

European social dialogue in 2003: transition or stagnation?

Introduction

Implementation of the Work Programme of the European Social Partners (2003-2005) began in 2003. The strategic aim of this programme, adopted in late 2002, was to make the agenda of the cross-industry social dialogue more independent of the European Commission (Degryse, 2003). It therefore falls to Social Developments 2003 to examine the first phase of execution of the work programme; this should enable us both to gauge the degree of autonomy acquired and to assess what impact that autonomy has had on the quality of the social dialogue.

We shall begin by recalling the content of the work programme and the actions scheduled for 2003. Next, we shall look at the negotiations undertaken, or underway, during that year, as well as the agreements reached. This will then allow us to conclude, we hope, with a full overview of the European cross-industry social dialogue in 2003 (¹).

But before addressing these issues, it is worth dwelling for a moment on the 10th Statutory Congress of the European Trade Union Confederation (ETUC), held in Prague from 26 to 29 May 2003. The Congress was significant in that it amended the constitution of Europe's trade union organisation and ushered in an almost completely

¹ I wish to thank Maria Helena André, Jean Degimbe and Stefan Clauwaert for their valuable comments. Naturally I take full responsibility for the content of this chapter.

new leadership team ⁽²⁾. Five policy reports were adopted at the Congress and now constitute the ETUC Action Programme for the coming years (ETUC, 2003a). These reports give a clear idea of the trade unions' priorities for the future: the trade union vision of Europe; the desired European economic and social model; enlargement and reinforcing European industrial relations; Europe and globalisation; and, finally, strengthening the ETUC and European trade union identity. It should also be noted that an informal row erupted at the Congress over the organisation's lack of internal cohesion, fuelled in particular by the decision not to increase the ETUC's funding allocation. More funds, some maintained, would have given the European trade union movement greater capacity for action.

Finally, as concerns the employers' organisation, Baron Georges Jacobs, President of UNICE for the past five years, was replaced on 30 June 2003 by Jürgen Strube, former chairman of the executive board at the German chemicals group BASF. Jürgen Strube has set himself five priorities for what is initially a two-year term of office: a competitive European economy, trade and external relations, industrial policy, legislation and regulations concerning business ("less and better legislation") and the social dialogue, including in particular the themes appearing on the social partners' agenda – employment, mobility and enlargement. UNICE will strive to "tackle these issues more autonomously".

² President Fritz Verzetnitsch (Austrian trade unionist), General Secretary Emilio Gabaglio, (Italy) and their team – two Deputy General Secretaries and four Confederal Secretaries – handed over, respectively, to Cándido Méndez Rodríguez (UGT, Spain), John Monks (TUC, UK) and the new Deputy General Secretaries Maria Helena André (UGT, Portugal) – the only one who was part of the former team –, and Reiner Hoffmann (DGB - Germany). The four new Confederal Secretaries are Walter Cerfeda (CGIL, Italy), Joël Decaillon (CGT, France), Józef Niemiec (Solidarnosc, Poland) and Cateleene Passchier (FNV, Netherlands).

1. Work programme for 2003

Since the work programme spans more than one year, several actions were set to begin in 2003 and continue beyond (ETUC, UNICE/UEAPME and CEEP, 2002a). According to the programme itself, the following fields were to be tackled in 2003, or from 2003 onwards (NA = not achieved; A = achieved):

Reports on social partner actions in Member States to implement employment guidelines	NA
Follow-up of framework of actions on lifelong learning (signed in 2002)	A
Seminar with a view to a voluntary agreement on stress at work	A
Seminar aiming at a framework of actions on gender equality	A
Joint orientations concerning industrial restructuring and its social consequences	A
Joint contribution to the European year on disability	A
Joint declaration and/or awareness-raising campaign promoting young people's interest in science and technology	NA
Monitoring of follow-up to framework agreement on telework	under way
Joint seminar on industrial relations in connection with enlargement	NA
Enlarged meetings of the European social dialogue to include the candidate countries	A
Study on restructuring in the candidate countries	NA
Seminar on the action plan on skills and mobility (notably concerning supplementary pensions)	A

As is immediately apparent, the schedule for 2003 was an extremely busy one. However, not all the actions envisaged were equally ambitious. For the sake of clarity, we shall place these actions in three main categories: *joint documents* (report on employment, contribution on

the disabled, declaration on young people, study on restructuring in candidate countries); *follow-up reports* (on telework and on the lifelong learning framework of actions); and lastly *seminars* (on stress at work, gender equality, industrial restructuring with a view to enlargement, and skills and mobility). To which, for the record, we should add the enlarged meeting of the Social Dialogue Committee ⁽³⁾.

