stress at work lowers productivity. This common interest constituted the basis on which the negotiations were founded: it was a win-win scenario. Nevertheless, it was not long before a number of difficulties surfaced. The negotiators needed not only to arrive at a shared definition of work-related stress, but also to agree on the individual and/or collective nature of this phenomenon and to identify its main causes. Finally, they had to determine the scope of a voluntary agreement on this topic and define the mechanisms to be used in preventing or eliminating stress at work.
1.2 Content of the agreement

The agreement on work-related stress consists of seven points (ETUC, UNICE/UEAPME and CEEP, 2004a), the main elements of which we shall now attempt to summarise. In the introduction, the social partners agree that stress “can potentially affect” any workplace – i.e. including SMEs – and any worker, but that “in practice” not all workplaces and not all workers are necessarily affected. The aim of the agreement is to increase the awareness and understanding of employers, workers and their representatives of work-related stress (hence it must be perceived as a collective problem). The objective is to provide them with a framework to identify, prevent and manage problems of work-related stress, without attaching blame to individuals. The agreement then describes stress – we should note that this is a “description” and not a “definition”, since the latter notion was rejected by the employers’ negotiators. Stress is described as a state accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them. The individual has great difficulty in coping with prolonged exposure to intensive pressure (here we note the emphasis on the individual). In this description, the social partners affirm that “stress is not a disease but prolonged exposure to it may reduce effectiveness at work and may cause ill health”. Lastly, stress originating outside the working environment is distinguished from stress at work, which may be caused by different factors such as work content, work organisation, the working environment, poor communication, etc.

Next comes a section identifying stress problems. This entails an analysis of factors such as work organisation and processes (working time arrangements, degree of autonomy, workload, etc.), working conditions and environment (exposure to abusive behaviour, noise, heat, etc.), communication (uncertainty about what is expected at work, forthcoming change, etc.) and subjective factors (emotional and social

1 Harassment and violence at work, which are potential factors of stress, were excluded from the negotiations by virtue of the fact that the European social partners’ work programme envisages the possibility of specific negotiations on these issues (theoretically in 2005).
pressures, feeling unable to cope, perceived lack of support, etc.). Whilst the trade union negotiators emphasised objective factors related to the company, the employers’ delegation for its part homed in on subjective factors pertaining to the individual. Be that as it may, the agreement stipulates that “if a problem of work-related stress is identified, action must be taken to prevent, eliminate or reduce it. The responsibility for determining the appropriate measures rests with the employer. These measures will be carried out with the participation and collaboration of workers and/or their representatives.”

The agreement cites Framework Directive 89/391, under which all employers have a legal obligation to protect the occupational safety and health of workers, considering that this obligation also applies to stress problems (Council of the European Communities, 1989). These problems may be addressed by various means, including those set out in the framework directive, such as an overall process of risk assessment. The last part of the agreement deals with the various measures – collective and/or individual – which may be put in place to prevent, eliminate or reduce problems of work-related stress.

1.3 An appraisal

Work-related stress is totally absent from the agenda of the social partners and/or the legislator in certain European Union countries. A study carried out by the European Industrial Relations Observatory (EIRO) points out that “stress is rarely dealt with specifically in health and safety legislation and is an issue in collective bargaining in only a few countries. Stress is a matter of increasing importance for trade unions and for some employers’ organisations, but overall it is still an ‘invisible’ issue in industrial relations, at least with regard to effective preventive action” (Llorens and Ortiz de Villacian, 2002). This statement alone demonstrates that the first plus-point of the European agreement is its very existence. Indeed, simply raising the issue may help to place it on the political and social agenda in some countries. In others, however, the minimum common denominator achieved here will not improve on a state of affairs which is already more favourable, be it in terms of statutory provisions or collective bargaining. And the actual content of the agreement must surely be regarded as a minimum common denominator. As stated above, the main sticking points between the employers and workers during its negotiation revolved around the definition/description of stress – is it a “disease”? –, the collective or individual nature of the problem, and the
dividing line between work-related stress and stress related to the worker’s private life.

Even though a number of studies concur that stress is a disease, the social partners’ agreement refrains from defining it as such and merely acknowledges that prolonged exposure to stress “may cause ill health”. As to its origin, the agreement considers that stress can be caused both by personal factors (e.g. family problems whose mental health consequences are taken into the workplace), and by specifically work-related factors. The problems in the latter category relate to work content and organisation, the working environment, etc. Clearly, the employers’ side sought to highlight the individual and subjective aspect of stress, meaning that it could be ascribed to personal causes for which the company is not responsible, whereas the trade union side tried to emphasise its collective and objective aspect, thus linking stress to general problems of work organisation.

The main reason why the ETUC endorsed this overall compromise is because the agreement makes explicit reference to work organisation, working conditions and the general work environment as potential factors of stress: this was one of its strategic priorities. It is nonetheless true that all the splits between employers and workers can be read between the lines of the agreement: the personal/work-related origins of stress, the individual/collective aspect, subjective/objective factors, etc. Since the negotiators failed to construct a joint, shared notion of work-related stress, they juxtaposed their views of the problem in the hope that they would balance each other out.

1.4 Implementation and follow-up

Another key priority of the trade unions was to tighten the provisions for implementing and following up the agreement, in the light of what is seen as a very mixed track record on implementation in the case of the autonomous agreement on telework (2002) owing to strong reservations from the employers (see next section). Reading the agreement on stress, it is noticeable that the implementation and follow-up procedures have been rewritten. The new version seems in part to be very formalistic. For instance, concerning implementation, the agreement “commits the members … to implement it”, rather than stating that the agreement “shall be implemented by the members”. From a semantic point of
view, the notion of “commitment” may be deemed a little more binding. The differences are more clear-cut in respect of follow-up:

- the report on implementation of the agreement will be given to the Social Dialogue Committee rather than to an ad hoc group;
- to this end the Social Dialogue Committee will, during the first three years, prepare a yearly table to precede the full report;
- the signatory parties will evaluate the agreement at any time after five years, if requested by one of them.

