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Broadening without Intensification: The Added Value of the European Social and Sectoral Dialogue

ABSTRACT ■ The framework of the European social dialogue (ESD) has enabled interest organizations at the European level to conclude agreements on a wide range of social policy issues. This applies both at the inter-sectoral level and within the various sectors, and has led in the last few decades to the creation of a large number of joint texts. This article addresses the issue of the added value of these results for the parties concluding them. It is argued that the ESD does not constitute a system of industrial relations at the European level, but serves as an alternative lobbying channel for the social partners involved.

Introduction

In his inaugural speech to the European Parliament in 1985, Jacques Delors — the newly appointed Commission President — said: ‘I put the question: when shall we see the first European collective agreement? I want to insist on this point: the European collective agreement is not a slogan’ (Tyszkiewicz, 1999: 39). It is clear that Delors had high hopes when he invited ETUC, UNICE and CEEP to joint discussions in Val Duchesse in 1985.

However, not all of Delors’ expectations have been met. Even after the introduction of a legal framework for European social dialogue (ESD) — which enabled the social partners to conclude agreements to be submitted to the Council for approval as directives — no agreement comparable to what is understood as a collective agreement in most national contexts has been concluded. However, this is not to say that nothing at all has happened: over the years, the European social partners in both the inter-sectoral and the sectoral social dialogue produced (up to August 2002) 268 official outcomes.¹

This article discusses the framework for ESD and the results that have

been produced.² The question is: if European collective agreements have not been concluded, why have there been so many outcomes? The next section presents a brief introduction to the ESD and addresses the obstacles to the establishment of social dialogue committees and to the achievement of results. There follows a discussion a number of crucial methodological points concerning the research project from which the empirical data for this article were drawn. We then discuss the content of the results achieved within the framework of the ESD; in other words, we seek an answer to our research question. Finally we summarize and conclude the article.

European Social Dialogue: Characteristics and Obstacles

The Maastricht Treaty: Towards the First ‘Euro-collective Agreement’?

The Single European Act (article 118b) marked the insertion of ‘social dialogue’ in the *acquis communautaire*. In 1992, the Maastricht Treaty was adopted, along with a social protocol signed by all Member States except the UK. In effect, this committed all signatories to the protocol as though it were part of the Treaty. In 1997, after the Labour Party took office in the UK, the protocol was included in the Treaty. What is now Article 136 of this Treaty states that: ‘the community and the Member States . . . shall have as their objectives the promotion of . . . dialogue between management and labour at European level’.³ To this end, the social partners were assigned the right to be consulted on any Commission proposal in the field of social policy. Moreover, and more importantly, it opened up the possibility for the social partners to conclude agreements on these issues and to request the Commission to submit such agreements to the Council as proposed directives. The other option for the social partners is to implement an agreement through the member organizations, using the national systems of industrial relations. Articles 136 to 140 entrench these procedures in the Treaty Establishing the European Union and lay down the conditions of the ESD. It should be emphasized that these procedures apply not only to the above-mentioned inter-sectoral organizations, but also to the European peak organizations in the various sectors.

Using the ESD procedures, the social partners in the inter-sectoral dialogue have so far reached five framework agreements, namely on parental leave (1996), part-time work (1997), fixed-term work (1999), telework (2002), and most recently (October 2004) on work-related stress. The first three have been implemented as directives by Council decision. Strikingly, they have been coined ‘Euro-collective agreements’

(Falkner, 1997: 7–8), which implies that the wish of the Delors Commission has come true. The fourth and fifth agreements result from article 138 consultations, which allow the social partners greater autonomy to implement and monitor the agreement themselves. The agreement on telework has so far been implemented only in the electricity sector and in local and regional government. In the sectoral dialogue up to 2002, 16 framework agreements were concluded in various sectors; some officially confirm the establishment of a social dialogue, while others regulate working time. A number of these working-time agreements (in sectors temporarily excluded from the general directive of 1993) were implemented as Council directives, while in other cases the social partners preferred to let their national affiliates implement the agreement.

