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## **SOCIAL DIALOGUE INTERACTION IN EUROPE WITHIN THE FRAMEWORK OF THE LISBON STRATEGY**

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## SOCIAL DIALOGUE INTERACTION IN EUROPE WITHIN THE FRAMEWORK OF THE LISBON STRATEGY

European social dialogue represents great diversity, regardless of whether it is cross-industrial or sectoral, held by European representative organisations or social partners within a group, and ends in consensus or not. Do these different forms of discussion influence each other? On 15 and 16 June 2009, Europe et Société invited some 35 European specialists to address this question, considered “difficult” by **Jacques MOREAU**, General Delegate of the association.

The encounter is in line with the conferences organised by Europe et Société on social dialogue at cross-industrial, sectoral and company levels, indicated **Jacques MOREAU**, who defined the aim of the association: “to examine professional relations within the European Union while respecting the principles of subsidiarity and proportionality”.

European social dialogue, which began in 1985 alongside the construction of the internal market, represents a good deal for the social

partners. Following the Maastricht Treaty in 1992, employers and employee representatives could, on the initiative of the Commission, conclude framework agreements which then became directives to be transposed by the member States. Also, the social partners were themselves able, both at cross-industrial and sectoral level, to take a subject and conclude a voluntary agreement. This can, according to the practises of the national organisations, give rise to a new text in each country.

To determine to what extent these texts interact, Europe et Société privileged “an empiric approach”, indicated **Jacques MOREAU**. At a period when “Europe is going through a difficult time”, these contributions should allow us, he added, “to increase the knowledge of the processes undertaken”. This deepening of social dialogue constitutes for him, “an essential element in the reinforcement of social cohesion in Europe and in the member States.”

### THE LISBON STRATEGY: REALITIES AND EVOLUTION

“To construct the most competitive economy in the world, with greater social cohesion, between now and 2010.” It was a very ambitious objective that was given to the European institutions by the member States at the Summit of Lisbon in March 2000. This is a “magnificent goal that no-one can oppose”, affirmed **Jacques MISTRAL**, Director of Economic Studies of the L'Institut français de relations internationales (French Institute of International Relations or IFRI). Lisbon also represents “a challenge to be overcome, in particular in France, a country with mediocre performances”, he added.

#### **The Lisbon strategy: what is the reality**

As we are reminded by **Jean-Louis LEVET**, General Director of the Institut de Recherches Économiques et Sociales (French Institute of Social and Economic Research or IRES), the construction began at the end of the 1990s,

after a period of relative stifling of the European economy. The growth rate of the continent levelled out at that time at 2%, the proportion of European income dedicated to research remained limited at 1.5%, as opposed to 3% in North America, while the spreading of information technologies was slower on this side of the Atlantic. Lisbon is the result of a compromise, continued **Jean-Louis LEVET**, between “the social democratic model, based on the alliance between flexicurity and social dialogue, and the neo-liberal model, based on structural reforms”. According to him, the deployment of this strategy is confronted today with the fact that “we never wanted to make a choice between these two models”.

Almost ten years later, and four years after the adoption in 2005 of measures destined to reinforce the implementation of the strategy, Lisbon presents a “mitigated” result, noted **Laurent COHEN-TANUGI**, lawyer and

author of a report for the French government on “Europe in Globalisation”. He pointed out that performances are “mediocre”, investment in research “has not really progressed”, and the gap with the United States, in terms of innovation and productivity, “has not really been reduced”. The aims revised in 2005 did not sufficiently take into account the evolution of Europe, in particular, the change from 15 to 27 member States in 2004, which made European governance more difficult. He also considers the approach chosen in Lisbon to coordinate the public policies of the member States in the economic and social areas, the “open coordination method” (MOC), which remains non-binding, as “a very weak engine”.

### **Towards a new paradigm?**

At the approach of the initial deadline, the member States need to update the objectives fixed in 2000, adapting them to the new context of the financial crisis. There are two opposing theories, says **Jean-Louis LEVET**. The first one, which tends to be defended more by the “enlightened conservatives” of the Commission, consists in “facing up to the crisis by reinforcing the Lisbon Strategy”, even maybe integrating into it the objectives of sustainable development defined at the Gothenburg Summit of 2001. The second theory, which he thinks is favoured by the “trade union organisations and the European Trade Union Confederation (ETUC)”, proposes a change of paradigm. This would involve moving from a “stability and growth pact towards a pact of sustainable development”, based on a system of environmental taxes, a transport policy and a reflection on production and consumption.

