

## **Sectoral social dialogue at EU level: Current issues and prospects**

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### **INTRODUCTION: SOCIAL DIALOGUE AT EU LEVEL**

In spring 2010 the Commission will issue its most recent Communication on social dialogues focusing this time exclusively on sectoral social dialogues (SSD). We take this official declaration of political plans and outline of future procedural structuring as the opportunity to elaborate on more recent developments and perspectives with a focus on sectoral social dialogues. In other words, where are SSD headed? The aim of the paper is neither to present a complete historical overview nor to provide a detailed empirical analysis of the current state of play. The objective is to cope with fundamental difficulties of the present stage of development, especially obvious problems of implementation including procedures of follow-up and monitoring, and to deal with various relevant prospects. In any case implementation must not be neglected in the analysis because it constitutes an important and even necessary phase of the policy cycle as well as an integrated part of policy making in the multilevel EU polity.

### **SOCIAL DIALOGUE AT INTERPROFESSIONAL LEVEL**

Social dialogues, institutionalized instruments of European governance, exist at two interrelated levels, the macro or interprofessional and the sectoral one. Until most recently the macro variant has been more prominent (Falkner 1998). It was officially launched in the mid 1980s when the newly appointed Delors Commission intended to integrate management and labour, or “the social partners”, more closely into processes of (social) policy making and the politically intended establishment of the “social dimension of the internal market” (“Val Duchesse dialogue”). The political idea was that “the dialogue between management and labour at the European level could, if the two sides consider it desirable, lead to relations based on agreement” (Article 118b SEA). Major problems of implementation did not exist because the results were mainly addressed to the Commission in the form of “joint opinions” and therefore had no direct implications for the social partners themselves.

In the early 1990s the institutional base was changed. Social dialogues achieved a qualitatively new stage of development when the Social Protocol and Agreement annexed to the Maastricht Treaty (and, later on, incorporated into the Amsterdam Treaty without major revisions) granted the social partners not only the right of being consulted twice on all proposals of the Commission but also the far-reaching opportunity to negotiate framework agreements that could be given legal force by a Council decision. Thus, this form of “coregulation” (CEC 2002b) increased their options of factual self-regulation in a broad range of issues. Some attempts failed. Only in a few selected cases the social partners managed to make use of their new, rather unique position and to conclude contractual arrangements (parental leave 1995/2009, part-time work 1997, fixed-term work 1999). The agreements were transformed into Directives and had to be implemented by the Member States. This necessary step happened in most countries by national legislation (Falkner et al. 2005).

The Laeken Declaration issued by the social partners in late 2001 changed the institutional framework again. The more recent “autonomous agreements” (telework 2002, work-related stress 2004, harassment and violence at work 2007) are of purely voluntary nature and should not be confused with the legally binding character of their predecessors (cf. Table 2). The substitution of the original tripartite character including the Commission as an important corporate actor by a mainly bipartite one fits into the results of the Lisbon summit and the overall context of the then new Lisbon strategy which introduced a shift in EU regulatory policy. The Commission now refrains from any kind of participation and active interference (such as agenda setting or the implicit threat of “bargaining in the shadow of the law”), launches only few consultations and almost no legislative initiatives of its own but restricts its role to logistic support (provision of facilities and experts, coverage of expenses) and leaves all initiatives to the social partners. Consequences of autonomous agreements for the social partners are rare.

## **THE “OLD” SECTORAL SOCIAL DIALOGUES**

SSD can be traced back to the 1960s. They existed in two institutional forms, joint committees and informal working groups. Until the late 1990s their number increased slowly to almost 20. All (about 300) results were purely voluntary, i. e. legally non binding for the signatory parties (CEC 1996, Sörries 1999). In other words, SSD played a consultative role. Judgments and opinions about these “old” forms were rather ambivalent and indicated their fundamental problem: Most employers and their organizations were quite satisfied about the status quo with its “soft” form of regulation and were interested in its preservation whereas most unions preferred (legally) binding framework agreements as results and “hard” regulation” but could not enforce them.