Although these framework agreements are indeed collectively concluded agreements, they are not like any form of collective agreement as commonly understood in the traditional (i.e. national) conception. The scope of the issues is much narrower, they do not concern wages and their practical impact remains limited, especially for the more advanced welfare states. The minimum provisions laid down in the agreements are usually far below those that are already in place in the individual countries (Dølvik and Visser, 2001; Keller and Bansbach, 2001: 424–5).

If we define industrial relations as a system of strategic choice, collective action by labour, business and governments, their mutual relationships of conflict, cooperation and power, affecting the content and regulation of employment relations (Visser, 1996: 2), it seems that this has not developed at the level of the EU. Although agreements are in fact concluded, the subjects addressed cover only a small part of the content and regulation of the employment relationship, and the actual impact remains limited. From a neo-functionalist perspective, the opposite could be expected. Since the conclusion of the Maastricht Treaty, the range of social issues that can be determined by qualified majority has been broadened. On the assumption that this would create spill-over effects for adjacent policy areas — in this particular case, in the area of industrial relations — the expectation could reasonably have been that this would lead to the development of a ‘European industrial relations system based on supranationally organized classes’ (Streeck, 1994: 167), including collective bargaining on the content and regulation of employment relations. However, this is clearly not the case. In other words, the ESD should not be considered a system of industrial relations.

This is contrary to what is argued by Jensen et al. (1999). While acknowledging that the effects on workers and employers of what they refer to as ‘European IR regulation’ is limited, and that there are large differences between European-level organizations and procedures and

national systems of industrial relations, they argue that there are important parallels with the structures and mechanisms in the national systems of industrial relations. The presence of a number of actors, a number of rules and procedures, and a number of results can — in their view — be seen as a starting point for a system of industrial relations at the European level. It should, however, be emphasized that these actors do not directly represent workers or employers, and that the rules and procedures that are in place do not allow the results to cover issues that have a substantial impact on working conditions in the Member States.

Obstacles to the Development of a European Social Dialogue

Two main factors may explain why there has been only a limited development of a European system of industrial relations. The first is the diversity across countries with respect to national sectoral boundaries, the representative structures of interest organizations, and the institutional structure and traditions of industrial relations. If national sectoral domain definitions do not coincide, this presents serious difficulties in organizing an ‘action set’ of interest organizations pursuing a common purpose at EU level (Visser and Ebbinghaus, 1992: 208). Moreover, the national member organizations often have very different organizational and representative structures. This applies both to trade unions and — arguably to a greater extent — employers’ organizations (Lanzalaco, 1992: 193–200). For example, some national affiliates of European employers’ associations are trade or lobbying organizations rather than employers’ associations, and are thus not mandated to address social issues, which immediately calls into question the legitimacy of joint texts concluded within the framework of the ESD. These differences in sectoral domains and representative structures originate in the variation across countries in the institutions and traditions of industrial relations (Rhodes, 1995: 115–8). Differences in the degree of centralization and coordination within the national systems of industrial relations are reflected in differences in the dominant level of social dialogue in a country. The authority of national federations and associations, or the extent of ‘vertical integration’, differs widely across trade union movements in the various Member States, and this can cause problems of mandate and implementation in the sectoral dialogue (Visser and Ebbinghaus, 1992). In brief, cross-national differences inhibit the establishment of representative structures at EU level capable of concluding framework agreements.

The second and perhaps more important issue is that because the social agenda of the EU is substantially narrower than at national level, the power of the Commission to cast a ‘shadow of hierarchy’ over ESD is

very limited. The Commission as a third party to the social dialogue is much more constrained than are national governments in its capacity to force the other two parties to negotiate. Although the Maastricht Treaty opened the possibility for qualified majority voting for more subject areas than was previously the case, many issues remain subject to unanimous voting or are explicitly excluded from European regulation. As a result, the scope for European social policy is quite restricted and thus the bulk of social and labour market policy is still developed at national level (Ebbinghaus and Visser, 1997). For interested organizations this implies that the most appropriate level at which to address these issues remains the national one. There is no strong incentive to discuss social and labour market policy at the European level, since there is simply a lot less to be gained. Social partners 'shoot where the ducks are', and most ducks swim around in national ponds. This is particularly relevant to the involvement of the inter-sectoral social partners in social policy development in the EU, through the co-decision procedure, although it also applies to the sectoral dialogue. As there are no means to 'bribe' European peak organizations to come to the bargaining table, as there are in national corporatist systems, they retain their 'power of non-decision' (Streeck, 1994).

