European social dialogue between hard and soft law.

Session 8F EU soft law: emergence, operation, and influence in comparative perspective

Paper prepared for the EUSA Tenth Biennial International Conference, Montreal, Canada May 17-19, 2007

Philippe Pochet
Observatoire social européen, Brussels
Griffith University, Brisbane
Université Catholique de Louvain (UCL)

pochet@ose.be

Introduction[1]

If the debates raged around the European Employment Strategy (EES) and more generally on Open Method of Coordination (OMC) and the new modes of governance, less and less attention was paid to social dialogue. An evaluation of the cross-industry and sectoral social dialogue is a difficult task as it is an on-going process with various dimensions, among them the information, consultation, and negotiation between the European trade unions, the European employers and the Commission are often underlined (Transfer, 2006). Social dialogue is based on the treaty (Art. 138 and 139) and is generally considered as being part of a hard law approach (Falkner, 1998). Nevertheless, the last cross-industry agreement dated back to 1999 and only few binding agreements have been signed at sectoral level. Since 2000, the agreements signed were autonomous agreements which look like a hybrid between soft and hard law both by flexibility of the content and the nature of instruments to implement the EU agreement. The paper analyses the latest developments at cross-industry and sectoral level in order to evaluate the nature of the dynamics at play (Leonard et al., 2007)

We will present in an integrated framework both the cross-industry and sectoral social dialogues. Their stories run mostly in parallel but recently the interaction has increased as they have worked on the same topics (telework for example) and as the Commission (see CEC, 2004) is trying to combine them. Finally, they have more or less reached the same point (soft law as the main regulatory instrument) and are confronted by the same set of problems (implementation, enlargement, representativeness…). As the sectoral social dialogue is much less well-known that the cross-industry one, we will concentrate our attention in this paper on developments at sectoral level (see also De Benecditus et al, 2003, de Boer et al, 2005, Dufresne et al, 2006, for the development at cross-industry level see the annual review by Degryse).

This chapter is structured as follows: the first part presents a brief history of the European social dialogue, the second part defines broad categories to classify the joint texts adopted by the EU social partners, the third present a quantitative analysis of the texts adopted in the last ten years at sectoral level. Section 4 briefly illustrates the nature of the exchange and presents a typology. Then we draw some conclusions.

---

[1] The paper is part of a research on new modes of governance (NEWGOV) coordinated by the European Institute Florence funded under the 6th EU framework research program.

1. A brief history of European social dialogue

Originally the bodies responsible for the consultation of the European social partners were joint committees, established by the European Commission. A first wave of six joint committees was formed in the sectors covered by the "integrated" common policies: mines (1952), agriculture (1963/1974), road transport (1965), inland waterways (1980), fishing (1974) and railways (1972). Their members were appointed by the Commission, with an equal number of employers and employees.

Informal working parties, set up at the request of the social partners, began to appear during the 1980s. They provided for a more pragmatic and flexible form of social dialogue, as well as being more informal. They were created in a number of sectors with the Commission's backing: Horeca (1983), commerce (1985), insurance (1987), banking (1990), etc.

A second wave of joint committees took shape in the late 1980s and early 1990s in the following sectors: sea transport (1987), civil aviation (1990), telecommunications (1990) and postal services (1994).

In 1985, the Single Act introduced a provision recognising the social partners and allowing them to develop a social dialogue. With the support of the President of the Commission, Jacques Delors, cross-industry social dialogue between ETUC, UNICE (now Business Europe) and CEEP began (Ross, 1995).

The idea behind the creation of the social dialogue was to enable the European social partners to and make commitments among themselves, autonomously, in much the same way as they do in social dialogue within Member States (CEC, 1996). From 1985 to 1990 the dialogue between them resulted in the adoption of a dozen "joint opinions" on a range of topics: vocational training, new technology, mobility[2], etc. The importance of the years 1985 to 1989 lies not so much in the content of the joint opinions adopted and their limited scope (Didry and Mias, 2005: 201) as in the establishment of procedures for regular dialogue (Turner, 1995). The 1991 Social Protocol laid down a legal framework which opened up new scope for dialogue at cross-industry level as well as in the various sectors. The entry into force of the Maastricht Treaty (and its Social Protocol) resulted

---

[2]   In particular on social dialogue and new technology (12 November 1985), the growth and employment cooperation strategy (6 November 1986), training and motivation, information and consultation (6 March 1987), the 1987-1988 annual economic report (26 November 1987), the European area of occupational and geographical mobility (13 February 1990), basic education and initial training and adult vocational training (19 June 1990), the transition from school to adult working life (6 November 1990), and new technology and work organisation and labour market adaptability (10 January 1991).

in an obligation on the Commission to consult the social partners prior to the adoption of a legislative proposal, and the possibility for them to sign collective agreements which may either be extended *erga omnes* by means of a Council directive or else be implemented by the social partners themselves at national level. Joint opinions nevertheless continued to be issued until 1996.

The cross-industry social partners agreed on three collective agreements transformed into directives by the Council (parental leave (1995), part-time work (1997), fixed-term contracts (1999). They failed to agree on others, such as works councils or information/consultation at national level. The failure in 2001 of the negotiations on temporary agency work, which should have been the last text on atypical employment (after the fixed-term and part-time agreements) marks the end of the "negotiated legislation" period. At the end of the 1990s, the trade unions reassessed the role and support of the Commission. In their view, the Commission was no longer pro-active in its support of the social dialogue by proposing new legislation and creating a threat obliging the employers to enter into negotiations. They were willing to explore new avenues.

