

# Abstract

## European Social Dialogue

**SIER**

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## 1. Introduction

In the present advisory paper, the Social and Economic Council (SER) replies to the European Commission Communication *Adapting and promoting the social dialogue at Community level* (COM (1998) 322 of 20 May 1998). The Communication is a follow-up to an earlier Communication concerning the *development of the social dialogue at Community level* (COM (96) 448 of 18 September 1996). This first Communication provoked a great deal of discussion, ultimately leading to a European Forum, co-organised by the SER, on the future of the European social dialogue.<sup>1</sup>

### *Brief summary of the Communication*

The second Communication aims to involve the social partners more directly in the development and implementation of the European Union's policy. The Commission refers to the new context which has arisen in this regard.

In the *first* place, the Treaty of Amsterdam and the resulting Employment Guidelines have extended the scope of the social dialogue. National Action Plans are offering the social partners the opportunity to contribute to employment policy. Specific appeals have gone out to the social partners to adapt forms of work and boost vocational training. *Secondly*, the EMU process has progressively made visible the importance of the social partners in influencing economic growth and an employment-friendly policy mix. *Thirdly*, the social dialogue has been reinforced by the Agreement on Social Policy (ASP) under the Maastricht Treaty (subsequently incorporated into the Treaty of Amsterdam).

In its Communication, the Commission explains how it wishes to adapt and promote the social dialogue. It describes a number of key actions related to *information, consultation, employment partnership* and *negotiation*. With a view to promoting and improving the working of the social dialogue, the Commission has set itself three objectives to which these key actions must contribute:

- a more open social dialogue;
- a more effective dialogue between the European institutions (Commission, Council of Ministers and Parliament) and the social partners;
- development of real collective bargaining at European level.

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<sup>1</sup> The replies to this Communication submitted by the social partners and other parties have been compiled in: *Synthesis Report of Responses to the Commission Communication "The development of the social dialogue at Community level"*, The Hague, April 1997.

### *Outline of advisory paper*

This summary of the SER's advisory report is organised as follows.

Chapter 2 places the social dialogue within the context of social and economic policy development at European level. Chapters 3 to 7 set out the SER's position, looking at the following aspects of the European social dialogue:

- the role of the social partners in the European Union's employment policy (Chapter 3);
- the future of the sectoral dialogue (Chapter 4);
- the issue of representativeness (Chapter 5);
- the division of powers between the Council, the Commission and Parliament (with particular attention being paid to the co-legislative powers which Article 4 ASP confers on the social partners in matters of social policy – Chapter 6);
- the social dialogue in relation to the enlargement of the European Union (Chapter 7).

In Chapters 3 to 7, each brief description of the Commission's proposals is followed by the SER's *Commentary*.

## 2. The policy context of the social dialogue

### 2.1 The social dialogue as a complex phenomenon

The phenomenon of the "social dialogue" has undergone a considerable expansion at European level in recent years. Viewed from a *functional* perspective, it can be said that in the mid-eighties, the social dialogue was generally thought to be commensurate with the *consultation* function, in particular the informal consultation which took place between the most important *interprofessional* European employer and worker organisations: UNICE, ETUC and CEEP (the social dialogue of Hertoginnedal).

Today, however, the social dialogue not only encompasses consultation, but also includes:

- the provision of *advice* (regarding the social and economic policies to be pursued and the regulatory framework);
- *negotiation* (within the system of industrial relations); pursuant to Article 4 ASP, negotiations may lead to the social partners playing a co-legislative role (see below).

Alongside this functional expansion, the present social dialogue also covers multiple levels. To complement the social dialogue at *interprofessional level*, the Commission has identified the *sectoral* social dialogue, the transnational dialogue in *multinational companies* and the *cross-border* dialogue at *regional level*.

From an *institutional* perspective, it is important that the "Social Dialogue", along with the expansion in function and level, also encompasses a rich variety of bipartite and tripartite advisory and consultative fora. In addition to the Hertoginnedal consultations, which are voluntary and informal, the Commission refers to the consultations and negotiations under the ASP, the interprofessional Advisory Committees, the tripartite Standing Committee on Employment, the (sectoral) Joint Committees and Informal Working Groups, and, finally, to the European Works Council.