No Added Value, No Social Dialogue

In the light of the wide cross-national differences and the Commission's limited 'shadow of hierarchy', it is clear that the success of ESD depends on the voluntary cooperation of at least two parties, that is, employers' organizations and trade unions. If either is unwilling, there will be no favourable prospect for the development of a fruitful dialogue. It has been observed that problems are often found in the representation of employers' interests (Keller and Sörries, 1998a). In the words of Streeck (1994: 170), European employers, like employers generally, prefer markets to institutions, and free markets to regulated markets. But agreements on social issues will be concluded only if both employers (associations) and employees (unions) see a distinct added value for themselves. In the end, the decision of the social partners to engage in social dialogue hinges predominantly on their perception of potential benefits. If there seems to be a lack of such benefits at European level, it is not worth the effort to overcome the above-mentioned problems of diversity. The potentially powerful position of the Commission as the initiator of social policy that can force the social partners to come to the bargaining table (Keller and Bansbach, 2001: 427) is constrained by the EU's limited social agenda. The evident question is why one would want to discuss issues, or even negotiate agreements within the framework of the ESD, if a more favourable outcome can be achieved through other channels available in

the multi-level system of European policy development, principally the national system of industrial relations.

Taking into account these obstacles to the development of a European social dialogue one may be surprised to see that in addition to the framework agreements mentioned earlier, up to August 2002 a total of 243 joint statements were concluded in the inter-sectoral and sectoral dialogue. Moreover, while the social partners in some sectors are apparently very active in concluding joint statements, so far those in other sectors have not even established the necessary dialogue committee. The conditions under which ESD develops are discussed in this article. Since it has been made clear above that social dialogue will not occur if either of the social partners does not perceive an added value, our research question was formulated as follows: what is the added value of the ESD for the sectoral social partners, and why has it developed in particular sectors and not in others?

Methodology

The empirical evidence presented in this article originates from a research project on the ESD carried out by Amsterdams Instituut voor Arbeids Studies (AIAS) in 2002 (Benedictus et al., 2002). In the project, two methods were used to gather empirical data.

First, all joint texts and framework agreements drawn up before August 2002 were extracted from the EC and the CIRCA websites⁴ and entered into a database. This was designed to store all documents that had been produced by joint committees and informal working groups (pre-1998) and by the sectoral social dialogue committees (post-1998).⁵ Any joint text drawn up and endorsed by both sides in the social dialogue is described as a 'result' of the ESD. The following fields (in addition to title, organizations involved, date, etc.) are included in the database:

- The status, namely whether or not a joint text contains binding obligations. If it imposes certain commitments on the signatory parties it is termed a 'framework agreement'. Conversely, when a joint text comprises informal commitments, recommendations or anything else without direct binding power on the parties involved, it is termed a 'joint statement'. It should be stressed that these joint statements are concluded on a wide variety of occasions, for example: when consulted within the framework of the ESD regarding a specific proposal for a directive on social policy; when commenting, on their own initiative, on a specific Commission Green or White Paper (not necessarily on social policy); when expressing their concern about an issue that has not yet been addressed by the Commission but which they feel

requires European-level policy action; and when making non-binding recommendations to the member organizations. It should be emphasized that this list is not at all exhaustive.

- The policy area, namely the main subject addressed in the joint text. In the first instance, the classification drawn on the Commission website was used. For those results achieved after June 2000, the CIRCA (EU Communication and Information Resource Centre Administrator) website was used, and the policy area was assigned after reading the full text. The policy areas distinguished are employment, working conditions, working time, training, health and safety, social dialogue, studies and statistics, enlargement, and policy and economy. It should be stressed that in many cases these individual labels do not cover all subjects addressed in a joint text, since these often contain elements of more than one policy area. ‘Policy and economy’ seems to be a category used by the Commission to classify all texts that do not fit any of the other policy areas. Results in this category in most cases contain comments on particular policy proposals made by the Commission, or on the economic situation.
- The purpose, namely whether a joint text is targeted at European politics (the Commission, the Council or all national governments) or at the affiliates of the European peak organizations. In the former case, the European social partner organizations advise European policy makers on the aim and contents of a specific policy proposal, within the framework of the consultation procedure laid down in the Treaty, or on policy-making in a specific area in general, on their own initiative. In the latter case, European organizations advise their members — either with or without binding force — to take a certain course of action.