Concerning the sectoral level, the need to adapt the working time directive in the sectors not covered was an incentive to negotiate. Following its framework decision of 20 May 1998 (CEC, 1998a) the Commission decided on 1 January 1999 to rationalise the system by replacing the joint committees and the informal working groups by a unique new structure: sectoral social dialogue committees (European Commission, 1998). They are formed by joint request of the social partners and approved by the Commission. They comprise a maximum of 40 representatives (with an equal number from both sides of industry) and are chaired either by one of the social partner representatives or, at their request, by the Commission representative who in any event acts as the committee secretary. Each committee is expected to adopt its own rules of procedure and work programme (often annual). It holds at least one plenary meeting per year and handles more specific matters at enlarged secretariat meetings or in restricted working groups. The negotiating mandate is determined by national organisations. The Commission has not laid down any rules as to the means of approving joint texts.

The last period is the consolidation of the system by the extension of the number of sectoral social dialogue committees (SSDCs). It has grown since the reform from 20 in 1998 to 33 in 2006 and more are waiting for a formal recognition by the Commission in 2007. Ten joint committees and 16 informal working groups were transformed into SSDCs, while nine sectors

established committees directly: live performance (1999), temporary workers (1999), furniture (2001), shipbuilding (2003), audiovisual (2004), chemical industry (2004), local and regional government (2004), hospitals and finally steel (2006). The last new sectors were the leading sectors at national level (steel, chemical, local public services). The last two important sectors missing at EU level are public administration and engineering (which is creating sub-sector committees steel, shipbuilding, garage…).

Ten years after Maastricht, the cross-industry social partners were keen to assert their autonomy vis-à-vis the European institutions, especially the Commission. This shared concern was not based on the same premise in the case of employers' and employees' organisations. For the trade unions, it derived from a reassessment of the Commission's role. The Commission appeared increasingly reluctant to fulfil its role of drafting legislative initiatives in the social policy field. Hence it echoed the trade unions' demands to a much lesser extent than in the past. For the employers, on the other hand, it was a means of shaking off once and for all the pressure exerted by the Commission (Arcq *et al.*, 2003; Branch and Greenwood, 2001). Legally binding framework agreements gradually gave way to so-called "voluntary/autonomous" agreements, where matters such as status and follow-up remain quite nebulous – as in the case of those on telework (2002) and stress (2004) (Branch, 2005) and violence at work (2007). This development was accompanied by the gradual introduction of the open method of coordination, inaugurated at Lisbon, into the social dialogue itself. In 2002 the social partners adopted a three-year work programme (2003-2005) which confirmed the absence of legally binding proposals by promoting "frameworks for action". We would mention among others the frameworks for action on lifelong learning (Winterton, 2006) and on gender equality. In 2005 the social partners – a weak ETUC and a still non-committal UNICE – negotiated a second programme of action (2006-2008). One autonomous agreement is foreseen (the topic has still to be decided between lifelong learning and disadvantaged groups). They will also evaluate the results of the autonomous agreements. The Commission in its 2004 communication also wanted to verify the "quality" of the implementation. It distinguished between completely autonomous agreement for which they will not control the implementation and voluntary agreement following a consultation by the Commission. In this case, they consider that they have the duty (by the treaty) to assess the results. As Smismans (2007) underlines: "the European social dialogue will be characterised by "voluntary implementation of the law", i.e. "you implement or we legislate" – at least where voluntary agreements resulted from initial Article consultation".

Concerning the actors, there is a process of concentration on the trade union side. The 33 sectoral committees are covered by the eleven European trade union industry federations (EIFs) (UNI-Europa is present in eleven and Transport (ETF) in six). On the employer side, by contrast, representation is somewhat fragmentary. This is particularly true for civil aviation but also for the mining, banking and audiovisual sectors. At cross-industry level the solution was to integrate minor partners into the delegations: UEAPME with UNICE and Eurocadres with the ETUC. CEEP, which represented public enterprises, is now trying to reinvent itself by representing local public services. All the actors are confronted by the challenge of enlargement which implies organisational (more members, more languages), structural (more fragmentation, less membership) and political questions (global representativeness)

2. Texts adopted: a classification [3]

When trying to make sense of the huge amount of texts (more than 400 adopted by the sectoral social dialogue committees), we are confronted the problem of the real meaning of these texts. The official titles of the joint documents vary considerably: common opinions, declarations, resolutions, proposals, guidelines, recommendations, codes of conduct, social labels, etc. It is thus not possible to create meaningful categories on the basis of the official designations. In the study carried out for the Commission (OSE, 2004) we distinguished between two broad categories. First, what we call the 'reciprocal commitment' between the social partners which corresponds to an internal commitment and secondly the 'common position', which covers documents intended for influencing the public authorities, first and foremost the European Commission.