This chapter focuses solely on initiatives requiring a commitment on the part of the social partners, be it in the form of an agreement or by establishing a framework of actions. These are: the agreement concerning the social consequences of **restructuring**, the negotiations relating to **stress** at work, the follow-up to the **telework** agreement, the follow-up to the framework of actions on **lifelong learning**, and the negotiations on **gender equality**. In addition, there are topics not contained in the work programme but put forward by the European Commission: protection of workers' **personal data** and the portability of **supplementary pension rights**.

2. Agreement reached in 2003

2.1 Social consequences of industrial restructuring

Corporate restructuring is a sensitive subject for European public opinion, and for Europe's trade union organisations in particular. The recent history of the internal market is peppered with large-scale corporate restructuring operations, closures and/or relocations, which have heightened awareness of this issue amongst political players. EU enlargement to include the central and eastern European countries makes it even more sensitive, and so it can well be imagined that the trade unions expected a good deal from the negotiations with their counterparts on this topic.

³ We could add to this already long list other contributions not included in the work programme but dictated by events: the social partners' joint contribution to the work of the European Convention, the contribution on streamlining the open method of co-ordination in the field of social affairs, and the joint contribution to the Employment Task Force (Kok Task Force). These contributions are not discussed in this chapter.

2.1.1 A reminder of the context

On 15 January 2002 the Commission called upon European employers' and workers' organisations to become involved in a dialogue on ways of anticipating and managing the social consequences of corporate restructuring (CEC, 2002). The aim was to see whether the social partners could agree amongst themselves on a set of "principles" which would allow "socially intelligent" restructuring operations (in the Commission's words) to go ahead, the idea being to define a body of good practice in this area: employability and adaptability of workers; simplification of legislation and procedures; corporate responsibility; and socially responsible implementation of restructuring decisions (adequate information for workers, fair compensation and periods of notice, machinery for resolving labour conflicts).

UNICE immediately made known its position on this first phase of consultation (Degryse, 2003). The employers highlighted the fact that a "substantial" legislative framework already exists to deal with the social aspects of industrial restructuring, both at European level and at national level, and that no additional regulatory constraints should be imposed. The European Trade Union Confederation, on the other hand, considered that a range of Community instruments – both legislative and/or negotiated – were needed in order to ensure that decisions regarding corporate restructuring are based on long-term perspectives and managed in a socially acceptable manner.

Even though the employers' and workers' attitudes appeared difficult to reconcile, "exploratory discussions" got under way in April 2002 in the hope of reaching "workable conclusions". It soon became apparent that UNICE-UEAPME was being held back by some elements among the employers' ranks who were very much opposed to the discussions, and had virtually no room for manoeuvre. A seminar was held in October to look at case studies of restructuring and attempt to learn lessons. Two further seminars took place in March and May 2003 to continue this examination of good practice. In all, ten specific cases of restructuring were scrutinised: seven large enterprises (Norsk Hydro, Danone, Marzotto, Deutsche Telekom, Barclays Bank, Siemens and Metso), two SMEs (Auwera and Abeil), and the industrial conversion of an entire Spanish region (Asturias). This meticulous study resulted in a

set of “orientations for reference”, drawn up jointly by the social partners. They are “intended to be disseminated to all the actors concerned”.

2.1.2 Content of the orientations for reference on the social consequences of restructuring

On 16 October 2003 the social partners reached agreement on a text entitled “*Orientations for reference in managing change and its social consequences*” (ETUC, UNICE/UEAPME and CEEP, 2003a). This document was officially forwarded to Commissioner Anna Diamantopoulou on 29 October. We should state at the outset that the text was approved by the UNICE Council of Presidents and by both the other employers’ organisations (CEEP and UEAPME), but was not put to the vote in the ETUC Executive Committee, which merely “took note” of it. The implication here is that the ETUC regards the document as a working basis for possible discussions among the social partners on certain topical issues (restructuring in eastern European countries, employment, training, etc.). No vote was held in the Executive Committee because it was far from certain that a satisfactory majority would come out in favour of it.

