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European social dialogue and transnational framework agreements as a response to the crisis?

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Policy implications

Collective bargaining and social dialogue at national, sectoral and company level have proven to be effective instruments in combating and overcoming the detrimental economic and social impact of the crisis. This brief deals with the efforts made and actions taken by European social partners within the framework of the European interprofessional and sectoral social dialogue and

the negotiations of so-called transnational framework agreements (that is, international and European framework agreements) since the crisis began. It shows that considerable contributions have been attempted or made by these actors, although the overall impact might be limited and/or difficult to assess. In addition, European institutions proclaim that implementing the Europe 2020 Strategy, one of whose main priorities is exiting the crisis, and establishing well-functioning European economic governance cannot be achieved without a role for European social dialogue and its actors. If this is so, it must be ensured that they are part and parcel of these pivotal European policies and strategies, in both word and deed.

Introduction

Collective bargaining and social dialogue at national, sectoral and company level has been an important and often effective tool in combating and overcoming the detrimental economic and social impact of the crisis (see, for example, Glassner et al. 2009 and 2010; European Commission 2011). National social dialogue systems can continue this role in the face of the manifold attacks and pressures they are currently experiencing, stemming from both European and national debates (for example, on European economic governance systems and their impact on national economic, labour market and wage systems, national austerity packages and so on) (for the public sector, see Glassner 2010).

Less is known, however, about how European social partners or workers' representatives have tried to contribute to facing the challenges and mitigating the (negative) implications of the crisis. This policy brief tries to overcome this gap and looks, first, at how the European social partners at both interprofessional and sectoral level have tried to (re)act within the framework of their European social dialogue as institutionalised in Articles 152–155 of the Treaty on the Functioning of the European Union (TFEU). It also provides a first insight into how international and European

workers' representatives have tried to contribute in this respect by concluding transnational framework agreements (TFAs).

The European interprofessional social dialogue

As from 2008, the crisis is to be considered an 'omnipresent phantom in the autonomous European interprofessional social dialogue' (Clauwaert et al. 2010: 75). The commitment of the European interprofessional social partners ETUC, BUSINESSEUROPE, UEAPME and CEEP to contribute to solutions to overcome the crisis got off on a bad footing, however. In the run up to the Tripartite Social Summit of March 2009, they engaged in talks with a view to coming up with a *'Joint Declaration on action to address the current financial and economic crisis'*, but

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Table 1: Implementation of 'most crisis related' actions of the 3rd Work Programme of the European Social Partners 2009–2010 – Status 03/2011

Foreseen actions	Actions undertaken
Negotiation and implementation of an autonomous framework agreement on inclusive labour markets	ETUC/BUSINESSEUROPE/UEAPME/CEEP (2010) Framework agreement on inclusive labour markets, Brussels, 25 March 2010 (http://resourcenet.etuc.org)
Joint recommendation contributing to the definition of the Post-2010 Lisbon agenda, also in the context of the current economic and financial crisis	ETUC/BUSINESSEUROPE/UEAPME/CEEP (2010b) Joint statement on the Europe 2020 Strategy, Brussels, 4 June 2010
Negotiation of a framework of actions on employment	Talks envisaged to start 2 nd half of 2011
Jointly monitoring the implementation of the common principles of flexicurity, notably in order to evaluate the role and involvement of the social partners in the process	Four regional seminars organised (22–23 11/2010 – Warsaw; 09–10/12/2010 – Lisbon; 31/1–1/2/2011 – Paris and 08/02/2011 – The Hague); European conference 31/3 – 1/4/2011 – Brussels
Development of a joint approach to the social and employment aspects and consequences of climate change policies with a view to maximising opportunities and minimising negative effects	Preparatory research presented at joint European conference – 1–2 March 2011 – Brussels
Jointly addressing mobility and economic migration issues and promoting the integration of migrant workers in the labour market and at the workplace	Talks envisaged to start 2 nd half of 2011

Source: ETUC/ETUI and authors.

failed – at least partly – because their positions diverged too much (*ibid.*: 78). They were able to reach a compromise on a joint recommendation on how the European Social Fund could support economic recovery, however (Businesseurope et al. 2009).