The decisive reform of institutional foundations happened in 1998 when the Commission shared the criticism in its third Communication on social dialogue (CEC 1998) and argued that the old structures “have become over-institutionalized or have retained operational methods which have outlived their usefulness”. In its bold political decision “on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level” (European Commission 1998) the Commission terminated the existing heterogeneous structures and replaced them by new unitary “sectoral dialogues committees”. These key forums for consultation, joint action and negotiations are to be set up at the joint request of social partners and shall “be consulted on developments at Community level having social implications, and develop and promote the social dialogue at sectoral level” (European Commission 1998: article 2). Their ultimate goal is the political redefinition of constraints and opportunities, the establishment of bilateral relations and the conclusion of legally binding framework agreements (“negotiated legislation”).

It is justified to argue that in recent years SSD have considerably gained in importance in the evolution of European industrial relations and in comparison with their interprofessional counterpart (European Commission 2006a, Dufresne et al. 2006). The first official Communications focused on the interprofessional level and SSD were not even mentioned (CEC 1993) or only regarded as consultation forums (CEC 1996). Later on, they were explicitly referred to (CEC 2002a). Nowadays they will constitute the exclusive topic of the forthcoming Communication; the Commission itself witnesses them, however, in a more critical perspective than some years ago. In general, SSD are considered to be more appropriate for the social regulation of sector-specific issues than the more traditional macro variant because of their higher degree of “flexibility” and their option of tailor-made, specific solutions and answers (CEC 1998: 17).

## **MORE RECENT QUANTITATIVE DEVELOPMENTS IN SECTORAL SOCIAL DIALOGUES**

More than a decade later the decisive question is, of course, if these self-defined, rather ambitious goals defined for SSD by the Commission (European Commission 1998) have been reached. In the meantime quantitative as well as qualitative developments have taken place. In purely quantitative perspective the number of SSD has gradually increased from less than 20 to 37 (in the beginning of 2010; cf. Table 1). They seem to show an increasing interest of the social partners and to cover a broader range of sectors. Nevertheless the institutional infrastructure is (still) quite dispersed between big and small sectors and the distribution across sectors remains uneven. Some sectors have been active for more than a decade. Some sectors, such as the new economy, are completely missing, other economically important sectors, such as metalworking or chemicals, are comparatively lagging. Some included sectors, such as tanning and leather, are rather small, others, such as transport, are overrepresented and divided into homogeneous sub-sectors (Keller 2005). Some SSD are still in their test phase or only in an informal stage of development (such as federal government).

Furthermore, it has to be taken into consideration that the present overall figure is fairly impressive only on first sight because it includes all formerly existing institutional forms (cf. Table 1). Thus, there exists an extremely high degree of continuity.

The sheer number of heterogeneous SSD outcomes has slightly increased (Pochet et al. 2009 for details). There is, however, no linear increase in the overall number of documents over time and, thus, no general but rather some sector-specific "dynamism". Last but not least there is an enormous amount of diversity between sectors concerning their activity (i.e. there are more productive ones such as electricity or railways versus less productive ones such as insurance or shipbuilding) and the respective number, content and type of joint outcomes. All in all, the judgment, whether the goals officially declared by the Commission in 1998 have been reached, is arbitrary.