Finally, as concerns the non-regression clause, the wording is identical in both documents. The main progress therefore concerns follow-up of the agreement and, more symbolically, implementation (which is, however, the principal stumbling block, judging by the telework agreement). It is interesting that, when the agreement on stress was presented to the press, all the social partners emphasised their undertaking to implement it in full. Yet this policy commitment to act in good faith does not resolve the recurrent question as to the nature and status of autonomous agreements, together with the rights and obligations flowing from them. This grey area is moreover the reason why some component groups within the ETUC oppose the agreement.

Overall, then, we can conclude that the agreement on work-related stress is rather weak in content but does plug a gap in certain EU countries. In addition, its implementation and follow-up provisions show signs of some tentative progress.

2. Following up earlier agreements

In this section we shall assess the track record of the autonomous agreement on telework and the framework of actions on competencies and qualifications, both signed in 2002.

2.1 Telework agreement

The rules for national-level implementation of the autonomous agreement on telework, signed by the European social partners in July 2002, were still at issue in 2004 (on the provisions of the agreement, see Degryse, 2003). On the whole, reasonable headway had been made with implementation in a quantitative sense, but the quality of this imple-
mentation continued to generate a string of question marks. Let us remember that this autonomous agreement was the first one having to be put into effect by the members of UNICE/UEAPME, CEEP and the ETUC (and the EUROCADRES/CEC Liaison Committee), in accordance with the procedures and practices specific to management and labour in the Member States. This had to be done by July 2005 at the latest. In 2006, an ad hoc group set up by the signatory parties will prepare a joint report on the implementation action taken at national level. Only then, in principle, will it be possible to assess the precise impact of the agreement’s provisions on (tele)workers. Lastly, the member organisations involved may consult the signatory parties about any questions on the content of the agreement and, if requested by one of the parties, the agreement may be reviewed any time after July 2007.

There was insufficient information available at the end of 2004 to carry out a detailed country by country analysis of transposition. National negotiations were still under way in several countries. It already seems, however, that there is no uniform method of transposing the agreement. While awaiting the joint report in 2006, the European Trade Union Institute (ETUI-REHS) has produced its own interim report on the implementation of the document (Clauwaert et al., 2004), from which the following broad conclusions can be drawn:

- in some countries, cross-industry and/or sectoral negotiations have been opened on the basis of the European agreement;
- in others, the Labour Code has been amended so as to incorporate the issue of telework;
- in others, recommendations have been adopted by tripartite bodies.

In another country, lastly, implementation has been confined to the publication of a guide on telework. The situation is therefore multi-faceted and depends both on individual countries’ models of industrial relations and the balance of power between trade unions and employers’ organisations, but likewise on the more or less prominent role that governments choose to play in these negotiations. Thus, to take two very contrasting examples, in Belgium the federal government has put distinct pressure on the employers to make them come to the negotiating table – which they initially refused to do. In the United
Kingdom, the only cross-industry initiative mentioned by the ETUI-REHS study is the publication by the two sides of industry of a non-binding guide on telework.

Obstacles to the agreement’s implementation have included not just the question of translations of the text (in certain countries this matter has even led to negotiations in its own right), but also the very nature of an autonomous agreement. The interpretations by employers’ organisations and trade unions are at variance. As in 2003, some employers’ federations still believe that the status of this text does not necessarily mean enforcement is mandatory, but that it is enough to draw up a set of good practices. The trade unions interpret it quite differently: the agreement is “autonomous” or “voluntary” in that the decision to embark on negotiations on this topic is autonomous or voluntary, but the same does not apply to implementation of the final outcome. These interpretations diverge so widely that the various signatory parties to the agreement need to sit down and clarify how this type of agreement is to be interpreted and what its scope should be. Such clarification is all the more necessary in that national social dialogue structures and procedures are highly diverse and in some cases at unequal stages in their development; the representativeness of organisations also varies, and tends to be weaker in the new EU Member States. In the absence of a clear response to the twofold question on the quality of enforcement of this type of agreement and its coverage, there is a real risk that the European social dialogue will produce texts without equivalent effects for all workers throughout the European Union – ranging from collective agreements to information leaflets. In other words, the European social dialogue will lose its effectiveness (its relevance?) in combating the social competition to which companies in the different EU countries are liable to resort.

2.2 Framework of actions on competencies and qualifications

In a previous article, we described the Framework of actions for the lifelong development of competencies and qualifications, adopted in March 2002, as the European social partners’ contribution to the Lisbon strategy in the experimental shape of an open method of coordination (see Degryse, 2002). This method of coordination, applied for the first time to the social dialogue, relates more specifically to
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guideline 4 of the European employment strategy (cf. article by Philippe Pochet in this volume). The idea was that the European social partners would devise some European “guidelines” on the development of competencies and qualifications and then call on the national economic and social players to incorporate them into their discussions and practices. The joint assessment made by the social partners in March 2004 is upbeat: “it clearly emerges from the document that social partners have intensively debated the issue of competence development in all Member States. Debates took various forms in the Member States, thereby respecting national practices and traditions of dialogue between the social partners and/or concertation between public authorities and players on the labour market. The framework of actions created or strengthened an impetus for dialogue and joint work on the lifelong development of competences and qualifications in most Member States, building on existing practices” (ETUC, UNICE/UEAPME and CEEP, 2004b: 4). Various instruments were used to this end, including collective agreements in some Member States, the creation of discussion forums in others, the carrying out of joint projects, the production of practical tools to help companies step up their worker education and training activities, etc. One of the aims of this framework of actions is to improve the linkage between the European and national social dialogues, as well as between the cross-industry and sectoral levels (several actions have been undertaken at European sectoral level in the fields of electricity, metalworking, postal services, etc.).

The choice of “competencies and qualifications” as a topic has made it possible to focus this linkage on a relatively uncontroversial subject area. The second follow-up report outlines several initiatives and examples of good practice. But the jury is still out on whether the European framework of actions really has generated fresh momentum on this issue, or whether the framework has been little more than a heading that brings together a list of activities which would have been carried out in any event at national and/or sectoral level. It would furthermore be interesting to find out whether, and to what extent, national debates on competencies and qualifications have the capacity in turn to influence the European debate.
3. Consultations in 2004
The European Commission undertook four consultations of the social partners in 2004: on the revision of the Working Time and Works Council Directives, as well as on musculoskeletal disorders and reducing exposure to substances that cause cancer and reduce fertility. We shall take a brief look at all these consultations, dwelling for a little longer on the issue of working time, which aroused a good deal of heated debate in 2004 both at European level and in the Member States.