Another concrete result was the signing of the autonomous framework agreement on inclusive labour markets in March 2010 following 10 months of intense negotiations. (ETUC et al. 2010a). The last, at least for the moment, concrete outcome of the interprofessional social dialogue concerns their envisaged 'joint contribution to the definition of the post 2010 Lisbon Strategy', which took the form of their 'Joint statement on the Europe 2020 Strategy' of 4 June 2010 and in which, next to reform of the global financing system, the European social partners urge, among other things, the need to: (1) combine and sequence exit strategies to cap public indebtedness with entry strategies investing in skills, technology and modern infrastructures, (2) promote the knowledge triangle (education, research and innovation) and (3) ensure a supportive public environment and access to high-quality, affordable and effective public services (ETUC et al. 2010b). As for other actions which could be 'crisis related' or debates which will certainly be largely influenced by the still ongoing crisis – such as their common work on climate change, the common guidelines on flexicurity and so on – much is still at the stage of work in progress, involving discussion and reflection (see Table 1).

The real impact of these outcomes and actions is currently not only hard to assess, but even called into question by direct participants in the dialogue. A recent study by the European Social Observatory for the ETUC on the state of play and prospects of the European social dialogue, showed that a large majority of ETUC affiliates have identified a real problem – mainly, but not only, with the cross-industry social dialogue instruments – and have expressed serious doubts not only about the content of the adopted texts, but also (and in particular) about the implementation and effectiveness of joint texts, be they framework agreements or less 'robust' texts, such as declarations and so on (ETUC/ESO 2011). In that spirit they launched a clear and urgent call for the elaboration of a clear framework for using social dialogue and its instruments.

This might be considered worrying in particular because, in addition, the agenda of the European interprofessional – but also sectoral – social dialogue might be obliged sooner rather than later, as well as reluctantly, to deal with such sensitive issues as wage setting arrangements, the increased need for flexicurity, the degree of centralisation of bargaining processes and (early) retirement schemes, as these issues come to be triggered by higher-level debates on proposed European competitiveness pacts, annual growth surveys and economic governance schemes.

The European sectoral social dialogue

Since 2008, nine European sectoral social dialogue committees (ESSDCs) have issued 14 joint declarations to address the impact of the economic and financial crisis on sector-related policies. The sectors in question are commerce, chemicals, steel, building and woodworking, public services, art and entertainment, road transport, inland waterway transport and furniture (see Table 2). Although at the forefront of discussions between the social partners (European Commission 2011: 173), the economic and financial crisis has not given rise to much in terms of joint activities or positions in the 40 existing ESSDCs. This rather worrying trend is not reflected in the recent Commission staff working document on the functioning and potential of European sectoral social dialogue (ESSD) of July 2010 in which the Commission praises the role played by the ESSDCs in the dynamic of the European social dialogue (European Commission 2010: 7). And as already mentioned, European sectoral social dialogue (ESSD) has, like the interprofessional European social dialogue, faced criticism on the quality of its output, in particular the lack of legally binding outcomes (ETUC-ESO 2011: 90). This can be explained by the fact that ESSD is focussed much more on joint lobbying and involves few mutual (and verifiable) commitments (ETUC-ESO 2011: 103; for the contrary view, see Degryse and Pochet 2011).

