

Editorial

Promoting social dialogue in the EU

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Social dialogue is considered important both in (many) Member States and in the European Union.

European social dialogue has been initiated and promoted by, in particular, the Commission. It was developed in the mid-eighties on the initiative of J. Delors, at the time the President of the Commission. The Single European Act (1987) enshrined in law that the Commission endeavours to develop social dialogue on a European level, which could lead to relations based on an agreement. The cross-industry social partners subsequently entered into a Joint Agreement in 1991, forming the basis for the so-called Protocol on Social Policy which was attached to the Treaty of Maastricht (1992). This Protocol was integrated in the EC Treaty following the Amsterdam summit (1997). In 1998 the Commission expanded social dialogue to the European sectoral level. Currently, the core elements of European social dialogue are set out in Articles 152-155 TFEU. In a nutshell, the Union recognizes and promotes the role of the social partners and facilitates their dialogue. All European initiatives in the field of social law require the prior consultation of the European social partners. The European social partners may negotiate agreements at an EU level, that can either be implemented autonomously or by a Council decision on a proposal from the Commission.

And indeed, the Commission delivered. The social partners were over time attributed important roles in major EU events, such as promoting the 2000 Lisbon strategy (Europe as the most competitive and dynamic knowledge-based economy in the world) and aiding the enlargement of the European Union with the Middle and Eastern European countries as of 2004. Still, critics have argued that all of these efforts were not really about promoting the best interests of the social partners, but rather about providing support to EU regulation and legitimacy. See in particular A. Lo Faro, *Regulating*

Social Europe: Reality and Myth of Collective Bargaining In the EC Legal Order, 2000. He points out that social dialogue on a European level was formed differently when compared to the national level: whereas historically in Member States there first was a social formation of collective autonomy and only *then* an intervention by State legislation, on a European level it was the other way around. That was, according to Lo Faro, because Europe needed the social partners in order to support the Community, being the actual reason for all that attention to social dialogue.

Be that as it may, it is interesting to note that the social partners apparently were not able to start playing a role in Europe without the active support of the Commission. Why weren't they able, as they were in the past, to start an autonomous social dialogue? Why did they need help from EU institutions?

That autonomy – not being dependent on State institutions and being able to make their own decisions – has recently been compromised slightly on an EU level. The sectoral European social partners concluded an agreement on 21 December 2015 'for informing and consulting civil servants and employees of central government administrations'. They requested the Commission to submit a proposal for the implementation of this agreement at an EU level by a decision of the Council adopted on the basis of Article 155(2) TFEU; a request that up until then had always been heeded by the Commission. Now, however, the Commission refused. In essence it considered that the agreement interfered with individual Member States' affairs and did not pass the subsidiarity test. The social partners concerned disagreed and argued, among other things, that they should be able to rely on a principle of 'horizontal subsidiarity', meaning that the social partners are best placed to assess whether an agreement must be implemented at the level of management and labour and the Member States or at an EU level. They basically claimed that they should have autonomy to make this call. The social partners tried to annul the Commission's decision not to submit the agreement to the Council in proceedings at the General Court. The Court rejected the claim. Among other things, it ruled that the objective of promoting the role of the social partners and the dialogue between them, respecting their autonomy, does not mean that the insti-

tutions, namely the Commission and then the Council, are bound to give effect to a joint request presented by the signatory parties to an agreement seeking the implementation of that agreement at an EU level. The General Court entitled the Commission to judge the agreement and to refuse to submit it to the Council (General Court 24 October 2019, T-310/18), which decision was later upheld by the CJEU (2 September 2021, C-982/19 P),¹ emphasizing that promoting the role of the social partners and the dialogue between them, respecting their autonomy, does not mean that the Commission is bound to give effect to a joint request presented by the signatories to an agreement seeking the implementation of that agreement at an EU level pursuant to Article 155(2) TFEU.

Perhaps as a means of ‘damage control’ in the light of the aforementioned proceedings, but in any event promoting social dialogue, on 13 June 2023 the Council forwarded a proposal for a recommendation on strengthening social dialogue in the European Union. According to this proposal, social dialogue is key to Europe: it plays an important role in shaping the future of work, taking into account trends in globalization, technology, demography and climate change. The Council observed that social dialogue is under pressure in many Member States, pointing out declining trade union density, low bargaining coverage and problems on representativeness. That is according to the Council worrisome and should be reversed. Member States should step in and help the social partners, *inter alia* by protecting trade unions, enabling collective bargaining at all appropriate levels and promoting higher coverage of collective bargaining.

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Although I am in favour of the involvement of social partners, it is in my view somewhat peculiar that the social partners seem once again to have to rely on EU institutions. First, they needed the Commission to enable them to act on a European level and now it seems they need the Council to persuade Member States to help them on a national level. Why aren’t they capable (anymore) of taking matters into their own hands? Why do we put our trust in them in order to solve key social problems, whilst their position seems impaired and they need to rely on the help of the EU institutions?

I think we need to give this attention on both a national and an EU level. Meanwhile, other matters also require our attention, such as interesting cases on equal treatment of disabled employees, temporary agency workers and data protection. You can read all about it in this magazine, and more. Enjoy!

1. See also F. Dorssemont, ‘Collective agreements and unions’ in EELC’s review of the year 2021, *EELC* 2022/1.