With regard to 'reciprocal commitments', we distinguished five levels of commitment: 'tools', 'declarations', 'recommendations', 'agreements' and 'internal rules'. Let us spell out the differences:

a) Agreements

This category corresponds to agreements initiated between the European social partners (pursuant to Article 139 EU Treaty), intended for national organisations and with a follow-up

---

[3] At the Observatoire social européen we have created a database including all the joint documents signed by the social partners at European level covering the 33 official sectoral committees and the cross-industry social dialogue. This article will present the results of a quantitative analysis covering all 412 agreements adopted since 1978 (for an analysis covering the whole period see Pochet, 2006). This analysis is based on the reading and classification of all "joint texts" signed since 1978 at sectoral level.

procedure determining precise mechanisms and deadlines for implementation. Agreements may or may not be converted into directives.

b) Recommendations

This category comprises texts with relatively clear provisions addressed mainly to national organisations and for which a follow-up and evaluation procedure is laid down at national and European level. There is deemed to be follow-up if the text sets out (reasonably precise) procedures for national implementation and for a European-level evaluation of this follow-up at a given point in time. This is therefore a procedural definition. Follow-up as such should not be confused with implementation, which relates to substantive aspects.

c) Declarations

This category corresponds to 'declarations of intent' drawn up by the European social partners, intended for national organisations or for themselves, and where no explicit follow-up procedures are set out in the text or where the procedure is vague.

d) Tools (for training and action)

This category comprises various sub-categories: studies (only studies carried out jointly by the social partners and not by European and/or national consultants); handbooks; glossaries or databases.

e) Internal rules

Internal rules are recognition agreements between the social partners.

f) Common positions

This category corresponds to texts addressed to the European institutions. These texts may be produced under very different circumstances.

3. A quantitative analysis

The advantage of a quantitative analysis is that we are able to cover all sectors and present the main global trends. The key question is the possible evolution from a dialogue centred on influencing European policies (mainly addressed to the European Commission) toward a more bilateral internal social dialogue. The second question bears on the binding nature of the instruments. We will present a set of graphs covering the number of documents signed per sector and per year; the number of agreements and recommendations per year, the nature of the documents, the topics covered and to whom they are addressed. We have broken down the 10 year period into two five year periods to be able to compare recent trends. We first present the results by sector.

DSS : Number of documents by sector

1997-2001 : white : 142 docs / 2002-2006 : orange : 139 docs
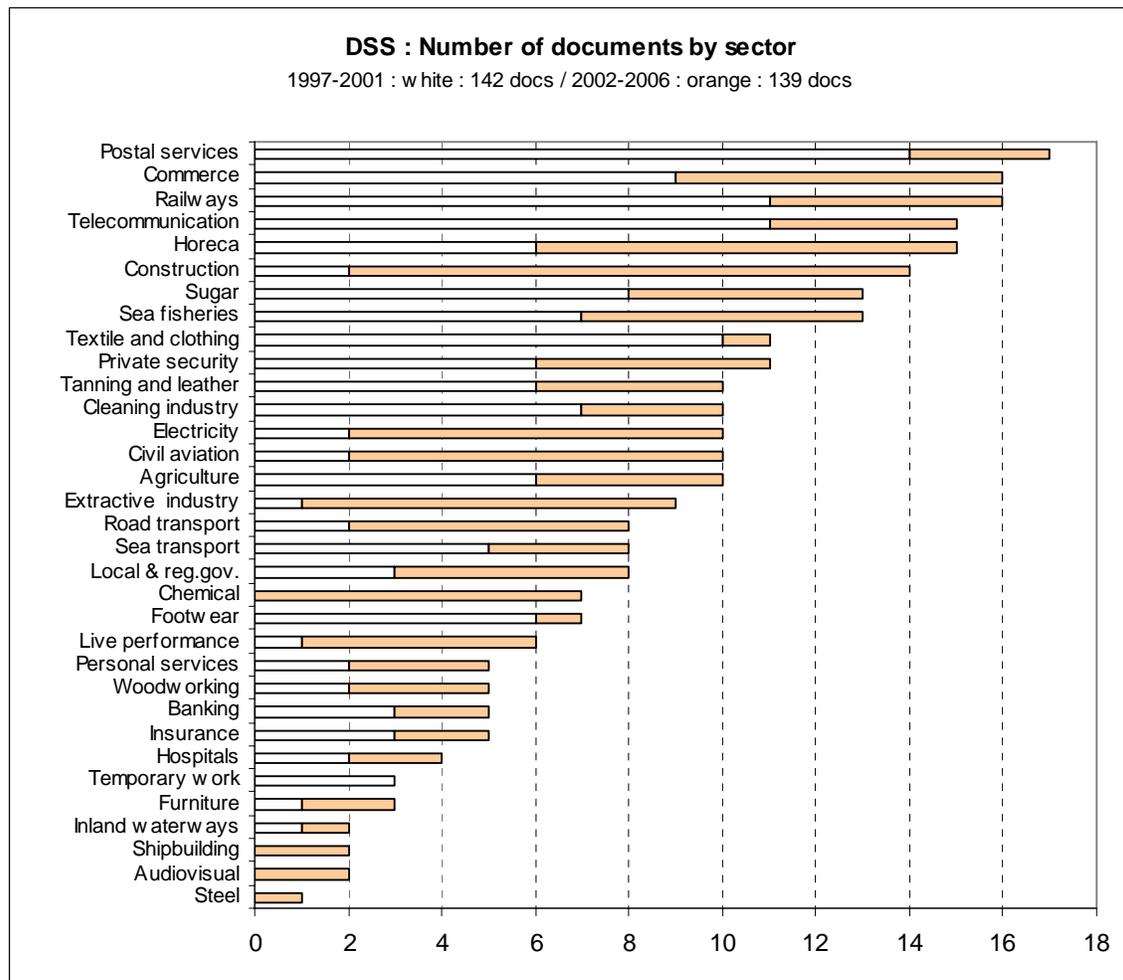
What is striking is that the productivity (number of texts adopted) by sector is very different (note that the date of creation of the committees could be different too)[4]. This productivity is also changing, for example most of the joint texts in the postal sector were adopted in the first five years; the opposite is the case for the construction sector. *Per se* this indicator says nothing about the quality of the texts adopted. We will return to that below when analysing the agreements and the recommendations.