A closer look at the declarations in question shows that one recurrent demand concerns a call to the European Union and national authorities to adopt coordinated concrete measures

Table 2: Main joint positions in the sectoral social dialogue committees in reaction to the economic crisis in 2009-2010

Commerce	Euro Commerce and UNI Commerce statement of 18.12.08 on the effect of the economic and financial crisis on both businesses in commerce and consumers and common contribution to some flagship initiatives of the 'EU 2020: a European strategy for a smart, sustainable and inclusive growth' of 04.08.2010.
Steel industry	EMF-IMF joint steel statement on anticipating change for a sustainable global and European steel industry of 13-14.10.2010
Public services	CEMR-EP / EPSU Joint statement of 27.02.2009 to the Spring European Council 2009 on the need to support local economies and business activity; Joint statement of 04.02.2010 to the European Council meeting of 11.02.2010 on the economic crisis and Joint statement of 10.12.2010 to the European Council meeting of 15.12.2010
Live performance	EAEA-PEARLE statement on 'The impact of the financial crisis in the live performance sector' of 06.05.2009.
Chemical	EMCEF-ECEG declaration on the global economic crisis of 13.05.09
Road Transport	IRU-ETF statement on the economic crisis of 14.05.09
Construction	EFBWW-FIEC declaration on 'The global economic crisis and its consequences for the European construction industry. Positive measures and concerns of the European Social Partners EFBWW and FIEC' of 30.06.09. and EFBWW and FIEC joint appeal 'Emerging from the crisis' of 29/01/2010.
Inland Waterway Transport	EUB, OEB-ESO and ETF contribution to the Commission's Consultation on the future of transport of 30.11.09.
Woodworking	Joint declaration on the economic situation of late 2009
Audiovisual	Joint opinion on protecting creativity, innovation and jobs – November 2009

Source: ETUI and authors – The joint texts referred to in the above table can be consulted in the European Commission European Social Dialogue Database, available at: <http://ec.europa.eu/social/main.jsp?catId=521&langId=en>

to sustain their sectors in response to the crisis, ranging from investment in public infrastructure to setting up temporary unemployment schemes and organising recourse to training to safeguard employment in particular in sectors badly hit by the crisis, such as textiles or transport. Most sectors are asking for long-term sustainable solutions and for quality employment and human capital to be taken as cornerstones in structural reforms (for example from the live performance sector, see p. 4, local and regional administration p. 2 and the steel industry p.1).

In the sectors in question, European trade union federations (ETUFs) and employers' associations agree that the financial and economic crisis is directly and severely affecting employment in all industrial sectors in Europe, in particular transport, construction, chemicals, automobiles, commerce and furniture, as well as public services and regional and local government, as Table 2 shows. These trends are confirmed by an ILO report on the jobs recovery and sectoral coverage in 2010, in particular for the manufacturing and construction sectors in Europe. It is stated that the 'larger employment decline in this sector is partly explained by the overcapacity and significant concentration of temporary workers in some Euro area countries' (Zeballos and Garry 2010: 10).

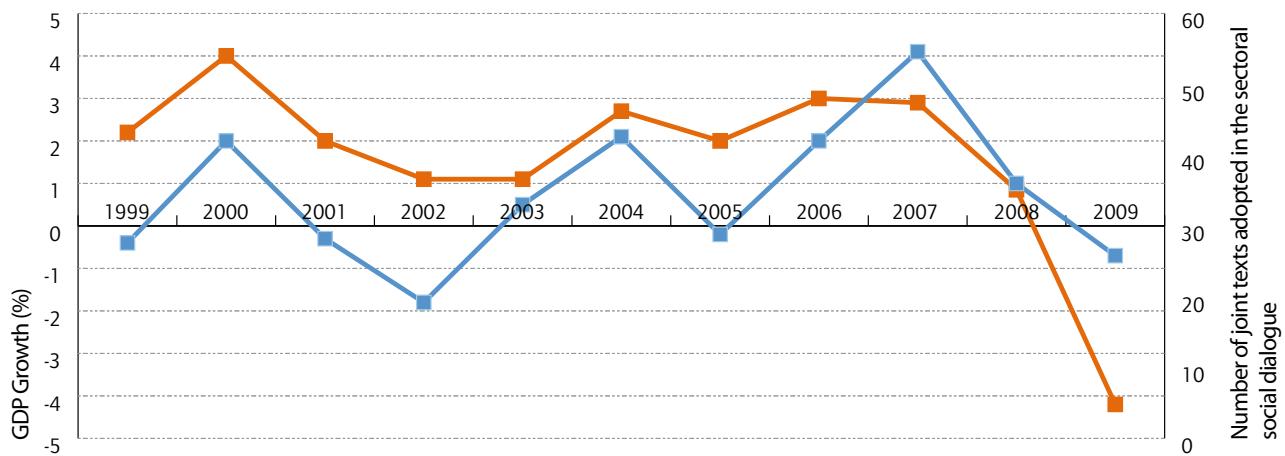
Effects of the crisis can be witnessed in terms of a general decline in activity, the introduction of short-time working, temporary or permanent layoffs and restructuring plans (for example, in commerce and chemicals). Joint requests have been made for solutions designed to reconcile recovery and growth with decent employment opportunities. Most sectors appeal for four kinds of measures to avoid worse-case scenarios: (1) to increase EU and national financial support in order to maintain investment and restore credit, to promote better access to credit and credit insurance, in particular for SMEs; (2) to invest in the sustainable public infrastructure needed for the recovery of the economy; (3) to support training and further qualification schemes in