3.1 Working time
The planned revision of the Working Time Directive was without a doubt one of the most controversial subjects of 2004. This revision was initiated under particularly difficult circumstances for the trade union movement: a whole host of company directors in Germany, Belgium and France had been demanding longer and/or more flexible working hours as a means of boosting their competitiveness. Most symptomatically, at the end of 2004 the French Prime Minister, Mr Raffarin, put forward a government plan to row back on the 35-hour week introduced by the previous Socialist government. Discussion of the European Working Time Directive, then, took place during an entire year of highly offensive attitudes in the world of business and, in some countries, among political circles. This debate was launched on 30 December 2003 with the publication of a communication from the European Commission aimed at revising the 1993 Working Time Directive (CEC, 2003). This document, also used for the first phase of social partner consultation, pursued three aims:

- to evaluate the application of derogations from the reference periods and the opt-out;
- to analyse the impact of European Court of Justice case law concerning the definition of working time and the qualification of time on call;
- to consult the European institutions and the social partners on a possible revision of the text.

Discussion initially focused above all on the opt-out clause. This was a temporary provision obtained by the United Kingdom in 1993,
authorising Member States – in actual fact the UK – not to apply the cap on the number of working hours (48 hours/week) under certain conditions, in particular by prior agreement of the worker. This opt-out was intended to be individual, and it was supposed to be used in certain specific situations. Yet it has manifestly been misused in the UK, where employers have obliged workers to sign the employment contract at the same time as the consent form whereby the worker waives the limit on his/her working hours. Clearly, if both documents are presented at the same time, it is in the interest of a job applicant to sign them both rather than risk not signing either – the upshot being that some 3.7 million British employees work more than 48 hours per week, or three and a half times as many as the European average (2). These excessive working hours enable the country to be competitive with France and Germany by engaging in social competition. Therefore, one of the principal reasons for revising the Directive in the first place was to halt misuse of the opt-out clause (following enlargement, some new Member States have likewise been making widespread use of the opt-out).

For this reason, the European Parliament lent its support in February 2004 to the idea of revising the Directive, with a view to improving worker protection (European Parliament, 2004a and 2004b). The ETUC was delighted. An initial exchange of views on this matter was held in the Employment and Social Affairs Council in March, and a consensus emerged on the reference period to be taken into consideration for calculating the average of 48 hours per week. This period was four months; the ministers agreed to extend it to one year (which builds greater flexibility into the calculation, for example for workers whose work intensity fluctuates significantly over the course of a year). Until that point, the debate seemed to have got off to quite a good start, but matters soon took a turn for the worse. On 19 May, as part of the second phase of consultation, the Commission invited the European social partners to negotiate directly among themselves on an amendment to the Directive, or else to give general indications as to the thrust of further legislation (CEC, 2004a). In this

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second document, the Commission put to the social partners four approaches concerning the opt-out:

- to revise the individual opt-out, with a view to its phasing-out, as soon as possible, and to identify, in the meantime, practical ways of tackling abuses (the strategy advocated by the European Parliament);
- to tighten the conditions for application of the individual opt-out, ensure that it really is voluntary and that it is not being misused in practice;
- to permit exemptions from the maximum weekly working time only through collective agreements or agreements between the social partners;
- to authorise such derogations only by means of collective agreements or agreements between social partners, while retaining the possibility of an individual opt-out in undertakings without such an agreement and no representation of the employees.

As concerns the definition of working time, the European Commission's proposal to the European social partners was to create a third time category in addition to “working time” and “rest time”: on-call time, intended to cover periods when the worker is in the workplace, available for duty but not actually engaged in it (3). Lastly, the Commission proposed that the social partners should agree to extend the reference period over which the average duration of a working week is calculated.

The trade unions were quick to react: the ETUC immediately said that it was “alarmed” by the approaches suggested by the Commission, since they would allow the opt-out to be preserved as a legitimate solution – instead of abolishing it. They would likewise prevent on-call hours from being recognised as working time and would expand the reference period for calculating the average weekly working time. The employers were of a completely different opinion. UNICE considered that only periods of actual work should count as working time, that the general

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3 Rest time is regarded as working time in some cases (on-call time during which hospital doctors, fire-fighters and police officers must be available for duty).
rule on calculating weekly working time should be an average taken over at least twelve months, and that the opt-out should be maintained. UNICE declared in mid June that there was no point in holding negotiations: an agreement with the ETUC was impossible, given the diametrically opposed positions of the two organisations.

The ball was therefore back in the Commission’s court: on 22 September it placed before the Council and the European Parliament a proposal for a revision of the Working Time Directive (CEC, 2004b). As far as the opt-out is concerned, the Commission proposed allowing Member States not to apply the maximum weekly working time limit where expressly authorised by a collective agreement or social partner agreement and where the worker consents. The Commission specified that – when a collective agreement is not in force and there is no collective representation of the workers within the undertaking or the business that is empowered, in accordance with national law and/or practice, to conclude a collective agreement – the employer must obtain the consent of every worker (Such circumstances may exist in SMEs, but are also commonplace in companies in central and eastern Europe). This consent must moreover be subject to strict conditions: it has to be given in writing, it cannot be given when the employment contract is being signed, its validity is limited to a maximum period of one year (renewable), no-one may work more than 65 hours per week, and employers must keep a register showing the number of hours actually worked. This register must be supplied to the competent authorities on demand.

With regard to on-call time, the Commission incorporated into its proposal for a directive what it had already proposed to the social partners, namely the creation of a new category in addition to working time and rest time: on-call time. This was defined in the text as the “period during which the worker has the obligation to be available at the workplace in order to intervene, at the employer’s request, to carry out his activity or duties” (CEC, 2004b: 9). The inactive part of on-call time would not constitute working time in the meaning of the directive. However, the Commission left it up to Member States, through national legislation or a collective agreement or social partner agreement, to count this inactive part of on-call time as working time.
As concerns the periods within which compensatory rest must be granted, the Commission laid down a maximum period of 72 hours in cases where the provisions on compulsory rest periods are waived (in the opinion of the Court of Justice, compensatory rest should be taken immediately). Finally, with respect to the reference period for calculating the duration of weekly working hours, the Commission proposed keeping it at four months but offering Member States the option of extending it to one year, provided that the social partners are consulted and social dialogue is encouraged. Under such circumstances, workers must not work more than 65 hours per week.

