Challenges to a "European" industrial relations system

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Introduction

The unions face two types of problem. The first of these is generally applicable to unions all over the world, insofar as it derives from the increased internationalisation of economies, changes from an industrial and agricultural to a services economy, new technologies, new forms of production, the increasing reliance on outsourcing and subcontracting, the impact of financialisation of the economy and more Anglo Saxon–oriented forms of corporate governance. The second type of problem is attributable more specifically to the unbalanced state of European integration that has given rise to political responses such as the European Constitution and then the Lisbon Treaty, the 'no' votes in France, the Netherlands and Ireland, the Social Agenda, revision of the European works councils and working time Directives, etc. A further feature of this picture is that recent European Court of Justice decisions have had a huge impact on the possibilities open to the trade unions to fight for equal treatment of all workers in Europe.

These are problems that trade unions have to explain to their members on a daily basis.

What kind of joint European answers to these challenges can the trade unions supply?

The ETUC, at its 9th Congress in 1999, adopted a resolution entitled 'Towards a European system of industrial relations[1]' in which it highlighted issues such as social regulation, social dialogue, coordination of collective bargaining, European works councils (EWC) and the Europeanisation of trade unions. Today, nine years and two Congresses later, though there is little reason to be more optimistic about a social Europe than in the 1990s, European integration has moved on, as have the various components of a European industrial relations system.

Against the background of these broader challenges, it is vital to consider what trade unions can do to improve the situation and how they can achieve their goals, such as raising living standards, promoting equality and upward convergence, and enhancing workers' voice at the workplace. Industrial relations systems are only part of the overall policy framework for achieving such goals, but they can contribute in a number of ways, for instance by:

- setting and raising standards in labour markets and establishing rules that ensure level playing fields, stabilising expectations, reducing uncertainty and promoting longer-term solutions;
- setting wages in such a way as to ensure wage growth that raises incomes, avoids inflation and meets normatively defined distributional goals, while preventing wage dumping;
- providing for employee voice and participation and helping resolve social conflicts at different levels;
- promoting high-quality jobs and workplaces and contributing to sustainable development goals.

This paper aims to facilitate the debate on the implications for European industrial relations systems of the developments cited above by offering a brief introduction to the challenges faced by industrial relations today, flagging up the context in which European trade union action has to be set (part I), supplying an inventory of the main elements of industrial relations systems already existing at European level, highlighting some key questions and the challenges in each area (part II), and concluding with some comments on the articulation between existing initiatives designed to achieve a multilevel industrial relations system and the still missing links (part III).

[1] Available in EN at: http://www.etuc.org/a/2258 and in FR at: http://www.etuc.org/r/923

I. Challenges industrial relations are facing today

In all advanced capitalist countries trade unions and industrial relations systems – the complex of institutions and policies that regulate the relationship between labour and capital – are under substantial pressure to adjust. This pressure stems from a number of sources.

At the end of the 20th century the advancing **globalisation** of the world economy entered a new phase. Previously isolated regions, such as eastern Europe, China and India became fully integrated into the world economy. This additional labour supply, offering medium or even high skills at low costs, has redefined countries' comparative advantages. Meanwhile, revolutionary developments in information and communications technologies have resulted in integrated production of previously separate goods, as well as integration of capital markets, while exposing previously 'domestic' industries and, increasingly, services to global competition. Firms have faced growing pressures from globalised capital and product markets and, while Europe remains characterised by 'varieties of capitalism', the Anglo-Saxon corporate governance model, with shareholder value as its principal focus, appears to have gained in influence across Europe. Furthermore, the production model has moved on, with the multinational companies especially having reorganised their value-added chains and production processes, leading to more complex links, both formal and informal, between companies.

As a result of all these processes, the balance between capital and labour has shifted, to the detriment of the latter.

In Europe, eastward enlargement has led to an increase in the diversity of the EU. The enlarged single market, with its free movement of goods, services, labour and capital – the 'four freedoms' – poses fundamental policy challenges as to how upward convergence can be promoted.

European integration was supposed – at least in the eyes of trade unions – to offer a means of imposing order and corrective regulation on unleashed market forces thanks to a combination of national and EU-level regulatory forms and institutions. Progress was made in some areas, but European integration has centred first and foremost on economic integration by eliminating national-level obstacles to the 'four freedoms', while introducing rules and standards that foster competition. Member states have been irrevocably committed to European economic integration and deepening of the internal market, and have been prepared to transfer much of their sovereignty in this field to the European level. Most notably, under European Monetary Union (EMU) 15 countries now share a single currency and a single central bank which impact national economic policy and national IR systems.

European integration has been much more limited in the labour market and social field, where the national state remains the dominant level of regulation. After decades of admittedly slow progress in different fields, such as free movement, equality between men and women, health and safety, anti-discrimination and information and consultation rights, since 2001 the flow of regulations in the social and employment field has further slowed to a mere trickle. There are various reasons for this, one being that the legislative process at EU level is structured in such a way that small, changing minorities are able to block progress and prevent the adoption of common regulations

and policies ('positive' integration), while the Treaty also excludes from European regulation, or imposes unanimity voting upon, a number of labour market and social issues. After a few initial successes, the number of interprofessional and sectoral collective agreements that have been converted into EU legislation has been subsequently limited. While the European Court of Justice (ECJ) has in the past been very important in developing and expanding social rights in key areas (such as discrimination, working time, fixed-term contracts, etc.), more recently it has challenged social rights by giving priority to the economic freedoms (Viking, Laval, Rüffert, Luxembourg).