Any recommendations on the social dialogue must take the variety of functions, levels and institutions into consideration. For example, there must be a specific division of responsibilities for each function, and, following on from this idea, a specific answer to the representativeness issue (see Chapter 5).

## 2.2 The EMU as an important policy context

The Commission has announced its proposals for improving the social dialogue on the eve of the introduction of the euro. The SER considers Economic and Monetary Union (EMU) to be the logical conclusion of the internal market; growth, employment and the competitiveness of the European Union depend on its completion. EMU will require sound political-institutional and social grounding, which, in monetary terms, is provided by the Maastricht Treaty. It is the SER's view that monetary union should be part of a wider process of social and economic integration. The SER views EMU very much as an economic-monetary dyad.

The "E" of EMU must be given more concrete form by effective policies at national and Community level. In this connection, there is a need for policy coordination in the meaning of Treaty Article 103: "Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council...". Only by more effective policy coordination will it be possible for EMU to make a recognisable contribution to prosperity and employment. It is in this connection that the stability and growth pact, the emphasis placed on employment, and the promotion of the employment objective in the Treaty of Amsterdam must be seen. The Luxembourg Summit of November 1997 created a framework for a coordinated national employment policy, as set out in Article 109 (N-S) of the Treaty of Amsterdam. Coordination will take shape by means of "peer pressure" and by a regularly scheduled assessment procedure which will provide examples of "best practices".

Given the specific responsibilities of the social partners, in particular in the realm of employment conditions, it would not be a good idea to restrict the task of coordination to governments alone. In this respect, it is important that the process of determining employment conditions, and, in broader terms, the functioning of the labour market as an adjustment mechanism at national level become even more meaningful when exchange rates are eliminated as a national policy instrument.

Assuming that the social partners will bear their own responsibilities in setting employment conditions, then, there is every reason to involve employer and worker organisations in preparing policies at European level and to utilise the different institutions and processes of the social dialogue as effectively as possible to achieve coordination with and between the social partners. At the very core of the matter is the issue of how best to develop common policy perspectives and whether the parties involved will be willing to commit themselves to achieving the objectives which have been set within this framework.

The Treaty allows for the possibility of consultations leading to contractual relations (at different levels), and for agreements to be implemented through Community legislation at the joint request of the social partners. It would, however, be a mistake to judge the value of the social dialogue simply from the number of agreements which have been concluded. The exchange of information and the convergence of (facilitating) policy perspectives may, even without the existence of explicit agreements, have an impact and promote policy coordination and the adoption of "best practices".

The desire to encourage employment-intensive growth is another important foothold from which the social dimension of EMU can be shaped. The ASP has involved the European social partners very closely in the policy-making process. Under Article 3 ASP, the Commission is obliged to consult the social partners in advance about new European social policy. There have already been two instances in which the European social partners have taken advantage of the opportunity (set out in Article 4 ASP) to have agreements converted into Community or national legislation.

### **3. The role of the social partners in determining the European Union's employment policy**

The Treaty of Amsterdam states that the Member States, "having regard to national practices related to the responsibilities of management and labour", will regard promoting employment as a matter of common concern. Coordination procedures have been put into place. Each year, the Council of Ministers – acting on the Commission's proposals and after consulting the Economic and Social Committee (ESC) and the new Employment and Labour Market Committee – will establish guidelines for employment policy in the Member States. In fulfilling its task, the Employment and Labour Market Committee will consult the social partners. At national level, the social partners will be involved mainly in drafting and implementing the National Action Plans for Employment in accordance with the Council's Guidelines.

At Community level, the issues revolve around the interaction with the different sectoral dialogues and the way the social partners are to be involved in measuring the progress made in implementing the Luxembourg Summit agreements. This raises the issue of the Standing Committee on Employment.

The Standing Committee was founded in 1970 as a tripartite consultative body. The Commission proposes to reform the Standing Committee's working methods and composition, so that its work can be linked more directly to the employment policy coordination procedures agreed upon.