In trade union circles, the verdict on the Commission’s proposals was extremely negative. The ETUC Executive Committee adopted a resolution on 13 October which found virtually all the draft provisions unacceptable:

- the reference period extendable from four months to a year subject to a mere “consultation” of the social partners could lead to extremely long hours during certain periods, as well as to increasingly irregular and unpredictable working hours;

- the new “inactive part of on-call time” concept is deemed to conflict with the aims of the directive and with other existing European legislation. This concept could have disastrous effects, especially in the field of healthcare;

- the maintenance of the individual opt-out when there is no collective agreement in force will reinforce rather than restrict the use of the opt-out, while perhaps putting increased pressure on trade union organisations to accept individual opt-outs (since employers might go so far as to reject collective agreements or even to derecognise the trade union). As for the conditions attaching to the individual opt-out (worker’s consent, valid for one-year, renewable, absolute limit of 65 hours per week), these are still too ambiguous since they will not put an end to documented cases of misuse and will ultimately make the 65-hour week acceptable in law.

The ETUC concludes that this proposed revision of the directive could bring about longer working weeks and more unpredictable hours, and could make it more difficult to reconcile work and family life.
This highly sensitive dossier came back before the Employment and Social Affairs Council on 4 October, and then again on 6 December 2004. The latter meeting reached a consensus on the extension to the reference period and on the question of compensatory rest, and made some headway on the concept of on-call time. However, the main sticking point among the ministers – the question of the opt-out – was not resolved. The Council was split between countries arguing for a collective opt-out clause based only on collective agreements, thereby restricting the scope for derogating from the rule by means of an individual opt-out (4), and countries in favour of maintaining an individual clause. The latter camp, comprising the United Kingdom and Ireland, was bolstered by EU enlargement: several of the new Member States came out in favour of preserving derogations on an individual basis, meaning that this group now has a substantial majority. Be that as it may, it was evident at the end of 2004 that overall agreement on the proposed directive was a long way off; some observers even felt that it would be very difficult, if not impossible, to reach a compromise on the issue of the opt-out since blocking minorities exist on both sides.

3.2 Works Councils

The revision of the 1994 Directive on European Works Councils was long-awaited (Council of the European Union, 1994). On 20 April 2004 the European Commission launched a first round of social partner consultations on this Directive which, for the record, provided for the establishment of European Works Councils (EWCs) or European information and consultation procedures in companies employing 1,000 or more workers located in at least two Member States. This enables trade union delegates from the various countries where the company is established to come together, meet the management, receive information and give their opinions on the strategies and decisions affecting the company and its workforce. Some 650 companies or groups have signed EWC agreements in the Europe of Fifteen, covering 11 million workers and, more directly, 10,000 of their representatives. But in fact these 650 companies only constitute just over a third of the

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4 France, Belgium, Spain, Sweden and Greece, according to the Bulletin of the European Union (No.8844 of 9 December 2004).
undertakings theoretically affected by the Directive, i.e. approximately 1,800.

The Commission’s consultation document gives a broadly positive assessment of European Works Councils, stating that “EWCs have been highly successful in providing access to information and consultation for employees in decision making processes and obtaining their feedback on company development, especially in relation to managing change. However, […] certain weaknesses identified in how EWCs operate mean that a new look is needed at how EWCs can fully develop” (CEC, 2004c). The principal reasons why a review of the text is needed are EU enlargement, which increases the number of companies covered by the Directive (and means that the EWCs of companies with branches in the acceding Member States will have to be enlarged), the implementation of the Lisbon objectives in 2000, the increased amount of restructuring among large European companies and internal developments within EWCs. In its consultation document the Commission calls on the social partners “to give their opinion on:

1) How best to ensure that the potential of European works councils to promote constructive and fruitful transnational social dialogue at the level of the undertaking, which will benefit both companies and their employees, is fully realised in the years ahead.

2) The possible direction of Community action in this regard, including, as the case may be, the revision of the European works councils Directive.

3) The role they believe the social partners themselves can play in addressing the issues that arise having regard, as appropriate, to their recent reflections on related issues in the context of managing change and its social consequences” (CEC, 2004d: 10).

The ETUC bemoaned the length of time taken by the Commission to initiate this revision process, something the ETUC had for years deemed necessary and urgent but which is four years behind schedule. It reacted promptly to this consultation, asking that the pace be stepped up and declaring its readiness for talks with UNICE. In particular, the ETUC “hopes that UNICE, which opposed first the directive and then its review, will now support a speedy revision, which would improve and add to the effectiveness of relations between the social partners at European level” (ETUC, 2004). In a resolution adopted by its Executive Committee on 4 and 5 December
2003 (ETUC, 2003), the trade union confederation had already set out an extremely detailed list of points which it wishes to address in connection with the review of the Directive. This list is too long to be reproduced here in full (26 proposed amendments), but let us single out what we regard as its salient points. The ETUC calls in particular for:

- a clearer definition of information and consultation;
- a new definition of the notion of confidentiality, for example so as to ensure that the members of EWCs are not prevented from communicating with each other or with their unions;
- a reduction in the period granted for the negotiation of agreements from three years to one;
- the imposition of sanctions on companies which infringe the law, and the legal entitlement of worker representatives to challenge violations of agreements;
- the right of EWC members to receive training, including in languages and economic, financial and social affairs;
- better access to experts’ opinions;
- the right to hold preparatory and follow-up meetings;
- the right of access to company sites for EWC members.