In addition, five case studies were carried out, involving a total of 23 semi-structured interviews. Sixteen of these were with representatives of European peak organizations in various sectors. Other interviews were with Commission functionaries involved in the ESD (two interviews), representatives of the inter-sectoral dialogue (three interviews) and experts on the ESD (two interviews).

The research addressed the development of the social dialogue over time, taking into account all joint statements and framework agreements on all policy areas, in four of the sectors: commerce, construction, metal and telecommunications. Within the constraints of the research project, the cases were selected in order to display the widest possible range of situations: sectors with many joint results (telecoms, commerce) and those with few or no results (metal, construction); private-sector (metal, commerce, construction) and public or former public sectors (telecoms); sectors with predominantly large firms (metal, telecoms) and those with

predominantly small and medium-sized enterprises (construction, commerce); those with much sector-specific European policy (telecoms, construction) and those with little or none (metal, commerce).⁶

In the fifth case, the responses of the five transport sectors to a single European policy initiative — the Working Time Directive of 1993 — were compared. This case provided not only crucial information about the Directive, but also valuable additional insights into the research question.

Opportunities and Influence for the Social Partners at EU Level

Despite the obstacles to the development of the ESD mentioned in the introduction, a substantial number of results have been achieved within its framework. Table 1 reveals two major facts, that the ESD had spread to 28 sectors by 2002, and that the number of results each year generally increased during the 1990s but subsequently declined.

Starting from the observation that social dialogue will develop only if both parties perceive an added value, it is clear that where a sectoral dialogue committee has been established and results have been achieved, both the employers' organizations and the trade unions thought that there was something to gain by achieving a result. Since one single result should thus have advantages for both sides, this is obviously a *shared* added value.

Market Liberalization Creates Common Goals

A striking fact illustrated by Table 1 is that the vast majority of results were achieved between 1992 and 2000, with a strong peak in 1996/7. A priori this could reflect the ongoing liberalization of the European market for various public services, such as telecommunications, postal services, gas and electricity, and transport. Table 2 shows that, indeed, three of these sectors are among the top four in terms of the number of results. The second highest number of results is in agriculture, which can be considered an exceptional case since the first result in this sector dates back to 1978, and between that year and 1986 this was the only sector in which a dialogue committee existed.⁷

A closer look at the results achieved in the telecommunications, railways and postal sectors reveals some striking similarities. The vast majority (61 out of 72, or 85 per cent) are joint statements and are targeted at one or more institutions at EU level. Moreover, the content of 76 per cent of the results in these sectors is categorized by the Commission as 'employment' or 'policy and economy'. In practice, these joint texts usually voice the concerns of both social partners about the

TABLE 1. Number of Sectors with at Least one Result and Number of Results per Year

Year	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002 ^a
Sectors with at least one result (cumulative)	1	1	1	1	1	1	1	1	2	2	4	4	7	8	9	12	14	15	19	23	24	24	26	28	28
Total results	1	1	1	4	3	0	1	0	5	0	8	0	6	10	13	19	10	14	30	37	20	10	22	11	2

Note: ^a To August.

Source: Benedictus et al. (2002: 47).

TABLE 2. Number of Results per Sector

Sector	Results	Sector	Results
Telecoms	32	Sugar	5
Agriculture	26	Journalism	4
Postal services	20	Construction	3
Railways	20	Public services	3
Civil aviation	16	Textiles/clothing	3
Sea fishing	14	Woodworking	3
Commerce	13	Banking	2
Maritime transport	10	Electricity	2
Cleaning	9	Insurances	2
Horeca	9	Leather	2
Private security	7	Agency work	2
Inland navigation	7	Personal services	1
Footwear	6	Tobacco	1
Road transport	5	Entertainment	1

Source: Benedictus et al., 2002: 54.