#### *Commentary*

The SER greatly values the regularly scheduled employment policy reviews and the systematic exchange of "best practices" set in motion after the Luxembourg Summit. This can be viewed as an element of institutionalised, positive policy competition and as a pendant of the convergence criteria for monetary union.

In general the SER agrees with the Commission's proposals to improve both the working methods and composition of the Standing Committee and coordination between the Employment and Labour Market Committee and the social partners. This may lead to greater efficiency and a better match with political decision-making. The SER does, however, believe that exercising more caution in reducing the number of social partner participants (for example from 36 to 24 instead of the 16 proposed) would leave more room for a balanced representation of employer and worker organisations. The designation of seats on the Standing Committee should further reflect the relative scale and representativeness of the individual organisations. In particular the proposal to include delegates from the *Confédération européenne des cadres* (CEC), an organisation that

represents executive employees, raises questions; a comparable organisation, EUROCADRES, will not, after all, also be represented as such. Finally, it would be sensible to evaluate the performance of the revamped Standing Committee in about five years' time.

#### 4. The future of the sectoral dialogue

To encourage the development of the social dialogue in sectors, the Commission wishes to take a more harmonised approach to the structures supporting this dialogue. The Commission believes that the existing structures (Joint Committees) are over-institutionalised in some sectors, whereas others still lack any form of support.

The Commission has now decided to eliminate all existing structures at sectoral level and, at the joint request of the social partners, to replace them by social dialogue bodies, called the Sectoral Dialogue Committees. It envisages these Committees being consulted about developments at Community level which have social implications, as well as developing and promoting the social dialogue at sectoral level. The Committees will be set up in every sector in which the social partners submit a joint request and in which they are well enough organised at European level to fulfil the representativeness criteria. In addition, the operating procedures will be streamlined. The Commission will see to it that the Committees are consulted closely and in good time about sector-specific questions which have major social implications. Together with DG V and the other DGs involved, the Commission will also provide the secretarial services.

##### *Commentary*

To ensure that the sectoral dialogue is well in tune with the wide-ranging developments and circumstances in the different sectors, the conditions must be created whereby its contribution will be most effective across the board. The partners at sectoral level discuss such issues as reorganisation, the opening of the market and technological innovation, and, if they so desire, they can consult on employment, the labour market, working conditions or other matters.

The purpose of eliminating the existing structures that support the sectoral dialogue must be to carve out space for a more efficiently designed dialogue in the different sectors. It is the task of the employers and workers in each particular sector to give the social dialogue genuine substance. In cases where an active, well-oiled social dialogue is already in place, the proposed structural reform must not place these achievements at risk. Indeed, the Commission's decision to eliminate existing structures carries a certain risk.

The question is whether the Commission's proposed streamlining is specific enough, or indeed enough in itself, to promote the proper development of the social dialogue in the various sectors. On the one hand, it would seem that the proposal to meet more than once a year will help to create and maintain a good climate for consultation. On the other, however, there is still the risk that public funds will be spent on meetings of a more

or less ritual nature. The streamlining measures should be more tailor-made, based on the annual working programmes.

## 5. The issue of representativeness

The key issue touched on in the replies to the Commission's first Communication was the representativeness of the organisations taking part in the various consultation and negotiation procedures. The ESC, for example, has announced proposals to define more detailed representativeness criteria<sup>2</sup>.

In its second Communication, the Commission states that the first annual report on a major study of the representativeness of cross-industry and sectoral organisations will be ready in early 1999.

Elaborating the distinction between consultation and negotiation, the Commission proposes taking a three-pronged approach to the representativeness issue:

1. There must be widespread availability of information and consultation on general topics.
2. With respect to *consultation* within the context of Article 3 ASP, the Commission considers organisations which satisfy the following criteria as representative:
  - a. they are representative at cross-industry level or related to specific sectors or categories and organised at European level;
  - b. they are themselves an integral and recognised part of Member States' social partner structures, have the capacity to negotiate agreements, and are representative of all Member States, as far as possible;
  - c. they have adequate structures to ensure their effective participation in the consultation process.
3. With respect to *negotiation*, respect for the right of any social partner to choose its negotiating counterpart is a key element of the autonomy of the social partners. "It is up to the social partners to decide who sits at any negotiating table and it is up to them to come to the necessary compromises" (p. 17, Communication). Nevertheless, there must be a broad enough basis of support to arrive at relevant agreements and to make the outcomes of the social dialogue widely acceptable. "In this context the Commission would stress that the current situation is jeopardising future developments and that a political solution is needed