Meanwhile European integration, dominated by the 'negative' form of integration entailed by opening up markets, has – whatever its positive effects in terms of permitting economies of scale, greater product variety, etc. – strongly impacted national labour markets and welfare states and at the same time reduced member states' capacity to regulate them. The enhanced possibilities for capital and labour mobility have strengthened the 'exit option' of individual firms, resulting in more intense regime competition between countries to attract and retain mobile factors of production (especially capital and highly skilled labour). This has translated into phenomena such as tax competition, pressure for wage moderation and increasing labour market flexibility.

EMU, while establishing a stable framework that shields countries from external shocks, has created adjustment pressure on national IR systems by reducing the range of adjustment mechanisms available to deal with asymmetric shocks and competitive pressures. Links between macroeconomic policy and national wage-setting institutions have been broken.

As a result, key national-level institutions, above all trade unions but also employer organisations, collective bargaining institutions and various institutionalised forms of worker participation and consultation, have been gradually weakened, reducing the capacity for collective action. Moreover, the above-mentioned recent rulings by the ECJ set important limits on national collective bargaining and collective action regulations and practices.

Against the background of these developments at the political level, divergent trends in the performance of the European labour markets have coincided with growing income inequality and concern about poverty and social exclusion.

While the employment situation is improving on average in the EU27, large differences between countries remain. Employment growth is being driven more by women than men but also by an expansion of employment among elderly people. In spite of these improvements, the EU27 annual average employment rate – 65.4% in 2007 – is still a long way from the Lisbon target of 70% by 2010. Unemployment has been decreasing for a number of years, but remains too high, especially in certain regions.

These improvements have to be seen, moreover, in the light of strong segmentation in labour market outcomes and the increasing prevalence of non-standard forms of employment. Employment rates remain relatively low for certain labour market groups – such as older women, migrant women and the low-skilled. Unemployment rates are especially high among young workers and those with the lowest educational attainment. What is more, employment expansion is, in large measure, attributable to increases in forms of non-standard employment that have received active support at the European

level (cf. European employment strategy and flexicurity debates) and in national policies. Part-time and temporary employment shares have increased markedly and these forms of contract are often linked with precarious working conditions and low levels of unionisation. Broader attempts to measure job quality suggest, at best, stagnation in this respect, with increasing problems in some areas, such as precarious employment, while working and occupational health and safety conditions have in many cases shown no improvement at all.

Meanwhile, labour's share of national income has been depressed, overall, by some ten percentage points of GDP since the early 1980s. Productivity growth has been sluggish, and wage growth even more so. Wage inequality has risen substantially in many countries, although some countries have successfully prevented this.

After this description of the challenges industrial relations are facing today, the second part of the paper will describe the elements of an industrial relations system at European level. This part is structured around a series of key questions relating to the implications and necessary actions:

1) How could the pressure on the national industrial relations systems be countered?
2) Are the areas subject to challenge already counterbalanced by developments at European level?
3) How could different levels be integrated in order to create an effective and encompassing multi-level system aimed at safeguarding wages and working conditions throughout Europe?
4) What role, in general, could trade unions take on in this context?

II. Elements of an industrial relations system on the European level

Collective industrial relations are fundamental to the regulation of employment relations in all EU member states. In the majority of these countries multi-employer systems of collective bargaining have proven relatively persistent despite ongoing pressures to decentralise collective bargaining. The EU-level system of industrial relations reflects the institutional characteristics of national industrial and labour relations which are an integral part of the 'European Social Model'. Patchy industrial relations structures have emerged on the European level but the extent to which they have become institutionalised is extremely uneven. The tendency is towards multi-level governance and it has been possible, over time, to observe the gradual formation of greater interdependence among national systems, the incorporation of European elements into the national systems, as well as the deliberate development of transnational and European institutions, actors and practices.

Today there are growing tensions between the still mainly national character of existing employment regulation mechanisms and the increasingly transnational character of economic activities in the internal market. The traditional forms of labour regulation, worker representation and wage bargaining, are facing serious challenges. The national industrial relations systems are under pressure from the efforts to eliminate barriers that restrict the four market freedoms. Such efforts include European tools such as the 'stability and growth pact' and the 'better regulation' agenda which serve, to some extent, to drive adjustment of the national legal frameworks. The possibilities and scope for the trade unions to negotiate national employment conditions with the employer side and the government is therefore very much influenced not only by the national context but also by international and European developments. In many sectors – agriculture, construction, tourism, commercial services, etc. – cross-border markets are increasingly a reality, entailing mobility of both labour and the provision of services, while 'labour-only services' are particularly problematic insofar as, while representing mobility of labour in practice, they are in actual fact governed by the regulations on services.

The current context and the general developments referred to in Part I make cross-border cooperation between trade unions all the more important. Such cooperation is indeed practically and urgently necessary for the protection and advancement of workers' interests at all levels. A sense of common identity and mutual benefit, as the basis for solidarity, are at the heart of every development of a coalition of interests with employees working in other countries. One of the main challenges is therefore to identify the added value and effectiveness of cross-border union cooperation in the service of workers' interests.

Considering industrial relations *stricto sensu* – and therefore leaving aside the European employment strategy, the macroeconomic dialogue and the Charter of Fundamental Rights – elements of such a system (institutions, actors, policies) can already be found on the European level in the field of 1) social dialogue, 2) collective bargaining, 3) worker participation, 4) regulation of working conditions, and 5) collective action.