**Jacques MISTRAL** has made his choice. He considers Lisbon as “the product of an outdated era”. The present recession is the product of “three superimposed crises”. The financial crisis, in short, “the effect of the flight before being in debt”, is accompanied by “the exhaustion of the new economy” celebrated at Lisbon, and the end of the “growth plan based on the automobile and aircraft industries”. The Twenty-Seven member States need not only to correct the financial deregulations and develop the potential represented by biotechnology and Internet, but also “to respond to the end of the post-war growth model”. The director of the economic studies of the L’Institut français de

relations internationales (French Institute of International Relations or IFRI) counts on “the complex interaction between the social, economic and financial forces” to “replace the American model of growth” which we are moving away from. He highlighted that, “there is one sole candidate, green capitalism”.

Whatever the future of the Lisbon Strategy, social dialogue should remain a part of it. **Philippe Pochet**, director of the European trade union institute in Brussels, thinks that this would be the case if the member States chose the “green” option. However, “green jobs” do not necessarily mean employment quality. This specialist pointed out that in the recycling industry “there are five times more accidents in the workplace than in all the other sectors”. Following the same train of thought, if we consider the climate change as “a new war”, we then have to face the consequences. After World War Two, **Philippe Pochet** reminded us, the American government paid for four years of higher-level education for its GIs, thus enabling the rise in power of the middle classes in the United States. If we consider our current situation to be a kind of war, should not this inspire the industries suffering job losses because of the climate change?

This choice could come up against numerous obstacles, beginning with the reluctance of the trade union organisations themselves. Thus, **Paul Windey**, President of the National Labour Council in Belgium observed that, “it is not always easy for a trade union who defends social progress to integrate the European social directives at national level”. This was the case with the Bolkestein directive that went against the rules established in several member States.

### **Lisbon and social dialogue: a success?**

One of the aims launched at Lisbon consisted in developing an autonomous social dialogue, notably by relying on the OMCs. Nearly ten years later, can we call this a success? Several framework agreements were concluded, on telework in 2002, stress (2004) then harassment and violence at work (2007). In June 2009, the European social partners revised an agreement of 1995 on parental leave. **Maxime Cerutti**, Advisor for social affairs of BusinessEurope, regards this last agreement “as a sign of the success of social dialogue”. He believes that “even in difficult

conditions linked to the crisis, we defend the constructive approaches that integrate both employee and employer interests". The representative of the European employers association, who challenges "defeatism", is also happy about the publication of "joint reports" by the social partners, and notably an analysis of the labour market published in 2007. **Maxime CERUTTI** regrets, on the other hand, that the employment summit, which brought together the member States and the social partners last May, did not result in the signature of a joint document. "The "draft" was not able to be approved by the European Trade Union Confederation (ETUC)", he explained.

**Philippe Pochet** remarked that he believes that the "assessment of the success or failure of Lisbon is strongly related to the function of the speaker". In this way, "practically no economist considers that Lisbon was a success, 80% of legal specialists agree, the political scientists are of divided opinion, while 90% of the sociologists find the process interesting because it encourages people to talk to each other". Despite the atomisation of powers in

Europe, in the opinion of this specialist, the topics discussed within the framework of Lisbon will end up permeating social relations at all levels.

**François ZIEGLER**, Administrator at the Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission, is also glad to have managed to make this "two-way process" work between employers and employee representatives. Since 2000, committees of sectoral social dialogue were launched in no less than 37 sectors of activity. These included sectors such as agriculture, construction, football or central administrations. These discussions gave rise to the drawing up of over 300 texts, indicated the representative of the Commission, including five directives, codes of conduct, common declarations but "just one autonomous agreement", that on the protection of workers against crystalline silica powder. According to **François ZIEGLER**, the process allows the social partners "to define the standard at European level". He assures that this is "an indispensable tool to make social subsidiarity a reality".

## THE LISBON STRATEGY: REALITIES AND FUTURE?

It is not necessarily easy to make the European social partners talk about the key issue of this conference, i.e. how different forms of social dialogue influence each other. The players are not yet used to this, and usually prefer to present their successes and the obstacles encountered than to reflect on the learning process. However, a study carried out by the sociologist Arnaud Mias, of the University of Rouen (France), proposes a more detailed examination of the exchange of practices.