position of their sector. In many cases, these statements are targeted directly at the Commission and often entail comments or recommendations on liberalization policies and their expected effects on the competitive position and the employment situation in the sector. In other cases, these comments target liberalization policy more generally, but the practical concerns are the same. It seems that the liberalization of previously shielded markets gives employers and employees a common goal: employers fear a loss of competitiveness for their own (formerly monopolistic and public) companies, while the unions fear loss of employment as a result of strong competition from new entrants. Companies in these sectors — which often are heavily burdened by large investments in infrastructure (cable networks, railway lines) — will experience the most drastic change in their environment as a result of liberalization. In railways, these competitive pressures not only develop within the sector, but are also exerted by ‘other modes of transportation’, such as road transport or inland waterways, as is emphasized in numerous joint statements. In effect, the concerns about competitiveness and employment are two sides of the same coin. By concluding these statements, and by addressing the Commission, the social partners try to influence the content of European regulation. The added value of the ESD for employers and employees seems to be the entry it provides into the policy process in the EU.

European Social Dialogue as an Alternative Lobbying Channel

The observation in the previous section can be broadly generalized by extending the scope of analysis to all sectors and to all results achieved within the framework of the ESD. When considering the distribution of results by status, it is clear that voicing common opinions is greatly preferred negotiating binding agreements: there have been 243 joint statements but only 21 framework agreements. It was shown above that the framework agreements in the inter-sectoral dialogue cannot be equated to collective agreements. This leaves 17 framework agreements concluded at sectoral level. The case study on the Working Time Directive shows that three of these were a direct result of pressure from the Commission and contain stipulations on the maximum number of working hours. Although these results are arguably the most far-reaching in the sectoral dialogue, they are not comparable to encompassing collective agreements. The other framework agreements in the sectoral dialogue appear to be mutual commitments to the establishment of a sectoral dialogue committee or the continuation of social dialogue, 'formal' recommendations on employment issues in the sector, or guidelines on teleworking. The content of these agreements shows that the impact on employees in the Member States will most likely be small or non-existent.

Three-quarters of all joint statements are targeted exclusively at EU politics, which means that these results are in no way intended to commit the national affiliates to anything, but are targeted purely at influencing European policy in some way. If one adds those statements that are targeted at both the member organizations and EU politics, the percentage is even higher, 85 per cent (see Table 3).

The results in the other categories hence constitute only 15 per cent of the total. Those targeted at the member organizations could be considered collective agreements were they to contain binding elements; but what distinguishes a joint statement from a framework agreement is the *absence* of such elements. Examination of these texts reveals that they usually contain quite general statements on such issues as child labour,

TABLE 3. Target of Joint Statements

Target	
EU politics	184
Member organizations	25
EU politics and member organizations	24
Parties issuing the statement	10
Other	1

Source: Benedictus et al., 2002: 48, 52.

fundamental labour rights, training, lifelong learning, technology, violence and crime, racism and xenophobia, and health and safety. In no way do these results commit the signatories to anything beyond the endorsement or denunciation of certain practices.

Table 4 supports the conclusion that the members of the European peak organizations have come to view the framework of the ESD as an alternative channel for lobbying; the results in all sectors show a picture similar to that in the three sectors discussed in the previous section. Those categorized as 'policy and economy' represent 40 per cent of the total results in the sectoral dialogue, while together with those categorized as 'employment' these account for 52 per cent of the total. It should be emphasized that the subjects addressed in these results are not in all cases those social issues listed in Article 140 of the Maastricht Treaty; in fact, many of the subjects cannot be considered 'social' at all.

Table 4 shows that 33 results (14 per cent) are categorized as 'working conditions', which at first sight might lead one to believe that these are indeed results covering issues related to the content and regulation of employment relations. However, further investigation provides contradictory evidence: the subjects addressed range from early retirement in the agricultural sector to combating child labour in the footwear sector, and although both subjects are certainly relevant to the employment relationship, 30 of the 33 results in this category are joint statements and thus do not contain any elements binding on the signatory peak organizations or on their national affiliates. Moreover, the aim of the majority of the results categorized as 'working conditions' does not differ from that of those categorized as 'policy and economy' and 'employment'. In fact, 16 results in this category are targeted exclusively at European politics, while another five are targeted at both European politics and member organizations. This implies that almost two-thirds of these results are in some way intended to influence European policy. A good example in this category is a joint statement issued by the social partners in the road transport sector on 20 February 1990, which offers their opinion on the Commission's proposals concerning the use of top sleeper cabins in