We now turn our attention to the total number of documents adopted per year.

DSS : Number of documents per year (1997-2006)
(281 doc.)

Year	Documents
1997	32
1998	22
1999	21
2000	40
2001	27
2002	19
2003	32
2004	40
2005	25
2006	23
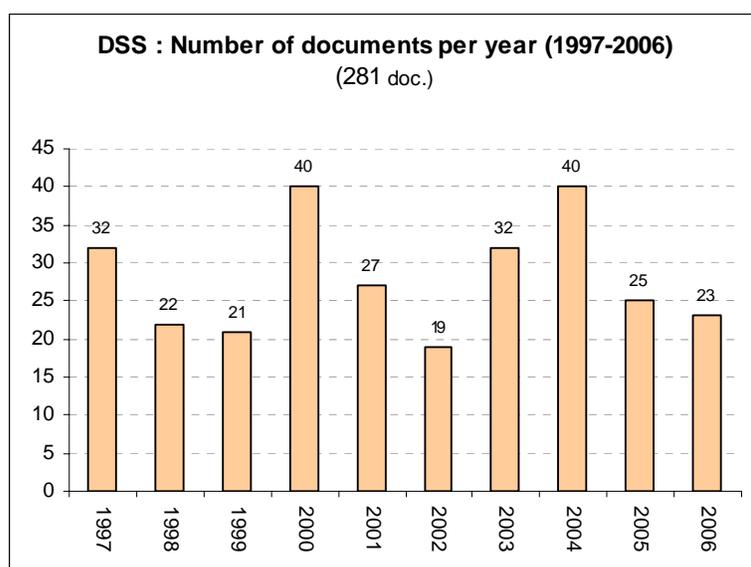
Concerning the number of documents adopted per year, there is not a clear trend. The maximum is reached in 2000 and 2004. It appears that the creation of the sectoral committees in 1999 did not modify the number of joint documents adopted which had already increased in 1997 and 96 not in the graph. The total in 2005 and 2006 is particularly low taking into account that the number of committees has increased since the beginning of the period analysed (less than one text per sector). The 2004 communication of the Commission trying to improve the quality of the sectoral social dialogue had no impact (or apparently a negative impact) on the quantity.

---

[4] When a committee is officially created as a SSDC we take into account the joint texts adopted before the official date of creation.

If in quantitative terms we cannot notice any influence of the EU communication, what about the quality? Do we notice a change in the nature of the documents adopted?

The first graph shows the type of text adopted and the second the distribution per year of agreements and recommendations, which are the more binding texts (we do not discuss here other categories which can also sometimes have an important impact, see Dufresne *et al.*, 2006).

DSS : Number of documents per type (1997-2006)
1997-2001 : white : 142 docs / 2002-2006 : orange : 139 docs

Type	1997-2001 (white)	2002-2006 (orange)
Common position	75	55
Declaration	14	36
Tool	20	19
Internal rules	18	13
Recommendation	12	13
Agreement	3	3

Number of Agreements/Recommandations per year (1997-2006)

Year	Agreement	Recommandation
1997	0	3
1998	2	3
1999	0	1
2000	1	2
2001	0	3
2002	0	3
2003	2	4
2004	0	3
2005	0	1
2006	1	2

When comparing the two sub-periods of 5 years each, a first remark is that there is a rather stable number of texts adopted during both periods (142 against 139).

Clearly too there is no visible trend toward the adoption of more binding texts. 3 agreements were adopted in the first 5 year period and 3 in the second one. Nevertheless, Durant the last 5 years, there were two important innovations. Firstly, the ailways sector signed the first autonomous sectoral agreement "on certain aspects of working conditions of mobile railway workers" which was transformed into a directive by the council (Hilal, 2006). There were discussion within the Commission and the Council on the obligation or not to accept to extend erga omnes this agreement. The second novelty was the silica agreement signed by one sector (mine sector) and a few employers and trade unions (not from the samesector).

As for the recommendations, 12 were signed during the first period and 13 during the second (a majority of recommendations are codes of conduct, CSR agreements and the like). If we consider the yearly distribution, the situation seems to be worse with a reduction in the number of recommendations over the last two years (table 3).

The main changes are between the "common positions" with a clear decrease the last five years and the "declarations" with an even clearer increase during the same period.

The communication of the Commission in 2004 speculated on the possibility of a qualitative change (a new generation of texts), meaning by that that more binding texts were being signed and hoping that this trend would continue. Clearly, the results of last two years do not confirm this hypothesis either in quantity or in quality. Moreover, there is no statistical evidence of a gathering momentum from "tools" or weak declarations towards recommendations or binding "agreements". It is worth mentioning that five of the six agreements were signed in the transport sector (for the list of agreements and recommendations see Annex 1).