### A reference document

The paper by **Arnaud Mias**, presented to the participants of the conference on 15 June, consists of four parts. The first one concerns the evaluation of effects of European texts on national laws. Then follow two chapters in which the sociologist tries to measure the reciprocal influences of social dialogue. Arnaud Mias then reflects on the necessary conditions for the development of these exchanges.

The future of European texts is relatively unknown. Moreover, it takes very different

forms. After studying the transposition of directives into national laws, Arnaud Mias observes "interpretation difficulties, a choice of many different procedures or a remoteness from the spirit of the European measure". In labour law, "the transposition comes up against even greater difficulties". Thus, in certain countries, "the main part of labour law comes from the government and from Parliament", while in others, "the social standards are drawn up by collective negotiation in the branches".

**Arnaud Mias** then examines "the interconnection" between social dialogue and European legislative processes. The sociologist first notes the "indirect contribution of the European social partners in the construction of a number of directives".

He also notes a convergence between the objectives (which he calls "agendas") of the European social partners and the legislative initiatives carried out Europe-wide. The transposition of a directive is sometimes the source of a tense debate between the national social partners, as was recently the case in Belgium. Some rules, such as Reach, which

deals with the dangerousness of chemical products, can also modify social dialogue in companies. **Arnaud MIAS** associates with this precise example, two types of change, one which he considers as negative and the other as positive: “managerial discrepancies in which the experts took the place of employee representatives to manage the health of employees who handle or transport chemical substances”, or on the other hand, “an effect of collective learning bringing about a transformation of the company and the work organization”.

Finally, he adds that we should not underestimate the influence of the jurisprudence of the European Court of Justice on national social relations, as was shown by the Vilvorde affair in Belgium in 1997, and the more recent Laval ruling in Sweden.

**Arnaud MIAS** defines the “interaction” between the social relations as “interferences not necessarily foreseen or provided for by the law”. Thus, the social partners of one country use the experience acquired in other countries to conclude an agreement. In the same way, similar practices may be observed in different countries at the same time, sometimes because of a European policy which is not initially intended to develop social dialogue, such as the liberalization of the telecommunications industry. Finally, **Arnaud MIAS**, who wishes to develop the interactions between the forms of dialogue, considers the work of the players to be essential. The latter often tend to accept that European level deals with topics which they consider negligible and removed from the national debate, as if they integrated a certain “social subsidiarity”. The “arenas” of national social dialogue, organised in very different ways in the Twenty-Seven member States, also have a strong influence on how the partners make commitments, as can be seen by some of the discussions held since the advent of the Lisbon strategy.

#### **The “model” agreement on telework**

The first “voluntary” European framework agreement, conceived and negotiated by the social partners, without intervention from the Commission, was made in 2002. However, the reality is less attractive than the official story, as we heard from **Jean LAPEYRE**, now Policy Officer at the Secretariat General of EESC European Economic and Social Committee. “The Commission had decided to

legislate in this domain. But on the day before of the second consultation phase, l’Unice (now BusinessEurope, editor’s note), made a request for autonomous negotiation”, explains the former Deputy Secretary General of ETUC. Thus, the social partners found themselves in an “almost identical situation” to that of 1995-2000, when the Commission asked social partners to start a discussion.

However, the basic fact is that the agreement concerned an essential sector, because telework “concerns 7% of European workers, at least one quarter of the time”, points out **Christian WELZ**, Research Director of the European Foundation for the Improvement of Living and Working Conditions in Dublin.

The course of negotiations continues at a good rhythm but sometimes encounters difficulties.

**Jean LAPEYRE** explained how certain existing situations in the member States needed to be taken into account. While the European Trade Union Confederation (ETUC) had fixed itself the objective of obtaining “the non-redundancy of employers on temporary contracts”, it turned out that Denmark represented an exception. The collective convention which is applied to the construction sector of this country indeed allows an employer to make a worker on a temporary contract redundant. The employment support mechanism practically guarantees that the worker will not remain unemployed. “So we had to demonstrate some imagination”, recognised **Jean LAPEYRE**, in order not to penalize the specificities of the Danish legislation. According to the formulation agreed on by the social partners, the employee on a temporary contract can only be made redundant “when equivalent protection is created by a national collective convention”. The discussion continued, tells the former head of the European Trade Union Confederation (ETUC), on the voluntary nature of telework, the reversibility of the situation of the employee, the access to training or the questions of material and maintenance.