order to retain skilled workers in particular sectors (especially during unemployment periods) and to boost the employability of workers who are particularly vulnerable on account of their lack of education or skills; and (4) to secure sustainable social protection schemes, in particular in sectors where workers' mobility is high (transport, art and performance). In addition, compliance with and promotion of European and national legislation, for example, on information and consultation of workers as well as on the involvement of European works councils in the case of restructuring have been requested. In many cases, social dialogue (chemical industry, arts and performance, building and woodworkers, local and regional government) has been identified as a complementary *'vital tool in time of crisis to find mutually acceptable solutions'* (for example, EAEA – Pearle joint statement 2009, pt. 14, p. 3).

Finally, the ESSD actors have also used other channels than their respective ESSDCs to raise awareness about the impact of the crisis in their sectors. For example, in the metal sector, the European Metal Federation (EMF) issued a joint statement together with the International Metal Federation (IMF) on 'anticipating change for a sustainable global and European steel industry' in October 2010 calling for the implementation of five pillars of sustainability as ways out of the crisis: long-term investment in plants and workers, employment security and safety, environmental modernisation and CSR, trade policy working for workers and promotion of workers' participation (EMF and IMF 2010).

With the same purpose, a range of other actions have been undertaken by the ETUFs, such as the 2009 EFFAT position paper on the impact of the crisis on tourism in Europe (EFFAT 2009) or the European Mining, Chemical and Energy Workers Federation (EMCEF) demonstration on 22 April 2010 in Brussels protesting against the impact of the crisis on their sectors and demanding ways out of the crisis. The question is thus whether the lack of

Figure 1: GDP growth and the number of joint texts adopted in the sectoral social dialogue



Source: ETUC – OSE (2010: 62)

recourse to ESSD, especially within the framework of the ESDDCs, in time of crisis could be interpreted as a sign of distrust. Or are the social partners indeed more inclined to use ESSD in times of growth rather than in times of crisis, as Figure 1 seems to indicate (ETUC – OSE 2010: 62).

Joint actions with multinationals are also part of the ETUF strategy to address the impact of the crisis in their respective sectors. Restructuring and the management of change have also been dealt with in TFAs, as developed below, although in a less prominent way than in sectoral social dialogue instruments, probably because of the difference in nature and scope of the instruments involved.

Transnational social dialogue at multinational level

Social dialogue has on several occasions been identified as an appropriate tool for tackling the anticipation and management of change (Gyllenhammar 1998; European Commission 2002 and 2005). Next to the interprofessional and sectoral social dialogue at European level, transnational social dialogue at company level has been playing an increasing, although still modest, role during the crisis. In some instances it has been used to address the social consequences of restructuring, as corporate restructuring affects both qualitative (skills and qualifications) and quantitative features (number of jobs) of the workforce.