TABLE 4. Results per Policy Area

Policy area	Results	Policy area	Results
Policy and economy	92	Social dialogue	16
Working conditions	33	Working time	15
Employment	27	Studies and statistics	4
Training	21	Enlargement	2
Health and safety	18		

Source: Benedictus et al. (2002: 59).

heavy goods vehicles. Because such cabins reduce the effective loading length of these lorries, the statement is intended to persuade the Commission to increase the fixed overall lengths to compensate for the decreased loading lengths and thus for the potential economic losses for the sector. So, although the name of the category may lead one to believe otherwise, the content and target of the majority of the results categorized as 'working conditions' show that these do not differ much from those in 'policy and economy' and 'employment'.

The 16 results categorized as 'social dialogue' mostly entail a commitment to establish or continue a social dialogue in the particular sector. In the commerce, woodworking, cleaning, tobacco, sugar, and hotels, restaurants and catering (Horeca) sectors, this has even been formalized in a framework agreement. The other ten 'social dialogue' statements generally concern the informal mutual recognition of each other as a social partner.

The categories 'training', 'health and safety', 'studies and statistics' and 'enlargement' speak for themselves. None of the results in these categories is a framework agreement,⁸ nor does any resemble a collective agreement. In fact, most results in these categories are aimed at influencing EU policy on these issues, in some cases in response to proposed policy measures, in other cases on the initiative of the social partners themselves.

The case studies conducted in the various sectors further confirm that particular policy measures may trigger ESD in a sector. A case in point is the European Working Time Directive of 1993, which provided for maximum working time and minimum rest periods for all workers in the EU, apart from certain sectors exempted from its stipulations. The exemptions covered in particular road transport, inland navigation, railways, maritime transport and civil aviation, because of the atypical nature of the employment of mobile workers in the transport sectors.⁹ Interview respondents from most of these sectors confirmed that the Commission put substantial pressure on the sectoral social partners to negotiate agreements on working time suited to their particular sector. By securing the adoption of the original directive, the Commission had proved its ability to achieve European-wide regulation on this issue. The explicit threat 'negotiate, or we'll legislate' led to the conclusion of framework agreements in railways, civil aviation and maritime transport, the last two being transformed into a directive by Council decision. Negotiations in road transport and inland navigation broke down in 1998, and for these sectors the Commission kept its promise to regulate the issue via the normal legislative procedure (Weber, 2001). The majority of joint statements and framework agreements in the category of 'working time' are directly related to the EWD.

Construction is a sector in which comparable developments have

occurred. Here, the two joint statements in the working conditions category both comment explicitly on the European Posted Workers Directive of 1996. As regards the establishment of a dialogue committee, an interview respondent from this sector mentioned that: 'the growth of the EFBWW [European Federation of Building and Wood Workers] was caused by an increasing importance of European regulation, in particular the Directive on health and safety in temporary and mobile workplaces. This convinced the national affiliates that the European level mattered'. With respect to the position of the employers, the same respondent argued that 'the thought was that if we want to break into the legislative process, we are stronger together than alone'. Thus, the reason both employers and employees wanted to establish a social dialogue and to conclude joint statements is clear: they wanted to influence European policy, rather than to negotiate autonomous agreements on social issues.

Conversely, the fact that EU policy measures have not had a great impact on the metal sector may partly explain why a dialogue committee has not been established. Once particular measures had been proposed by the Commission (e.g. the block exemption regulation for the garage sector¹⁰) or there had been sector-specific international developments (e.g. the termination of the ECSC treaty in the steel sector), the social partners in the relevant parts of the metal sector started to apply themselves to establishing a sectoral dialogue committee to address these issues. The presence or absence of either European sector-specific policy or European general policy with sector-specific consequences is therefore an important explanatory factor behind the establishment of an ESD committee and the achievement of results. If Council directives, policy proposals, White or Green Papers have a potential effect on a sector, the social partners frequently use the ESD as a channel for access to the policy process in order to promote their sectoral interests. In most cases, this does not concern social or employment policy issues at all.