As for UNICE, its response could not have been more different (UNICE, 2004a). The employers’ organisation announced straight away that it “is strongly opposed to a revision of the EWC Directive. European employers are convinced that the best way to develop worker information and consultation in Community-scale undertakings is through dialogue at the level of the companies concerned” (UNICE, 2004a: point 3). Nevertheless, “convincing of the value of exchanging and learning from experience at the EU level”, UNICE declared its readiness to discuss this matter in the context of the European social dialogue, “using a similar method as when preparing the orientations of reference for managing change and its social consequences” (Concerning the scope of this method, we would refer readers to the previous edition of Social Developments in the European Union 2003, pp.62-63, and in particular its very lukewarm reception from the trade unions).
Even though Europe’s employers were opposed to the 1994 Directive, they now recognise that Works Councils “are beginning to demonstrate their value in informing and consulting workers at transnational level on relevant matters, and have generally helped companies in communicating change” (UNICE, 2004a: point 4). UNICE nonetheless draws attention to the complexity of organising discussions in such transnational bodies and of ensuring that European Works Councils dovetail smoothly with national or establishment-level arrangements for information and consultation. In the employers’ opinion, the Commission’s consultation document does not adequately reflect this complex reality, especially because it focuses too narrowly on the operation of Works Councils in instances of restructuring. Similarly, UNICE expresses a number of reservations as to the reasons for reviewing the Directive: “Trying to extrapolate lessons from experience of the application of the EWC directive before 1 May 2004 for enlarged Europe would be misleading. Time must be given to companies and workers concerned to learn how to use the procedures put in place […] before trying to draw conclusions on whether or not to revise the Directive” (UNICE, 2004a: point 7).

Arguing that EU-level legislative intervention would be counter-productive, it asserts that the social partners – and not the legislator – are best placed to take forward the operation of EWCs. They can do so by monitoring the transposition and implementation of the Directive in the new Member States, holding exchanges of views and drawing lessons from the experiences of European Works Councils, especially in view of EU enlargement. It was moreover in this spirit that two joint seminars were held in October 2004, aimed at carrying out case studies of EWCs.

With the exception of these seminars, the revision of the Directive appeared at the end of 2004 to be proceeding at an astonishingly slow pace. What was equally astonishing was the minimal importance seemingly attached by the Commission in this process to one obvious deficiency: the small number of Works Councils established when compared with the number of companies theoretically covered by the Directive (650 out of 1,800 undertakings). According to an ETUC memorandum, most of the companies affected by the Directive employ fewer than 5,000 workers but only 23% of them have an EWC. As for multinationals with over 10,000 employees, just 61% of them have an EWC. How can these major shortcomings be explained, and how are
we to interpret and learn from the patchy implementation of the 1994 Directive? These questions should have been thoroughly discussed as soon as it was decided to review this text.

3.3 Health and safety

Two other social partner consultations were initiated in 2004, in respect of workers’ health and safety in their place of work. The first began on 26 March and concerns reducing exposure to substances that cause cancer and reduce fertility. Estimates have revealed that 32 million people are exposed to these substances at doses which can be considered hazardous, and 35,000 to 45,000 people die every year of work-related cancers. The cost of a single death from work-related cancer amounts on average to € 2.14 million, taking the total cost for such deaths in the EU to over € 70 billion per year. The consultation document poses four main questions:

- Should the current directive on exposure to cancer-causing substances be extended to include substances which are detrimental to reproduction?
- Should the number of substances covered by the Directive be increased?
- Are the levels of such substances set out in the existing Directive appropriate?
- Should measures be taken to make the procedures within the Directive simpler and more adaptable to scientific progress?

The second consultation was launched on 12 November and concerns the protection of workers against musculoskeletal disorders (5). These complaints, which take the form of back pain and repetitive strain injuries, constitute the principal health and safety problem facing European workers today. Studies have shown that in the EU they affect over 40 million workers in all sectors and account for between 40 and 50% of all occupational health problems. The cost to Europe’s employers amounts to billions of euros, and 0.5 to 2% of GDP is lost

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every year. The Commission explains in its consultation document that whereas in principle these complaints are covered by general Community health and safety legislation, much of this legislation dates back more than ten years and does not apply specifically to work-related musculoskeletal disorders. Some Member States have passed laws to deal with the problem but others have not. For this reason, the Commission asks workers and employers to answer the following questions:

- Do you consider that the existing health and safety legislative framework is appropriate and sufficient to prevent musculoskeletal disorders, or do you consider that further initiatives are needed in this area? Should this initiative focus on upper-limb musculoskeletal disorders, or should it address other musculoskeletal disorders as well?

- If so, should this initiative be taken at Community level?

- If so, which should be the priority preventative focus of this initiative: ergonomics, work organisation, psychosocial aspects, or other issues?

- If so, taking into consideration the existing EU Directives applicable to this field, do you consider that a binding instrument is called for from the outset, either by amending the existing Council Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment (Council of the European Communities, 1990) or by adopting a new and specifically binding instrument? Would you instead favour the use of non-binding initiatives, such as the use of voluntary European standards or guidelines? Or would you prefer a method combining the regulatory with the non-regulatory, such as a binding legal act, setting out the goals to be achieved, with the technical means of achieving those goals described through European standards and other guidelines? Do you consider that a joint initiative of the European social partners pursuant to Article 139 of the EC Treaty would be appropriate?
4. Sectoral social dialogue: main developments

The European social dialogue underwent fresh developments in various sectors of activity during 2004. We shall review below the most significant ones in thirteen sectors, beginning with the establishment of three new sectoral social dialogue committees (SSDCs) – local and regional government, the audiovisual sector and the chemical industry – and following on with another sector, insurance, which seems to be in rather poor shape.

4.1 Local and regional government

The 29th sectoral social dialogue committee, for local and regional government, was officially instituted on 13 January 2004. The establishment of this SSDC puts on a formal footing a social dialogue which has existed since the late 1990s. The protagonists in this sector had already adopted some joint declarations (on equal opportunities in 1999; on European employment policy in 2000). The new committee, comprising representatives of the Council of European Municipalities and Regions - Employers’ Platform (CEMR-EP) and the European Federation of Public Service Unions (EPSU), has adopted a work programme for 2004-2005 and a joint declaration on telework (see below). The main planks of its programme are to promote high-quality public services, strengthen social dialogue in the new Member States, become involved in determining Commission policies (especially in the field of employment) and to complement the work of the cross-industry social partners. At the inauguration of this new SSDC, the two sides of industry also adopted a joint declaration on telework. In it they refer explicitly to the autonomous agreement signed by the cross-industry social partners in 2002, encouraging their members to be guided by it when introducing or managing telework in their sector. They undertake in addition to monitor future trends in telework in their sector and to conduct a preliminary appraisal in 2005.