In the period from 2008 to the beginning of 2011, during which a large number of multinational restructurings took place, a range of TFAs were reviewed or signed in order to ensure the participation of workers. Currently, out of 150 TFAs, 37 deal with restructuring in 22 multinationals. Ten out of those 37 TFAs were signed or revised between 2008 and 2011 (ILO 2010). The main issues at stake are (i) the anticipation of change in order to maintain and develop employees' skills and qualifications to enhance their employability, (ii) information and consultation of workers' representatives,

(iii) avoiding collective redundancies and plant closures and (iv) finding other alternatives for more socially acceptable paths towards growth, development and competitiveness.

The latest TFA – between Alstom and the EMF – dates back to February 2011. This agreement is seen as part of a campaign 'to anticipate market developments and the impact of these changes on employment and competencies' (EMF 2011) and provides a concrete framework for coping with the effects of the crisis on European locations. Based on information and consultation with workers' representatives and trade unions at European, national and local levels, the main priorities are: (i) maintaining the workforce by promoting employee mobility and reassignment in the event of decreasing business needs or restructuring, thus implementing short-time and part-time work; (ii) accessing and managing training in structural change to support requalification, repositioning and development of alternative activities inside/outside the company; and (iii) promoting employees' voluntary mobility along with their plans to start up their own companies and to pursue personal career projects. In the longer term, the agreement foresees the promotion of sustainable employee competency development, focusing, among other things, on the anticipation of skills and qualification needs and a proactive training policy.

In the same vein, and following the acquisition of Areva by the consortium Alstom-Schneider Electric, the three multinationals and the EMF have signed a European agreement to secure the integration of Areva T&D's employees affected by the acquisition. The agreement deals with employment management in the form of job security and moving to an equivalent position in the same employment area, thus maintaining remuneration, seniority and training; as well as promoting social dialogue. Furthermore, no plant closure or no collective redundancies will result from the acquisition until early 2013. 'The innovative nature of the agreement is illustrated both by its European dimension and its content, which covers employment management in the context of an acquisition' (EMF 2010a).

In the European textiles and clothing sector, the first European Framework Agreement (EFA) on the anticipation of change and restructuring was signed between the European Trade Union Federation: Textiles, Clothing and Leather (ETUC:TCL), the European Works Council (EWC) and Dim Branded Apparel in December 2010 (ETUC:TCL 2010). The objective of the EFA is to identify good practices in respect of jobs management. A working group has been set up to develop a detailed database of existing and prospective jobs in Europe in order to support job mobility and promote employee careers via an annual interview. Furthermore, local outplacement schemes in the event of restructuring should help employees to find new jobs in the region affected.

At the end of 2010, the GDF Suez Group signed, together with the IMF, the International Federation of Chemical Energy, Mine and General Workers Unions (ICEM), Building and Woodworkers International (BWI) and the International Public Services Unions (PSI), an international framework agreement on fundamental workers' rights and social dialogue. Within the framework of the social dialogue scheme and for the first time, an IFA will deal, in addition to more specific agreements, with restructuring (ICEM 2010, p. 4).

The driving force behind the TFA remains the ETUF, in particular in the metal, services, energy and chemical sectors. Recently, the ETUC:TCL joined with the EMF and EMCEF to express their common will in favour of a European framework on anticipating and managing change, with particular emphasis on training schemes (Liaisons Sociales Europe 2011: 4). In parallel, multinationals and, to a lesser extent, SMEs are increasingly adapting their social policy on the issues of wages, training and corporate governance and anticipation of change to the European level, thus involving social dialogue with EWCs. According to Deluzet (2010), both phenomena lead to social convergence in Europe. Thus both sectoral social dialogue and social dialogue in multinationals appear to be new fora for innovative regulation. However, with more than 150 TFAs, transnational social dialogue with multinationals remains a patchwork of individual cases, evolving in a legal no-man's-land, thus creating legal uncertainty and preventing good implementation and more efficiency with regard to agreements (Van Hoek and Henrickx 2009). Some leading sectors have already developed TFA-related policies and have developed model agreements, such as the IMF (IMF 2006a and 2006b). At the European level, the EMF 'supports the development of a negotiating role in multinational companies. Through the negotiation of framework agreements both at European and international level, the EMF seeks to secure minimum standards for workers with a view to improving working conditions and avoiding the undercutting of social standards (EMF 2005). Topics include the anticipation of change, restructuring (EMF 2005), CSR and health and safety (EMF 2010b).