These are the five components that will be looked at more closely in the next section, giving a state of play of the situation, indicating the current problems and flagging up the key questions currently faced by trade unions in each of these areas.

1.) Social dialogue

Social dialogue is strongly anchored at the European level in that it is acknowledged as a regulatory instrument by Articles 138 and 139 of the Treaty.

More than 20 years after creation of the European social dialogue (ESD) a total of six framework agreements have been concluded at interprofessional level. Of these, the first three were transposed into European Directives. In addition, the social partners have adopted frameworks of action, as well as numerous joint statements, and have developed joint initiatives (on restructuring, for example). During the last five years in particular, the European social partners have become more autonomous in this process, as can be seen from the multi-annual work programmes drawn up by the partners themselves to define the scope and content of their joint work. From being a process that was initially exclusively dependent on requests from the European Commission, the ESD has evolved into an autonomous institution, though there are still many lessons to be learned before it can be said to have attained maturity and to be in a position to achieve its full potential.

The European-level sectoral social dialogue, as it exists today, is a well-established process. Its already 30-year-old formal and informal structures were reformed in May 1998 by the creation of sectoral social dialogue committees (currently numbering 36, with three more awaiting formal recognition). The Sectoral ESD has produced six binding collective agreements and around 40 texts classified as 'soft law', such as codes of conduct, charters, etc. A characteristic of the sectoral, as of the intersectoral, social dialogue at European level is the diversity of tools used to formalise commitments made by the social partners.

Although the European social dialogue has achieved a number of important results over time, evaluations of the actions also give rise to criticism and some degree of scepticism.

The first drawback relates to the lack of genuine commitment on the employer side to achieving better working conditions and social and labour rights in Europe. This shortcoming naturally leads to weaker outcomes than would be the case were the employers more committed to the process. Criticism relates, secondly, to the political environment and the lack of concrete legislative proposals in the social field which give no incentive to employers to enter into negotiation – a situation that is commonly referred to as 'bargaining in the shadow of the law'. Thirdly, there are the fears expressed by trade unions in some member states that the result of the negotiations on the European level could be to lower national standards or impose changes upon their own industrial relations systems.

There are concerns, furthermore, about the legal aspect which stem, firstly, from the uncertain nature of the instruments produced by the ESD and the resulting lack of legal enforceability, alongside the absence of alternative dispute resolution mechanisms, and, secondly, from the impossibility in the current political context to extend such agreements by means of the *erga omnes* principle which would be a way of guaranteeing better implementation via national legislation and/or collective agreements.

An additional problem is how to get the national trade unions and European Industry Federations (EIFs) fully involved in the process as a whole and in its appropriation and acceptance at national and/or sectoral level.

These difficulties notwithstanding, the European social dialogue does seem to represent one of the most promising ways of getting social rights recognised and the social *acquis communautaire* reinforced, given that the Commission's agenda on social issues remains devoid of significant content.

There remains, however, an obvious tension between a qualitative and fully autonomous European social dialogue and the need to restore the possibility to bargain 'in the shadow of the law'. A key issue is not only how to reconcile or deal with this tension on a European level, but also how to articulate it with the standards and rules governing industrial relations systems on the national level, insofar as each national system has its own combination of rules with regard to how the tensions between autonomous social dialogue and 'the shadow of the law' co-exist. While the standards and rules applicable at the national level cannot be transposed to the European level, it is quite obvious that the European social dialogue is already exerting an influence, however peripheral, on the national-level configurations.

Hence, while the ESD is gaining in importance as a potential regulatory tool, trade unions need to give thought to how the outcome of the ESD can be improved in respect of the issues dealt with, the nature and impact of the instruments, the obligations of the signatory parties and implementation.

Challenges

- What steps can be taken to ensure that the employer side becomes more committed to the process?
- How to develop a better understanding of employers' interest (or lack of interest) in the ESD, and how to ensure that more pressure is put on employers and their organisations to take an interest in the ESD?

Coordination:

- How can the articulation between the European sectoral and the cross-sectoral level be ensured?
- How can the social dialogue on all levels in the national context be better linked to the European level in such a way that the two prove complementary?

Implementation:

- How can a mechanism for transposition of the autonomous framework agreements, based on the experience acquired since 2000, be developed?
- How can a monitoring, follow-up and – when necessary – revision of the European social dialogue instruments, with appropriate involvement of the social partners themselves, be ensured?
- What form could be taken by an alternative dispute resolution mechanism at the European level?

2.) Collective bargaining (CB)

Another dimension that has emerged on a supranational level is that of processes that can be classified as variants of, or variations upon, the processes of collective bargaining that are familiar in the national contexts, though it must be borne in mind that the European processes in question do not refer to the same legal and normative frames as the national ones. As opposed to the European social dialogue, there are no legal foundations supporting initiatives in this sphere. In order to deal with the increased internationalisation of the economy, the risk of social dumping and of companies playing off workers in different countries against one another, trade unions in Europe have embarked on two major approaches to the cross-border coordination of collective bargaining policies. One of these is the cross-border cooperation of trade unions in the transnational coordination of CB; the other is the negotiation and signature of joint agreements on the level of multi-national companies (MNC).