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2 The ESC's advisory paper presents four conditions for determining the representativeness of an *organisation* within the context of the European social dialogue. In addition, it also briefly discusses the issue of the representativeness of *agreements* as related to the social partners' co-legislative role. The question which then arises is whether the agreement has been concluded by organisations that represent an adequate number of workers and employers, while recognising the fact that the social partners are free to choose their negotiating partners. ESC, *Opinion on the Commission Communication concerning the development of the social dialogue at Community level*, Brussels, 29 January 1997, section 1.8.

to prepare the ground for the future" (p. 17, Communication). This refers in particular to the problems which may arise if participating social partners ask to have their negotiating results implemented through *Community legislation* under Article 4 ASP. In such cases, the legislative body will of course want to assess the representative status of the contracting parties in terms of the scope of their agreement.

#### *Commentary*

The SER believes it is crucial that progress should be made in the short term on the issue of representativeness by determining representativeness criteria and actually applying them. A distinction must be made in this regard between the levels of the relevant institutions and fora. Every effort must be made to avoid a situation in which organisations that are representative only for a single sector, for example, can invoke a right to be represented in an interprofessional consultative body.

The three-pronged approach to the representativeness issue taken by the Commission, in which it makes a sharp distinction between general consultation and consultation/negotiation within the framework of the ASP, offers a sound basis for improvement.

The first element, widespread availability of information and consultation on *general topics*, requires no further explanation.

Regarding the process of *consultation* under the ASP, it is obvious to the SER that the Commission should determine and apply the criteria for representativeness. The SER does, however, wish to remark regarding these criteria that it believes that the organisations should, *in principle*, be representative for all Member States. The use of the phrase "as far as possible" seems to leave too much room open for consultation by organisations which do not aspire to be fully representative for all Member States.

Regarding the process of *negotiation* under the ASP, the SER would emphasise the principle of respecting the social partners' autonomy in such matters. It is up to the European social partners themselves to decide with whom and in which setting they wish to negotiate and with whom they will conclude an agreement.

As the Treaty provides for the possibility of implementing agreements through Community legislation, it is also important that the Council of Ministers drafts criteria for the representativeness of a possible *agreement*.

These criteria can serve to determine whether a negotiating result in fact qualifies for implementation through Community legislation.

The social partners can, incidentally, strengthen their autonomy and the continuity of their mutual consultations, and reduce their dependence on the Commission, by setting up their own, independent secretariat.

## 6. The division of powers between the Council, the Commission and Parliament

The division of powers between the European institutions is another factor which plays a role in the social dialogue, in particular when the social partners enter into negotiations, conclude agreements and then request to have their agreements implemented through Community legislation. When the social partners request to have an agreement implemented through Community legislation, questions concerning the tasks, powers and responsibilities of the Commission, the Council and Parliament are raised. The Dutch government, in its reply to the first Commission Communication (published in Spring 1997), outlined the following division of tasks between the Community institutions:

### *Commission:*

- a. (marginal) review of the representativeness of the negotiators against newly-created criteria and against the background of the subject;
- b. full review as to whether the substance of the agreement is not in conflict with Community law;
- c. assessment as to whether it would be desirable to give wider application to the substance of the agreement concluded by the social partners;
- d. assessment of how this can best be achieved.

### *Council of Ministers:*

The Council must respect the *substance* of the agreement concluded by the social partners. Their agreements must naturally concur with the framework set out in Article 2 ASP and not overreach their powers (autonomy). Intervention in the substance would impinge upon the power to enter into agreements conferred on the social partners under the Social Protocol. The Council is, of course, free to reject the agreement as a whole.

The situation is otherwise regarding the *implementation provisions*. The Council's legislative powers are undiminished here. In this capacity, it may amend or reject proposals made by the social partners.