The orientations contain five main strands, which are briefly described below.

- *Explaining and giving the reasons for change.* The employers’ and workers’ organisations agreed on a few key ideas: the need to explain and give the reasons for change in good time to workers and/or their representatives in the company concerned, by setting out the company’s overall strategy; allow an open discussion on the intentions of the management, enabling workers and/or their representatives to make their views known; facilitate the involvement of managers; meet the obligations on information and consultation of the workers and/or their representatives throughout the process of change. Reference is also made to good practice, such as producing a specific annual report on company developments, and drawing on suggestions from workers as to how to improve the organisation of work and production.

- *Developing employability.* This second strand underlines the importance of maintaining and developing workers’ competencies and qualifications in order to “*foster internal and external mobility and ensure the success of the*

business". Emphasis is also placed on the need to act early in order to prepare the evolution of jobs and competencies and, if possible, anticipate them. This approach is the one recommended in the framework of actions for lifelong development of competencies and qualifications (see below).

- *Territorial dimension.* Moving on next to the economic and social repercussions of restructuring for an entire region or territory, the document calls for "*complementarity and synergies between the actions of the various actors (employers, trade unions and territorial public authorities)*". The importance of this partnership to foster new job-creating economic activities, manage reassignments and improve the operation of the local labour market was highlighted in the experience of regions changing economic activity, especially those supported by the EU structural funds.

- *Specific situation of SMEs.* SMEs were a rather tricky aspect of these negotiations, as we pointed out in last year's edition of Social Developments. Indeed, multinational companies usually work with a whole host of subcontractors and suppliers, and these are the first to be affected by large-scale restructuring operations. Thus the agreement contains a paragraph devoted to the specific situation of SMEs; but in actual fact it says nothing very definite (it calls for "*strong creativity and strong motivation on the part of the various players*", etc. This paragraph, requested by UEAPME, aims above all to highlight the financial risk taken by owner-managers and the need for a supportive environment.

- *Managing restructuring.* Last but not least, the final major strand of the document relates to actually managing the social consequences of restructuring. The text begins by asserting that these consequences "*are managed locally*" and goes on to state that where "*social plans*" are drawn up, the negotiation should take account of factors such as the company's constraints, the tax regime, national legislation, collective agreements, and the needs and choices of workers. It then spells out the possible alternatives to dismissals: reassignment of workers, training, reconversion, support for business creation, an agreement to diversify forms of work and employment and/or suspend or adapt some benefits on a temporary basis, personalised worker support, natural departures, notably through retirement or, as a last resort, early retirement.

Last of all, the document states that “*a positive attitude to change together with the existence of a climate of confidence between management and workers*” and/or their representatives are key factors, and calls for monitoring mechanisms to be put in place to evaluate the effects and check the efficiency of the solutions identified in the medium and long term.

2.1.3 A tentative assessment

We should point out first and foremost that it is difficult to form an opinion about a text whose very status is somewhat nebulous. The “orientations for reference” obviously do not constitute a framework agreement as defined by the Treaty on European Union (provisions on the European social dialogue). What, then, is the precise scope of this joint document? Is it merely a guide to good practice? Have the social partners committed themselves, in any shape or form, to abiding by these orientations? Neither the letter sent to Anna Diamantopoulou nor the introduction to the text itself gives an answer. All it does say is that “*UNICE/UEAPME, CEEP and ETUC agreed to reflect on restructuring with a view to identifying orientations that could serve as a reference to assist in managing change and its social consequences on the basis of specific case studies*” and that the orientations “*are intended to be disseminated to all the actors concerned*” (ETUC, UNICE/UEAPME and CEEP, 2003a: 1). For the time being, therefore, we shall have to abide by this new term, “orientations for reference”, without knowing exactly what it means.