**Table 1 – Sectoral Social Dialogues – Old and New Structures**

	NEW STRUCTURE		OLD STRUCTURES	
	Joint request for a Sectoral Dialogue Committee	New dialogue	Joint Committees	Informal Working Group
Agriculture	1		1	
Audiovisual	1	1		
Banking	1			1
Catering	1			1
Chemical industry	1	1		
Civil aviation	1		1	
Cleaning industry	1			1
Commerce	1			1
Construction	1			1
Electricity	1			1
Extractive industry	1		1	
Football	1	1		
Footwear	1			1
Furniture	1	1		
Gas	1	1		
Horeca	1			1
Hospitals	1	1		
Inland waterways	1		1	
Insurance	1			1
Live performance	1	1		
Local+regional gov.	1			1
Metalwork	1	1		
Personal services	1			1
Postal services	1		1	
Private security	1			1
Railways	1		1	
Road transport	1		1	
Sea fisheries	1		1	
Sea transport	1		1	
Shipbuilding	1	1		
Steel	1		1	
Sugar	1			1
Tanning and leather	1			1
Telecommunications	1		1	
Temporary work	1	1		
Textiles and clothing	1			1
Woodworking	1			1
	<b>37</b>	<b>10</b>	<b>11</b>	<b>16</b>

Sources: CEC 1996, Annex II; Pochet et al. 2009, 16; own additions

## **MORE RECENT QUALITATIVE DEVELOPMENTS IN SECTORAL SOCIAL DIALOGUES**

In qualitative regard various types of social dialogue outcomes are to be distinguished according to a semi-official typology (cf. Table 2). SSD cover a fairly broad variety of topics and reach far beyond social policy issues (from training to health and safety, to non-discrimination and corporate social responsibility). All in all, they are more appropriate for (sector-)specific issues than for more general ones. Furthermore, they constitute more an instrument for joint lobbying the European institutions and actors than for others such as “hard” issues of employment relations and working conditions (de Boer et al. 2005). They provide useful (new) information on sectoral market developments not available otherwise and, thus, can be seen as learning laboratories for representatives of both sides enhancing the gradual development of mutual understanding and trustful cooperation. One could, of course, argue that, as these processes have been going on for quite a while, they should therefore come to an end, and should be dissolved by more binding forms. However, they have in only very few sectors led to framework agreements legally binding for the signatory parties and, thus, have not reached the most ambitious officially defined goal of the fundamental re-organization of sectoral social dialogue in 1998 (Keller 2003). In figures: Less than two per cent of all texts have legally binding effects (Pochet et al. 2009). Quite the contrary, there is an obvious trend towards legally non-binding but implementation-oriented “new generation texts” (cf. Table 2).

The implications for the implementation of “new generation texts” will be discussed in the next section.

Furthermore, the addressees of results are quite relevant. European and national institutions are far more frequent than national organizations, European social partners and companies (Pochet et al. 2009, 22). This distribution indicates that only a tiny minority of outcomes requires further activities of the European social partners or their national affiliates or individual companies. According to the typology presented in Table 2, within the 37 SSD around 60 “new generation texts” have been concluded so far that require implementation and follow-up by the social partners.

## **PROBLEMS OF IMPLEMENTING SOCIAL DIALOGUE RESULTS**

Basically there are two options for implementation (according to Article 155 TFEU; ex Article 139 TEC). The legislative track (“at the joint request of the signatory parties, by a Council decision on a proposal from the Commission”) leads to legally binding social partner agreements which are implemented as Directives by a decision of the Council (cf. Table 2, Ia), whereas the negotiation track (“in accordance with the procedures and practices specific to management and labour and the Member States”) consists of legally non-binding so-called autonomous agreements (cf. Table 2, Ib) or other “new generation texts” (process-oriented texts, cf. Table 2, II).<sup>1</sup> The former<sup>2</sup> includes the option of sanctions in all cases of inappropriate implementation or even non-compliance at national and sectoral level, the latter does not because of its purely voluntary character. In this situation (the “autonomous route”) not the Member States, as in the opposite case, but the independent social partners at national level are not only deeper involved in negotiations but are exclusively in charge of all procedures and processes of implementation. By definition, the system of implementation

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<sup>1</sup> Empirical analyses show that in social partners' perception and practice the distinction between “autonomous agreements” and other “new generation texts” is a purely analytical one (Weber 2008).