The transnational coordination of CB

At the sectoral level, 'networks' for the transnational coordination of collective bargaining have been established with the involvement – quite uneven from one case to the next – of the relevant European Industry Federation (EIF) and the national members. The European Metalworkers' Federation (EMF) took on a pioneering role when formulating its 'statement of principle on collective bargaining policy' in 1993. The next cornerstone of this new approach was not put in place until some years later when, in 1997, some of the EMF member organisations established cross-border networks for the exchange of collective bargaining information and trade union officials. The 'European coordination rule' adopted in 1998 specifies orientation criteria (inflation and national productivity gains) for wage bargaining. Subsequently, the EMF members also agreed on a Charter on working time (1998) and a second such charter on vocational training (2001). The Eucob@n system, i.e. the European Collective Bargaining Network, was created with the aim of gathering information on CB covering the metal, chemical and textile industries.

There exist, in addition, various union initiatives for bi- or multilateral cross-border cooperation at cross-sectoral level. The so-called 'Doorn initiative' (adopted by Belgian, German, Luxembourg and Dutch trade unions) established an explicit cross-border coordination of collective bargaining policy. In 1998 the 'Doorn declaration' was adopted defining an 'orientation formula' for national bargaining, according to which trade union negotiators should seek collective agreements that would provide at least the equivalent of 'the sum total of the evolution of prices and the increases in labour productivity'.

Along similar lines, the ETUC, since 2000, has embarked on adopting a collective wage bargaining guideline arguing that, over the medium term, nominal wage increases should compensate for inflation and should also reflect the greater part of productivity growth, with the remaining margin being used for qualitative improvements in working conditions. Rather than being implemented strictly across all EU member states, the guideline is a political statement about the desirable nature of fair wage and wealth distribution developments.

It is today apparent that these initiatives did not stand the test of reality and failed to achieve the expected results. Even so, the issue of cross-border coordination of CB policies is at an early stage and therefore perceived as a 'learning experience' by the involved actors; as trade-union initiatives aimed at the transnational coordination of CB,

policies differ considerably between sectors with regard to their degree of institutionalisation, the involvement of the EIF and the formalisation of CB goals and criteria, as well as evaluation and monitoring procedures.

The positive aspects of establishing arrangements for the transnational coordination of CB policies are the following: first, CB coordination as a purely union-driven process enables the coordination of CB without the involvement of employers who are reluctant or even opposed to engagement in 'European' collective bargaining; secondly, thanks to involvement of the relevant EIF, the efficiency of transnational CB is supposed to increase due to the coordination and monitoring function of the sectoral European peak-level organisation; thirdly, in functional terms, such cross-border networks are flexible enough to allow for considerable diversity with regard to national CB arrangements and practices; fourthly, cross-border CB coordination initiatives serve to strengthen interpersonal relations between union representatives from different countries and are therefore regarded as a potential means of increasing cross-border solidarity and action.

The coordination of collective bargaining suffers, meanwhile, from of the existence of several major obstacles. One of these is the diversity of industrial relations systems across Europe, expressed in very different levels of membership, collective bargaining coverage rates, and bargaining traditions and practices. Another is that many trade unions have an essentially national focus and are prepared to become involved in transnational activities to only a very limited extent. Frequently also, they perceive their interests in predominantly national terms and sometimes see workers and unions in other countries as competitors rather than partners. The coordination endeavours thus suffer from a serious lack of implementation at national level. What is more, the 'European coordination rule', as it has been developed, has proved highly problematic in terms of its application in the service sectors.

'Transnational collective bargaining'

The second approach to transnational CB is found at the level of multinational companies (MNC) and is a *sui generis* instance of negotiations between employers and trade unions or employee representatives. Despite the absence of a European legal framework, the number of transnational texts signed by multinationals and labour force representatives has increased considerably in recent years. Although these transnational texts cannot technically be described as collective agreements, they do incorporate many features similar to those typical of collective agreements concluded at the national level. Interestingly enough, the most relevant initiatives started with European multinationals using, in most cases, existing social dialogue structures set up at the national and European level. As such, European works councils played a key role in almost all texts, while the signature of a European/international workers' federation is to be found on almost half of the texts, and several of them bear the signature of national trade unions. These transnational agreements (alongside global or international framework agreements, which are not considered in any detail in this paper) most definitely create a dynamic of social dialogue and represent an impetus for negotiation at the European and international level. However, there remain several major uncertainties surrounding the binding nature of such agreements, the actors or parties to their conclusion, as well as their interpretation and implementation. In this context, and in order to increase the 'capacity to act' of social partners, and thereby improve the quality and effectiveness of transnational agreements, the European Commission is proposing to discuss 'the role of transnational company agreements'.

The initiatives covered by the label 'Corporate social responsibility (CSR)' also represent, to a certain extent, an interesting avenue towards cross-border social dialogue. CSR is neither a goal nor an option; rather, it is a process requiring highly nuanced approaches. In the best cases, it prompts multinationals to adopt more socially oriented commitments, including worldwide respect of labour standards within the multinationals' sphere of influence (including subcontractors, clients and suppliers). CSR could be seen as a first step towards more binding agreements. Business, while pointing out the voluntary nature of CSR, could also commit itself to more binding obligations by subscribing to international framework agreements.

Many questions can be raised with regard to the above issues. However, with regard to the emerging transnational coordination of collective bargaining and agreements, trade unions need to reflect on what they are seeking to achieve via these processes and hence how they can improve the outcome in respect of both the process and the issues dealt with. This involves giving close consideration to aspects such as the nature and impact of the processes, the obligations of the signatory parties and the implementation of what has been agreed. Nor can the key issue of coordination of different levels and actors be neglected.

