

## **1) Social dialogue and collective bargaining as two key concepts**

### **1a) Social dialogue**

Social dialogue is defined by the International Labour Organisation (ILO)

- to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.
- It can exist as a tripartite process, with the government as an official party to the dialogue and referring "to all dealings between the government and workers' and employers' organizations concerning the formulation and implementation of economic and social policy". Or it may consist of bipartite relations only between labour and management (or trade unions and employers' organisations).
- Concertation can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of all of these.

Pre-conditions of effective social dialogue:

- Respect for the fundamental rights of freedom of association and collective bargaining
- Strong, independent workers' and employers' organisations with the technical capacity and knowledge required to participate in social dialogue
- Political will and commitment to engage in social dialogue on the part of all parties
- Appropriate institutional support

### **1b) Collective bargaining**

Actors and levels of collective bargaining as to the International Labour Organisation (ILO):

- Collective bargaining takes place between an employer, a group of employers or one or more employers' organisations on the one hand and one or more workers' organisations on the other.
- It may take place at many different levels, with one level sometimes complementing the other: a unit within an enterprise, enterprise level, sectoral, regional and national level.
- Collective bargaining serves a dual purpose:
  - It provides a means of determining the wages and conditions of work applying to the group of workers covered by the ensuing agreement through free and voluntary negotiations between the two independent parties concerned.
  - It also enables employers and workers to define by agreement the rules governing their relationship.

There are legal and structural pre-conditions for collective bargaining to function properly:

- The democratic foundations and the appropriate legal framework with which to ensure independence and the effective participation of social partners are essential.
- If there exists an extension mechanism, the coverage of collective agreements can be extended to those who are not directly involved in collective bargaining.
- A proper enforcement mechanism (legal, regulatory or soft regulations) is essential for collective agreements to become effective.

Sources:

<http://www.ilo.org/public/english/dialogue/themes/sd.htm>

<http://www.ilo.org/public/english/dialogue/themes/tri.htm>

<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm>

<http://www.ilo.org/public/english/dialogue/themes/cb.htm>

## **2) European Social Dialogue**

### **a) European Social Dialogue – A key element of the European Social Model**

- The European social dialogue is recognised as a pillar of the European Social Model.
  - Acknowledging the autonomy of social partners – i.e. the representatives of management/employers’ organisations and labour/trade unions – and the diversity of industrial relations in Europe, it embodies the principle of social subsidiarity and complements the national practices of social dialogue and industrial relations.
  - It is the essential means by which the social partners contribute to the governance of the European Union and the definition of European social standards.
  - Social dialogue between representative organisations of workers and employers at all levels – company, local, regional, sectoral, national, and European – is generally seen as important for sustainable development, growth and employment creation, business performance and international competitiveness, job quality and good employment practices, as well as efficient and productive industrial relations.
- The EU Treaties stipulate that the European Union recognises and promotes the role of social partners at its level and facilitates dialogue between them.
  - They i.a. entitle social partners to exclusive consultations on policy initiatives in the area of employment and social affairs (Art. 154 TFEU).
  - They also confer upon social partners the possibility to initiate European legislation in this policy area through negotiations that suspend any legislative initiative by the European Commission and agreements that can be transposed into EU law upon their request (Art. 155 TFEU)

*Article 154 (ex Article 138 TEC)*

*1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.*

*2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.*

*3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.*

*4. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.*

*Article 155 (ex Article 139 TEC)*

*1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.*

### **b) European Social Dialogue – Typology of texts, instruments and follow-up measures**

<b>Category of texts</b>	<b>Sub-categories</b>	<b>Follow-up measures</b>
Agreements (implemented in accordance with Article 154(2): minimum standards*)	Implementation by directives (Article 154)	Implementation reports
	Implementation by social partners (Article 155)	
Process-oriented texts (contain clear provisions and a process to monitor implementation)	Framework of actions, guidelines, codes of conduct, policy orientations	Follow-up reports
Joint opinions and tools	Declarations, guides, handbooks, websites, tools	No follow-up clauses; promotional activities
Procedural texts (concern	Rules of procedure, work	No follow-up clauses