Once the agreement was concluded in 2002, the social partners put it into place at national level, but not in the same way everywhere. In several countries, including Belgium, France, Italy, Greece or Sweden, national or sectoral collective conventions were negotiated by the social partners. This made of it “an eligible right for the workers”, pointed out **Jean LAPEYRE**. Elsewhere, the European

agreement gave rise to a simple recommendation.

**Christian WELZ** distinguishes three groups of countries:

- those who considered a voluntary autonomous agreement (“soft law”) concluded between the social partners to be sufficient;
- those where the European stipulation was the subject of a real legislation (“hard law”) also negotiated by the partners;
- and those where the same “hard” legislation was imposed by the state.

The “hard law” has “advantages”, emphasised the representative of the Dublin Foundation. “It is exhaustive and covers all of the labour market”. However, this type of stipulation voted by the Parliament “encroaches somewhat on the prerogatives of the social partners”.

**Jean LAPEYRE** asks whether this diversity in the question of implementation “is a richness or a handicap?” The former head of the European Trade Union Confederation (ETUC) is in favour of “a communautary framework” to guarantee the result of European negotiations, whether cross-industrial or sectoral”.

### **The framework agreement on stress**

If the first autonomous European agreement on telework “concerns a very concrete issue requiring the implementation of standards”, analysed **Slawomir ADAMCZYK**, of the Polish trade union Solidarnosc, the question of stress was already the subject of “a regulation at both European and national levels”. He thinks that “stress at work has a very significant impact on the European economy”. The workers complain a lot about it, almost as much as about muscular skeletal disorders. Stress has an impact on the personal lives of employees, but also on labour efficiency and the rate of absenteeism. “This represents a loss for the employers who should take an interest in the subject”, pointed out **Slawomir ADAMCZYK**. **Jean-Louis MALYS**, National Secretary of the CFDT (French Democratic Confederation of Labour), offered “a comparison between stress and noise. For a long time, noise was considered part of a normal environment. In an industrial company, it only disturbed the employees. Then people realised that this was not a normal situation, and protective earphones were introduced”.

The danger is still difficult to evaluate, said **Slawomir ADAMCZYK**, who thinks that “it is difficult to define a psychological level beyond which things are unacceptable”. According to him, the social partners have an interest in showing “flexibility” and in distinguishing the effects of stress in different sectors of activity.

The drawing up of the agreement shows in any case that the different players, at all levels, took inspiration from experiences elsewhere. **Jean-Claude GAUDRIOT**, former Director of Human Resources of the Belgian Solway Chemical Group explained that some companies, like his own, took an interest in the subject before others. A first agreement was signed in 1998 for the units of this company located in Belgium. A Charter applicable to the entire group followed in 2003.

The European agreement was signed in 2004. As **Charles-Louis MOLGO**, Head of the Office of Collective Labour Relations at the General Direction for Labour, French Ministry for Employment, Social Relations, Family and Solidarity, and member of the Paris Municipal Administration, explained, this text “is considerably different to the text on telework because it offers an action and prevention orientated framework, while the previous agreement envisaged possible rules for work organization”. Confronted with this new document, Solway then adopted a “very pragmatic approach”, as indicated **Jean-Claude GAUDRIOT**. The social partners of the group, in each country, “enriched their experience of discussions held in the member States on the occasion of the application of the European agreement”, specified the former Director of Human Resources.

In 2008, the social partners in France managed to come to an agreement which translated the European aspirations into national law. “We enriched the text on several aspects”, noted **Jean-Louis MALYS**. In particular, the French trade union organisations manage to convince the employers representatives to remove the reference to “positive forms of stress”, a development which pleased the head of the CFDT. At this time, “the context of suicides at Renault, Peugeot, IBM and EDF was widely talked about”, added **Charles-Louis MOLGO**. At Solway, the French text “provided food for thought” for the social partners, who then established a program in

five stages based on awareness, diagnosis and prevention.

The French agreement was distributed beyond its initial targets, among the workers of the social economy and the liberal professions, on the request of the trade unions of these sectors. “The minister will know if distribution needs to be increased, and if there is a lack of social partners for negotiation in sectors not included,” specified the representative of the Ministry for Employment.