Challenges

Coordination

- How can the extremely heterogeneous nature of national industrial relations structures and practices be 'tamed' in order to enhance the development of a multi-level approach to CB?
- How is it possible to address the practical problems resulting from differences in CB systems and traditions such as the emphasis on company-based or sectoral bargaining, the synchronisation of bargaining rounds or differences in the scope and duration of collective agreements?
- How can compliance of national bargaining units with European guidelines be achieved in order to guarantee the effectiveness of cross-border CB coordination?
- Can the conclusion of agreements on the level of MNC be regarded as a step towards a real 'internationalisation of CB'?

Implementation

- How can transnational agreements be implemented and how can this principle be expanded to cover the whole network of companies involved in the same production chain?
- Would it be feasible to think along similar lines in relation to SMEs?

Actors and networks

- What is the role – mere coordination or a more active role – of the relevant EIF in transnational coordination initiatives?
- What strategies have to be adopted to transform existing networks from the ex-post exchange of CB results into forums for ex-ante exchange of information?
- Should EWC be involved in CB at the level of MNC? What should be the relationship between the traditional collective bargaining party, i.e. trade unions, and the EWC?

3.) Worker participation

Another important element in the Europeanisation of industrial relations is the area of 'worker participation' – the mechanism for the involvement of employees in management decision-making – in a very broad sense including information, consultation, co-decision-making, employee participation in European works councils and European company board-level representation.

While workers' representation is perceived as part of the European Social Model, the introduction of this second pillar of industrial relations has not been devoid of tension in a number of countries. The basic tools for worker participation remain at company level. They are organised on the basis of the national framework for industrial relations and have been devised to deal with a wide range of different types of situation. The variety is compounded by changes in the predominant production model, insofar as the production process is now rarely limited to the boundaries of a single company, so that chains of subcontractors have become an important feature of the new work organisation. This means, in many cases, that systems of representation will exclude some segments of the workforce.

Information/consultation

The body of law on worker participation consists of at least 15 European Directives. The provisions in this sphere are thus highly fragmented and include quite varying definitions of information, consultation and participation. The scope of the Directives ranges from specific situations – such as collective redundancies and transfers of undertakings – to the general right to information and consultation, while other specific provisions exist to cover any event of a transnational nature substantially affecting the interests of the employees. It was not until 2002 that a general Directive on information and consultation of employees in a national context – designed to close existing gaps in Community legislation – was published. The scope of the right to workforce information and consultation was thus extended to all EU member states (but SMEs are still excluded), a development of particular relevance for countries (such as the UK, Ireland and the new member states) where no such rules previously existed. In spite of the new provisions, the whole area remains fragmented and this situation creates confusion and legal insecurity for both workers and their representatives, as well as for management, these difficulties being compounded by the fact that most Directives are poorly implemented. This is, furthermore, a field of law in which provisions are often flouted and where infringement is weakly sanctioned, as evidenced by frequent cases of plant closure without appropriate or timely information and consultation of the workforce.

These problems have not gone unnoticed and the European Commission intends in 2008, in the context of its 'better regulation' agenda, to undertake codification of the information and consultation Directives. It is to be hoped that this harmonisation will not only cover technical requirements but will also accommodate recent developments, such as restructuring, transnational collective bargaining, etc.

European Works Councils (EWC)

EWCs have now been in existence for some 20 years and it is already more than a decade since this institution became officially enshrined in European law. There are currently 870 such bodies in 823 multinational undertakings (MNCs), the rate of MNC compliance with the legislative requirements having remained steady at around 35%

over several years. Despite the accession of 12 new countries to the EU during the past four years, there has been no significant rise in the number of EWCs.

In terms of the operation of EWCs, it is possible to observe a profound and still deepening gap between those that perform effectively and those that provide mere window-dressing. In a few EWCs consultation has been upgraded to negotiation in the form of co-signing transnational agreements and involvement in aspects of the developing European level of collective bargaining (see point 2). At the same time, no more than a quarter of EWCs receive information, and even fewer are consulted about company decisions before they are finalised. This situation has contributed to a growing number of EWCs initiating litigation – some 40 cases in the EU in total – to seek respect for their information and consultation rights. On a more positive note, EWCs are becoming an important focus for trade union contact and cooperation at European level within the company, while also providing the opportunity for development of networks of TU representatives.

After a ten-year delay, the revision of the EWC Directive was finally embarked upon at the beginning of July this year and it is to be hoped that the amendments can be adopted by the EP and the Council before the next European election.

European Company

Since 2004 EU law has offered businesses the possibility to set up a European Company (SE). This option entails numerous advantages for the management and for company mobility, but an SE cannot be set up in the absence of an agreement on employee involvement in accordance with the terms of EU Directive 2001/86/EU. The result will be a SE works council 'plus', i.e. rights and working conditions superior to those provided for under the EWC Directive, 'plus' board-level representation where applicable.

Meanwhile, more than 40 SEs covering a total of 300,000 workers have been set up under such an agreement. Since, in some EU member states, worker representation at board level is not part of the national industrial relations system, as a result of SE involvement more employees than before gain the right to be represented in company boardrooms.

At the same time, a worrying trend can be observed whereby a growing number of so-called 'shelf SEs' are established and registered as SE undertakings. In formal terms, these are firms without employees which are subsequently sold by consultancies as instantly available legal forms. Consequently, when these firms do, at a later stage, recruit employees, no agreement on employee participation is signed. Most disturbingly of all, such entities are accepted by national registers.