Concerning the topics covered, social dialogue itself is the most important topic in quantitative terms (it is quite natural as the actors are struggling to establish the rules of the game (internal rules) at EU level and trying to promote social dialogue at all levels (codes of conduct, enlargement…).

The second topic concerns economic and sectoral policies which are the common positions addressed mainly to the Commission. Working conditions and employment are less important in the second period. Enlargement and training are more important in the second period.

DSS : Number of documents by topic (1997- 2006)
1997-2001 : white : 142 docs / 2002-2006 : orange : 139 docs

Topic	1997-2001 (white)	2002-2006 (orange)
Social dialogue	29	31
Economic and/or sectoral pol.	26	25
Working conditions	20	11
Training	12	17
Health and safety	8	16
Soc. aspects of Community pol.	15	9
Employment	16	6
Enlargement	3	13
Non-discrimination	5	5
Working time	6	3
Sustainable development	2	3

Concerning the addressees, the main difference between the two periods is a clear decrease in the category of documents addressed to the European institutions.

Number of documents per addressee
1997-2001 : white : 142 docs. / 2002-2006 : orange : 139 docs

Addressee	1997-2001 (white)	2002-2006 (orange)
European institutions	75	51
National organisations	34	41
European social partners	27	34
Companies	4	9
National public authorities	2	4
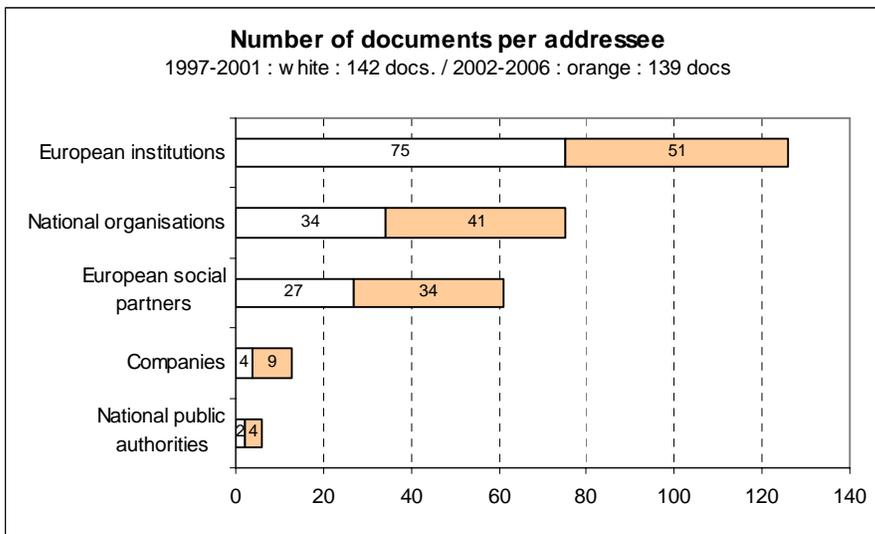
To sum up this section, we cannot find a clear tendency toward a more internal social dialogue. Influencing EU policies seems to remain an important part of the formal activities, but its importance is decreasing. The innovation has been the development of autonomous agreements (3 in the last three years). Nevertheless when compared with the nearly 35 sectors,

this result remains unimpressive. As for recommendations, we notice no progress either in the number adopted, or in the process of verification of their implementation. In order to better understand future developments we have to explain the underlying dynamics which structure the exchanges between the sectoral actors.

3.   Nature of the exchange

In the previous section, we have mainly concentrated our analysis on the output (joint texts). Could we link these results with particular groups of sectors? In previous work (Dufresne *et al.*, 2006), we have tried to establish a typology of six groups of sectors, each of which produces a particular type of document (Pochet *et al.*, 2006).

In our analytical framework the external pressures from EU policies or global pressures were the key factor. A second factor is the tradition of the sector at national level which influences the construction of the EU actors. There is also an interaction between the nature of the external pressure and the organisation of the sector at national level. In our approach, although there are structural determinants, actors nevertheless play an important role. They have to invent some European "substance", in other words why the EU level matters.

The diagram below summarise the interactions.
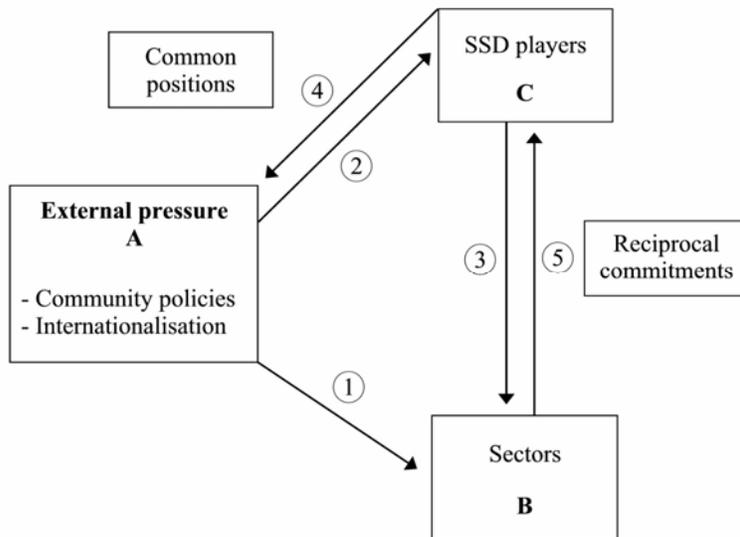
Based on this global framework and the analysis of the documents signed, we distinguish six groups of sectors.