Laeken: The Future of the ESD in Non-binding Agreements

In December 2001, the social partners in the inter-sectoral dialogue set out their vision on the future of the ESD in the Laeken Declaration. In this declaration, they opted for more emphasis on autonomous, bipartite dialogue aimed at the conclusion of voluntary, non-legally binding agreements. The social partners thus more or less ruled out the possibility of concluding framework agreements to be submitted to the Council for implementation as a directive. The conclusion of, respectively, the telework agreement in July 2002, and the work-related stress agreement in October 2004 confirms the new course announced in the Laeken Declaration. Agreements on telework concluded earlier in commerce and telecommunications indicate that some sectoral dialogue

committees share these views. Interview respondents in other sectors indicated that their ambition is still to conclude legally binding agreements on certain issues. According to a representative of the railways sector, 'if safety is to be guaranteed, in order to be enforceable, it has to be legally binding'.

The declaration by the inter-sectoral social partners confirms that the direction in which the ESD is developing is clearly away from the path of legally binding agreements. While it has been shown that in terms of actual results, this path has not been much trodden before, this formal statement obviates any further prospects for the conclusion of European collective agreements, and further confirms the non-existence of a European system of industrial relations. By focusing on more voluntary agreements, the inter-sectoral social partners more or less confirm the limitations imposed by the cross-national diversity identified in the introduction to this article. Without a realistic threat of legislation enabling the Commission to pressure the social partners into negotiations, and with the wide differences on a variety of aspects of employment regulation both between and within countries, it seems unlikely that many framework agreements will be concluded in the future, let alone implemented by Council decision. In its communication on the ESD in 2002, the Commission stated that the social partners will have to make the first move towards negotiating a framework agreement, thus implicitly affirming its refusal any longer to steer the ESD (EC, 2002: 8). Both the Commission and the social partners thus endorse the path of voluntary, non-legally binding agreements.

This type of regulation fits well with the direction in which EU social policy formation in general is moving. Alongside the development of the European Employment Strategy, which originates in the White Paper on Growth Competitiveness and Employment of 1993, new policy procedures have been developed to strike a balance between cross-national variety and the achievement of common goals. These 'soft law' procedures generally combine the setting of a number of fixed targets for all Member States with substantial freedom for the individual States in deciding how to achieve these goals. Policy experiences are exchanged, which should enable mutual learning processes, and peer pressure ('naming and shaming') should guarantee compliance with the commonly agreed targets. Since the Lisbon Summit in 2000, this type of regulation has been termed the open method of coordination (OMC).

But while the soft character and the basic concept of 'same targets, different paths' are quite similar in both methods, there is one crucial difference that poses a serious problem for the viability of the 'new-style' ESD. While OMC relies on national governments for implementation of its targets, the implementation of agreements in the ESD relies on the

institutions of industrial relations in the various Member States. Cross-national differences will play an even more important role in the 'new-style' ESD than when implementing an agreement through Council decision, which is carried out by the national legislators. Given the problems of the level of bargaining authority and representative structures identified in the introduction, the legitimacy of these agreements is open to debate. Altogether, it is clear that the ESD has not developed, and most likely will not develop, into a system of industrial relations at the level of the EU, nor does the conclusion of a 'genuine' European collective agreement seem to be likely in the near future. However, this is not to say that the ESD is an empty shell.

The true value of the ESD seems to lie in the entry into the European policy process it provides the social partners. It has been shown that the framework of the ESD has provided the sectoral social partners with an alternative channel for promoting their shared sectoral interests. The ESD has not developed into an alternative or complementary level of industrial relations or collective bargaining, but has taken a position within the European multi-level system of policy development. The influence the social partners can exert through this channel is not limited to social policy (as it is in the consultation procedure laid down in the Maastricht Treaty), but extends to anything within the Commission's competences. As such, the most important value of the ESD is that it provides the social partners with a degree of influence in the European policy process.

Broadening without Intensification: So What?