### **Flexicurity, a European concept**

The discussion on flexicurity also constitutes an example of the still-evolving “mutualisation” of experiences. The notion, which appeared in the 1990s, was defined within the framework of the Lisbon strategy. It is about “increasing the capacity of adaptation of labour markets, combining flexicurity and employment security and improving the capacity of professional insertion by investing in the human capital” said **Jean-Louis LEVET**, who commented that “it is difficult not to agree with it”. In 2006, “the European Commission took up the concept of flexicurity which corresponded from then on to an official objective”, noted **Ton WILTHAGEN**, reporter of the group of experts on flexibility in the Union.

In certain countries, flexicurity has long been part of the scenery. This is the case in Denmark. According to **Niels GRON FABECH**, Director of Labour Law and Collective Negotiations at the Confederation of Danish industries, the Danish “golden triangle”, is “composed of social security, flexibility and a strong activity on the labour market”. It is most often “at local level” that evolutions are decided, such as the adjustment of the length of the working day, or mutations from one post to another, specified the trade unionist.

The model is timidly beginning to expand outside of Europe. Thus, a “common declaration” was signed in February 2007 between Eurociett, the European Federation of agencies of temporary work, and UNI-Europa, the European trade union federation for services and communication. However, two years after the agreement on this text, diverging interpretations can be observed. **Bernadette SÉGOL**, General Secretary of UNI-Europa, commented “it is not about an agreement on flexicurity. During the

negotiations, we indicated that we did not want to call this document this way”. She estimates that “the term flexicurity has become a bad word in a certain number of countries”. She also admits that she had to “struggle” at the centre of the executive committee to have the agreement accepted. However, **Tristan D’AVEZAC**, Vice-President of Eurociett, does consider it as a “common declaration on flexicurity”. Beyond this debate on an appropriate name to give it, the “common declaration” does contain some points of agreement, in particular on the fact that “the agencies of temporary work refuse to compete to the detriment of workers rights and working conditions”, explained **Tristan D’AVEZAC**. The elaboration of the text was influenced by several elements which arose during the discussions. **Bernadette SÉGOL** explains why negotiations were guided by the exclusion of temporary work of the services directive, while UNI Europa maintained “very close” exchanges of information with the European Trade Union Confederation (ETUC). **Tristan D’AVEZAC** believes that “the agreement on flexicurity was nourished by national initiatives”.

### **The evolutions of the code of conduct in the textile industry**

European social dialogue generates another form of documents, codes of conduct which are non-restrictive but which can be transposed into national collective conventions. The agreement on the textile industry is part of this, and is a good example of the capacity of players to be inspired by others.

Three committees of sectoral dialogue were created in the 1990s, tells **Patrick ITSCHERT**, General Secretary of the European Trade Union Federation of Textile, Clothing and Leather, with the aim of concluding agreements covering the different sectors. However, this was not all done in a day: “sessions were suspended, doors were slammed and the Commission intervened when necessary”, recollected the trade unionist.

The agreement, finally signed in 1997, was supposed to be transported in the following years into the national conventions. “This was done in twelve of the fifteen member States of the period”, underlined **Patrick ITSCHERT**. The agreement was also implemented in companies: three German companies,

Hartmann, Schiesser and then Triumph, integrated it at the same time, making it possible to make adjustments. “The agreement was not sufficient. During a second stage, we therefore added to the document subclauses on the involvement of the subcontractors and licence-holders, and on control”, explained the trade unionist.

The text was also enriched by the experience carried out in a company of another sector, Danone, among which “the European Works

Council can create specific working groups”. Despite the slow pace and the difficulties encountered, **Patrick ITSCHERT** considers that this slow construction process, which used various types of support over the years, constitutes “an example of a framework agreement. There was an impact on social dialogue at national level, in the new member States and even in the candidate countries, not forgetting the companies, of course”.

## EFFECTS AND CONSEQUENCES OF THE INTERACTION OF SOCIAL DIALOGUE IN EUROPE

### Unlimited diversity

The diversity of European texts seems to be unlimited. Beyond the large cross-industrial agreements, the sectoral agreements sometimes take the form of common declarations that can be called corporatist. Certain very concrete documents show however that the circulation of ideas and of law is possible in Europe.