4.2 Audiovisual sector

The sectoral social dialogue committee in the audiovisual sector held its inaugural meeting and adopted its rules of procedure on 29 April 2004. The negotiations geared to launching a European social dialogue in the public audiovisual sector had been initiated in 1998, between EURO-
MEI and the European Broadcasting Union (EBU). This process finally resulted in the formation of a committee encompassing the entire audiovisual sector, involving the International Federation of Actors (FIA), the International Federation of Musicians (FIM), the European Federation of Journalists (EFJ), with EURO-MEI for the workers and the Association of Commercial Television (ACT), the Association of European Radio (AER), the European Coordinator of Independent Producers (CEPI), the International Federation of Film Producers Associations (FIAPF) and the EBU for the employers. At their constitutive meeting, the social partners mainly discussed their work programme: it will initially revolve around certain key European Union initiatives with an effect on the sector (the Directive on Services in the Internal Market, the Working Time Directive), the aim being to arrive at a common position on these texts. The committee plans at a later stage to address other issues such as health and safety, equal opportunities and training, the role of women in the media, access to employment for ethnic minorities, and also enlargement and its impact on the European social model.

4.3 Chemical industry

The constitutive session of the sectoral social dialogue committee for the chemical industry took place on 14 December 2004. The establishment of this committee, the 31st, follows on quite logically from a period of cooperation between the social partners in this sector (the European Mine, Chemical and Energy Workers’ Federation – EMCEF – for the workers and the European Chemical Employers’ Group – ECEG – for the employers), which had already resulted in the drawing up of joint position papers, most notably in November 2003 on the REACH legislation (6). The chemical industry is Europe’s second largest industrial sector, employing more than two million people, and has the highest turnover in the world in this sector. At a conference held in Helsinki on 10 September 2004, the social partners in the chemical industry signed a joint position paper on education, skills and lifelong learning in the European chemical industry. They undertake in

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6 This is a proposal for a directive setting out a new regulatory framework for chemicals in Europe (Registration, Evaluation and Authorisation of Chemicals).
this document to set up a joint working group which will, in the first instance, carry out an in-depth analysis of the status quo regarding skills, qualifications, vocational (further) training and lifelong learning within the industry. The second stage will be an exchange of information and good practice comparing the different national systems of education in order to support further developments in these areas. The joint text also looks at issues related to bolstering the image of the chemical industry, support for the teaching of science in schools, and improving vocational education and lifelong training for workers.

4.4 Insurance

Negotiations on lifelong learning in the insurance sector were broken off on 28 May 2004 after a year of talks (UNI-Europa Finance for the workers, and three employers’ organisations: the European Federation of National Insurance Associations – CEA, the European Association of Cooperative and Mutual Insurers – ACME, and the International Association of Insurance and Reinsurance Providers - BIPAR). The social partners in the banking sector had adopted a joint declaration on lifelong learning in March 2003, and the aim of UNI-Europa was to achieve a similar declaration in the insurance sector. The negotiations foundered in particular over ways of determining skill requirements, the provision of training during working time and trade union involvement in the training process. The collapse of these talks fits into a wider context of rather weak social dialogue in the insurance sector, as demonstrated in particular by a study produced by the Observatoire social européen (Pochet et al., 2004). Social dialogue in the sector has been marking time since the mid 1990s, so much so that for a while the Commission considered classifying this sectoral social dialogue committee as “dormant”.

4.5 Transport

The Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers’ Federation (ETF) signed two important agreements, negotiated as part of the European social dialogue, on 27 January 2004: one on the European licence for drivers carrying out a cross-border interoperability service, and the other on the working conditions of railway workers assigned to cross-border services. The European driving licence had been under discussion since
2000. Both of these texts are to be kept under review by a working group which will meet every six months at the same time as the SSDC.

4.6 Telecommunications

On 5 May 2004, the European social partners in the telecoms sector (the European Telecommunications Network Operators’ Association – ETNO – for the employers, and UNI-Europa Telecom for the workers) reached an agreement on a charter for call centres. This joint document, officially unveiled on 15 June 2004, lays down a set of basic principles in various areas including health and safety at work, working time, worker training, etc. These principles deal in the main with the quality of customer service, working conditions, qualitative and quantitative performance targets, personnel management, work organisation, information and consultation of worker representatives, and compliance with basic labour standards as set out in the ILO Declaration on fundamental principles and rights at work. Following on from the elaboration of a set of “guidelines” on telework in Europe in 2001, the call centre charter constitutes the second joint undertaking of the European social partners in the telecoms sector, one which is experiencing rapid growth but whose geography considerably transcends Europe’s borders (many companies have now outsourced their call centres to countries such as India).

4.7 Electricity

On 4 June 2004, the social partners in the electricity sector – Eurelectric for the employers and the European Federation of Public Service Unions (EPSU) as well as the European Mine, Chemical and Energy Workers’ Federation (EMCEF) for the workers – signed a joint declaration on future training requirements in the sector. This text forms part of the EPSU-EMCEF work programme, which strongly emphasises the issues of lifelong learning and skills. Indeed, according to research commissioned by the social partners, Europe’s electricity industry is currently facing a major skills shortage. It is in an attempt to remedy this state of affairs that they have agreed on a number of principles aimed at raising these issues at all levels (companies, national social partners, European institutions). EMCEF and EPSU likewise undertake to assess what practical follow-up there has been to this joint declaration in 2007.
4.8 Construction

The social partners in the construction industry (FIEC and the EFBWW) published a brochure on the employment of young and older workers on 24 March 2004. With 1.9 million companies and almost 11 million employees, the construction sector is Europe’s largest industrial employer. Yet the employment and integration of young people in this sector appears to pose a growing problem. The social partners have seen fit to air some solutions by producing this brochure, highlighting above all the importance of tutorship, i.e. the establishment of a formal relationship between an older, more experienced worker and a young recruit to the company. So as to help construction firms develop this tutorship mechanism, the brochure provides a description of the stages to be gone through, examples of good practice, and practical data sheets for the employer, the tutor and the youngster. In April, furthermore, FIEC and the EFBWW adopted a joint declaration on services in the internal market. This text calls in particular for the amendment or deletion of some articles in the directive which could, in their opinion, encourage abusive practices, unfair competition, social dumping and undeclared labour.