The players in sectors which are in decline and heavily exposed to international competition handle the industrial and employment crisis by producing "codes of conduct" which should also cover enterprises outside EU-27.

Those in sectors covered by integrated Community policies (Agriculture, Railways, Sea transport, Road transport, Civil aviation …) attempt to build a European tier of industrial relations, in some cases even managing to sign agreements (in the narrow sense of the term).

The players in sectors in network (Telecommunications, Electricity, Postal services…), where there is a tradition of partnership, manage deregulation/privatisation by opening up space for negotiation and producing mostly recommendations aimed to accompany restructurations.

Traditional sectors (banking, insurance) confine themselves to a more "conservative" social dialogue while searching for some truly European topic to negotiate. .

Finally, those sectors seeking to enhance their (poor) public image (Private security, Cleaning industry, Personal services, Live performance, Temporary work…) construct such European "substance" with varying degrees of success, in certain instances by creating a sort of European quality label, trying to devise codes of conduct not based on ILO standards (ethical, for example).

The commerce sector (and to a lesser extent local government) is a separate case, experimenting with a variety of social dialogue instruments in a bid to better highlight its specific characteristics compare to the industrial sectors.

Table 1: Correspondence between Social Dialogue Categories and Types of Joint Document Adopted

	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
External environment: degree of integration with Community policies	Very strong	Average + considerable EU legislative activity	Average + little EU legislative activity	Weak	Weak	Specificity of services *versus* industry
Exposure to international competition	Controlled	Weak	Weak	Strong	Weak	Benefits from international competition (lower prices) or is not sensitive to it
Sectors concerned	*Agriculture* Fishing Railways Sea transport Civil aviation Road transport Inland waterways Mines	*Telecommunications* Electricity Postal services --------------- Construction	*Banking* Insurance ------------- Chemicals	*Textiles/clothing* Tanning Footwear Sugar Woodworking Furniture Shipbuilding	*Private security* Cleaning industry Personal services Live performance Temporary work Audiovisual	*Commerce* Local and regional government

					---------------- Horeca	
Players' strategies	Trade union preference for legislative measures	National traditions of social partnership (public services)	National social partnership	Survival of the sector; incorporation of (ILO) social standards (specific to Europe *vs.* rest of world)	Employers wish to use the SSD to construct a European dimension in the sector	Emulates cross-industry level
	Close involvement of social partners in implementing, and even in determining, Community policies	Action to influence policy-making and competitive conditions		Access to decision-makers on trade matters	Access to decision-makers concerning unique features of the sector	Participation at all levels of consultation
Goals of European social dialogue	Creation of a European level of industrial relations	Coping with exposure to competition and the interconnection of national spaces	Monitoring European developments (mergers, concentrations, etc) and industrial peace	Managing restructuring and outsourcing abroad	Construction of a dimension directly at EU level (image modernisation)	Development of an autonomous dialogue

The various dynamics illustrated by the typology also indicate that only for the first group do we expect binding agreements. One distinctive feature of the social partners in these sectors is that they are structurally involved in Union policy-making and are consulted about the numerous projects and policies underway. Information is readily available to them and they can influence Community policies in many ways. Their "preference" in terms of social dialogue outputs (at least on the trade union side) is for binding agreements, as was made plain during our interviews and is indirectly borne out by the Nordestgaard and Kirton-Darling survey (2004) on codes of conduct. Indeed, the table showing the different sectors' attitudes towards these new instruments revealed that *all* the sectors in this category responded in the same fashion: they prefer classic instruments in the form of legislation or collective agreements. They were the only ones to express this preference in such strong terms. For the others, the outcome should be at best recommendations.

Conclusion

To sum up the interprofessional social dialogue has three main strands. The first is its involvement in a range of general European policy areas: macroeconomic policy, employment policy, etc.; the aim being to influence the overall European agenda. Didry and Mias have shown how the earliest joint opinions had a limited yet distinct impact on certain Community texts.

The second strand is the reinforcement of social dialogue. This has happened in two different ways: firstly, the conclusion of agreements for which the Treaty makes provision (subsequently transformed into directives or else implemented by the social partners themselves); secondly, various initiatives aimed at encouraging the Commission to shape the social dialogue. The social partners took similar action when seeking to step up the role of social dialogue in Article I-48 of the constitutional Treaty, which is another illustration of their desire for autonomy and their dependence on the Community authorities.

The third and final strand is the construction of an independent agenda. The 2001 document on the three-year work programme is clearer than any other in this regard; it is nevertheless ambiguous since it overwhelmingly falls in with the EU's priorities, as proclaimed by the Commission. The autonomy is therefore only relative. The new triennial agreement follows the same line of reasoning and action but will evaluate the results achieved so far by the autonomous collective agreements.

Sectoral social dialogue has not developed in a way that mirrors the interprofessional social dialogue. The latter began with non-binding texts, principally in consensual areas and addressed to the Commission (training and life long learning). Then there was a move towards 'agreements' extended *erga omnes* by means of Council directives, finally ending up with so-called voluntary agreements and more flexible instruments as in the case of lifelong learning.

Our quantitative analysis of the sectoral social dialogue has shown a plethora of documents unevenly distributed across the years but growing in number especially from 1996 onwards. The majority of these documents consist of 'common positions' addressed to the European institutions with the aim of influencing the EU policies, particularly before 1998. In other words, the main function of social dialogue at that time was to lobby jointly in order to influence the EU policies.