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the rules of the procedure for social dialogue)	programmes, social partner agreements regarding the functioning of European social dialogue, the representativeness of actors and the composition of social partner delegations	
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- \* “Agreements (implemented in accordance with Article 154(2): minimum standards”: More information
- These texts establish minimum standards and entail the implementation of certain commitments by the European social partners and their national members at a given deadline.
  - Article 154(2) makes it clear that two main types of agreement fall within this category, the main difference being related to the method of implementation foreseen:
  - Implementation at the joint request of the signatory parties by a Council decision (thus far in practice by Council directives) following a proposal from the Commission: This first category includes the cross-industry framework agreements on parental leave, part-time work and fixed-term contracts, as well as a series of sector-level agreements
    - Cross-sectoral 1: Council Directive 2010/18/EU implementing the 2009 framework agreement on parental leave to build on the previous Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC
    - Cross-sectoral 2: Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC
    - Cross-sectoral 3: Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP
    - Example 1 for sectoral agreement: Council Directive 2010/32/EU implemented the framework agreement on the prevention of injuries from sharp instruments in the hospital and healthcare sector, concluded by the European social partners in the sector
    - Example 2 for sectoral agreement: Agreement to incorporate into EU legislation of a substantial number of provisions contained in the 2006 ILO Maritime Labour Convention, implemented by Directive 2009/13/EC
  - With regard to the second type of agreement – those implemented in accordance with the procedures and practices specific to management and labour and the Member States – it is the social partners themselves who are responsible for implementing and monitoring them.
    - Cross-sectoral 1: Framework agreements on telework (2002)
    - Cross-sectoral 2: Framework agreement on work-related stress (2004)
    - Cross-sectoral 3: Framework agreement on harassment and violence at work (2007)
    - Multi-sectoral: Multi-sectoral guidelines to tackle third-party violence and harassment (2010)
    - Example 1 for sectoral agreement: 2006 multi-sectoral agreement on protecting workers against silica crystalline dust
    - Example 2 for sectoral agreement: 2009 agreement on the implementation of the European hairdressing certificates in the personal services sector

### **3) Sectoral Social Dialogue Committees (SSDC)**

- Instrument for the benefit of 145 million workers (out of about 185 million in 2008) and more than 6 million undertakings
- Currently (early 2014) 43 SSDC are in place
- These committees focus on a variety of issues, including qualifications, skill needs and mobility of workers, health and safety and the image of the sector or aim at influencing European policies in specific areas of interest to the sector, including ..., health and consumer protection legislation ...and public procurement.
- There are three main areas where SSDC might seek to take action (as a rule based on a joint work programme): firstly, in involving own members within the sector in the elaboration of joint priorities, views, statements, declarations; secondly in ensuring that the sector’s views are heard beyond the confines of the particular industry as well as in all policy areas, both through consultations and autonomous action; and thirdly, in

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negotiating (framework) agreements, codes of conduct, guidelines, handbooks, framework of actions, etc. all to serve as “policy orientation” and for implementation.

- A first generation of committees involving the social partners at European level stemmed from the advisory and joint committees ... as part of the ECSC Treaty and the initial steps towards the Common Market
- A second generation of committees formed in the 1990s ... as joint committees or informal working groups, mainly in relation to the creation of the internal market and in response to liberalisation and privatisation and increasing cross-border mobility of workers
- Following the Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level (98/500/EC), the then existing 24 first and second generation committees were transformed into European Sectoral Social Dialogue Committees (SSDC)

*Article 1*

*Sectoral Dialogue Committees (hereinafter referred to as ‘the Committees’) are hereby established in those sectors where the social partners make a joint request to take part in a dialogue at European level, and where the organisations representing both sides of industry fulfil the following criteria:*

- (a) they shall relate to specific sectors or categories and be organised at European level;*
- (b) they shall consist of organisations which are themselves an integral and recognised part of Member States’ social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;*
- (c) they shall have adequate structures to ensure their effective participation in the work of the Committees.*

*Article 2*

*Each Committee shall, for the sector of activity for which it is established,*

- (a) be consulted on developments at Community level having social implications, and*
- (b) develop and promote the social dialogue at sectoral level.*