### *Parliament*

The position of the European Parliament must be reinforced to some extent. The most feasible approach would be to involve Parliament informally in the procedure. Parliament would naturally not have the right to alter the substance. Its role is to review the agreement in terms of the common good.

### *Commentary*

In general, the SER subscribes to the division of tasks outlined above, this being a more detailed description of the procedure defined in Article 4 ASP. Nevertheless, in the case of a legislative procedure in which the Council and Parliament do not have any influence, at least formally, on the substance of the legislation (other than the possibility of refusing to implement the social partners' agreement through Community legislation), it will be necessary to establish unambiguous rules in order to guarantee the democratic legitimacy of the procedure. In addition, the procedure must also be reviewed in terms of its effectiveness and efficiency.

The SER believes that its suggestion to allow the Council to establish representativeness criteria for possible agreements constitutes the first step towards reinforcing the democratic legitimacy and efficiency of the co-legislative procedure. Another possibility would be to confer advisory powers on Parliament regarding any Council decision whereby the outcome of the European social dialogue is made binding through Community legislation. Such powers should allow Parliament to provide well-founded advice as to whether agreements should or should not be implemented through Community legislation, but it should not be allowed to amend the substance of these agreements. Such a move would intrude on the negotiating process with the likely result of social partners not even embarking upon it. Consideration could be given to include such advisory powers in the existing inter-institutional agreement concluded between the Council and Parliament.

## 7. The social dialogue and enlargement

The Communication touches briefly on the social dialogue and the enlargement of the European Union by the accession of Central and Eastern European countries. The Commission believes it is essential that candidate Member States develop their own social dialogue structures and activities, referring to the so-called Accession Partnerships in this regard. Moreover, the European social dialogue is now a major component of the *acquis communautaire*, which new Member States must incorporate into their legislation.

### *Commentary*

In the opinion of the SER, shortcomings in social policy and in industrial relations are the biggest roadblocks to accession for Central and Eastern European candidate Member States. The task of creating a balanced system of industrial relations to which both of the social partners make a valuable contribution will be a particularly difficult one in countries in which the government has for dozens of years determined and imposed its own policy agenda. Only by encouraging the development of independent employer and worker organisations will it be possible to establish a basis for an effective national social dialogue (set up as the social partners see fit) and meaningful input in the European social dialogue. The European Union's Accession Partnerships with the candidate Member States correctly give priority to the further development of an active, autonomous social dialogue, and view this as one of the medium-term objectives.

There is broad agreement that it is vital to develop sound industrial relations and an effective social dialogue in the candidate Member States.

The question, naturally, is how best such support can be provided.

In terms of promoting the *national* social dialogue in the candidate Member States, the SER believes that the most sensible approach would be to concentrate on creating "loose" consultative platforms and on the different advisory and consultative activities which can ground the social dialogue.

It is important to avoid establishing highly specified structures at this early stage which may well turn out to be less suitable in a few years' time.

At *Community* level, the problem is whether representatives from the candidate Member States would already be able to participate as observers in certain social dialogue advisory and consultative fora.

The Commission emphasises that the social dialogue is part of the *acquis communautaire* which the new Member States must incorporate into their own legislation. Although essentially a correct observation, there is still some question regarding the extent to which an effective accession criterion can be imposed in this respect.

It would be difficult to prohibit countries that lack a *national* social dialogue from accession, as long as this lack does not impede that country's ability to implement the European Union's social policy. After all, there are already examples of present-day Member States in which a (institutionalised) form of national social dialogue is either virtually non-existent or has been largely ineffective until now. That makes it particularly difficult to impose any criteria on the candidate Member States regarding the *design* of the national industrial relations system which go beyond those arising from ILO's fundamental covenants, for example. Indirectly, of course, the absence of a functioning social dialogue will constitute an impediment to Membership, in so far as it has a negative impact on the candidate Member State's ability to implement the *acquis* on social policy.

Nevertheless, the Treaty clearly imposes an obligation on the Member States to cooperate in developing the *European* social dialogue. Any unwillingness to do so may be reason enough to delay (or even obstruct) accession in the SER's view.