4.9 Postal services

On 16 January 2004, the European social dialogue committee of the postal sector launched a website devoted to social dialogue in the postal sector (7). This initiative is the first of its kind as far as the sectoral social dialogue is concerned. The sector generates a turnover of € 80 billion (1.4% of GDP) and employs 1.7 million people. The website has two main aims according to its initiators: to build on and highlight the work of the SSDC, and to encourage and facilitate exchanges between the postal sector social partners at European level, especially by making available the agendas and minutes of SSDC meetings and providing a database of contacts in the European post offices.

4.10 Cleaning industry

The European social partners in the cleaning industry (EFCI and UNI-Europa) adopted a joint declaration on 17 September 2004, entitled

“Selecting best value in public procurement of cleaning services”. Now that the European Directive on procedures for the award of public works contracts, public supply contracts and public service contracts (adopted in March 2004) has to be transposed into the Member States’ national legal systems, the European social partners in this sector are appealing to the local, regional, national and European contracting authorities to select the economically most advantageous offer of cleaning services (best value for money), rather than limiting their criteria to the lowest price only.

4.11 Commerce

The social partners in the commerce sector (UNI-Europa Commerce and EuroCommerce) adopted on 28 May 2004 a declaration on promoting the employment and integration of disabled persons in commerce and distribution in Europe. This declaration calls in particular for the elaboration of a disability management strategy as part of equal opportunity policy. It is mainly directed at affiliated employers’ and trade union organisations.

4.12 Horeca

On 11 June 2004 the social partners in the hotel, restaurant and catering (Horeca) sector (EFFAT and HOTREC) adopted a set of joint recommendations laying down guidelines on training and development in the Horeca sector, especially in SMEs. They likewise adopted new rules of procedure for the sectoral social dialogue committee.

4.13 Culture

Following the conference held in Tallinn on the enlargement of the social dialogue in the performing arts sector, the social partners in this sector adopted on 18 April 2004 a joint declaration on the future of the social dialogue in an enlarged Europe.

5. Future of the social dialogue: communication from the European Commission

The main aim of the communication adopted by the European Commission on 12 August 2004, “Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue” (CEC, 2004e), is to improve the structure of the European social
dialogue, especially the sectoral social dialogue. In this document, the Commission surveys recent developments in the social dialogue, both cross-industry and sectoral, as well as the challenges confronting it, above all enlargement (technical capacity of social partner organisations in the new Member States, national industrial relations systems, a wider variety of existing traditions, etc.) and the management of economic and social change. Management of change, in the Commission’s view, constitutes the prime purpose of the European social dialogue, which means that the social partners’ contributions must be “as concrete and effective as possible”. The Commission’s starting point, however, is that the implementing provisions contained in many of the texts produced through social dialogue are vague and imprecise. Furthermore, the significance and status of the European social partners’ texts is not always easy to understand. There is a clear allusion here to certain documents resulting from the sectoral social dialogue, as well as to the controversy surrounding the nature and status of “voluntary” or “autonomous” agreements adopted in the cross-industry social dialogue (telework and stress, see above). Consequently, the Commission puts forward some new terminology on which the social partners are invited to base themselves when drafting their documents. Four major categories are defined:

- “agreements” implemented in accordance with Article 139(2). Texts in this category establish minimum standards and entail the implementation of certain commitments by a given deadline. Two main types of agreement fall within this category: agreements implemented by Council decision (or “framework agreements”) and autonomous agreements (also known, but too ambiguously, as “voluntary” agreements) implemented by the procedures and practices specific to management and labour and the Member States. The Commission helpfully recalls that Article 139(2) states that Community-level agreements “shall be implemented”, which implies that there is an obligation to implement these agreements and for the signatory parties to exercise influence on their national members
in order to implement the European agreement (including in the case of autonomous agreements) (8).

- “process-oriented texts”. This rather odd term covers a variety of joint texts which are implemented in a more incremental and process-oriented way than agreements. There are three main types of instrument falling within this category: frameworks of action, which identify certain policy priorities towards which the national social partners undertake to work (with appropriate follow-up); guidelines and codes of conduct, which make recommendations and/or provide guidelines to national affiliates concerning the establishment of standards or principles; and policy orientations, in which the social partners pursue a proactive approach to promoting certain policies among their members and undertake to assess the follow-up given and its impact.

- “joint opinions” and “tools”. This category consists of social partner texts and tools which contribute to exchanging information, either upwards from the social partners to the European institutions and/or national public authorities, or downwards, by explaining the implications of EU policies to national members. Such documents in fact constitute the bulk of the texts adopted by the social partners over the years, usually intended as input into the work of the European institutions and/or national public authorities.

- “procedural texts”. This final category consists of texts which seek to lay down the rules for bipartite dialogue between the parties. This category also includes the social partner texts which determine the rules of procedure for the sectoral social dialogue committees.

Lastly, Annex 3 contains a proposed “drafting checklist for new generation social partner texts”, in which the Commission asks the social partners to provide, for each text adopted, a certain amount of information such as the addressee(s), the status and purpose of the text, the deadline by which the provisions should be implemented, the rules for national-level implementation, etc.

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8 See the controversy on this subject in the section on telework, above.
The ETUC made known its initial (somewhat mixed) reactions to this communication at the end of September. On the one hand, the trade union confederation welcomes the fact that the Commission recognises the important role of the autonomous social dialogue as well as its qualitative and quantitative development, and calls on the Member States to bolster the administrative capacity of national social partner organisations. Similarly, it welcomes the undertaking to encourage the social partners to strengthen the link between European Works Councils and the various levels of social dialogue, plus the commitment to clarify the tools of the social dialogue (particularly as concerns “autonomous” agreements). On the other hand, it draws attention to what it regards as three problematical issues: the Commission document does not make the Lisbon agenda any better balanced; it does not prevent either a conflation of the different levels of European social dialogue or the ability of employers to engage in unilateral initiatives in the field of corporate social responsibility; and, finally, it rules out any recourse to autonomous negotiations and agreements in a number of instances such as, for example, the revision of existing directives.