In terms of achievements, by offering the 'EWC plus' option, the SE undoubtedly represents an advance in European industrial relations. However, as is the case with EWCs, the SE board-level representation has introduced a new pillar into the national industrial relations systems and hence represents an important challenge for employee representatives on the board level in that these members have to combine meeting the needs of their constituencies (employees) with a totally new function, namely, supervising company business or being a member of an EWC. This change in profile often causes controversy and misunderstandings between local trade unions and their representatives at works council as well as board level, and a general tension tends to arise between the tasks on the European level involving contact with the management

and the daily tasks on the national level. What is more, the fact that EWC members are not always trade union representatives creates an even greater tension between the national and the European levels.

Challenges

- What causes these mixed results? Is it the lack of trade union investment in such new bodies, the lack of employer will for cooperation, or is the legal framework the main problem?

Actors

- How can trade unions make better use of these European-level instruments (EWC and SE board level)?
- How could the trade unions boost the number of EWCs in Europe and why have they not so far succeeded in so doing?
- Do trade unions currently have the capacity to support employees in creating new EWCs?
- How can trade unions address the problem of EWC members not being trade union representatives?
- How can worker participation in SEs be used to provide an effective channel for putting forward social interests at the level of company decision-making?

Coordination

- How can unions foster more cooperation between national works councils and EWCs, on the one hand, and between the sectoral level and EWCs on the other?
- How can EWCs be made more effective and more useful for employees on the national level?

Implementation

- How is it possible to achieve respect and better implementation of workers' rights on information and consultation? Would more dissuasive and rapid sanctions be part of the solution?

4.) Regulation of working conditions

European legislation in the social field is of course very patchy and incomplete compared to national legislative provision in this area. There exist, nevertheless, numerous Directives which exert an effect on national realities, for example in the area of worker participation (as mentioned above), the area which could be entitled 'working conditions' (with around 12 Directives e.g. fixed-term and part-time work, posting of workers, working time), the area of gender equality and non-discrimination (with around 11 Directives), and of course the large area of health and safety provisions (about 20 Directives). For several years there has been a standstill with regard to social legislation, the last social agenda having been devoid of concrete legal initiatives. Even so, there are the occasional instances of new legislation and, after years of stalemate in the Council, a political compromise for a proposal for a European Directive on temporary agency work was finally found, while, on the negative side, recent developments have triggered social regression with the proposal on the revised working time Directive.

The green paper on labour law is another example where the European legislator failed to take up the opportunity to become active in the social field (even though the issues raised were important). The European Commission now has the task of achieving 'better regulation', which means consolidating existing standards instead of creating new ones. This implies simplification and revision of existing Directives (e.g. EWC – ongoing, SE – upcoming). When existing Directives are revised, the risk of worsening the terms of the formerly reached compromise is present. This is true of the working time Directive insofar as the present proposal, rather than raising social standards by means of legislative process, involves lowering them. But 'better regulation' also implies better implementation. The general tendency towards incorrect transposition or application of European Directives into national law is becoming stronger – and not in the social field alone – and this development represents a clear sign of a lack and/or loss of respect for EU legislation. New infringement proceedings in employment rose to 11% in 2007, when 35 new cases were opened, making this area the '*fourth most important source of incorrect transposition/application of EU Internal Market rules*' (Scoreboard 16, Internal Market, July 2007, p. 20).

European Directives are adding new pillars to the industrial relations landscape in many countries, thereby offering instruments that could gain in importance as a potential regulatory tool. Nevertheless, the development of soft law (not legally binding, lacking features such as obligation, justiciability, sanctions, and/or enforcement mechanisms) as a new mode of governance and as an alternative path to hard law has become increasingly prevalent and emphasised in European integration. It is in this light that it is important to consider a significant element not discussed in this paper, namely the role of trade unions in shaping the Lisbon strategy and the European employment strategy (which is itself a case of soft law in that the guidelines are general and not legally binding). Even though the requirement for trade union involvement is stipulated in several different official texts, there would still appear to be considerable scope for trade unions to grasp existing opportunities more fully and to strengthen their version of the Lisbon strategy.

Recent decisions of the ECJ seem to require legislative changes on the European level in order to ensure the possibility of equal treatment of posted workers and in order to place the fundamental social rights on an equal footing with the economic freedoms, or to give the former priority over the latter. Social legislation is of course one way of redressing the power imbalance between the economic and the social field hitherto inherent in the process of European construction.

What standards are really missing on European level? What standards do trade unions want in which areas in order to protect workers in Europe? Is the existing legislation sufficient or is revision necessary in some cases (e.g. parental leave Directive, posted workers Directive)? Is there a good prospect of improving existing standards? Might the lack of provisions on a European level represent a risk, seeing that, where no legislation exists, it is ultimately up to the ECJ to administer the law (see ECJ judgments on collective rights, Laval, Viking)?

Challenges

- How to achieve a situation in which fundamental social rights gain priority over economic freedoms?
- What instruments should be used to achieve the desired standards – legislation or social dialogue, or both?

Coordination

- How can trade unions articulate their demands on all the necessary levels, i.e. the European legislator, the European social partners when negotiating agreements on the European level, the national legislators when implementing Directives, the national social partners when implementing European agreements, and the courts (national and European)?
- What should be the link between soft law and hard law?