### Nature and scope of the agreements

**Bernard CARON**, director of social relations at the EDF is glad to have attained a “global agreement on corporate social responsibility” applicable to “seven countries, fourteen companies and some 125,000 employees”. The agreement is also susceptible to be applied to companies with a majority of shares held by the EDF. At the centre of the group, the direction of social relations applies “the principle of subsidiarity” and “the respect of governance”, each company being able to decide how to deploy the agreement. **Bernard CARON** hopes that this agreement will allow the emergence “everywhere” of a “quality social dialogue”. Neither does he hide that one of the aims of the management consists in “creating a true common culture of the EDF group”.

This goal seems to be shared in several sectors of activity. Thus, in commerce, one of the “priorities of this year in the area of social dialogue” concerns “the fight against criminality” and “the bad attitude of customers, relates **Iaria SAVOINI**, Director of Social Affairs of EuroCommerce, the employers organization of the sector. The same federation also signed with its negotiation partners, last December, “a text on the

economic and financial crisis, addressed to the Commission” demanding “permanent and temporary measures” in favour of distribution and of employment in this sector.

**Delphine RUDELLI**, Head of European Public Affairs of the Union des Industries et Métiers de la Métallurgie (Union of Metallurgy Industries or UIMM) confirmed that at European level, it is “somewhat easier to come to agreement on consensual questions, such as professional training, the image of the sector or the attractiveness of the professions”. However, she thinks that social dialogue, even on these subjects, has the advantage of “identifying blocking points and reasons behind misunderstanding.”

In the chemical industry, the sectoral dialogue addresses the specific questions of the sector. As **Jean PELIN**, President of the European Chemical Employers Group explained, sectoral dialogue recently culminated in three “common positions” on the Reach regulation, ruling on dangerous products, on the project of an European directive on climate change, and finally a position on the current crisis. Certainly, “the trade union organisations say to us that these positions do not link them in a binding way”, he recognizes. But according to him, these common positions are recognised as “important” by the Commission.

**François LAURENT**, National secretary of the Energy and Chemical branch of the Central Belgian confederation of Christian trade unionists (CSC), is less enthusiastic than the employers representative. “It is true that we managed to adopt the texts, but when we read them, we have the impression all the same that

they are addressed principally to third parties”, he said, revealing that, “it is much easier to agree on actions that others should carry out, than on what we should do ourselves”. The Belgian trade union representative goes a little further in his reasoning, reminding us that, “the main activity of the employers in Brussels is lobbying”. Without making a personal judgement, he reports that the employers of the chemistry industry are sometimes suspected of making social dialogue into “an instrument to serve their lobbying activities”.

### **Concrete results**

Consequently, **François LAURENT** praises the agreements “which really give something to the workers”. He points out that this is the case in another sector of activity, also affiliated to the chemical industry, that of hairdressing and beauty care. UNI-Europa was alerted by a directive proposed by the Commission on the protection of consumers against the cosmetic

products, and requested the Commission to take heed. “They based their case on the fact that the workers in this sector are more exposed to risks than simple consumers”, said the trade unionist. Despite this argument, the Commission refused to include the comments of the profession in a directive aimed at consumers. UNI-Europa therefore kept on trying and proposed a framework agreement “taking inspiration from the spirit of the agreement of crystalline silica”, specified **François LAURENT**. The federation of employers in the hairdressing industry was very interested. And for a good reason, “the employers are subject to the very same working conditions as the workers”. Also, added the trade unionist, “the working conditions for hairdressers are the same all over Europe; the same products are used everywhere”. A framework agreement would be useful in that it would compensate the weaknesses of a cosmetic directive.

## **OVERCOMING THE DIFFICULTIES TO ACHIEVE A MORE EFFICIENT SOCIAL DIALOGUE**

European social dialogue comes up against numerous obstacles that the players have to learn to overcome if they want to succeed. These difficulties hinder, among other things, their capacity to integrate the experiences of others.

### **Identify and motivate the players**

Social relations are full of pitfalls, as pointed out by almost all the speakers. One of the main difficulties is related to the legitimacy of the social partners. Some organisations, according to **François ZIEGLER**, “do not have a real capacity to negotiate”. **Patrick ITSCHERT** gives the example of the textile industry. “In some countries, the trade unions, or the employers entrusted with negotiation, only represent 5% of the workers”, indicated the representative of the European federation of the sector.