Leaving aside the role of the text, even its content is widely regarded as being somewhat threadbare. Intelligent use can undoubtedly be made of some of the orientations set out for purposes of industrial restructuring. It is nonetheless surprising to see the text call, for example, for the obligations on information and consultation of workers to be met, and for account to be taken of national legislation, as if that did not go without saying. It is moreover hard to detect anything innovative; the document’s main merit seems to be its acceptance by the employers’ organisations. It is worth remembering that industrial restructuring was an extremely sensitive matter, given the trade unions’ high expectations and the employers’ strong reservations, but also, as we pointed out in last year’s Social Developments, the difficulty of taking sectoral aspects into account. The text of the agreement does not meet the trade unions’ expectations: it has come in for criticism from certain ETUC affiliates,

who had expected more of it or have expressed reservations. On the employers' side, what allowed the sections of UNICE most virulently opposed to negotiations on this issue to be won over was presumably the total absence of any binding obligations. It seems clear in any event that the role of this document is primarily symbolic. Does it not, in a sense, take us back to the era of "common opinions" in the second half of the 1980s? That would be a backward step, given the recent momentum of the social dialogue: having had framework agreements transformed into directives, and then voluntary agreements transposed into national practice by the affiliates of the signatory organisations, we now reach the stage of "good practice". The optimistic view would be that these orientations could eventually be incorporated into more specific, more binding instruments. But there is as yet no evidence of any such likelihood, apart, perhaps, from the stance of the ETUC Executive Committee which simply regards them as a "working basis".

3. Negotiations underway in 2003

3.1 Stress at work

The European Commission decided to launch a first round of consultation with the social partners on the issue of stress at work. This process got underway on 2 December 2002, and the parties were given six weeks in which to reply. The consultation document noted that over 40 million people in the EU are affected by stress in the workplace, and that this is thought to cost Member States some 20 million euros every year ⁽⁴⁾. The Commission raised three questions during the consultation process: is there any need for an initiative in this area? If so, must it be taken at Community level? If so, should this issue be addressed in the first instance by means of a non-binding instrument (as the Commission would prefer) or via a binding instrument with a joint initiative by the social partners?

⁴ For more information on issues related to stress at work, we recommend reading the special issue of the TUTB (European Trade Union Technical Bureau for Health and Safety) Newsletter "Stress at work", No.19-20, September 2002.

3.1.1 Reactions of the social partners

The social partners responded to this first round of consultation with a joint letter dated 15 January 2003 (ETUC, UNICE/UEAPME and CEEP, 2003b). In it they recall that stress already features in their multi-annual work programme ⁽⁵⁾, and inform the Commission of their intention to hold a seminar on this issue on 25-26 February. They also ask the Commission to await the outcome of this seminar before taking any initiative, the aim of the social partners being to sign a “voluntary agreement” on the matter ⁽⁶⁾. After the seminar, the ETUC Executive Committee, meeting on 28-29 April, mandated an ETUC delegation to open talks with the European employers’ organisations in the hope of reaching such an agreement. On the employers’ side, the Council of Presidents likewise decided to authorise UNICE to embark on negotiations. The discussions began on 18 September 2003.

3.1.2 Items on the agenda

The principal items on the agenda for these negotiations were the following: finding a common definition of stress at work, acknowledging this phenomenon to be a collective and not an individual problem (and, hence, one to be handled on a collective basis), identifying the main causes of stress (job content, work organisation and the working environment), and defining the scope of a voluntary agreement on this issue. Lastly, if answers could be found to all these questions, determining mechanisms to prevent and/or eliminate stress at work.

Despite meetings held in September, October and December, the actual negotiations had still not begun by the end of 2003. A number of technical points needed to be clarified first of all, and fresh reservations

⁵ Which begs the question “why it is that the Commission is urging the social partners to negotiate on a topic which they themselves have already put on their own agenda?”.

⁶ This would be the second voluntary agreement, following the one concluded on telework in 2002 (cf. Degryse, 2003).

had to be overcome (7). The ETUC decided in December to put forward a draft structure for a text, to serve as a basis for the talks. These negotiations were expected to continue throughout the first half of 2004 at a rate of two meetings per month (one plenary and one meeting of the drafting group), so as to produce a joint text in all probability by May/June 2004.