<sup>2</sup> Up to now, there exist three legally binding social partner Directives at the interprofessional level (parental leave (1995/2009), part time work (1997), fixed-term work (1999)) and six at sectoral level (working time, seafarers 1998; working time, railways 1998; working time, civil aviation 2000; working conditions, railways 2004; labour convention, maritime transport 2008; health and safety, hospitals 2009).

is more decentralized and depends not on the Member States but on private actors, their capacities and their diverging interests in processes of vertical coordination (cf. Table 3).

**Table 2 – Results of European Social Dialogue - Typology**

<b>Social Dialogue Results - Types of Texts</b>		<b>Implementation and Monitoring</b>
I. Agreements in accordance with Article 139(2): minimum standards	a) Council decision	Member States responsible for transposition and implementation (even where implemented by collective bargaining); monitoring by the Commission
	b) Autonomous agreements*	implemented in accordance with the procedures and practices specific to management and labour and the Member States; social partners responsible for implementing and monitoring
II. Process-oriented texts *	a) Frameworks of action	identification of certain policy priorities; these priorities serve as benchmarks; follow-up and annual reporting by the social partners
	b) Guidelines, codes of conduct	recommendations and/or guidelines to national affiliates concerning the establishment of standards or principles; regular follow-up and reporting by the social partners
	c) Policy orientations	proactive promotion of policies; regular follow-up and reporting by the social partners
III. Joint opinions and tools	a) Joint opinions	provide input to the European institutions and/or national public authorities; no implementation, monitoring or follow-up provisions
	b) Declarations	outlining future work and activities which the social partners intend to undertake; no implementation, monitoring or follow-up provisions
	c) Tools	practical advice to employees and companies; exchange knowledge of good practice; no implementation, monitoring or follow-up provisions
IV. Procedural texts	Rules of procedure	rules for the bipartite dialogue between the parties

\* Texts of type Ib and II are called “new generation texts” by the Commission.

Source: Weber 2008, 55 (according to CEC 2004, Annex II)

This major shift of strategies and instruments leads not only to a higher degree of autonomy but also to more heterogeneity and less standardization in the multilevel governance of European industrial relations. It implies no legal bindingness but informal, moral and political obligations for the social partners’ organizations who are indispensable actors within their national industrial relations systems.

The power and authority of European federations on their national affiliates is, however, rather limited, not to say non-existing because there is no hierarchical relationship between both levels. Information asymmetries may exist and be exploited. At national level there is frequently a low level of individual awareness and motivation, institutionalization and organizational capacity are missing, at least some actors at national level have other (or deviating and diverse) interests in the specific content of “new generation texts” (Weber 2008; forthcoming). Therefore, actors develop different strategies of action, lack of commitment and certain reservations to give up parts of their autonomy in favor of legitimizing their supranational associations and mandating them on an ad hoc or permanent base to negotiate and to conclude (legally) binding framework agreements on their behalf. For them, the value added of fragmented European regulation is sometimes difficult to detect (for details Léonard 2008). Last but not least, on the employers’ side there are frequently general business instead of specialized employers’ organizations. In addition, a related problem for implementation is posed by non-congruent representation structures when either

national social partner organization are not affiliated or national affiliates do not act as a “social partner” within the national system (Weber forthcoming).

Furthermore, the specific traits of national industrial relations systems (among others, various degree of centralization of collective bargaining, organizational structures on both sides of industry, quality of their relationships) will constitute problems. Level linkages between the European and the national level as well as within national organizations are difficult to establish. The topics of these specific, agreements are of major importance for their implementation at national level. First of all instruments of “soft” implementation, such as recommendations, are utilized at decentralized levels. Empirical analysis has found a varying but limited embeddedness of the issue “European social dialogue” within national organizations (Weber forthcoming). In any case harmonization would be a complete unrealistic goal.