**Evelyne LEONARD**, of the Catholic University of Louvain (Belgium), who gathers information on the numerous difficulties encountered in practise by the European social partners, explains why the borders of the national sectors do not always correspond. “If we mention chemistry, we know what it is about. However, does chemistry include pharmaceuticals and plastics?” she asked.

Concerning the postal services, she points out, “no national trade union or employer organisation corresponds strictly to the boundary covered by the national members of European organisations”. As for the employers, the chambers of commerce can also be members even they are not entirely considered as social negotiation partners.

Once the players have been identified, they have to be motivated. This is not always easy either, going by **Evelyne LEONARD**. “Many people ask why bring issues to European level, to Brussels, this strange city full of technocrats where it rains all the time”, she joked. The academic observed three types of behaviour among social partners. First of all, “the core of permanent members who come to Brussels and who participate. They see a point in European social dialogue”. Then there is a “second circle of players who come when a subject interests them, i.e. their attendance depends on the subjects under discussion”. Finally, we have those whom we never see, and who are sometimes difficult to identify. Among them, “a small fringe element which is opposed to Europe, this has to be said. Others are opposed to the subjects under discussion. Thus, an organisation from a central European country refused to participate in a discussion on parity

between the sexes on the grounds that “women should stay at home”, related **Evelyne LEONARD**.

**Tristan D’AVEZAC**, at Eurociett, also notices that the new member States sometimes lack motivation. “To advance, we need structured negotiating partners who know the subject”. **Zsuzsa KADAR**, a Hungarian representative, expert of social relations in central Europe, confirms these difficulties. There is a lot of division among the trade union movement; the employer organisations have a tendency to only negotiate at company level and the employers consider themselves as lobbying partners of the government, rather than as social partners. But these same organizations often expect the solution to come from the state”, she related.

#### **A lack of resources**

The lack of interest on the part of certain players may often be explained by material

reasons. “The administrative capacity of social partners does not evolve in proportion with their ambitions”, stated **François ZIEGLER**. “Secretariats regularly ask us for two to four weeks more to work”, he says. Because “to be involved in European social dialogue requires resources. You have to keep up to date, read all the documents of the Commission”, points out **Evelyne LEONARD**. She notes that the national organisations have less resources and time because sectoral social dialogue is marginalized in their countries.

The budget limitations are sometimes accompanied by very mundane difficulties, also at national level. Thus, during the application in France of the European agreement on stress, the trade unions and the employer representatives did not have the same translation! “We were each working separately with completely different texts. There followed a minor dispute with the MEDEF (employers’ representatives) over which translation the talks should be based on”, related **Jean-Louis Malys**, of the CFDT (French Democratic Confederation of Labour).

## **THE OBSTACLE OF NATIONAL LEGAL SYSTEMS**

#### **France does not like soft law**

European social dialogue also comes up against much more conceptual difficulties, as was illustrated by the presentation of **Marie-Françoise LEMAITRE**, of the General Directorate of the French Ministry for Employment, Social Relations, Family and Solidarity and Urban Affairs. According to her, European social dialogue “does not produce standards” although the services of the State, in France, “like hard law”, which corresponds to “a Latin country with written law”. The representative of the French Ministry for Employment is well aware of “the primacy of communitary law” over national law. However, she finds the “soft law” produced by the European authorities “distant and complicated”. According to her, a sectoral or group agreement, “either produces a standard or it does not. And if it does not result in a standard, there is no more to be said”. All the while assimilating European social dialogue with a “framework of supranational, even international negotiation”, **Marie-Françoise LEMAITRE** also judges the

representativeness of the players to be uncertain. “In France, at the Ministry for Employment, we know national players. “Because the EDF is based in France, when it deposes a company agreement, this meets our approval. But does this make it conform to the communitary and national regulation?”, she asked.

The point of view put forward by **Marie-Françoise LEMAITRE** gave rise to a lively discussion. **Evelyne LEONARD** declared this contribution to be “biased in two ways. It emphasizes the situation in France, and is biased legally”. She pointed out that “the criteria of representativeness of the social partners are defined by the Commission”, and challenges the affirmation that the member States can question this representativeness. **Bernard CARON**, of EDF, replies that the signatories of the global agreement on corporate social responsibility “never considered the question of the standard during negotiations”. According to him, this document is binding beyond its legal value. “The assessment bodies outside the financial

aspect, or the NGOs examine the commitments and the consequences of these”, he stated.