3.2 Follow-up to the voluntary agreement on telework

The follow-up to the voluntary agreement on telework might well become a thorn in the side of the European social dialogue. The agreement on telework was signed on 16 July 2002 (ETUC, UNICE/UEAPME and CEEP, 2002b). The social partners undertook to apply this *voluntary* agreement at national level not by means of a Community legal instrument, but in accordance with the national procedures and practices specific to management and labour in the Member States (for more details about this agreement, see Degryse, 2003). Implementation was to take place within three years, so it is as yet too soon to draw any conclusions about the application of the agreement. An initial mid-term review (Clauwaert *et al.*, 2003) has been carried out by the trade unions. What emerges is that the EU countries can be grouped in three categories:

- those where negotiations based on the European agreement did begin in 2003: Austria, Finland, Sweden, Luxembourg and the United Kingdom;
- those where the agreement had an influence on negotiations already underway or in the pipeline, and/or the agreement is to be on the negotiating table in 2004: Denmark, France, Germany, Portugal, Spain and the Netherlands;

⁷ The question that still arose in some people's minds was why the issue of stress at work was not being dealt with by the health and safety committee (Luxembourg) rather than as part of the cross-industry social dialogue. In actual fact the two types of negotiations are quite distinct: the Luxembourg committee is a tripartite body for consultation and concertation.

- lastly, those where nothing tangible had yet been achieved during 2003: Belgium, Greece, Ireland (initiatives have been taken in these three countries but without any firm outcomes by the end of 2003) and Italy.

This classification should be read with caution: it is merely a snapshot of the state of affairs at a given point in time (31 December 2003). Changes are inevitable. Furthermore, it does not reflect the ambitiousness of those transposing the text. For instance, an agreement was reached rapidly in the UK, but one that has no binding character whatsoever, whereas in Belgium the trade union organisations have demanded that the agreement be transposed into a collective agreement; the employers have however objected. Thus it will be impossible to draw any definitive conclusions regarding the above classification before mid 2005.

Nevertheless, some observers are clearly quite uneasy about certain national interpretations of the agreement's "voluntary" nature. The employers' organisations in several countries have stood in the way of binding national negotiations, arguing that the agreement was voluntary in the sense of "optional". That was obviously not the spirit of the European talks. UNICE itself has apparently called on its national federations to implement the agreement, but is thought to have been stymied by the stubbornness of some of its affiliates.

3.2.1 Key points at issue

The revelation that national transposition may be performed grudgingly in some countries could rapidly discredit the very principle of negotiating voluntary agreements, especially in those countries where the trade union organisations are confronted by inertia on the part of employers. These organisations in fact find themselves in the paradoxical situation where their opposite numbers accept a set of principles governing the practice of telework at European level, whilst at the same time refusing to imbue these principles with any content at all at national level. What would be the point of the social partners holding European-level negotiations if the texts they generated were not incorporated into national collective bargaining?

The second key issue is the risk that the social dialogue might embark on the production of documents whose effects are dissimilar in different EU Member States. Unlike legislation, which – although national transposition may be flexible – applies to all EU countries, voluntary agreements may result in national legislation, a recommendation, a non-binding code of conduct or even nothing, as the case may be. In such circumstances they will no longer function as a bulwark against competing social standards from one Member State to another, and will consequently fall short of the number one goal of European social policy.

It is therefore understandable that the ETUC deems it so important for the trade union side to assess the implementation of the voluntary agreement on telework: this assessment will determine its future attitude to voluntary agreements. If implementation were to reveal shortcomings, the ETUC would abandon this approach.

3.3 Follow-up reports on the “competencies and qualifications” framework of actions

As we pointed out in the last edition of *Social Developments*, the approval of a framework of actions for the lifelong development of competencies and qualifications, in 2002, represents the first time that the open method of co-ordination (OMC) has been applied to the social partners, using the European social dialogue as a vehicle. Let us briefly summarise the four priority areas identified by the framework of actions:

- to identify and anticipate competencies and qualifications needs;
- to recognise and validate competencies and qualifications;
- to inform, support and provide guidance;
- to mobilise resources.

The framework of actions made provision for the drafting of annual assessment reports and for updating the priorities where appropriate (ETUC, UNICE and CEEP, 2002c). The first follow-up report was published on 14 March 2003: it is a 73 page document which reviews the activities carried out in each Member State under the “guidelines”

laid down at European level. Given that this report was the first to be published, only a few months after the European social partners had adopted the framework of actions, it was still “*difficult to identify clear major trends in the information submitted by the social partners on the follow-up actions they have taken at different levels. However, it clearly emerges (...) that introduction of the framework of actions in the various national contexts has provided the impetus for debates between the social partners on development of competencies and qualifications, and in some cases has made it possible to group activities around the four priorities identified at European level*” (ETUC, UNICE and CEEP, 2003c: 4). Four main types of action have been taken: national discussion and analysis of the priorities themselves, integration of some of the priorities into collective agreements, promotion of the approach and the priorities of the framework of actions through tripartite concertation, launching of more focused actions and projects, etc. According to the European social partners, this follow-up report confirms the interaction between their activities and proposals at European and other levels (national, cross-industry and sectoral). Even though a number of the national actions described predate the adoption of the European framework of actions, the very existence of such a framework might be expected to foster a convergence of national practices in the long term. But it is still too early to be sure of that.