**Table 3 – European Social Dialogue - Responsibilities in the Implementation Process**

Actors	Responsibilities
<b>National social partners</b>	Main responsibility for implementation Translation (if necessary) Dissemination of autonomous agreement and information Discussions/negotiations between social partners Developing implementing measure Reporting about implementation activities
<b>European social partners</b>	Assistance and advice (e.g. translation, best practices) Coordination and monitoring of activities Yearly progress reports and final implementation reports Interpretation (in case of doubts/requests)
<b>National authorities</b>	Subsidiary role in implementation, e.g. through regulation or legislation (not compulsory)
<b>Commission</b>	Assistance and financial support (if necessary) Monitoring and assessment

Source: European Commission 2009, 126

In empirical perspective six types of follow-up procedures can be distinguished (Pochet et al. 2009, 56-58):

- written survey among members,
- annual or periodic reports,
- plenary meetings: oral or written report,
- presentation of good practices,
- conferences and websites,
- new texts and initiatives.

All these “soft” instruments are characterized by fundamental methodological weaknesses, such as

- low response rates in written surveys and joint questionnaires,
- presentation of successful examples and results only in annual or biannual reports and conferences,



- problems of selectivity because of a bias towards the presentation of positive results; interest of social partners in positive descriptions of their impact especially at national level (“double filtering” (Weber 2008) by both national and supranational social partners),
- problems of generalization in more or less carefully selected cases of good practices,
- problems of validity and reliability in all cases of self-evaluation by participants.

“Hard” empirical indicators such as coverage rates, which are frequently used in present industrial relations research, are barely mentioned in the social partners’ documents.<sup>3</sup> Monitoring systems to cope with problems of how these statements are to be interpreted in procedural as well as substantive regard are hardly provided. Existing differences of interest are widely neglected. Furthermore, all these instruments of purely voluntary nature produce only limited results and are insufficient to reach a complete coverage. The Commission itself is nowadays more sceptical about the consequences of various forms of implementation than ever before: “Autonomous agreements are very well adapted to regulate and improve certain aspects of working conditions, but they cannot guarantee uniform outcomes, binding status and full coverage in all countries.” (European Commission 2009, 126-7).<sup>4</sup>

In the case of social partner Directives coverage would be theoretically 100 per cent; in practice they face more or less serious problems of compliance. In the case of autonomous agreements (and other “new generation texts”), however, coverage rates have to remain more or less incomplete. The instrument of implementation would be a country specific form of collective bargaining which takes place at different, national, sectoral or enterprise levels in individual Member States (Traxler et al. 2001 for details) “in accordance with the procedures specific to management and labour and the Member States” (Article 155 (2) TFEU; ex Article 139 (2) TEC). We know, however, from most recent empirical research that coverage rates differ between almost 100 per cent (in Austria, Belgium and France) and less than 20 per cent (in some new member states) (European Commission 2006b; 2008).

Therefore, the only instrument to reach a complete collective bargaining coverage of the economy would be the existence and use of extension clauses which extend the contents of social partner agreements beyond the members of the signatory parties. However, such clauses do not exist in all member states and if so their application can by no means be taken for granted (cf. Table 4). Collective bargaining constitutes a likely but, in empirical terms, not the only procedure of implementation. Other “soft” instruments, such as recommendations, guidelines, or brochures, would also be applicable. It is rather likely, however, that they would lead to even lower coverage rates and are, therefore, less appropriate in terms of implementation scope and will lead to even more fragmentation.

Last but not least, implementation of autonomous agreements (and other “new generation texts”) by “hard” national legislation would be legally possible but is unlikely to take place for political reasons. It would require a high degree of compliance and political commitment as well as topical awareness of national governments and the former existence of such practice at national level (cf. for empirical details the case studies on the autonomous agreement on telework by Larsen and Andersen 2007; Ramos Martin and Visser 2008).

To conclude, most results of SSD are legally non-binding and share certain problems. In empirical perspective there is hardly any evidence of attempts towards systematic and even

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<sup>3</sup> The official figures, “over 70 million workers and nearly six million undertakings” (European Commission 2006a, 5) are impossible to disaggregate and difficult to evaluate.