It is beyond doubt that the social partners, employers as well as employees, perceive an added value in the framework of the ESD. On a general level, both the number of sectors and the number of results increased in the 1990s. However, these results do not resemble anything like a national collective agreement. The issues addressed are rarely 'social' and the texts are usually aimed at influencing European policy (in many cases economic policy) in some way, rather than at concluding agreements on the content and regulation of the employment relationship at the level of the EU. In other words, the expectation of former President Delors that the establishment of the ESD was a first step towards collective bargaining at the European level has not been met.

The obstacles posed by cross-national diversity and by the Commission's small 'shadow of hierarchy' can only be overcome if the social partners perceive an added value in engaging in social dialogue at the EU level. In response to the research question 'what is the added value of the ESD for the sectoral social partners, and why has it developed in

particular sectors and not in others?', it has been shown that especially in the sectoral dialogue the possibilities provided by the framework of the ESD have enabled the social partners to voice their opinion on virtually any legislative proposal at the EU level that has an impact on their sector. Because the number of subjects that fall under the competence of the EU is continuously increasing, the ESD might prove a good way for interest organizations to retain some influence over these issues, and can as such be considered an alternative lobbying channel for their sectoral interests. In fact, it is precisely this feature that constitutes the added value of the ESD for the social partners. If there is no EU policy with an impact on a particular sector – in other words, if there is nothing to influence – there is no incentive for sectoral social partners to establish a social dialogue. This may largely explain why the social partners in the metal sector, for example, have so far not made an effort to overcome the obstacles posed by cross-national differences and to establish a sectoral dialogue committee.

The Laeken Declaration does not change this: it signalled the formal recognition of the limitations of the social partners to conclude legally binding framework agreements. In the 'new-style' ESD, they no longer aim for implementation through Council decision, but favour the use of voluntary bipartite agreements, to be enforced through collective negotiations by the national affiliates. It should be emphasized that this does not change anything as regards the conclusion of joint statements, nor has it any necessary impact on the sectoral dialogue. The ESD as an alternative lobbying channel thus remains untouched, and as such, in an EU characterized by an opaque multi-level policy environment, it may even be argued that this type of involvement of interest groups in the European policy process will strengthen the legitimacy of decisions.

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NOTES

- 1 Since the completion of data-analysis for this article, the European Commission (2004: 5) has reported over 300 outcomes.
- 2 For other recent interpretations of the European social and sectoral dialogue, see Compston and Greenwood (2001); European Commission (2004); Falkner (1993) and Keller (1993).

- 3 In several language versions, the English 'management and labour' appears as 'social partners'.
- 4 URL: www.europa.eu.int/comm/employment_social/soc-dial/social/euro_agr/index_en.htm and forum.europa.eu.int/Public/irc/empl/esdo_accords_europeens/home
- 5 In 1998, the Commission reformed the ESD, requiring all dialogue committees and informal working groups to 'reapply' for official recognition as a sectoral dialogue committee (EC, 1998). In all sectors except inland navigation this resulted in a continuation of the social dialogue.
- 6 Atypical sectors such as local authorities and agriculture (which has a very specific background as regards its position in the European integration process and policy development) were avoided. Larger sectors were favoured over smaller.
- 7 In agriculture, railways, inland navigation, commerce, road transport, civil aviation, sea fishing and maritime transport, a 'European social dialogue' already existed before the Maastricht Treaty. The inter-sectoral social partners also concluded their first result before 1992.
- 8 The draft framework agreement of May 2004 on 'work-related stress', now formally adopted, will fill this gap. In addition, in 2002 a framework for actions on the 'lifelong development of competencies and qualifications' was agreed, in which the social partners expressed a proactive commitment to promote training and lifelong learning. However, the practical impact of this statement of policy on the development of the 'knowledge' economy is not clear at the time of writing.
- 9 Other groups such as doctors in training were also exempted, but these were not covered in our research.
- 10 This is an instrument to exempt a particular type of agreement in the garage sector from Article 81(1) of the Consolidated Treaty, which bans agreements that could have anti-competitive effects. According to the Commission, the previous regulation did not sufficiently facilitate competition between car dealers, and disadvantaged consumers. The regulation on this issue (1475/95/EC) expired in September 2002, and the new Commission proposal entails a number of changes that are supposed to increase competition in the sector.

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