3.4 Data protection

The protection of workers’ personal data is another sensitive matter. In August 2001 the Commission initiated a first round of consultation with the social partners on this subject, which rapidly revealed marked differences in the approaches of employees’ and employers’ organisations. The ETUC considered that, broadly speaking, workers are not sufficiently well protected against certain practices on the part of their employers, and urged a total ban on genetic screening, limits to be placed on medical data and testing for drug use, and a prohibition on permanent, automatic monitoring of workers. UNICE, for its part, pointed out that there were already directives regulating certain aspects of data processing. The Commission, in the belief that a European initiative should nevertheless be envisaged, launched a second round of consultation in October 2002. It argued in favour of establishing a European framework for data protection in the field of employment,

laying down a set of principles for collecting and processing sensitive data (racial or ethnic origin, political opinions, religion or creed, sexual orientation, criminal convictions, etc.), medical data, testing for drug use and genetic testing.

3.4.1 UNICE says no

We should point out at this stage that data protection does not feature in the work programme published by the social partners in November 2002, which could be taken as an indication of insurmountable differences between them. These differences came into sharp focus in 2003. On 6 January 2003 the employers issued their reply to this second round of consultation. UNICE repeats the objections that it already put forward during the first round, and concludes by stating clearly that it “*does not intend to open negotiations in accordance with Articles 138 and 139 of the Treaty on the basis of the principles set out in the Commission document*” (UNICE, 2003a: 4). In addition, the employers are opposed to a specific directive aimed at establishing a European framework for personal data protection at work, as envisaged by the Commission. Such a framework could “*prove counterproductive for both companies and workers*”. The employers have made their refusal to sit down at the negotiating table quite plain. The ETUC would no doubt have liked at the very least to raise certain aspects of data protection within the social dialogue, but given the stonewalling by UNICE the matter will be dealt with through legislative channels. That did not however prevent the ETUC, on 20 October, from renewing its appeal for a ban on genetic screening at work.

3.5 Portability of supplementary pension rights

Another major topic on the European social partners’ agenda is the portability of supplementary pension rights (i.e. the possibility of acquiring and retaining pension rights in cases of occupational mobility, either by preserving them in the previous employer’s scheme or by transferring them into a new scheme). We should just recall that the current regulations on occupational pensions represent one of the obstacles to workers’ occupational mobility. For example, in certain Member States, employees must normally stay with the same employer for five years before becoming entitled to an occupational pension; if, during that time, a worker decides to change jobs, he/she will not

accrue any pension rights for that period. What is more, it is not always possible to transfer pension rights from one type of scheme to another or to a scheme in another Member State. The aim of making these rights “portable” is therefore to remove an obstacle to occupational mobility. The Commission, believing that this issue should be addressed by the social partners as a matter of priority (whilst keeping the possibility of legislation as a fall-back option), initiated a first round of social dialogue consultation on the matter on 12 June 2002. Both the European trade unions and the employers responded by acknowledging the need for action at Community level (cf. Degryse, 2003), leading the Commission to embark on a second round on 12 September 2003 (CEC, 2003). In this second round of consultation the social partners were invited to make proposals concerning the possible content and scope of any such Community-wide measures. They were asked to respond within a period of six weeks. The negotiation of a collective agreement would have to be carried out within nine months, if that course of action were decided upon.

3.5.1 Reaction of the social partners

The ETUC Executive Committee replied to the Commission on 17 October 2003 (ETUC, 2003b). The solution to the problem of portability could, in its opinion, be twofold in nature: on the one hand legislative, covering in particular the removal of obstacles to mobility, in the field of occupational pensions, related to taxation, or the removal of current legal obstacles linked to the transfer of capital, corresponding to occupational pension rights acquired by a worker. The other initiative could involve negotiations between the social partners and result in a framework agreement setting out the major principles concerning the putting in place of supplementary pension schemes, a refusal to call into question the organisation of supplementary occupational pension schemes, the acquisition of occupational pension rights, equal treatment in conserving rights acquired, and the right to transfer the capital corresponding to acquired rights. The ETUC declared its readiness to begin negotiations with its European counterparts about these principles, which should be implemented at national level in the framework of the social dialogue, be it cross-industry or sectoral.