<sup>4</sup> Most recently some scholars introduced the distinction between fundamental social rights and promotional rights. They also argued that complete coverage is necessary only in the former case (Ramos Martin and Visser 2008). We doubt the usefulness and do not share the political implications of this distinction.

implementation. Furthermore, monitoring and follow-up procedures are missing in the vast majority of cases. Implementation (and its empirical impact) is at present the weakest part of the overall process. The main reason is the lack of interest of some social partners and, therefore, the lack of instruments. In this context, both the content of a “new generation text” as well as the national institutional setting have to be taken into account (Weber 2008; forthcoming).

**Table 4 – Coverage rates in the European Union (2006)**

<b>Country</b>	<b>C.B. Coverage Rate</b>	<b>Extension mechanism</b>
Austria	99.0	Yes
Belgium	96.0	Yes
France	95.0	Yes
Slovenia	95.0	Yes
Sweden	92.0	No
Finland	90.0	Yes
Spain	83.0	Yes
Netherlands	81.4	Yes
Denmark	80.0	No
Greece	70.0	Yes
Portugal	70.0	Yes
Germany	63.0	Yes
Malta	62.0	No
Italy	60.0	Yes
Romania	60.0	No
Luxembourg	60.0	Yes
Cyprus	57.0	No
Czech Republic	49.6	(Yes)
Slovakia	48.0	Yes
Poland	40.0	Yes
Bulgaria	38.0	Yes
Hungary	35.0	Yes
United Kingdom	33.5	No
Estonia	16.0	Yes
Latvia	16.0	Yes
Lithuania	11.0	No
Ireland	n.a.	Yes
EU 15	68.8	
EU 27	62.9	
EU 12	43.8	

Sources: European Commission 2009, 78; European Commission 2006b, 45; Schulten 2005

Results of social dialogues at both levels, the interprofessional and the sectoral one, are interrelated. The above mentioned social partner Directives of the 1990s were implemented by legislation in the majority of Member States. In contrast to this legally binding regulation, most recent autonomous agreements concluded at interprofessional level<sup>5</sup> also need implementation procedures at decentralized, i. e. sectoral or enterprise level “in accordance with the procedures and practices specific to management and labour and the Member States”. Thus, they face additional difficulties in comparison with their predecessors and horizontal as well as vertical forms of “synergies” (CEC 2004) are difficult to exploit. Furthermore, there are enormous differences between sectors in individual Member States. In the majority of old Member States collective bargaining takes place at sectoral level. It is of crucial importance for implementation processes and procedures. It is the weak link especially but not exclusively in the majority of new member states because of the severe and lasting shortage of appropriate organizations at this level (Ghellab and Vaughan-Whitehead 2003, Kohl and Platzer 2004, Léonard et al. 2006). Therefore, their participation rate at European level is rather low and further “integrated programmes”, aiming at organizational capacity building for sectoral social partners, are needed. Social regulation and the development of common standards at European level become more difficult in a more diversified polity after enlargement.

## **MAJOR CAVEATS OF (SECTORAL) SOCIAL DIALOGUE**

Some general caveats on structural limitations of SSD are hardly ever mentioned in official documents but have to be kept in mind. One necessary precondition for any success is the fact that they have to constitute “positive sum games” or “win-win situations”.<sup>6</sup> If one side of industry is not interested in a specific topic it flatly refuses to negotiate and SSD cannot lead to any kind of positive result in terms of agreements. Thus, they exclude all controversial or conflictual (or “hard”) issues and, by definition, their potential range of topics is limited to consensual (or “soft”) ones. Major industrial relations issues are, however, of potentially controversial nature.