UNICE, for its part, adopted a very detailed position paper on the Commission communication on 25 November (UNICE, 2004b). It can be summarised as follows: promotion of the European social dialogue must be predicated on genuine respect for the social partners’ autonomy, since it is they who organise both the cross-industry and the sectoral social dialogue, as well as on the principle of subsidiarity, “which means recognising that industrial relations remain essentially national and that interaction between the EU and national levels is not a hierarchical relationship but one of complementarity and can be of a different nature depending on the issue or challenge” (UNICE, 2004b: point 3). Yet, according to UNICE, the Commission communication is governed by an “excessively administrative and interventionist” conception of the social dialogue. It cites by way of example the suggestion (not to be taken up, in its view) regarding establishment of a Community framework for transnational collective bargaining, but also the statement that the Commission’s right of initiative can be exercised at any time, and the Commission’s conception of the synergies between the European sectoral level and the company level, “notably the artificial links made between EWCs and the EU sectoral social dialogue” (UNICE, 2004b: point 5).
Whereas the employers agree that the main aim of the social dialogue should be to facilitate economic and social change, and especially to facilitate implementation of the Lisbon strategy, they see no need to devise a fuller framework for the European social dialogue. Any such framework would even be deemed “unacceptable and misleading”, as European-level negotiations and the resulting framework agreements are fundamentally different from collective agreements deriving from bargaining on wages and working conditions in the Member States.

In short, UNICE’s position boils down to a threefold refusal: the refusal to go along with a centralised approach to the social dialogue, the refusal to envisage a single model of social dialogue, especially in the context of enlargement, and the refusal of a “political” role for the Commission, which should confine itself to providing studies, information and perhaps monitoring. We would also draw attention to this comment by UNICE concerning “autonomous” or “voluntary” agreements: “It is important to underline that it is not because an agreement is not legally binding that its efficiency or legitimacy can be questioned. On the contrary, for issues for which a legislative approach is not appropriate, the framework of reference offered by a voluntary agreement is a factor of efficiency and of good governance. Moreover, this type of agreement, by avoiding to impose excessive constraints, can result in a better balance between flexibility and security than a legally binding text” (UNICE, 2004b: point 7). As to following up this type of agreement, UNICE considers that “over-prescriptive follow-up provisions would be counter-productive for the implementation of new generation texts given the diversity of (and developments in) national industrial relations practices” (UNICE, 2004b: point 18). Finally, while the European employers’ organisation states that it agrees overall with the typology of agreements proposed by the Commission, it insists that such a typology cannot be more than an ex-post analytical tool; nor can it be exhaustive. “Any attempts to turn it into an ex-ante framework would be totally unacceptable as it would hamper the autonomy of the social dialogue. It would also be counter-productive as it would block innovation in the EU social dialogue” (UNICE, 2004b: point 19).

Conclusions
As far as matters of substance are concerned (organisation of working time, European Works Councils, the role and purpose of social dialogue), the European social dialogue – at least at cross-industry
European social dialogue: modest achievements in a climate of conflict

Social developments in the European Union 2004

level – revealed deep-seated differences of opinion between the trade unions and employers’ organisation in 2004. Only one cross-industry agreement was signed in the course of the year, on work-related stress. This type of topic lends itself to win-win compromises between the trade unions (quality of work) and employers (productivity); but the amount of compromise at European level has been minimal. What is more, it is fashioned in a way – an autonomous agreement – which leaves its status ambiguous. Not that this agreement is superfluous: it places the issue of work-related stress firmly on the political and social agenda of all the EU Member States, as well as (slightly) tightening the follow-up procedures.

For the time being, however, the social dialogue seems sadly lacking in the kind of momentum which would enable it to tackle more sensitive issues. The inability to embark on cross-industry negotiations about the revision of the Working Time Directive demonstrates the current limitations of a European social dialogue which, for the past twelve years, has been confined to relatively consensual topics (parental leave, competencies and qualifications) or ones that have created winners on both sides (fixed-term employment contracts, part-time work, telework); but it has come to grief over more controversial matters where one of the parties – the employers, in fact – thinks it has nothing to gain (information and consultation for workers, data protection, organisation of working time).

We should point out here that the employers are increasingly tending to regard Community initiatives in the field of social affairs as interference which flouts the principle of subsidiarity and disregards the autonomy of the social partners. At the same time, however, they vigorously contest the idea of gradually creating a European framework for transnational collective bargaining. The sole purpose of the European social dialogue, in their opinion, should be to promote economic and social change via a flexible, non-binding approach.

The trade union approach is radically different: European-level collective bargaining is seen as a means of forestalling competition between national systems (and workers). The issue of working time could have been exemplary in this regard in 2004, if only UNICE had not ruled out any prospect of negotiating with the ETUC. The turn
taken by events on this front has since demonstrated that in actual fact the employers’ organisation has the benefit of a number of objective allies, not only in London and in other capitals but also within the European institutions. In its proposal for a new Working Time Directive, the Commission appears to adopt a new policy strategy which amounts to endorsing the organised balance of power in companies where appropriate structures already exist (presence of trade unions, worker representation, collective agreements, etc.) but makes no attempt to extend the outcome of this balance of power to companies where it is lacking. This new approach – which could be criticised on the same grounds as autonomous social dialogue agreements, namely the absence of equivalent effects – implies that the Commission’s attitude to the European social model is undergoing a significant change. For the first time ever, the revision of a directive is resulting in the extension of a temporary derogation initially granted only to the United Kingdom, an extension which opens the door to social competition. In the context of the enlarged Union, it could be inferred from such an approach that the Commission is moving away from a certain type of European social model which cannot survive unless it is expanded and consolidated rather than threatened with competition.

One final word about the sectoral social dialogue. It is impossible to assess the sectoral dialogue in its entirety, given the contrasting dynamics from one sector to another. The various sectors have gradually been putting arrangements in place since the official establishment of sectoral social dialogue committees (SSDCs) in 1998. This was again apparent in 2004, with the formation of three new SSDCs. The existence of such bodies, however, is no guarantee of dynamic activity, as evidenced this year by the insurance sector, unable to overcome its stumbling blocks. The European Commission’s communication on the future of the social dialogue arises out of a desire to lend better structure to this social dialogue and above all to the fruits of its negotiations. We therefore find ourselves engaged in a long-term process which has not yet produced any particularly remarkable results but is at least still ongoing.
References