As for UNICE, its reply was issued on 19 November. Although Europe's employers are in favour of removing the obstacles to cross-border labour mobility associated with supplementary pensions, they want any EU initiative in this field to deal only with the cross-border portability of supplementary pensions (i.e. it should not tackle the conditions for acquiring, preserving and transferring these rights), "*insofar as this would interfere with the organisation of supplementary pension arrangements in Member States*" (UNICE, 2003b: 1). Thus UNICE does not wish to enter into negotiations on the aspects proposed by the Commission. Europe's employers are nevertheless prepared to hold an EU-level technical seminar as part of the social dialogue, in an effort to distil a joint contribution to the debate.

This position does not go as far as the Commission would have liked. The Commission considers that the negotiations should be geared to two objectives: gradually reducing the periods required for eligibility to a pension (qualifying periods) or recognition of relevant spells of employment in another Member State; and also allowing workers the choice of whether to retain the rights acquired in the initial scheme or to transfer them into a new scheme, including in another Member State. Lastly, the Commission would like dormant acquired rights – those preserved by a worker in the pension scheme of a former employer – to be better protected against inflation.

It is therefore evident that, although the European employers and employees share a common desire to remove the barriers to occupational mobility associated with supplementary pension rights, they agree neither on the means to that end nor on the scope of any Community initiative. No fully fledged negotiations were opened on this topic in 2003, and if the social partners fail to take action the Commission has reserved the right to put forward draft legislation. That appears to be the most likely scenario.

3.6 Gender equality

This last point will be broached only very briefly. It concerns the decision taken, in the social partners' work programme, to draw up a framework of actions on gender equality. Some preparatory meetings were held in 2003, and in December it was decided to open

negotiations. On 26 January 2004 the social partners agreed on a working method, and meetings have been scheduled for April, May, July, September and October. Discussion is likely to revolve around the following themes: discrimination, women and business, reconciliation of family life and working life, and equal pay. Social Developments 2004 will examine this subject in greater depth.

Conclusion

The European cross-industry social dialogue focused on an amalgam of three important topics in 2003: corporate restructuring (signing of a text about which the trade unions had misgivings), telework (follow-up to the 2002 agreement) and stress at work (start of negotiations). Whereas these topics are not connected in any formal sense, they do clearly interact with one another.

- Two questions arise in respect of the “orientations for reference” on the social consequences of restructuring. The first concerns the status of the document (a sort of good practice guide); the second relates to the inherent weakness of its content. Would it have been possible to go further? Undoubtedly not, given the substantial reservations with which UNICE entered into negotiations. The upshot of this weakness is that the ETUC has not formally rubber-stamped the document but has merely “taken note” of it and considers it a working basis for possible future discussion. For the ETUC at least, therefore, the debate is not over yet.

- It is not absolutely clear so far how the voluntary agreement on telework is to be implemented. No precise assessment of the extent of implementation will be possible until 2005. However, it already appears that to the employers in several Member States the term “voluntary” is synonymous with “optional”. This does not correspond to the spirit of the European-level negotiations. The reluctance to incorporate this agreement into national practice in certain countries could, if it persists in 2004, cause the trade union side to boycott this type of agreement.

- Finally, as concerns the voluntary agreement on stress at work, the social partners will only get to the heart of the matter in 2004. Although for this reason we cannot say much in this edition of Social Developments, it does appear that the follow-up to the telework

agreement will have a major impact on the outcome of the negotiations on stress. Moreover, what is really at issue here is the very principle of “voluntary agreements”. It is clear in any event that, having had their fingers burnt over implementation of the telework agreement, some national trade unions are unwilling to persevere with that approach.

Were it to emerge that voluntary agreements do not have equivalent effects in all the Member States, that would at the very least be a cause for concern, since the number one goal of European social policy is to prevent competition within the internal market from adversely affecting working conditions (*social dumping*). In more general terms, both “voluntary agreements” and the “orientations for reference” now raise the question of how we are to interpret the various instruments referred to in the social partners’ work programme. Is it absolutely certain that employers and employees share a common conception of the instruments they are proposing?