The fundamental explanation for the conclusion of social partner Directives at interprofessional level during the 1990s was the existence of the Commission’s implicit threat “either you negotiate or we’ll legislate” or what has been called social partners “bargaining in the shadow of the law” (Bercusson 1992). Since the early 2000s this immanent threat to overcome the prevailing regulatory minimalism does not exist any longer. Autonomous social dialogues are not initiated by the Commission and, therefore, not of tripartite nature but launched by the social partners themselves and completely autonomous and of bipartite character. It is rather unlikely that the Commission will change its political strategy. Even if the Commission decided to revise its overall strategy once again, this transformation would only be valid at the interprofessional level. It would be more or less impossible to implement at sectoral level because of non-congruent if not opposite preferences within the Commission, i.e. between participating DGs, between the Commission and other supranational actors and because of the enormous diversity of interests between sectors.<sup>7</sup>

The predominating complete autonomy of the social partners during all phases of the policy cycle will not lead to substantial results of legally binding nature in the foreseeable future but

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<sup>5</sup> The above mentioned autonomous agreements on telework (2002), stress (2004), and harassment and violence (2007).

<sup>6</sup> This is the reason why health and safety issues have been prominent and frequent issues.

<sup>7</sup> The only empirical exception at sectoral level in the 1990s was the extension of the Working Time Directive to formerly excluded sectors. Negotiations between the social partners led to framework agreements in railways, civil aviation and maritime transport, but not in road transport. Agreements in civil aviation and maritime transport were transformed into a directive (Keller 2005).

will increase the already existing high degree of fragmentation. As long as organizations of one side, especially many sectoral employers' federations, prefer the unrestricted principles of autonomy and social subsidiarity (Eurocommerce et al. 2009) they are able to exert their veto power and, thus, to effectively prevent the conclusion of legally binding framework agreements.

The related issue of European Works Councils, the institutions of information and consultation at the level of multinational enterprises (according to Directive 94/45/EC), provides strong empirical evidence for this point of view. As long as their foundation was purely voluntary their overall number remained extremely small in low two-digit figures. Only the Directive finally passed in 1994 has led to a considerable numerical increase (Kerckhofs 2006). This leads to the result the industrial relations at the level of MNE is more comprehensively developed than at the sectoral level.

Last but not least it has to be kept in mind that because of legal-institutional restrictions wages and salaries are excluded from the potential range of topics. The same verdict holds for instruments of distributional conflicts, i. e. for strikes and lock-outs (Article 153 (5) TFEU, ex Article 137 (5) TEC). All in all, the regulatory power of SSD remains limited for structural and political reasons.

## **PROSPECTS OF SOCIAL DIALOGUE AT EU LEVEL**

Instead of expecting fundamental changes one could accept a less ambitious point of view and argue in favor of gradual improvements within the current framework of social dialogues. Some problems, such as the crucial issue of representativeness, are frequently difficult especially in various cases of sectoral social partners' organizations. These difficulties can be officially solved if the Commission decides to include these organizations despite the representativeness problems. The integration of additional, smaller and somehow competing associations on both sides can also be coped with if they conclude mutual agreement on cooperation. Last but not least the original lack of experience of sectoral social partners in implementation problems might also slowly become less important. The Commission itself shares the view and has proposed a number of actions in one of its more recent Communication (CEC 2002a). Some further (most likely limited) improvements would be possible in order to increase and to improve the necessary contribution of social dialogues in general and SSD in particular to the development of the constantly changing European social model. Future increases in the number of SSD would need more scarce resources to be provided by the social partners at supranational and national level – and by the Commission. Nevertheless, the problem of a quantitative versus a qualitative development of SSD does create a problem so far unsolved. The empirical diagnosis of developments in recent years is, however, "broadening without intensification" (de Boer et al. 2005, 66).