Besides restructuring issues, TFAs cover general recognition and promotion of core labour standards, sustainable development, health and safety and CSR. A common agenda of all TFAs is the promotion of effective social dialogue at multinational level and in its subsidiaries, in some cases extended to subcontractors and suppliers. With the establishment of a working group in May 2010 to set up a global trade union network in multinationals (for example, prior to the launch of negotiations on an IFA, as

in the case of Caterpillar), the IMF intends among other things to strengthen transnational social dialogue and, in particular, to promote TFAs on specific issues such as health and safety, training, equal opportunities and restructuring.

According to the ILO, social dialogue in general and transnational social dialogue with multinationals in particular has been a way out of the crisis (ILO 2010). Transnational social dialogue led to the signing of agreements making it possible to tackle the social consequences of the crisis and speed up the recovery, thus saving jobs and wages in cases of restructuring. This is particularly true in industrial relations systems (as in Europe in contrast to the USA, for example) where social dialogue is functioning well, thereby leading to innovative and sustainable solutions. This also applies to transnational framework agreements as part of transnational social dialogue. On the other hand, the still fairly small number of TFAs, as well as the lack of a legal and conventional framework, reduces the impact of workers' participation on developing ways out of the crisis.

Concluding remarks

The European interprofessional and sectoral social dialogues have been trying, by means of a number of initiatives, to contribute to identifying ways out of the crisis for Europe. As already mentioned, the real impact of this is not only hard to assess, but even called into question by direct actors in the dialogue. Furthermore, 'higher level' European debates might put social dialogue at both national and European level under even more pressure or at least confront it with very sensitive issues. In the same vein, a still small range of TFAs, seen as new bargaining tools between trade unions and multinationals, deal with the treatment of the social consequences of globalisation, in particular in respect of restructuring. More proactively, European and global trade union federations encourage transnational negotiations and setting 'internal rules of procedures' to exert a stronger impact on multinationals' compliance with core labour standards in their operations worldwide, in their subsidiaries and, increasingly, at suppliers and subcontractors. Furthermore, parties to TFAs are developing alternative dispute resolution mechanisms to secure better implementation and effectiveness of agreements at plant level and thus are contributing to the further development of more stable supranational structures of interest representation, information, consultation and dialogue and increasing trade unions and worker involvement in the decision-making of multinationals (Schömann 2009). However, TFAs remain a small part of a larger range of social dialogue instruments and as such their impact must be put in perspective

Exiting from the crisis is rightly a priority for the Europe 2020 Strategy. However, European social dialogue and workers' representation seem to be a 'missing/forgotten link': there are few references in the policy documents related to the Strategy (ETUC and ETUI 2011: 82–100). Workers' involvement is similarly barely envisaged in European economic governance proposals. But as in the case of the Lisbon Strategy, with regard to which the European social dialogue and social partners contributed positively to implementation, the Europe 2020 Strategy flagships – as well as European economic governance – will need the support and active input of the European social dialogue and its actors if they

are to survive. Therefore the call by the ETUC in its resolution of October 2010 (and repeated in a resolution of March 2001) for (new) economic and social governance to provide for a greater role for EU social dialogue should not only be seriously considered, but immediately implemented and concretised (ETUC 2010; ETUC 2011).

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