There is no evidence at sectoral level of a gathering momentum from 'tools' and "weak" documents towards more binding 'agreements'. Nor has there always necessarily been discussion of a consensual issue at the outset. Therefore training, which was so important in the Val Duchesse social dialogue at cross-industry level and then the voluntary social dialogue post 2000 on this topic (Heyes, 2007), has not always come first in the sectoral dialogue. Nevertheless, training is becoming a more important issue at sectoral level the last few years.

For a quantitative perspective, the conclusion is clear: fewer than 2% of the texts adopted at sectoral level are agreements with binding effect. The attempt of the Commission (2004) to

clarify the nature of the document signed in order to improve their quality and bindingness has not been successful.

What we have sought to highlight with our typology is the nature of exchange. There are differing tendencies between sectors, some are more inclined towards consultation and adopting 'common positions' and others more for internal consumption and 'mutual undertakings'. Nevertheless, there is no clear cut difference between sectors and there are also internal evolutions in various direction (for example sea transport and civil aviation sectors signed binding agreement on working time but were not able to negotiate later other binding agreements). The analysis of 'internal rules' also demonstrates divergent degrees of ambition. Some of them mention the possibility of arriving at detailed, binding texts but most of them avoid this subject.

The diversity of situations, issues and dynamics is one explanation why it is so difficult to build a well-structured system of industrial relations at Community level. It nevertheless seems that several sectors have reached a critical point. For some sectors, social dialogue appears purely formal without any impact at EU or national level. Those which signed recommendation which can also be labelled soft law (less than the half of the 33 committees have signed such text in the last 10 years) are facing the same problems: how should the texts be implemented at national level and followed up at EU level ? What linkage should there be between the European and national sectoral levels (and between the sectoral and interprofessional dialogue)? Thus the aims of the social dialogue have still to be clarified.

Our general conclusion, however, is that the interprofessional and the sectoral social dialogue - albeit in largely different ways - are converging towards the production of texts which are not legally binding but are increasingly coming to resemble codes of conduct or optional guidelines: what we have called recommendations. Thus implementation is the task of decentralised stakeholders, perhaps with moral pressure exerted on those who fail in their duty.

If it is the case, this implies important consequences. First, it means a blurring of the EU instrument. Social dialogue was considered as an autonomous (or semi-autonomous, "on the shadow of the law") way to reach binding agreements. The move toward a more soft approach was not fully the result of a choice but mainly a second best form in a trade union perspective. It was the consequence of the lack of pressure from the Commission and the Member States for developing an ambitious social program and the lack of interest of the employer side.

The purpose assigned to social dialogue depends partly on our vision of Europe. According to a classic federalist vision, its purpose is to take up or coordinate the key elements of national trade union objectives and develop a multilevel industrial relations system (Falkner, 1998). According to a more experimental-type vision, European social dialogue is aimed more at innovating, in respect of both themes and instruments (Pochet, 2003). For the time being, the European sectoral and cross-industry social dialogues are manifestly following the latter approach which is not the first choice of the trade unions: they would prefer to have more classic, binding instruments, and would like the effects not to be confined just to a few representatives meeting in Brussels.

At the outset Social dialogue and EU collective agreements were thought as an alternative way to EU legislation and a way to create a multilevel industrial relations system. 20 year after the Single Act and the first steps to develop social dialogue, the results look much more like OMC or EES and share the same problems of implementation and participation, at EU and national level.

References

Arcq, E., Dufresne, A. and Pochet, P. (2003), "The Employers: Hidden Face of European Industrial Relations", *Transfer*, Vol.9, No.2, pp.302-321.

Benedictus, H., de Boer, R., van der Meer, M., Salverda, W., Visser, J. and Zijl, M. (2003), *The European Social Dialogue: Development, Sectoral Variation and Prospects*, Reed Business Information, Doentinchem.

Branch, A. (2005), "The Evolution of the European Social Dialogue towards Greater Autonomy: Challenges and Potential Benefits", *The International Journal of Comparative Labour Law and Industrial Relations*, No.21, pp.321-346

Branch, A. and Greenwood, J. (2001), "European Employers: Social Partners?", in Compston, H. and Greenwood, J. (eds.), *Social Partnership in the European Union,* Palgrave, Houndmills, pp.41-70.

CEC (1996), Communication from the Commission concerning the Development of the Social Dialogue at Community Level, COM (96) 448 final of 18 September 1996.

CEC (1998), Commission Decision 98/500/EC of 20 May 1998 on the Establishment of Sectoral Dialogue Committees Promoting the Dialogue between the Social Partners at European Level, OJ L 225 of 12 August 1998, pp.0027-0028.

CEC (2004), Communication from the Commission, "Partnership for Change in an Enlarged Europe - Enhancing the Contribution of European Social Dialogue", COM (2004) 557 final of 12 August 2004.

de Boer, R., Benedictus, H. and van der Meer, M. (2005), "Broadening Without Intensification: The Added Value of the European Social and Sectoral Dialogue", *European Journal of Industrial Relations*, Vol.11, No.1, pp.51-70.

Didry, C. and Mias, A. (2005), *Le Moment Delors. Les syndicats au cœur de l'Europe sociale*, P.I.E.-Peter Lang, Brussels.