- Informal Working Groups – involving EPSU – turned into SSDC (as of/after 1998)
  - Electricity 1996 => 2000
  - Local and regional government (LRG) 1996 => 2004; second representativity study 2013/2014, as a decade ago only about half of current EU MS had this status
- SSDC – involving EPSU – set up without having operated Joint Committees, Informal Working Groups or a test phase beforehand
  - Hospitals (and healthcare) 2006; for NACE sectors 86 and 87; NACE rev.2 classes 86-87, and notably NACE rev.2 class 86.1, most closely cover the sector, including hospital, human health and care activities\*\*; representativeness study for EU27 2007
  - Gas 2007
  - [Education: 2010]
- Test phase before formalisation – involving EPSU
  - Central Government Administrations (CGA) (test phase 2008, formalisation 2010)

\*\* NACE: Categories relevant for local and regional government, hospitals and social services

**European Classification of Economic Activities (NACE), 2-digit according to Rev. 2 (2006)**

O84 - Public administration and defence; compulsory social security  
O84.1 - Administration of the State and the economic and social policy of the community  
O84.11 - General public administration activities  
O84.12 - Regulation of the activities of providing health care, education, cultural services and other social services, excluding social security  
O84.13 - Regulation of and contribution to more efficient operation of businesses  
O84.24 - Public order and safety activities  
O84.25 - Fire service activities

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Q Human Health and Social Work Activities  
Q86 Human health activities  
Q86.1 Hospital activities  
Q86.2 Medical and dental practice activities  
Q86.9 Other human health activities  
Q87 Residential care activities  
Q87.1 Residential nursing care activities  
Q87.2 Residential care activities for mental retardation, mental health and substance abuse  
Q87.3 Residential care activities for the elderly and disabled  
Q87.9 Other residential care activities  
Q88 Social work activities without accommodation  
Q88.1 Social work activities without accommodation for the elderly and disabled  
Q88.9 Other social work activities without accommodation

**Employment (2008)**

*Nr || Sector || Employed || Employees || SELF || WOMEN || TEMP || PART || LOW QUAL || HIGH QUAL*  
86 Human health activities 12.73 11.31 11% 79% 13% 26% 12% 43%  
87 Residential care activities 3.89 3.80 2% 81% 16% 39% 23% 25%  
88 Social work activities without accommodation 4.57 4.35 5% 83% 17% 40% 24% 28%

**Number of employees in the EU in 2008, by sector (NACE-2)**

*Nr || NACE class and description || Number of employees (in 1000) || Number of employees (in %)*  
**86** Human health activities 11.405 6.14%  
**87** Residential care activities 3.780 2.04%  
**88** Social work activities without accommodation 4.347 2.34%

**Sources for sections 2) and 3)**

- EC/DG EMPL: European Sectoral Social Dialogue  
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- EC/DG EMPL: Social Dialogue Text Database  
<http://ec.europa.eu/social/main.jsp?catId=521&langId=en>
- EC/DG EMPL (Unit F.1): European Sectoral Social Dialogue – Recent developments (2010 edition) [EN/FR/DE], 2011  
<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=570&furtherPubs=yes>
- EC/DG EMPL: Industrial Relations in Europe 2012 [EN], 2013  
<http://ec.europa.eu/social/main.jsp?catId=738&langId=fr&pubId=7498>
- EC: Commission Staff Working Paper on the functioning and potential of European sectoral social dialogue, Brussels, 22.07.2010, SEC(2010) 964 final  
Via <http://ec.europa.eu/social/main.jsp?catId=329&langId=en&furtherPubs=yes>
- EC/DG EMPL: European Social Dialogue Newsletter [EN] (5 editions as of June 2014)  
<http://ec.europa.eu/social/main.jsp?langId=en&catId=480&newsId=2027&furtherNews=yes>
- Eurofound: Dynamics of European Sectoral Social Dialogue, 2009  
<http://www.eurofound.europa.eu/publications/htmlfiles/ef0898.htm>
- Eurofound: Employment and industrial relations in the health care sector, 2011  
<http://www.eurofound.europa.eu/eiro/studies/tn1008022s/index.htm>
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<http://www.eurofound.europa.eu/eiro/representativeness.htm> (2007 for hospital sector)  
<http://www.uclouvain.be/316324.html> (for studies until 2006)
- Jane Lethbridge: Social dialogue in the hospital sector at EU level, in: Transfer: European Review of Labour and Research November 2011, vol. 17, no. 4, pp. 501-513