The social dialogue in 2003 leads to a second conclusion: there is a lack of political will on the part of UNICE. We have seen how much difficulty the employers had in opening negotiations about industrial restructuring, the reluctance of national employers’ federations to implement the telework agreement, the refusal to negotiate on the protection of workers’ personal data, and lastly the refusal to negotiate on various aspects of the portability of supplementary pension rights. By constantly backing off in this way, UNICE is certainly not helping to boost the momentum of the European social dialogue. Its attitude demonstrates yet again – not that there is any need – the one-sidedness of labour relations at Community level: the trade unions, which intend to “rise to the challenge”, are confronted by counterparts who consistently keep their distance. This imbalance is bound to favour the “lowest bidder”, as well as calling into question the autonomy of the social dialogue – autonomy which is in fact called for in the social partners’ work programme. This imbalance is ultimately compounded by the ineffectual nature of the Commission’s actions in the field of social affairs. Its weakness can probably be explained by two main factors: on the one hand, the current political balance of power in the

Council, which is not in its favour ⁽⁸⁾, and, on the other, the prospect of enlargement, which will without doubt be followed by a slowdown in legislative initiatives in the social sphere. The lack of balance evident in 2003 made it look very unlikely that the European social dialogue would become a driving force behind Social Europe.

References

CEC (2002), Communication from the Commission to the Spring European Council in Barcelona, “The Lisbon Strategy - making change happen”, COM (2002) 14 final of 15 January 2002 (http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0014en01.pdf).

CEC (2003), “Second stage of consultation of social partners on measures to improve the portability of occupational pension rights”, SEC (2003) 916, 12 September 2003.

Clauwaert, S., Düvel, W. and Schömann, I. (2003), “Report on the implementation of the ETUC/UNICE-UEAPME/CEEP agreement on telework”, Interim version, European Trade Union Institute, Brussels, 15 November 2003.

Degryse, C. (2003), “Cross-industry social dialogue in 2002: a testing year”, in Degryse, C. and Pochet, P. (eds.), *Social Developments in the European Union 2002*, European Trade Union Institute, Observatoire social européen and Saltsa, Brussels, pp.177-207.

ETUC (2003a), Action Programme adopted at the ETUC 10th Statutory Congress, Prague, 26-29 May 2003.

ETUC (2003b), ETUC response to the European Commission’s Communication “Second consultation phase of the social partners with a view to improving the portability of supplementary pension rights”,

⁸ There was no agreement among Member States in 2003 concerning the Commission’s proposal for a directive on temporary agency workers, which was to have been adopted by the Council before the end of the year. This directive was itself a result of failed negotiations between the social partners. The lack of an agreement in the Council demonstrates at any rate that the legislative option cannot necessarily be relied on as a “spare wheel” in the social dialogue.

resolution adopted by the ETUC Executive Committee, Brussels, 16-17 October 2003.

ETUC, UNICE/UEAPME and CEEP (2002a), Work programme of the social partners 2003-2005, Brussels, 28 November 2002 (http://europa.eu.int/comm/employment_social/news/2002/dec/prog_de_travail_comm_en.pdf).

ETUC, UNICE/UEAPME and CEEP (2002b), Framework agreement on telework, Brussels, 16 July 2002 (http://europa.eu.int/comm/employment_social/news/2002/oct/teleworking_agreement_en.pdf).

ETUC, UNICE and CEEP (2002c), Framework of actions for the lifelong development of competencies and qualifications, Brussels, 28 February 2002 (<http://www.etuc.org/en/dossiers/colbargain/lll.cfm>).

ETUC, UNICE/UEAPME and CEEP (2003a), Orientations for reference in managing change and its social consequences, 16 October 2003.

ETUC, UNICE/UEAPME and CEEP (2003b), Joint letter to Mrs Odile Quintin, Director General, DG Employment, European Commission, 15 January 2003.

ETUC, UNICE/UEAPME and CEEP (2003c), Framework of actions for the lifelong development of competencies and qualifications, First follow-up report, 14 March 2003.

UNICE (2003a), Commission's second-stage consultation on the protection of workers' personal data - UNICE's reply, 6 January 2003.

UNICE (2003b), Commission's second stage consultation of social partners on portability of supplementary pension rights - UNICE reply, 19 November 2003.