Dufresne, A., Degryse, C. and Pochet, P. (eds.) (2006), The European Sectoral Social Dialogue. Actors, Developments and Challenges, PIE-Peter Lang, Brussels.

Transfer(2005), "Sectoral Social Dialogue", *Transfer*, Special Issue on Sectoral Social Dialogue, Vol.11, No.3, Autumn 2005.

Falkner, G. (1998), *EU Social Policy in the 1990s: Towards a Corporatist Policy Community,* European Public Policy Series, Routledge, London.

Goetchy, J (2005) Tranfer, Brussels

Heyes, J. (2007) Training, Social Dialogue and collective Bargaining in Western Europe, Econonmic and Industrial Democracy, Vol 28 (2), pp 239-258.

Hilal, N. (2005), "La naissance d'une coordination syndicale européenne: les mobilisations sociales dans le secteur des transports ferroviaires et routiers", *doctoral thesis*, May 2005.

Keller, B. (2005), Europeanisation at Sectoral Level. Empirical Results and Missing Perspectives", *Transfer*, Vol.11, No.3, Autumn 2005, pp.397-408.

Leonard, E et al. (2007) New structures, forms and process of governance in European industrial relations, European Foundation for improvement of Living and Working Conditions, Dublin.

Marginson, P. and Sisson, K. (2004), *Europeanisation, Integration and Industrial Relations. Multilevel Governance in the Making*, Palgrave Macmillan, Houndmills.

OSE (2004), "Dialogue social sectoriel 1997-2004", Final report produced for the European Commission, DG Employment and Social Affairs, Brussels, March 2004 (http://europa.eu.int/comm/employment_social/ social_dialogue/docs/rapport_final_dss_fr.pdf).

Pochet, P. (2003), "Subsidiarity, Social Dialogue and the Open Method of Co-ordination: The Role of the Trade Unions", in Foster, D. and Scott, P. (eds.), *Trade Unions in Europe. Meeting the Challenges*, P.I.E.-Peter Lang, Brussels, pp.87-113.

Pochet, P. (2006), "A Quantitative Analysis", in Dufresne, A., Degryse, C. and Pochet, P. (eds.) (2006), *The European Sectoral Social Dialogue. Actors, Developments and Challenges*, PIE-Peter Lang, Brussels, pp.83-108.

Pochet, P., Degryse, C. and Dufresne, A. (2006), "A Typology" in Dufresne, A., Degryse, C. and Pochet, P. (eds.) (2006), *The European Sectoral Social Dialogue. Actors, Developments and Challenges*, PIE-Peter Lang, Brussels, pp.109-130.

Schulten, T (2004) Foundation and Perspectives of Trade union Wage policy in Europe, WSI-Discussionspaper, n°129.

Smismans, S. (2007) The European social dialogue between constitutional and labour law, European Law Review, forthcoming.

Turner, L. (1996), "The Europeanization of Labour: Structure before Action", *European Journal of Industrial Relations*, Vol.2, No.3, November 1996, pp.325-344.

Winterton, J. (2006) Social dialogue and vocational training in Europe Are we witnessing the emergence of a European model, Journal Of European Industrial training, Vol 30, n°1, pp 65-76

1. AGREEMENTS

Sector	Date	Agreement	Directive
Mining and others	**2006**	*Agreement on Workers Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it*	
Sea transport	**1998**	*Agreement on the organisation of working time*	*Council Directive **1999/63/EC** of 21 June 1999*
Civil aviation	**2000**	*Agreement on the organisation of working time of mobile staff*	*Council Directive **2000/79/EC** of 27 November 2000*
Railways	**1998**	*Agreement on some aspects of the organisation of working time*	
	2004	*Agreement on the European licence for drivers carrying out a cross-border interoperability service*	
	2004	*Agreement on certain aspects of the working conditions of mobile railway workers*	*Council Directive **2005/47/EC** of 18 July 2005*

2. RECOMMENDATIONS

Sector	Date	Recommendation
Agriculture	**1997**	*Recommendation framework agreement on the improvement of paid employment*
	2002	*Agreement on vocational training*
	2005	*European agreement on the reduction of worker's exposure to the risk of work-related musculo-skeletal disorders*
Commerce	**1999**	*Agreement on Fundamental Rights and Principles at Work*
	2001	*Guidelines on Telework*
	2003	*Joint statement on Corporate social responsibility*
	2006	*Social partners sign letter of intent - BeQuaWe European Certified Training*
Electricity	**2002**	*Joint declaration on telework*
	2003	*Joint declaration on equal opportunities / diversity*
Footwear	**1997**	*Charter of children rights*
	2000	*Code of conduct*
Hairdressers	**2001**	*Code of conduct*
Horeca	**2004**	*An initiative for improving corporate social responsibility*
local and regional	**1998**	*Joint declaration on equal opportunities*

government	**2004**	*Joint statement on telework*
Mining	**2004**	*Joint declaration on general questions of health and safety*
Postal	**1998**	*Agreement -Promoting employment*
Private security	**2003**	*Code of conduct and ethics*
Road Transport	**2006**	*Joint recommendations on employment and training in logistics*
Sugar	**1998**	*Apprenticeship. Joint recommendation*
	2003	*Corporate social responsibility : Code of conduct*
Tanning and leather	**2000**	*Code of conduct*
Telecom	**2001**	*Guidelines for telework*
Textile	**1997**	*A charter. Code of conduct*
Woodworking	**2002**	*Code of conduct*