#### **Other more conciliatory member States**

In the United Kingdom, the “softness” of European law seems to be a lot less problematical than in France, if we are to go by the account of **Jan WRIGHT**, Vice Director of the department in charge of innovation and skills, the equivalent of the Ministry for Employment. “We have an ad hoc mechanism, corresponding to the United Kingdom” she says assuring us that this works well “quite simply because the model is flexible”.

In reality, there are as many ways as implementing European law as there are countries of the Union, we are told by **Lutz MÜHL** of the German federation of employers of the chemical industry, who thinks that “a single solution which would work in all of the Twenty-Seven countries would be unimaginable”. **Christoph RIEDMANN**, of the Representation of the Austrian Chamber of Commerce in Brussels, can back this up. When Austria joined the EU in 1995, the observers reasonably imagined that the social standards existing in the country already met the European average. However, this turned out to

be untrue. Thus, on the subject of discrimination, the Austrian players thought that this could only occur “in relation to women”, indicated **Christoph RIEDMANN**. But, “there are other dimensions. Discrimination also concerns men, even if the law does not provide for this,” explained the Austrian representative.

Sometimes, the national reality must adapt to the jurisprudence of the European Court of Justice. This is the case for Sweden, following the “Laval case”, a legal decision of 2007, which seems to consider the free circulation of services to be more important than the respect of the working conditions in the host countries. “To fully understand the situation, you need to know the legal context of our country”, was the comment of **Stefan HULT**, Director of Labour Law Department, Ministry for Employment in Stockholm (Sweden), on this topic. In Germany, on the other hand, a decision of the Court of 2005 cancelling a stipulation unfavourable to older workers was welcomed by **Evelyn RÄDER**, Head of Social affairs and Employment Department at Verdi (German services trade union), as “the road to take for a social Europe”.

## **A MORE OPEN DIALOGUE**

How can we prepare a future social dialogue which is more effective, more spontaneous and draws better on experiences at all levels in Europe?

#### **A Mediterranean initiative**

These multiple challenges motivated a group of French, Italian and Spanish trade unionists from the energy and chemical sectors to create last December the Association pour l'Europe Solidaire et la Coopération en Méditerranée (Association for Solidarity in Europe and for Mediterranean Cooperation or AESCOOMED). The goal of the association, intended to expand progressively to the countries of North Africa and the Middle East, is to carry out independent work on selected topics.

The two first studies are intended to be about “energy questions in the Mediterranean and the social consequences of the crisis on the sub-contractors of the automobile industry”, explained **Jean-François RENUCCI**, General

Director of the new association. AESCOOMED regards the agreement on crystalline silica as a model. This is, according to **Jean-François RENUCCI**, “the first voluntary agreement published in the Official Journal in all the EU languages”. The agreement contains a kind of restriction, because it “obliges member States and social partners to adapt it depending on their legislation and to carry out a reporting, specifying the results of the operation”.

#### **The crisis, an opportunity?**

For the moment, the interactions between the different aspects of European social dialogue are limited, noted **Jacques MOREAU** at the end of two days of debates. It is true that, “a lot has changed between 1998 and 2009; habits have been established. Today, we no longer question the necessity of sectoral social dialogue at European level”. But the “path” described by the General Delegate of Europe et Société is confronted with the relative “over-

shadowing” of the Commission and especially the “extreme diversity, both national and sectoral of the players”. The organisations, observes **Jacques MOREAU**, “are not armed to carry out all the tasks that they are being entrusted with”. The “mandate that the national organisations accept to entrust to the European players”, should also be a subject of reflection, particularly in the new member States.

The coming period, during which we will have to adapt to the crisis, could allow the emergence of new constructions, and give “a new dimension” to the analyses carried out so far, such as on flexicurity. This result could be obtained if the social partners face up to their responsibilities and are able for the task of meeting the current challenges”.

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## ***FORTHCOMING ACTIVITIES***

***27 and 28 January 2010***

***Conference organised by Europe et Société with the support of the European Commission on the subject of The impact of the information consultation directive on social dialogue and the developments envisaged***

***During the 1<sup>st</sup> semester 2010***

***Conference organised by Europe et Société with the support of the European Commission on the subject of Social dialogue and industrial restructuring in Europe***

***October 2009***

***Publication of the***

***Interaction of social dialogue in Europe within the framework of the Lisbon strategy***

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