The Commission's official tasks include "promoting the consultation of management and labour at Community level" and taking "any relevant measure to facilitate their dialogue by ensuring balanced support for the parties" (Article 155 TFEU; ex Article 138 TEC). All processes of implementation – independent of their character as results of autonomous agreements or others – need more substantial input and firmer commitment by the Commission because of the bilateral character of SSD. Its activities are completely compartmentalized but should be strictly coordinated between participating DGs not only within DG Employment, Social Affairs and Equal Opportunities (DG EMPL). In other words, DG EMPL should be in charge and take the lead in all phases of the policy cycle despite the fact that SSD are of bilateral-autonomous nature. The provision of additional European Social Fund resources could constitute one further step towards improvements of capacity building and better functioning of SSD especially as far as implementation procedures are concerned. The Commission could also be of help in achieving a better co-ordination between different SSD as well as between both forms of social dialogues at interprofessional

and sectoral level. As “Guardian of the Treaty” it must be interested in some kind of equal implementation of European regulation in all Member States.

Furthermore, not only the Commission but the signatory parties themselves could agree on more systematic, structural implementation, monitoring and evaluation mechanisms and explicitly agree on more appropriate procedures in their legally non-binding “new generation texts” (as they did for example in the 2006 multi-sectoral agreement on crystalline silica). Joint multi-annual work programmes exist at interprofessional (2003-2005, 2006-2008, 2009-2010). At sectoral level, the number of work programmes has increased markedly in most recent years as the Commission has pushed this development. They constitute another helpful frame of reference as far as autonomous initiatives and implementation procedures are concerned because they build structures for work. The conclusion of binding timeframes for implementation would also be of help. Last but not least, social partners could increase their organizational capacity (expertise, human and financial resources) and reinforce their commitment. Empirical analysis points to the necessary but missing linkages between and within social partner organizations at the different levels (Weber forthcoming). Despite the principle of subsidiarity and, therefore, the voluntary character of SSD the conclusion of some open method of coordination like procedure as a new mode of non-regulatory governance (Zeitlin et al. 2005) could be possible (including, among others, common use of indicators and benchmarks, regular preparation of reports on monitoring by the social partners and summarizing, joint evaluation reports by the Commission) (European Commission 2002 ).<sup>8</sup>

The forthcoming Commission Communication will therefore have to elaborate on many issues related to the implementation and monitoring of social dialogue outcomes and to strengthening the level of commitment of (national) social partners.

To reach this goal, incentives by the Commission will be necessary. Given the sheer number of 37 SSD, the Commission's resources in both budgetary and personnel terms are limited. In exchange for Commission support, the Commission may therefore insist more intensively than recently on certain quality criteria that have to be met by social partners. First, this could refer to the working procedures of the individual SSD, such as work programmes. Second, this could refer to the outcomes. Here, the Commission has already given some criteria in its most recent Communication (CEC 2004), e.g. concerning the denomination of outcomes and a checklist on various aspects of social partner texts. Furthermore, it will be essential to reach more synergy and transparency between sectors and between Commission services in terms of information. Overall, the Commission should strengthen their monitoring and assessing role (cf. Table 3). However, organizational factors of the different involved organizations at the various levels will limit such ambitions.

To conclude, some more or less incremental progress has been made, although mainly in quantitative terms. The far-reaching, ambitious goal defined by the Commission itself during the process of restructuring of SSD in 1998, however, has not been reached and policy convergence has hardly happened. The contribution of SSD as a joint regulation procedure to the development of a European Social Model as a unique path of societal development remains limited. The original perspective and political hope of an emerging trend towards transnational collective bargaining and to genuine European industrial relations has not taken place and is unlikely to happen in the future. Since the 1970s, attempts to establish appropriate legal-institutional prerequisites for a transnational system of collective bargaining failed. The most recent one shared the fate of its predecessors (Ales et al. 2006). Therefore, collective bargaining will remain a purely national activity and a respective European system of industrial relations will, for several structural and institutional reasons outlined above, not emerge in the foreseeable future.

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<sup>8</sup> For a discussion of how autonomous social dialogue could be classified in terms of “soft” forms of regulation see Weber (forthcoming).



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