Implementation

- How can national transposition of European legislation raise standards, given that European Directives ensure only minimum standards?
- How can good implementation be assured?

5.) Collective action

It is impossible to speak of social dialogue, collective bargaining, workers' representation and working conditions without addressing the question of collective action. Trade union coordination, as well as the process towards transnational collective bargaining and the European social dialogue, is limited by the lack of the right to take collective action on a European level, and this gap leaves the European trade unions in a disadvantageous balance of power in relation to management. When trade unions in Europe wish to organise transnational trade union action, they have to act within the national 'legislative' boundaries, simultaneously seeking to coordinate national actions on a transnational scale in such a way that they acquire a European impact. This situation arises due to the fact that collective action is still today regulated almost exclusively by national rules (legislation, collective agreements and case law). It is an area of law on which Europe cannot legislate. The right to collective action is, nonetheless, stipulated in Article 28 of the Nice Charter of Fundamental Rights – but this is a non-binding text – and has recently been classified by the ECJ as a fundamental social right in the Community legislative corpus. Even so, trade unions and worker action – in other words, real people and how they behave – are probably more important in this context than a purely legal approach, while they are also essential in order to counter the risk that the developments at EU level might give rise to arrangements less favourable than those already contained in many national systems, thereby exerting pressure on the most advanced countries to reduce existing standards.

Challenges

- How to give new impetus to the trade union fight for the right to transnational collective action?
- How to respond when the European Court of Justice exerts pressure on national systems of collective bargaining and collective action?
- How can trade unions avoid further restriction of the fundamental social right to take collective action, whether as a result of actions by the European legislator or by the ECJ?

III. Conclusion

This brief overview of the European level of industrial relations has sought to provide some of the background information required to approach the four guiding questions presented in Chapter I:

1) How could the pressure on national industrial relations systems be countered?
2) Are the areas subject to challenge at national level being counterbalanced by developments at European level, or is the EU level exacerbating the challenges?
3) How could different levels be integrated in order to create an effective and encompassing multi-level system aimed at safeguarding wages and working conditions throughout Europe?
4) What role could the trade unions take on in this context?

The paper started out by contextualising and setting the scene in order to better understand the conditions under which both national and European-level industrial relations are operating. The second part mapped the various instruments and initiatives operating at supra-national level and raised specific questions about content, actors, coordination, implementation and the legal aspects in five domains. The two parts, taken together, have shown that a number of important developments are indeed taking place at supra-national level. However, the EU social dynamic, characterised by incremental progress, has recently become much more uncertain as regards legal issues, as exemplified by the regressive proposal concerning working time or the recent ECJ judgments. This implies a need to carefully analyse the implications of these recent developments and develop appropriate strategies focusing, on the one hand, on how to influence these new dynamics at play at EU level and, on the other hand, on how to coordinate from a trade union perspective the different levels, i.e. national and European.

If the national systems are no longer (or at least much less) able to cope with the challenges deriving from European integration (more integrated transnational labour markets, judgments from the ECJ, etc.) what steps can be taken to achieve progress?

The most controversial way of framing a discussion on the future of European industrial relations would undoubtedly be to discuss a transfer of power and competence from the national to the European level. The following arguments certainly run counter to such an option. Transfer of power to a level with an underdeveloped and unbalanced industrial relations system is a prospect hardly likely to thrill the trade unions, which fear that the provisions of the ESD or European legislation might undermine national collective bargaining policies, national legislation and national systems. The trade unions perceive a tension between their national and European consciousness, while the lack of popular support further hampers the prospects and search for a European-level industrial relations system. This is a situation likely to generate a trend towards a more defensive attitude, with priority being placed on survival of the local firm and individual workplace.

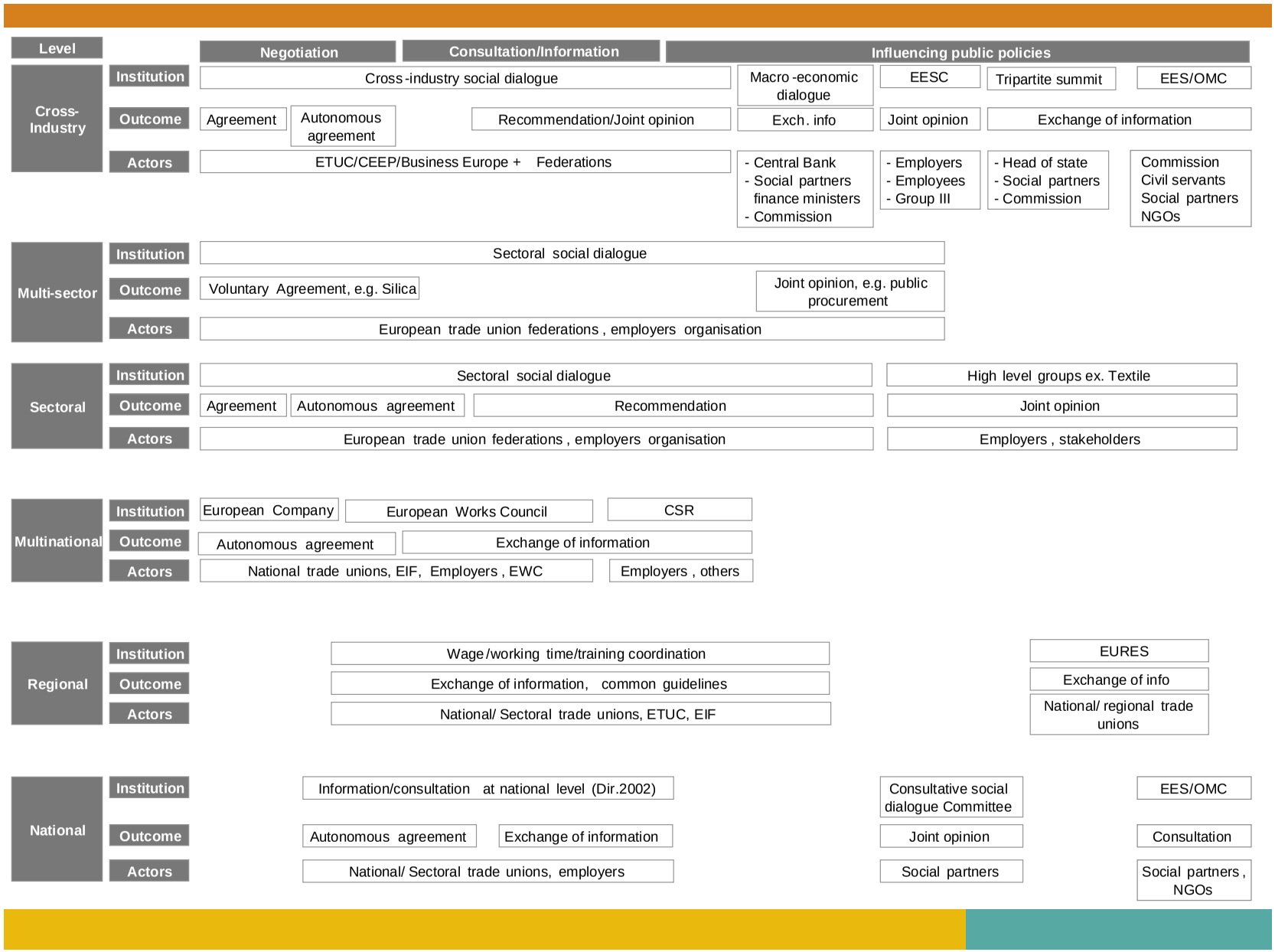
This way of approaching the discussion about the national and the European level, namely shifting powers upwards, thus proves to be rather unproductive or at least the conditions for success too difficult to achieve in the near future. Insofar as it is possible to observe a long-term tendency towards multi-level governance – over time developments such as the gradual increase in interdependence among the national systems, the adoption of European elements in national systems and the deliberate development of

transnational institutions, actors and practices have become apparent – it is perhaps worth suggesting that the discussion be conducted on the basis of these considerations. In this paper we have focussed our attention on the in which trade union action could change the situation as they are the main actors

Thinking along these lines, it is then possible to adopt a multi-level approach that consists in surveying the initiatives/instruments already existing on the different levels and considering where in this complex picture links are still missing. The results of such a systematic approach can be seen in the Figure below, which shows the different institutions, outcomes and actors at the various levels. It covers three main fields of action presented as a continuum: negotiation, information/consultation and influence of public policies. At the same time, this mode of presentation serves to reveal the missing links: e.g. the articulation between sectoral and cross-industry social dialogue or between EWCs and cross-sectoral and sectoral social dialogue.

If the situation is surveyed in such a manner, the ongoing discussion could turn around the following questions:

- How can the various governance levels in industrial relations be better articulated and coordinated – both between and across levels?
- What are the key missing links and institutions and how can the gaps be closed?
- How can the influence of the trade unions in all the 'institutions' on the European level (EWC, SD, CB) be maximised and, most importantly, how can the activities in the 'institutions' be interlinked?
- How can this multi-level coordination be articulated at the workplace and how can this contribute to ensuring higher union membership?


Level
Negotiation
Consultation/Information
Influencing public policies
Cross-Industry
Institution
Cross-industry social dialogue
Macro-economic dialogue
EESC
Tripartite summit
EES/OMC
Outcome
Agreement
Autonomous agreement
Recommendation/Joint opinion
Exch. info
Joint opinion
Exchange of information
Actors
ETUC/CEEP/Business Europe + Federations
- Central Bank
- Social partners finance ministers
- Commission
- Employers
- Employees
- Group III
- Head of state
- Social partners
- Commission
Commission
Civil servants
Social partners
NGOs
Multi-sector
Institution
Sectoral social dialogue
Outcome
Voluntary Agreement, e.g. Silica
Joint opinion, e.g. public procurement
Actors
European trade union federations , employers organisation
Sectoral
Institution
Sectoral social dialogue
High level groups ex. Textile
Outcome
Agreement
Autonomous agreement
Recommendation
Joint opinion
Actors
European trade union federations , employers organisation
Employers , stakeholders
Multinational
Institution
European Company
European Works Council
CSR
Outcome
Autonomous agreement
Exchange of information
Actors
National trade unions, EIF, Employers , EWC
Employers , others
Regional
Institution
Wage/working time/training coordination
EURES
Outcome
Exchange of information, common guidelines
Exchange of info
Actors
National/ Sectoral trade unions, ETUC, EIF
National/ regional trade unions
National
Institution
Information/consultation at national level (Dir.2002)
Consultative social dialogue Committee
EES/OMC
Outcome
Autonomous agreement
Exchange of information
Joint opinion
Consultation
Actors
National/ Sectoral trade unions, employers
Social partners
Social partners , NGOs